

UTTARAKHAND STATE POLICE COMPLAINTS AUTHORITY

ANALYSING ACCOUNTABILITY IN ACTION

Enquiry

examination
recommendation



CHRI

Commonwealth Human Rights Initiative

working for the **practical realisation** of *human rights* in the countries of the Commonwealth

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

The nature of CHRI's sponsoring organisations allows for a national presence and an international network.* These professionals can also steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards and practices. They bring local knowledge, can access policy makers, highlight issues, and act in concert to promote human rights.

CHRI is based in New Delhi, India, and has offices in London, UK, and Accra, Ghana.

International Advisory Commission: Sam Okudzeto – Chairperson. Members: Eunice Brookman-Amisah, Murray Burt, Yash Ghai, Alison Duxbury, Neville Linton, B.G. Verghese, Zohra Yusuf and Maja Daruwala.

Executive Committee (India): B.G. Verghese – Chairperson. Members: Anu Aga, B.K. Chandrashekar, Bhagwan Das, Nitin Desai, K.S. Dhillon, Harivansh, Sanjoy Hazarika, Poonam Muttreja, Ruma Pal, R.V. Pillai, Kamal Kumar and Maja Daruwala – Director.

Executive Committee (Ghana): Sam Okudzeto – Chairperson. Members: Anna Bossman, Neville Linton, Emile Short, B.G. Verghese, and Maja Daruwala – Director.

Executive Committee (UK): Neville Linton – Chairperson; Lindsay Ross – Deputy Chairperson. Members: Frances D'Souza, Austin Davis, Meenakshi Dhar, Derek Ingram, Claire Martin, Syed Sharfuddin and Elizabeth Smith.

* Commonwealth Journalists Association, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Parliamentary Association, Commonwealth Press Union and Commonwealth Broadcasting Association

ISBN: 81-88205-81-8

© Commonwealth Human Rights Initiative, 2010.

Material from this report may be used, duly acknowledging the source.



CHRI Headquarters, New Delhi

B-117, Second Floor
Sarvodaya Enclave
New Delhi - 110 017
INDIA
Tel: +91-11-43180200
Fax: +91-11-2686-4688
E-mail: info@humanrightsinitiative.org

CHRI United Kingdom, London

Institute of Commonwealth Studies
28, Russell Square
London WC1B 5DS
UK
Tel: +44-020-7-862-8857
Fax: +44-020-7-862-8820
E-mail: chri@sas.ac.uk

CHRI Africa, Accra

House No.9, Samora Machel
Street Asylum Down
Opposite Beverly Hills Hotel
Near Trust Towers, Accra, Ghana
Tel: +233 302971170
Tel/Fax: +233 302971170
E-mail: chriaf@africaonline.com.gh

UTTARAKHAND STATE POLICE COMPLAINTS AUTHORITY

ANALYSING ACCOUNTABILITY IN ACTION

Written By:
Navaz Kotwal
Sharan Srinivas

Edited By:
Devika Prasad

CHRI 2010

This report and the accompanying research and dissemination have been made possible with the financial support of the British High Commission, New Delhi.

TABLE OF CONTENTS

Chapter 1: Introduction	6
1.1 Background	7
1.2 The Uttarakhand Police: Strength, Statistics and Misconduct	8
Chapter 2: The Police Complaints Authority in Uttarakhand	10
2.1 Composition	11
2.2 Staff	12
2.3 Rule-Making Powers	12
2.4 Mandate	13
2.5 Powers	14
2.6 Offices and Funding	14
2.7 Tenure	15
2.8 Outreach	15
2.9 Cooperation from the Police	16
Chapter 3: The Working of the Authority: An Analysis	18
3.1 Profile of the Complainants	19
3.2 Profile of the Complaints Received	20
3.3 Procedure followed by the Authority	24
Chapter 4: The Authority's Orders: A Brief Summary	28
4.1 Trend of Disposal of Complaints	30
4.2 The Authority's Inquiries	31
Chapter 6: Where to From Here?	34
6.1 Conclusion	35
6.2 Recommendations	35
6.2.1 Independent Investigators	35
6.2.2 Publicity	36
6.2.3 Action on Complaints	36
6.2.4 Speedy Disposal of Complaints	37
6.2.5 Transparency and Openness	37
6.2.6 Rule-Making Powers	37
6.2.7 Annual Report	37
6.2.8 Working Relationship with the Police	38
6.2.9 Obligatory Nature of Recommendations	38
Annexure: Uttarakhand Police Act	39
Endnotes	44

CHAPTER 1

INTRODUCTION

Today, the ways in which the police handle complaints in relation to themselves is an area of great weakness within the institution. While the police say that there is a great deal of disciplining, dismissal, salary reduction, transfer and punishment that takes place in its ranks – much more than in other services – the public at large is convinced that a policeman can get away with anything – from being rude, unresponsive and negligent, to being corrupt and murderous. Refusal to file complaints or come to the aid of the public is a major grouse. Another is illegal arbitrary and unnecessary arrests.

Background

Today, the ways in which the police handle complaints in relation to themselves is an area of great weakness within the institution. While the police say that there is a great deal of disciplining, dismissal, salary reduction, transfer and punishment that takes place in its ranks – much more than in other services – the public at large is convinced that a policeman can get away with anything – from being rude, unresponsive and negligent, to being corrupt and murderous. Refusal to file complaints or come to the aid of the public is a major grouse. Another is illegal arbitrary and unnecessary arrests. This overcrowds our jails with poor and indigent petty offenders while affluent wrongdoers roam at large, unmindful of the police or because of them. Extortion, intimidation and allegations of violence and mistreatment in custody are too numerous to even merit serious denial from the leadership. The general feeling is that it takes a brave man with connections of his own to complain about the police, and even then, little will come of it except perhaps a small reprimand or transfer – that too, years later and after considerable heartburn.

The police argue that they are subject to a multiplicity of scrutiny. They point to the National Human Rights Commission (NHRC) which looks at human rights violations by the police; the various specialist commissions who ask for explanations about police handling of Scheduled Castes and Scheduled Tribes, children, women and minorities. There is the judiciary and the legislature that also oversees policing functions. However, except the judiciary none of these are specialist bodies which can examine complaints in detail, seek information on how they are being handled, and make binding recommendations.

Despite the presence of several of these institutions there is a well-founded and widespread perception that police complaints are neither speedily nor transparently handled, nor do they lead to systemic changes or just consequences for the individual police personnel involved. On the contrary, they can and do frequently lead to victimisation of the complainant.

Meanwhile, there is growing public dissatisfaction with police functioning – not only in the routine malpractice, roughness, unwarranted violence and corruption but also based on its non-performance in ensuring the safety and security of residents in the ordinary course of everyday policing.

It is in the wake of this that the need and demand for greater police accountability is growing worldwide and in India as well. Governments are seeking ways to supplement internal disciplinary mechanism with external oversight and redressal. Such external oversight of the police is seen as a means to righting the police as well as providing relief to victims of police abuse. Such an independent external agency, specialising as it does solely in policing malpractice, is a valuable mechanism to ensure not only that individual accountability is seen to be done but year-on-year improvements will be made to minimise repetition of malpractice. Most importantly, such an Authority will showcase the fact that a powerful organ of state is willing to hold itself publicly accountable for those who abuse its powers.

Recognising the levels of unaccountability of the police in India, the Supreme Court in 2006, on a petition brought before it by two former Director Generals of Police (DGPs) – Prakash Singh and N. K. Singh – asking for police reforms to be implemented across the country directed all states and Union Territories to establish Police Complaints Authorities (PCAs) at the state and district levels, with immediate effect.¹ It was hoped that a new external oversight system would complement existing internal oversight mechanisms and together create a web of accountability from which it would be increasingly difficult for police misconduct to escape without consequences.

Since 2007, the Commonwealth Human Rights Initiative (CHRI) has been tracking the establishment and growth of the newly created Police Complaints Authorities across different states of India. In doing so, we have found that to date 15 states have ostensibly set up Complaints Authorities through either new legislations or government orders. Of these, only five are actually functioning at the ground level. These include the Authorities set up in Assam, Goa, Kerala, Tripura and Uttarakhand. But these five also do not present an encouraging picture. Implementation so far has not set any positive precedents or benchmarks. Not only is the record of actual implementation abysmal, the quality of implementation, across the board, is in breach of the letter and spirit of the Court's direction. The Agencies are severely under-resourced, lack independent members with diverse skill sets, and have not been allocated a fixed budget.

Our aim is to publish a series of reports, profiling the work, functioning and efficacy of these Complaints Authorities in each of these states. Uttarakhand is the second report in the series – the first being Goa.

This report covers complaints made to the Uttarakhand Police Complaints Authority that was set up in January 2007. It presents a broad and holistic analysis of the functioning of the Complaints Authority. The period of analysis comprises complaints received between April 2007 and January 2009. The report attempts to identify the nature of the complaints received, the profile of the complainants, the investigation or inquiry procedure that is adopted by the Authority once it receives a complaint, and the trend of orders or decisions being delivered by the Authority. We have also tried to statistically analyse the complaints and presented the same graphically for easy reference. We have then gone on to categorise the general trends in order to explain the decisions delivered by the Authority. These to some extent illustrate the weaknesses of the Authority and some of the significant challenges it faces in living up to its mandate. We have concluded by giving recommendations that would lend to improved and enhanced functioning of the Authority as well as increasing public confidence in the working of the Authority.

The Uttarakhand Police: Strength, Statistics and Misconduct

Uttarakhand is a relatively new state carved out of Uttar Pradesh in 2000. The state has two divisions – Garhwal and Kumaun, with 13 districts² and a population of approximately 94 lakhs.

Current Strength Statistics of the Uttarakhand Police Department³

Year	Population	Police Strength			Ratio of Police to Population
		Male	Female	Total	
2007	9439000	12243	1153	13393	1: 0.0014189

Number of Complaints Per 100 Policemen

	No of Complaints Against Police	Actual Police Strength (Civil + Armed)	No. of Complaints Per 100 Police
All India Total	51,767	14,25,181	3.6
Uttarakhand	749	14,805	2.5

Uttarakhand has a police force (civil police and district armed police) consisting of 13,393 police officers, which is approximately 142 police officers per 100,000 population. Though it is not in line with the United Nations standards of 230 police per 100,000 population, it is comparatively better than many other states.

The National Crime Records Bureau (NCRB) report “Crime in India, 2008” has reported 377 complaints against police personnel in Uttarakhand in 2008. Of these complaints, departmental inquiries were instituted in 740 cases. The remaining nine cases called for judicial inquiries. Of the 749 cases, 447 were declared false or unsubstantiated. First Information Reports (FIRs) were registered in nine of the remaining cases. Of these, only five were chargesheeted and sent for trial. The remaining 293 cases were reported for departmental action.⁴

2007 also saw ten cases of extrajudicial executions. In 2008, four such cases came to light. However, these do not find mention in the NCRB reports. Last year, the killing of a 24-year-old youth in Dehradun attracted considerable media coverage and attention.⁵ However cases like these are not taken up by the Complaints Authority chiefly because the Authority lacks the expertise to inquire into such matters. The public too would rather not depend on a body with limited powers to look into serious offences. This rising number of complaints of police misconduct coupled with continuing public dissatisfaction of the performance of existing accountability mechanisms warrants the creation of an autonomous Police Complaints Authority.

CHAPTER 2

THE POLICE COMPLAINTS AUTHORITY IN UTTARAKHAND

However these Authorities were replaced in 2008 when the new Uttarakhand Police Act came into force. The Act created a single Authority at the state level in Dehradun. There was no provision for district level Authorities and thus the Authorities set up at the regional level via the Office Memorandum were disbanded.

Introduction

An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police and will serve as fundamental protection against ill-treatment and misconduct.

Complaints Authorities can provide an important, independent check on purely internal accounts. In providing an alternative forum to which affected citizens may complain about police abuses, external oversight gives individuals access to justice that otherwise would often be unavailable to them. It can improve the relationship between the police and public, increasing community trust in the police force. It can also provide the sort of independent and unbiased investigations into allegations that would otherwise be unlikely. External mechanisms can also be important in exposing harmful police practices and in highlighting the shortcomings of internal regulation. Through this they can contribute to efforts aimed at the improvement of internal disciplinary measures, as well as influence broader reforms in police policy that encourage respect for human rights.

In early 2007, the Uttarakhand state government created three Police Complaints Authorities – one at the state level and two at the regional levels (situated at Paudi and Almora) in pursuance of the sixth directive in the 2006 *Prakash Singh* Supreme Court judgement on police reforms.⁶

However these Authorities were replaced in 2008 when the new Uttarakhand Police Act came into force.⁷ The Act created a single Authority at the state level in Dehradun. There was no provision for district-level Authorities and thus the Authorities set up at the regional level via the Office Memorandum were disbanded. Undoubtedly, this was a wrong move by the government for three reasons – firstly the Court had clearly ordered Authorities to be set up at both the state and district levels. Thus the move significantly violates the Court's directive. Secondly, considering the size and population of the state, the spread of the districts, the mountainous terrain, and the number of complaints against the police, it is unlikely that a single Authority will be able to handle the volume of complaints. Finally, people living in far flung areas located away from Dehradun will not have easy access to it. An important aspect of the success of any such body is its easy accessibility to complainants. Facilitating, rather than limiting, access should be the prime objective of the government. It is unreasonable and unrealistic to expect complainants to travel the length of the state just to access the Authority.

Composition

The Supreme Court's directive in the *Prakash Singh* case expressly laid down a composition, selection process and mandate for the Complaints Authorities.

In terms of Composition the Court required that:

At the state level:

- the Chair of the Complaints Authority to be a retired judge of the High Court/Supreme Court chosen by the state government out of a panel of names proposed by the Chief Justice.

At the district level:

- a retired district judge, chosen by the state government out of a panel of names proposed by the Chief Justice of the High Court or a High Court Judge, is to serve as Chair;
- At both state and district levels, in addition to the Chair, the Authorities are to be made up of three to five members “depending upon the volume of complaints”;
- other members to be chosen by the government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission.

The composition, as well as the checks and balances in the selection process, are designed to ensure that members will be independent-minded individuals who would go about their work without fear or favour.

The Uttarakhand Police Act, 2007 states that the Complaints Authority will consist of a chairperson and maximum four other members.⁸ The members will be appointed directly by the state government from persons who have a credible record of integrity and commitment to human rights. For the appointed members, the Act stipulates that one should be a woman, one should have knowledge of law, and not more than one member should be drawn from the police.⁹ The Act reserves for the state government the discretion to appoint one of the members as the Chairperson of the Authority.¹⁰ This does not follow the process of appointment of the chairperson or any of its members as laid down by the Court. Neither does it ensure that the chairperson is a retired judge. The selection process for the members must be such that it assures impartiality and independence. There are no comprehensive objective selection criteria nor any independent selection panel to select any of the members, thereby defeating any semblance of openness, objectivity in selection or independence in the final product who would be obliged for their posts to the government against whose agencies they would often be required to proceed.

The present Authority is headed by Justice Shambu Nath Srivastav, a retired High Court Judge, P. K. Joshi, a retired IPS officer, Madan Singh, a retired IAS officer, V. K. Aggarawal, retired brigadier from the army and Dr. Kusum Nautiyal, a social worker. These members have been directly nominated by the government. One can see that the trend of appointing retired officers for any such institution is reflected here as well. The need for including a retired police officer seems unnecessary as it is obvious that the Authority will work in tandem with the police while conducting their inquiries, as envisaged in the Act. Thus the police point of view will be adequately addressed in the course of inquiries. Also, the presence of a retired army officer, along with a retired police officer, brings a dominant security force personnel perspective to the Authority, which is clearly not what the official recommendations on police reform or the Supreme Court had envisioned for Complaints Authorities.

With all due respect, the decision to include a retired army officer in a civilian oversight body must be seriously questioned. An army officer is not accustomed to dealing with complaints of human rights violations in an open forum, and will certainly not be accustomed to working in a manner which is independent of the government, or critical of government servants. Added to this, with only one civil

society member, the overall balance of the Authority is tilted in favour of retired government functionaries, who may or may not bring about the desired autonomy to the body.

Staff

The Authority will be provided staff by the government but the staff will be selected by the Authority in accordance with the procedure prescribed by the government.¹¹ This could mean that the Authority will get the sanction of the required staff from the government and then will be able to carry on with its independent recruitment procedure depending on its institutional requirements.

Rule-Making Powers

The Authority also has the right to frame its own rules for the conduct of its business with the approval of the government.¹² The Chairman of the Authority, Justice (retired) Shrivastava said that they had framed the rules for the Authority in September 2008 and sent them to the government for approval. Thereafter, he has written to the government several times asking for an update on its status. However, till date, he has had no response from the government.

Mandate

The Supreme Court laid down a mandate for the Police Complaints Authorities in its judgement. The Court required each state government to set up a Police Complaints Authority at the state and district levels. The state-level Authority would be empowered to look into allegations of “serious misconduct”, which includes but is not limited to:

- death;
- grievous hurt; and
- rape in police custody.

The district-level Authorities are empowered to look into complaints which include:

- death;
- grievous hurt;
- rape in police custody;
- allegations of extortion;
- land/house grabbing; and
- any incident involving serious abuse of authority.

The Court laid down that the jurisdiction of the state and district-level Authorities are tied to the *ranks* of officers being complained against. The state-level Authority will look into complaints against officers of the rank of Superintendent of Police and above. The district-level Authority will inquire into complaints against officers of the rank of Deputy Superintendent of Police and below. Importantly, in relation to their mandate, the Court laid down that the recommendations of the Complaints Authorities at both

the state and district levels “for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority”.

The Uttarakhand Act does not set up a district-level Authority. Thus the division of complaints between the state- and district-level Authorities against ranks of officers being complained against does not arise. A single Authority will look into complaints against all rank of officers.

As per the Act “serious misconduct” is defined as death in police custody; grievous hurt, as defined under Section 320 of the Indian Penal Code, 1860;¹³ rape or attempt to commit rape; arrest or detention without due process of law; violation of human rights; or corruption.¹⁴ The Authority may also inquire into any other case referred to it by the state government or the Director General of Police (DGP).¹⁵ Moreover, the Authority may monitor the status of departmental inquiries or departmental action on complaints of “misconduct” against gazetted officers. This is to be done through obtaining quarterly reports from the Chief of Police.¹⁶ The Authority may also give appropriate advice to the state government for completion of action in such cases.¹⁷

These provisions in the Act are commendable, and if year-on-year, the nature of complaints are analysed by the Authority and a pattern of misconduct is established, a sound set of recommendations can be made to improve police functioning and behaviour, while at the same time improve the public perception of the police.

With regard to complaints of “misconduct” the Act requires that all such complaints shall be forwarded by the Authority directly to the DGP for further action. It may issue appropriate advice for further action or a direction to initiate a fresh inquiry if it deems fit in a particular case.¹⁸ However, it is a matter of concern that the Act fails to define what “misconduct” would mean.

Another important part of the Authority’s mandate is to prepare an annual report containing numbers and types of cases of “serious misconduct” that it inquired into, patterns of “misconduct” committed by police personnel and recommendations to enhance police accountability in the state.¹⁹ This report is to be laid before the legislature and made available to the public. The Authority can also prepare special reports on specific cases and make them available directly to the public.²⁰ This is a very significant task of the Authority; if used strategically, it can keep the issue of police accountability alive in public memory and also ensure that year-on-year policing improves.

Powers

The Act gives the Complaints Authority the powers of a civil court.²¹ On completion of its inquiry, the Authority can communicate its finding to the state government recommending appropriate action against the errant police officer.²² However, the Act fails to mention what this appropriate action could comprise. This could be interpreted widely and the Authority could impose an extensive range of sanctions on the errant officers. On the other hand, lack of clarity on the nature of powers could lead to the state government and police unwilling to accept or abide by the recommendations of the Authority. But most

importantly, the Act is silent on the nature of powers that vest with the Authority. It does not clearly state whether the recommendations of the Authority will be binding on the state government. This is in violation of the Court’s directive, which plainly states that the recommendations of Complaints Authorities for any action “shall be binding” on the government and the police. There is no doubt that the Court included this requirement in light of the experience of other established independent oversight bodies whose recommendations are routinely ignored by the police and governments, because they do not have binding powers.

Offices and Funding

Located at the posh Race Course Road in Dehradun, the Police Complaints Authority is situated in an imposing two-storey, private, rented house. While the ground floor is occupied by the secretarial staff, the Chairperson and the members have their offices on the first floor. Given the limited number of the staff of the Authority, the present accommodation appears sufficient. However, there is no separate room for waiting complainants or policemen who come to depose. The office only has one landline telephone and no separate dedicated fax line. It does not have a website either. The state police website mentions other relevant web links such as the State Lokayukta and Home Ministry but does not mention the Police Complaints Authority as one of the bodies where complaints could be made against the police.

In terms of funding, the Authority is provided with a budget by the state government. This has its own separate component in the state budget.²³ In an interview with CHRI, the Chairman of the Authority stated that the Authority had not faced any financial difficulties till date. In the first year, the Authority received a substantial grant of over Rs. 50 lakhs. The expenditure was a little over Rs. 41 lakhs. In the first year the Authority needs to publicise its presence, its work and its mandate and since the funds were available this could be easily done. Despite the availability of funds, the Authority has not thought of hiring the services of investigators to conduct independent inquiries. Compared to the other five functional Authorities, the Uttarakhand Authority is far better off in terms of finances. The Authority needs to capitalise on this and think of novel methods to enhance its working and efficacy. If it fails to do so, it will only have itself to blame.

Depicted below is the budget allotted to the Authority and the expenses it incurred for 2008-2009 and 2009-2010 (in rupees):

Year	Grant	Expenditure	Balance
2008-2009	50,65,000	41,02,797	9,62,203
2009-2010	100,05,000	43,64,830	56,40,170

From the table, it is quite clear that the budget allocation for 2009-2010 has been doubled from the previous year. The balance amount is a phenomenal Rs. 56 lakhs which means that the expenditure of the Authority is less than 50 per cent of the total grant.

Tenure

The Chairperson and the other members are provided a three-year tenure and they are eligible to be reappointed provided they have not reached the age of 70 years.²⁴

Outreach

When the Police Complaints Authority was first established, the newly appointed Chairperson conducted a press conference. This was reported by the newspapers and people came to know that the body had been set up. From its consultations with various civil society organisations in the state, CHRI found that the Authority has since not made any further attempts to spread awareness about its existence and how people can make use of its services. Considering the fact that there is no real shortage of funds which can be effectively utilised for publicity and raising awareness about the existence, function and mandate of the Authority, it appears that the Authority is to some extent failing to realise its potential and the effect it could have on improved police performance.

Cooperation from the Police

In a couple of cases the Authority recommended departmental action against erring police officers. But instead of taking action against these policemen, the Chief of Police designated an Additional Superintendent of Police to re-inquire into the same cases. The officer so designated will again conduct an inquiry to ascertain the truthfulness or veracity of the Authority's findings. In other words, this means that the police department has arrogated the Authority to review its findings. This is clearly against the Police Act that states that the government will take suitable action on the Authority's recommendations.

Furthermore, the government has appointed an officer of the level of a Deputy Inspector General of Police in the Chief Minister's office who now functions as a liaison officer between the Home Ministry and the Authority. This development has made the functioning of the Authority even more difficult. Any move on the part of the Authority to assert its autonomy and enforce accountability is resisted from the administration.

Non-Cooperation from the Police

There is no doubt that the announcement of the much-needed Complaints Authority has set up a whirlwind of resistance and contention, and the temptation from all quarters is not to cooperate with it.

An example of this fact is that in the two years that the Authority has functioned there has been no meeting between the Police Chief and members of the Authority. The Chairperson of the Authority wrote to the Director General that he needed to meet him to discuss the nature and trends of

complaints against the police in the state and methods they could jointly agree on and adopt to minimise them. The DGP wrote back to say that the Chairperson was welcome to visit police headquarter and discuss the matter with him. Thereafter there was no effort to set up such a meeting.

This only goes to show the indifference and scant police regard for the statutory body. However, for a police force that has lost the confidence of the public and has also lost the ability to provide protection to the public because of lack of cooperation from the community, it becomes all the more important that it lends itself to the criticism and scrutiny of an external oversight mechanism.

CHAPTER 3

THE WORKING OF THE AUTHORITY: AN ANALYSIS

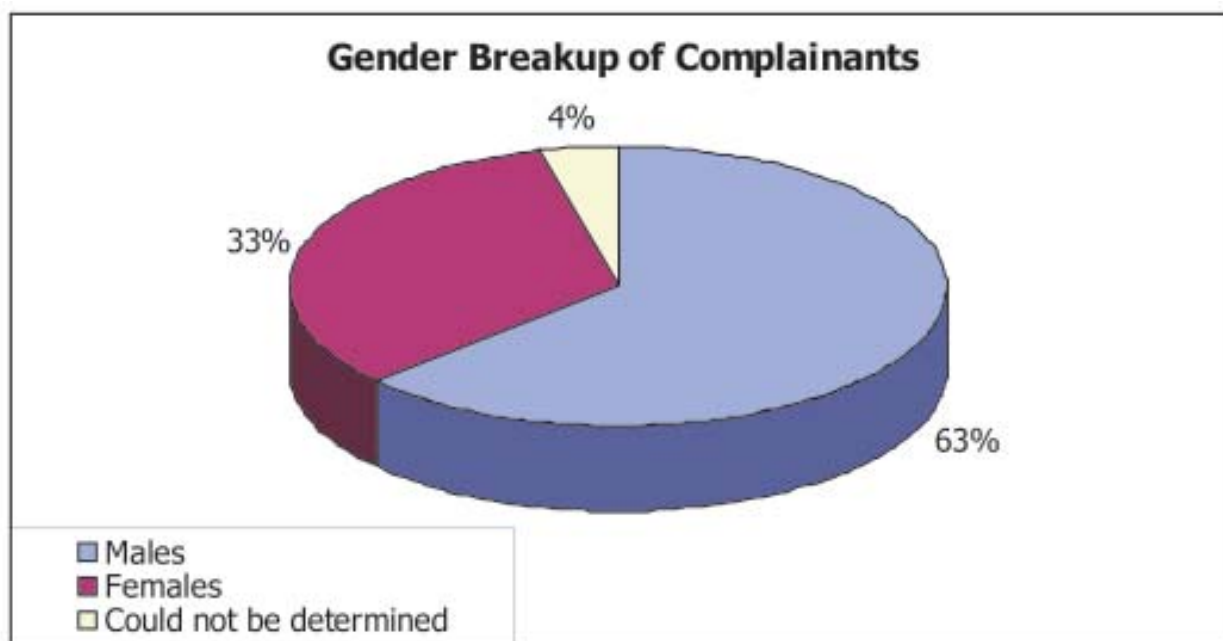
The aim is not to provide empty criticism of the working of the Authority but to highlight the areas that need attention and provide recommendations for the consideration of the Authority as well as the government.

CHRI was able to acquire hard copies of the orders passed by the Complaints Authority through a Right to Information (RTI) request made to the Authority. A careful analysis of the material received reveals that the Authority received 100 complaints between September 2008 and August 2009. In none of these 100 complaints has the Authority recommended the registration of an FIR against the errant police officer.

The section presents an analysis of the orders, with a focus on identifying the trends in complainant profiles, types of complaints received, procedure adopted by the Authority to decide upon complaints and ends with a summary analysis of the orders passed by the Authority. The aim is not to provide empty criticism of the working of the Authority but to highlight the areas that need attention and provide recommendations for the consideration of the Authority as well as the government.

Profile of the Complainants

Gender Profile

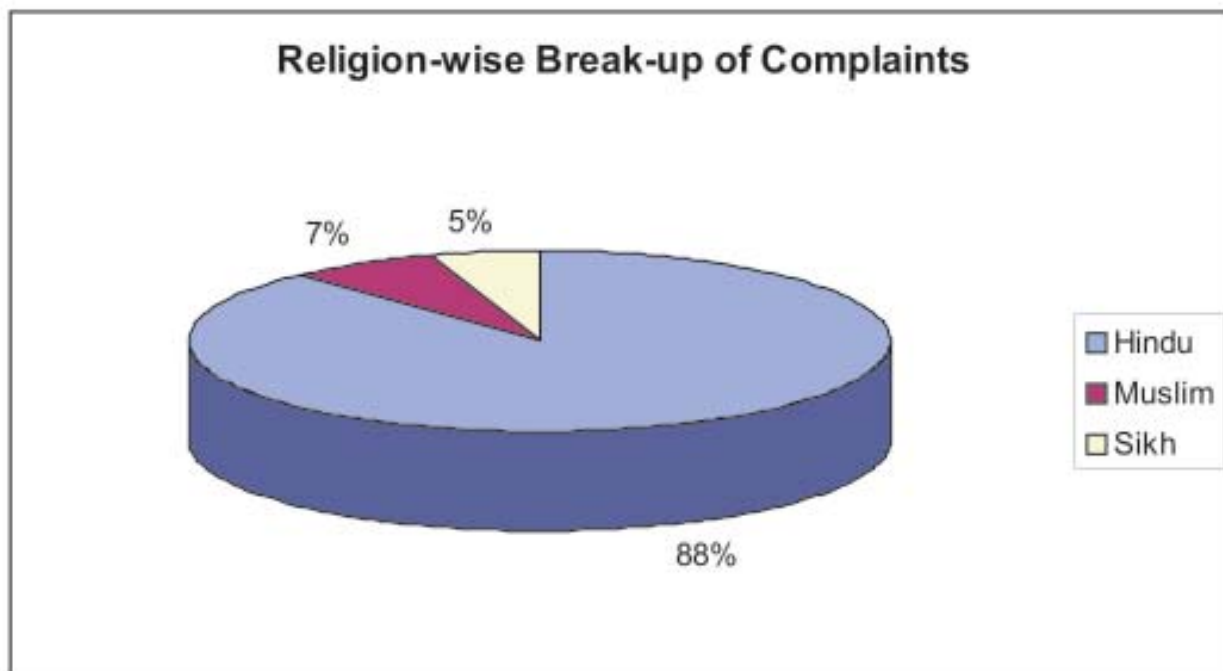


After the analysis of the complainants it is clear that the majority are male. While 63 of the complaints were received from males, only 33 complainants out of 100 were filed by women. Some groups in the community, particularly women, are known to be reluctant to use the complaints procedure. The Authority must pursue any positive strategies and practices designed to promote the complaints system to women.

Religious Profile

From the 100 complaints received, it was not possible to discern the religion of four complainants. The remaining 96 comprised 56 male Hindus, 28 female Hindus, four male Muslims, three female Muslims,

four male Sikhs and one female Sikh. Religion-wise, the Uttarakhand demography consists of 83 per cent Hindus, 12 per cent Muslims and 25 per cent Sikhs. There are members of other religions too, like



Christians, Buddhists and Jains. However, their percentage is meagre. Hindus form the majority in the Uttarakhand population.

Profile of the Complaints Received

Region-wise Break-up of Complaints

A vast majority of the complaints received by the Authority came from the major urban and developed areas of the state. The largest number came from Dehradun which recorded 29 complaints. Uddhamsinghnagar, an industrial hub accounted for 25, followed by Haridwar, with 17, Almora, three, and Nainital and Rishikesh accounted for seven and four complainants respectively.

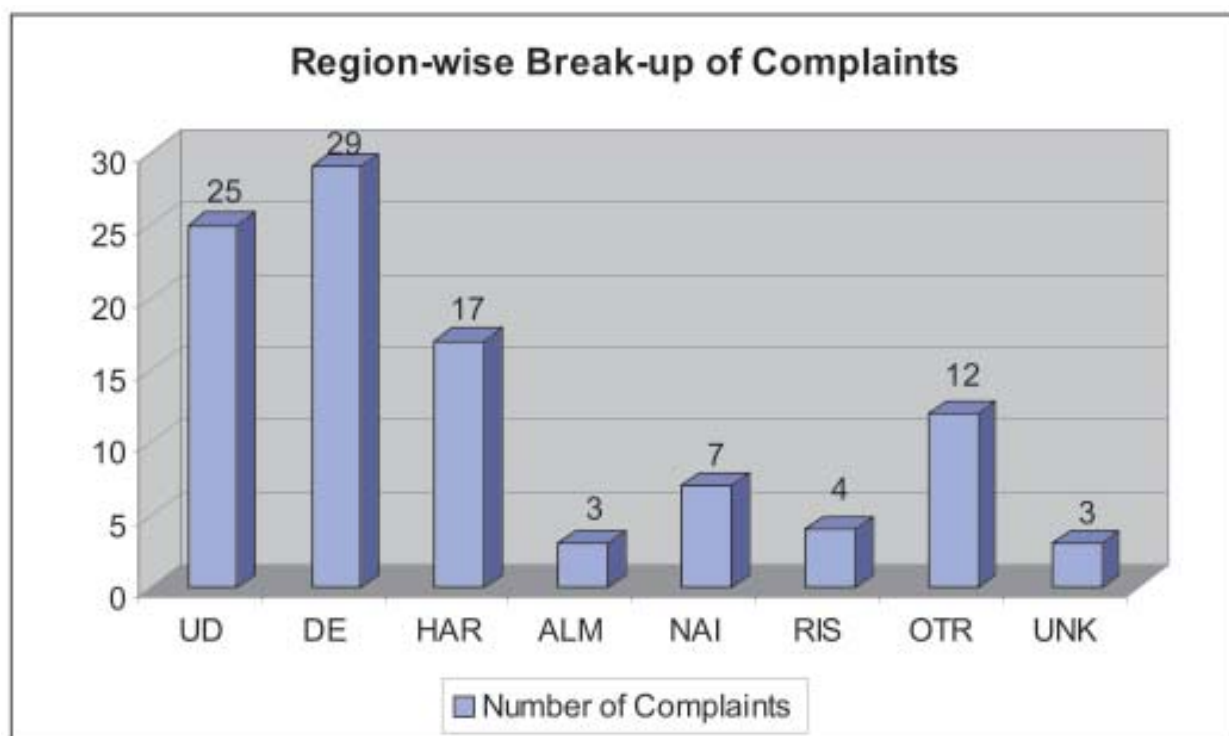
Name of the Place	Number of Complaints
Uddhamsinghnagar (UD)	25
Dehradun (DE)	29
Haridwar (HAR)	17
Almora (ALM)	03

Name of the Place	Number of Complaints
Nainital (NAI)	07
Rishikesh (RIS)	04
Others (OTR)	12
Unknown (UNK)	03

There were one or two complaints from each of the regions of Garhwal, Kashipur, Pauri, Pittorgarh, Bageshwar, Bajpur, Merut, Haldwani, Chamoli and Rudrapur. However, since the complaints from these regions are so few we have clubbed them under the head of “others”.

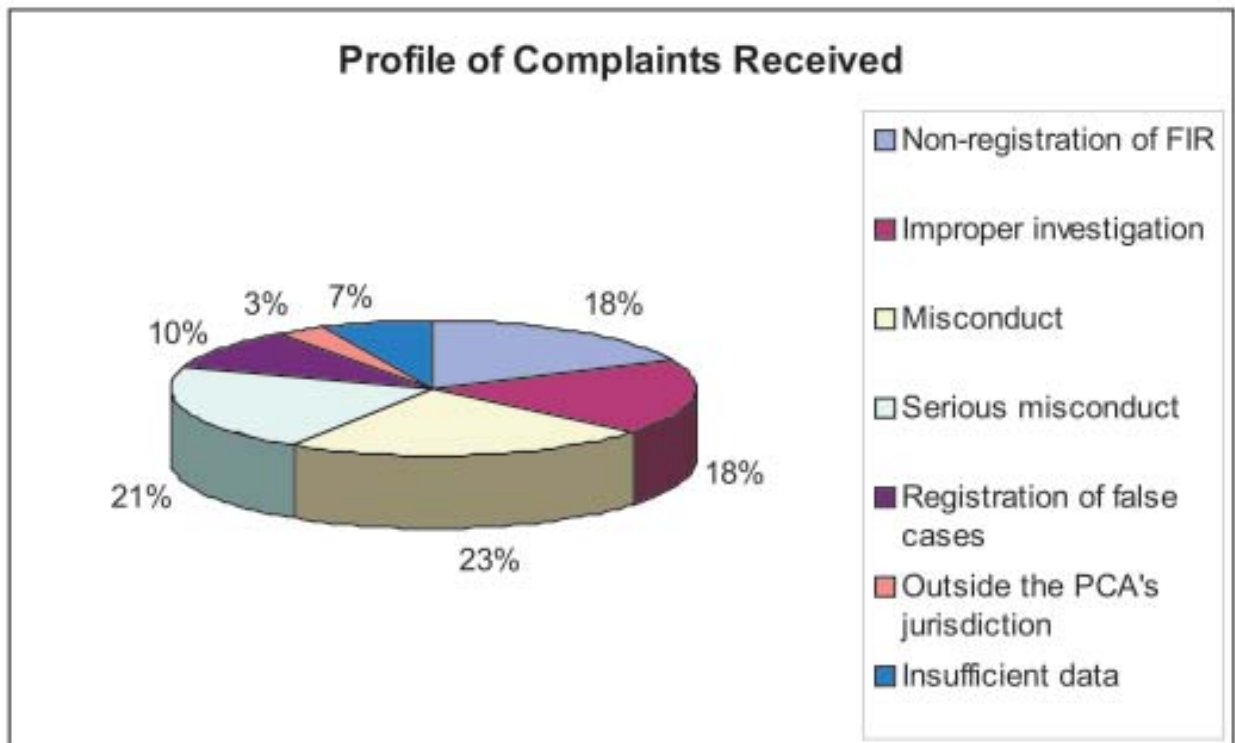
As there are no regional or district-level complaints authorities, it is clear that there needs to be a concerted effort by the Uttarakhand State Authority to spread its outreach to rural areas. It is possible that the reason for the lack of complaints from these districts is due to their remoteness and the inability of complainants to travel to Dehradun for hearings.

If this is indeed the case, the state government must establish authorities at the district level in accordance with the Supreme Court’s orders to ensure that people from these regions are not denied access to a police oversight and accountability mechanism simply because of the geographical location of their residences.



Types of Complaints Received by the Authority

The 100 complaints received by the Authority can be divided into different categories: non-registration of First Information Reports (FIRs); improper investigation; misconduct; serious misconduct and registration of false cases by the police. There are a few complaints that do not fall within the jurisdiction of the Authority. In some of the complaints the data was insufficient and thus it was difficult to ascertain the nature of the allegation.



■ Non-registration of First Information Reports (FIRs)

A large number of complaints relate to non-registration of First Information Reports (FIRs). Of the 100 complaints received, 18 are related to non-registration of FIRs. A closer analysis of these complaints shows that some relate to serious allegations of murder (complaint # 126), kidnapping (complaint # 122) and assault (complaint # 58). There is also a complaint about delay in the registration of an FIR and even after the FIR was registered the necessary arrests were not made by the police, despite knowing the whereabouts of the accused (complaint # 63). Of course, arrests are not mandatory and it is up to the discretion of the investigating officer. However, in serious cases where the victims or witnesses have expressed concern and been intimidated by accused persons the police need to take action.

■ Improper Investigation

Another prevalent category of complaints are those of non-investigation or improper investigations and 18 cases belong to this category. The most serious complaints of improper investigation relate to murder (complaint #18) and assault (complaint # 89).

The majority of these cases have been dismissed due to lack of evidence, or merely because the matter is under investigation by the police.

In complaint # 98, the complainant alleged that the police have not taken any steps against a police officer who had abused his position of power. The Authority found that another authority is already inquiring into the matter.

■ **Serious Misconduct and Misconduct**

Forty-four complaints regarding serious misconduct and misconduct were received by the PCA. The majority of complaints of serious misconduct relate to illegal detention but there are also cases of allegation of torture (complaint # 80) and abduction (complaint # 43). In another case, (complaint #20), it was held by the Authority that since the police officer was of an unknown caste, he could not use casteist remarks against the complainant.

In one complaint of serious misconduct, the Authority stated that it could not look into it since it was being heard by another Authority (complaint #124). In complaint #170 the Authority recommended disciplinary action against the police officers. But this type of bold decision by the Authority is rare. In complaint #143 the victim complained that the police accused him of being a Maoist sympathiser and harassed him repeatedly. The Authority did not find any documentary evidence against the accused police officer but directed the officer to submit the litigation fee. In such types of cases, the Authority should go into the depth of the case and should not dispose it in a casual manner due to lack of substantial evidence. Similarly in complaint #59, as the complainant failed to attend the hearing, the Authority chose to dismiss the case without going into the reasons regarding the absence of the complainant.

The majority of complaints of misconduct relate to misbehaviour. In complaint #178, the victim complained that police misbehaved with her while she was travelling and forced her to sit in the police station without giving any reason.

In several cases (complaint #34 and complaint #20), the Authority concluded that the allegations made against the police officers were fabricated and dismissed the cases accordingly. However, it is difficult to gauge the basis on which such conclusions were arrived at.

■ **Registration of False Cases**

Ten per cent of the complaints relate to registration of false charges against a person. In complaint # 86 a case of assault, misbehaviour and framing of false case was filed by the complainant, but owing to his subsequent absence in the hearings, the case was disposed. The Authority has not gone into the reasons for non-attendance. A matter of concern is that without cooperation from the police or the presence of independent investigators the Authority probably does not even have the capacity to look into such matters. However, for the future the Authority needs to give due consideration to such issues and make appropriate recommendations to the government.

Complaint # 78 relates to a complainant alleging that he was falsely implicated in a case by a Sub-Inspector (SI). The complainant alleged that the police officer threatened to implicate him in additional cases if he did not confess to the crime.

At some stage of the hearings the complainant withdrew his complaint. However, withdrawal of complaints, especially serious ones of such a nature, must not be permitted without the prior approval of the Authority and that too only after determining the reasons for such withdrawal.

Procedure Followed by the Authority

The Uttarakhand Act lays down that the Authority shall forward the complaints of misconduct received directly by it, to the Director General of Police for further action. In relation to complaints of serious misconduct against police persons the Act allows the Authority to inquire into such allegations. However the Act does not state how such an inquiry will be made. In the absence of rules being framed and adopted by the Authority there is ambiguity on how a complaint is to be made by a complainant and what procedure the Authority is to follow in case it decides to inquire into a particular matter. Unless a procedure is formally adopted and laid down the Authority's functioning will always remain lacking. It will lead to a weak institution that is unable to perform its function and is one more obscure way to deny people the accountability it seeks from the police.

In fact, the Authority has drafted an inquiry procedure. As mentioned earlier, the Authority has drafted Rules that lay down all the steps to be taken in an inquiry procedure. While the government remains unresponsive and is delaying the adoption of the Rules for the Authority, it is useful to look at the procedure as mentioned in the draft Rules to be followed by the Authority from the time it receives a complaint to its final disposal. Through a Right to Information (RTI) request CHRI managed to get a copy of the Rules drafted by the Authority. The inquiry procedure is briefly summarised below:

Step 1: Cognisance of the Complaint

- Authority shall take cognisance of all complaints of serious misconduct;
- Authority shall investigate all matters of misbehaviour of police officers;
- Authority can also take suo moto cognisance of any information of misconduct by a police officer;
- Anonymous complaints shall not be looked into.

Step 2: Intake

- Registration of complaint on affidavit; complaint to be sent by post to the Authority;
- In special circumstances complaint may also be in the form of application;
- Complaint must contain a brief description of the accusations, and the form in which it is presented should conform to a given format.

Step 3: Inquiry

- Defendant is notified of the complaint against him and asked to submit a written statement in his defence within a prescribed time limit;
- Inquiry to be made by the Authority based on the information received from the complainant and defendant;
- Authority will have the powers of a civil court;
- Complaint to be heard by the Chairperson or any other member as directed by the Chairperson or by two or more members;
- Complainant may be allowed to withdraw or modify complaint;
- Authority has the powers to stay proceedings if suitable grounds exist.

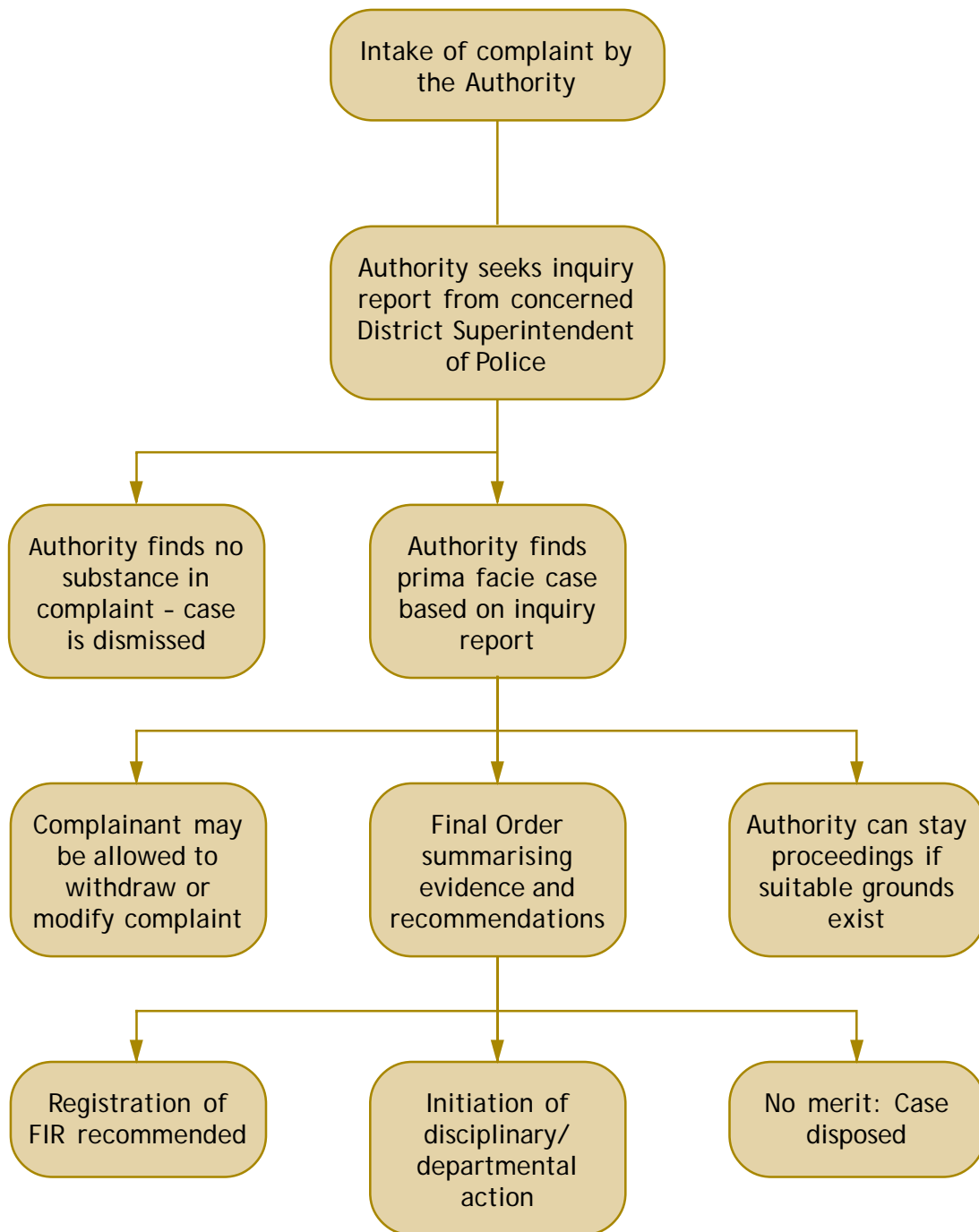
Step 4: Conclusion of the Inquiry

- Final order summarising evidence and recommendation if any;
- Where a case is made out, the Authority shall recommend appropriate action to be taken against the errant officer to the state government;
- Seek explanation from the DG Police where the complainant is dissatisfied with the inquiry conducted against the accused police officers or inquiry is taking an inordinately long time to be completed;
- On receipt of such explanation, the Authority may give orders to initiate appropriate proceedings and taking into consideration the circumstances of the case;
- Where it is of the opinion that proceedings are not being held in a fair and just manner, direct that such proceedings be restarted.

As this formal procedure cannot yet be implemented in the absence of Rules, over the period of the two years that the Authority has been functional, a pattern of dealing with cases has emerged that the Authority now seems to have adopted and formalised. However the procedure is not listed anywhere.

From an analysis of the complaints and the subsequent orders, the Authority's work commences when it receives a complaint. The first step it takes is to seek an inquiry report from the concerned District Superintendent of Police. Based on the inquiry report of the police the Authority decides if a case is made out against the police or the complaint needs to be dismissed. If the Authority decides to hear the complaint, notice is issued to both parties – the complainant as well as the officer against whom the allegation has been made. On hearing both sides, the Authority arrives at a decision and issues a final order and directions. The directions are forwarded to the state government for appropriate action. The whole process takes an average of three months to complete.

Procedure for Resolving Complaints: Draft Rules Framed by the Authority



This procedure followed by the Authority does not explain key elements needed for the inquiry process to be fair and credible in terms of evidence gathered. It is not clear whether the Authority solely relies on the report of the Superintendent of Police to decide whether to dismiss a complaint or take it forward. In the wake of a negative report from the Superintendent, it is unclear if the Authority assumes itself to be bound by its findings. It is also unclear whether there will be any investigation into the complaint and the

type of evidence that would be gathered. The nature of the Authority's hearings is also difficult to understand. It is unclear whether both parties would be presented with an opportunity to cross-examine witnesses. Unless these issues are clarified, people will continue to remain clueless about the processes and proceedings of the Authority.

The draft Rules are somewhat more explanatory in this regard, and make it clear that the inquiry is to be conducted "based on information received from *the complainant and defendant*". When finally able to enforce the Rules, the Authority must ensure that this provision is properly implemented. This should mean that the complainant will have equal rights as the defendant to participate in every stage of the Authority's inquiry, and importantly, that the police version will not be the dominant consideration. A key failing of the current procedure is the sole and total reliance on the District Superintendent of Police's report as the Authority's preliminary inquiry. The Authority abandons all its independence at this stage by relying only on the police report to decide whether the complaint is credible. In fact, the Authority has made itself the mouthpiece of the police as it is effectively allowing the police to decide which complaints it should accept, and which to dismiss!

If the Authority wants to invite a police report at this preliminary stage, then it must also conduct its own preliminary inquiries entirely independent of the police, and consider the complaint based on the preliminary information gathered from its own inquiries, along with the police report as important supplementary material. It should be kept in mind that it is for the Authority, and not the police, to determine whether a prima facie case exists against the implicated police officer. The only credible way to do this is for the Authority to conduct its own preliminary inquiries.

Finally, to ensure impartiality of the process, it is important that the investigators should not belong to the same police department as the officer being inquired. The Supreme Court, when it passed its judgement, chose to uphold this principle and stated that the Police Complaints Authorities may use retired investigators from the Crime Investigation Department, Intelligence, Vigilance or other organisations. External oversight bodies across several jurisdictions prevent having serving or former members of the Police Service on its staff, and its police investigators are all drawn from police services from outside of the region. No Authority would ever rely on serving police officers from the very same jurisdiction to carry out an investigation into its own officers. The Authority however in the absence of independent investigators approaches a police officer from the same district to provide the first inquiry report. This is a worrisome factor and the Authority needs to reconsider this mode of inquiry.

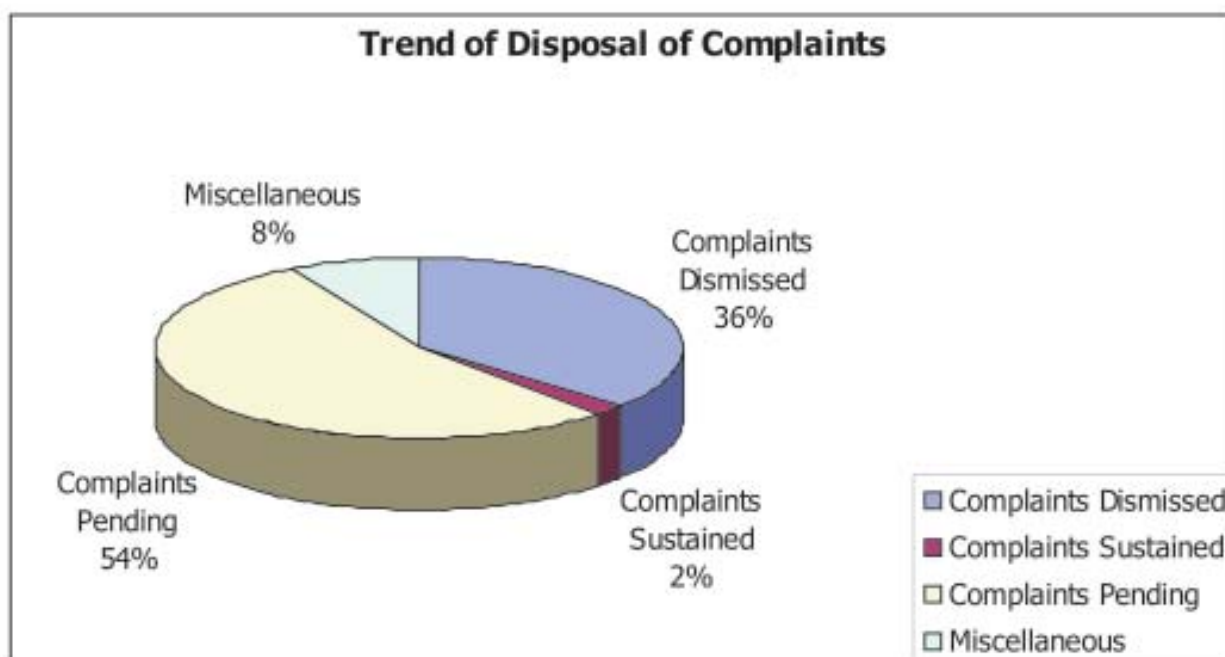
CHAPTER 4

THE AUTHORITY'S ORDER: A BRIEF SUMMARY

Several complaints have been dismissed by the authority for numerous reasons. Only two cases have been dismissed at the first stage itself before even a preliminary inquiry was conducted. In these complaints, the Authority found the allegations to be baseless and fabricated. We have not been able to determine how such a conclusion was arrived at without even a preliminary inquiry.

The Uttarakhand Authority's handling of complaints highlights several broad trends as illustrated by the chart and table below.

Type of Order Issued	Number of Orders
Complaints Dismissed	36
Complaints Sustained	02
Complaints Pending	62
Total	100



Action Taken by the Authority	Number of Complaints
Complaints disposed without holding an initial inquiry	2
Complaints disposed after holding an initial inquiry	27
Complaints disposed due to settlement between parties	1
Complaints disposed due to complainant's absence during hearings	5
Complaints disposed due to complainant withdrawing complaint	1
Complaints resulting in PCA recommending disciplinary action against police officer	2
Complaints resulting in PCA recommending that an FIR be lodged against police officer	0
Complaints pending before PCA	62
Total	100

Trend of Disposal of Complaints

Several complaints have been dismissed by the authority for numerous reasons. Only two cases have been dismissed at the first stage itself before even a preliminary inquiry was conducted. In these complaints, the Authority found the allegations to be baseless and fabricated. We have not been able to determine how such a conclusion was arrived at without even a preliminary inquiry.

Twenty-seven cases were dismissed after further inquiry by the Authority. This was after failing to find substantial ground within the complaint to proceed with the inquiry.

Five of the cases were dismissed because the complainant stopped attending the Authority hearings or proceedings.

It is understandable that the Authority cannot proceed in a matter unless the complainant attends the hearings. However, if the Authority finds this to be a repeated pattern they must ask themselves if it is because of the inaccessibility of the Authority, since it only has one office in Dehradun and it is expensive and difficult for complainants in the districts to travel to the city.

There may be other reasons for this trend. It may be due to intimidation, threat or complainants being brought off by the police. Here the Authority has an important role to ascertain and ensure that the complainant is not threatened into a compromise by the police. If this trend persists it will soon lead to complainants losing faith in the Authority. Though it may be premature at this stage, the Authority could, for the future, think of witness protection programmes or victim assistance schemes to be introduced within the working of the Authority. However for the moment though it is not within its mandate, the Authority should try making inquiries as to why complainants or witnesses have stopped attending hearings. If any foul play comes to their attention it should be immediately reported to the DGP for strict action to be taken against the errant officers. Further, the DGP should also keep in mind that his prime responsibility is to ensure that his officers are disciplined and not involved in criminality.

In only one case has the Authority settled the dispute between the parties to the complaint. Amicable dispute resolution where the Authority has acted as a mediator is always a welcome initiative. Settlement is a way of dealing with a complaint by solving, explaining, clearing up or settling the matter directly with the complainant. It can be a proportionate, timely and effective manner of resolving many complaints. It can be a simple and flexible way for people to tell the police what happened and find out why it happened. The complainant's acceptance of the outcome should be the objective of any resolution process.

However, the Authority must always keep in mind that a complaint is only suitable for settlement in the first instance if the conduct which is being complained about (if it were proved) would not justify bringing any criminal or disciplinary proceedings against the officer.

The Authority should take all measures to seek the complainant's consent before proceeding with a local resolution process. The complainant should never feel under pressure to consent to local resolution. But primarily the Authority needs to keep in mind that its main job is to effect institutional change and to invigorate police accountability for malpractice.

Finally, 62 complaints are pending before the PCA. This means that within two years of its functioning there is a 62 per cent pendency within the Authority. This may be owing to various reasons like lack of manpower, the complainant not attending the Authority's hearings or non-cooperation from the police as well as the fact that the Authority itself is a nascent body and only slowly learning and understanding its mandate. However, this also happens to be the crucial period where performance of the Authority will be judged and public confidence in its functioning be built. If within such a short period of the Authority coming into existence the pendency is so high it will only spiral in the future. The Authority needs to pay utmost attention to this delay and pendency and devise methods of speedy and judicious disposal of complaints before it. This alone would build confidence of complainants in the fair and impartial process of the Authority.

The Authority's Inquiries

Dismissed at the First Instance: The Complaints Authority Shirking its Responsibility

There is no doubt that the Complaints Authority acted correctly in disposing several of the complaints without holding an enquiry, for these were mostly civil cases and those where the complaint is not against a police officer. That these complaints were brought to the Authority highlights the fact that the general public has very little or no knowledge of the institution's mandate and powers.

In a particular case – complaint #118, the complainant has prayed that the Authority order the Election Commission not to give voter IDs to illegal Bangladeshi migrants and direct the police to remove them from the slums and deport them to Bangladesh. In light of these misperceptions, CHRI reiterates that the Uttarakhand Police Complaints Authority must make renewed efforts to conduct an awareness campaign throughout the state to educate the public on its mandate and functioning.

The Uttarakhand Police Act does state that "no complaint shall be entertained by the Authority, if the subject matter of the complaint is being examined by any other Authority or any court established by law."²⁵ This is conventionally interpreted to mean that the Authority will not initiate an inquiry in cases where a complaint against a police officer is already being looked at by another tribunal, such as the National Human Rights Commission, or a court. However, the Uttarakhand Police Complaints Authority appears to be operating on a far more expansive interpretation of the words "sub judice", by refusing to inquire into any complaint where any one of the parties involved in the matter is facing criminal proceedings, even if that party is the complainant himself. This interpretation allows a police officer to be free of the Authority's scrutiny by simply registering a frivolous First Information Report against the complainant. Once that happens, the entire matter will be considered by the Authority to be "sub

judice” and dismissed without an inquiry, making it impossible for the complainant to find any relief or remedy from the Authority.

This disturbing practice of the Authority is best demonstrated in exposing its inaction. In complaint # 51 the complainant alleged that police had picked up his son and illegally detained him for 11 days in jail. The Authority upon receiving the complaint dismissed the matter saying that it was “sub judice”.

The idea behind creating Complaints Authorities was for these institutions to provide a quick mechanism for victims of police misconduct to gain redress. The Uttarakhand Authority’s reluctance to even consider the idea that the police may be guilty of registering false cases and its acceptance of the police’s word as the absolute truth greatly reduces its effectiveness as a redressal mechanism. The message that it is sending to police officers is worrying; that he/she can get out of the purview of the PCA even after committing heinous misconduct as long as he/she registers a case against the complainant, no matter how frivolous, false or short of substance it is. This approach is contradictory to the spirit of the Supreme Court’s judgement, which ordered the creation of Complaints Authorities to instil a greater sense of accountability within the police service. CHRI strongly recommends that the Uttarakhand PCA takes a more limited view of the term “sub judice” and inquires into claims of registrations of false cases by the police.

Police Investigating the Police: A Case of Conflict of Interest?

The Authority’s heavy reliance on the concerned Superintendent of Police’s report to determine whether or not a case was made out against a police officer is, as mentioned above, a matter of concern.

A clear conflict of interest results when the police are tasked with investigating the alleged misdeeds of fellow officers under their jurisdiction. Besides, another problem that arises from the Authority’s reliance on the police to carry out investigation is the possibility of complainants being intimidated into withdrawing their complaints.

It is well known that most people fear approaching the police. This is a fear that is often well-founded. One of the aims behind creating a Police Complaints Authority was for victims of police misconduct to be able to have an alternative means of gaining redress. The Uttarakhand Authority’s reliance on the police to investigate members of their own service and then base their orders on their reports, negates the very reasoning behind creating a Complaints Authority that would be *independent* of the police. It is quite possible that complainants, who have withdrawn their complaints, did so because they were pressured by the officer sent by the Authority to investigate the matter. Even in cases where complaints were not withdrawn, a police inquiry almost always finds that there is no substance in the complainant’s allegation. Ties of fraternity run deep within the police service and it is naïve to expect that such inquiries will be completely unbiased. For the Uttarakhand Police Complaints Authority to continue to be relevant, it must seriously consider employing its own set of investigators and abandon the practice of getting serving police officers to investigate their own. The Supreme Court recognised this and clearly stated in its judgement in *Prakash Singh* that “the Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilise the services of retired investigators from the CID, Intelligence, Vigilance or any other organisation.” Having a dedicated team of investigators will go a

long way in restoring public confidence in the Uttarakhand Police Complaints Authority as an *independent, civilian* oversight mechanism capable of giving relief to complainants.

Absence of Complainants

Though some complaints contained very serious allegations against police officers, one can surmise that the complainants could simply not afford to make the trip to Dehradun to attend the hearings and take the matter to its logical conclusion. One must be cognisant of the fact that some of the persons worst affected by police excesses are the poor and powerless. Having a Police Complaints Authority only at the state level deprives the vast majority of Uttarakhand's citizens from availing of the services of a Complaints Authority. Mindful of the number of complaints disposed owing to the absence of the complainant at hearings, CHRI reiterates its call for the state government to establish district-level Complaints Authorities at every district. This will ensure that all the state's citizens have equal access to a Complaints Authority located close to their place of residence.

Relief: Too little, Too Late?

The Authority recommended that disciplinary proceedings be initiated against the errant officer in only two complaints. Even in those two cases, CHRI considers the action recommended by the Authority to be rather inadequate. For instance, in complaint #170, the Authority, after carrying out an inquiry, sustained the complainant's allegation that his brother had been tortured in police custody during interrogation by the Station House Officer. Instead of ordering the registration of an FIR and directing that criminal prosecution be initiated against the errant police officer, the Authority was content in ordering that the police hold an internal disciplinary proceeding against the officer concerned. The Authority's reluctance to recommend the registration of an FIR that could lead to a criminal prosecution even when a grave offence such as torture in custody is found to have occurred, greatly weakens its ability to act as an accountability mechanism.

This is not to suggest that the Authority has been totally ineffective.

These few and fleeting instances where the Authority has held police officers accountable for their misconduct do not detract from the reality that the Authority has in most cases failed to use its powers to maximum effect. The fact that the Authority has failed to recommend the registration of an FIR in even a single case gives cause for concern. This point is best underlined by complaint # 72, where the Authority sustained the complainant's allegation that a constable raped and assaulted her several times. Instead of explicitly ordering that an FIR be registered, the PCA was content to recommend dismissal of the errant officer and ask that "the state authorities take action against him". If rape and assault do not merit criminal prosecution, CHRI is unsure where the Authority draws the threshold to recommend the same. All too often, it appears that the remedy complainants can obtain from the Complaints Authority is too little, too late.

CHAPTER 5

WHERE TO FROM HERE?

More generally, the Authority in Uttarakhand is falling into the same pattern of functioning as the Authorities in other states, which accounts in large part for their collective failed performance. This is the over-reliance on the police in decision-making in individual cases, and the unwillingness to take the action needed for serious offences committed by police officers. With all due respect, it is clear that the members themselves do not understand the mandate of these bodies.

Conclusion

In CHRI's research and assessment of the five working Authorities, a recurring problem is a severe shortage of funds. In some cases, for the first year of functioning, committed Authority Chairs used personal funds to keep their Authorities afloat. Of the five working Police Complaints Authorities, the Uttarakhand Authority is the only one which has been allocated the funds needed to work effectively. Not only that, as mentioned above, the Authority's budget for 2009-2010 has been doubled. This is a tremendous boost for the Uttarakhand Authority. CHRI recognises that there are major challenges in building a complaints body such as this, and adequate funding is not an antidote. But it certainly puts the Uttarakhand Authority in a much better position to implement its mandate than its counterparts in other states.

Unfortunately, CHRI is of the view that the Authority is not working to its maximum potential, nor is it developing its institutional capacity as it could. In spite of having the funding, it is disappointing that the Authority has not made moves to expand its outreach, or recruit independent investigators. Specific recommendations on these aspects follow below.

More generally, the Authority in Uttarakhand is falling into the same pattern of functioning as the Authorities in other states, which accounts in large part for their collective failed performance. This is the over-reliance on the police in decision-making in individual cases, and the unwillingness to take the action needed for serious offences committed by police officers. With all due respect, it is clear that the members themselves do not understand the mandate of these bodies. They have failed to grasp that the Authorities are intended to be independent channels of redress for the public, against the most serious police misconduct. Members have failed to comprehend the most basic and fundamental aspect of Complaints Authorities, which is to hold the police accountable. At present, the Authorities are working against police accountability rather than strengthening it. In all the Authorities operating, there is an over-reliance on the police in the process of inquiry, leading to orders favouring the implicated officers. Complainants are a negligible part of the process. Disturbingly, there is no realisation among members that these are damaging the credibility and effectiveness of the bodies. Members are sorely in need of specialised training on the larger principles behind external oversight of the police and the role of Complaints Authorities.

Recommendations

Independent Investigators

The Authority must be adequately staffed with qualified investigators and, as far as possible, not be staffed by former police or army officers. This is crucial for the appearance and actual independence of the Authority. Currently, the police are virtually hijacking the Authority's oversight role, by being given such a large part in the inquiry process of the Authority. Hiring independent investigators will reduce the Authority's reliance on the police – and thereby, also weaken the police's control over the Authority.

The Authority must ensure that independent investigators are given adequate operational support, and specialised professional training on conducting investigations and on the rules of evidence. In addition, the Authority should put in place a comprehensive supervisory system for the independent investigators.

Publicity

The Complaints Authority must promote the complaints procedure and take positive steps, using modern media, to make the general public aware of the complaints system and how to record a complaint. At the bare minimum, the public needs to know about the Authority: what it is, where it is located, who the members are and how the public can access the Authority. The public also needs information about the complaints system: the Authority's mandate, what complaints can be made to the Authority, who can make a complaint, and how to go about making it. Information on how to complain (in person, by phone, letter or email) needs to be clear, accurate, understandable and relevant. It should be available when and where it may be needed. It should tell people what they can and cannot expect from the complaints system, and about their own responsibilities.

Proper publicity can make the mission a success. The onus is on the state government and the Authority to play a proactive role to ensure that the existence of the Authority reaches every nook and corner of the state. In that regard, both print and electronic media should be roped in for proper advertising. District administrations should also be given informational pamphlets and resource material on the Authority for mass distribution in the districts. The Authority members themselves should travel to all the districts to publicise the mandate, the working of the Authority, and how to go about making a complaint. It is clear that a single press conference in Dehradun is hardly adequate for information about the Authority to reach the people of Uttarakhand. The Authority has the funding to spread its outreach on a large scale; it is important to maximise on this.

Action on Complaints

It is somewhat understandable that the Authority members do not have the capacity to do the kind of investigative work that is required, but other aspects of the process which are in the Authority's hands must be implemented in a watertight, comprehensive manner. The Authority can draw up its own

checklist on the nature of evidence gathered and needed, for instance, and not rely solely on the police version. Rules and procedure for Authority hearings can also be drafted, with a strict focus on ensuring the participation of the complainant at every stage along with the defendant. Provisions and rights for witnesses can be enshrined.

The Authority must ensure that the police guarantees access to their internal personnel files. As a result, the Authority should ensure that the police acts efficiently and guarantees access to law enforcement records, files and personnel. In such cases where the Authority recommends departmental action, it must ensure that it is informed about the investigation progress and the decision of the police department.

Speedy Disposal of Complaints

From the growing pendency it is clear that the single Authority located in Dehradun is unable to deal with the volume of complaints. Additionally, the single Authority ensures that people in distant parts of the state have little or no access to it. We thus recommend that Authorities be set up at the district level in compliance with the Court's directives. If the set-up of district-level Authorities appears unrealistic, the government should at least consider reconstituting the Authorities originally functioning at Paudi and Almora. To gain the trust of the complainant as well as the accused police officers, the PCA should fix a mandatory deadline for the completion of inquiries, and there should be penalties for delay. For instance, in the Authorities in other states, three months is often a benchmark in terms of an inquiry's duration. Fixing a deadline is particularly important in light of the high number of pending cases with the Uttarakhand Authority. The Annual Report of the Authority should specifically list the completion time of every inquiry.

Transparency and Openness

The legitimacy of a Police Complaints Authority is greatly enhanced by the transparency of its proceedings. Making the police complaints system as open and transparent as possible will encourage the public to have confidence that complaints will be handled fairly and misconduct or unsatisfactory performance dealt with effectively. Copies of the proceedings should be a matter of public record and should be freely available. There is a compelling public interest in demonstrating how those serving with the police are accountable to the public, even where disclosure may publicise failures in policing or poor conduct by police personnel.

Rule-Making Powers

It is encouraging to note that the Act has given powers to the Authority itself to frame Rules for its functioning. The Authority has done its work and passed the Rules on to the government. However, the government has clearly shown no interest in taking the matter forward. Experience shows that in the absence of rules/guidelines for effective functioning, the Authority may be rendered useless. We would urge that the Authority re-examine its Rules in light of the suggestions we have made, and the government on its part to make every attempt to ensure that the Rules are notified at the earliest.

Annual Report

The Authority is required to bring out an Annual Report listing the number and types of cases of “serious misconduct”, which have been inquired into by it; the number and types of cases of “serious misconduct” on which the complainants were dissatisfied by the departmental inquiry into the complaints, as well as the patterns of misconduct and recommendations to address the same. The Authority can make an enormous difference by providing recommendations that would go towards improving police behaviour. There is resistance from the police to acknowledge the Authority as an independent external oversight body. The government needs to make clear to the police that it needs to cooperate and work closely with the Authority.

Working Relationship with the Police

In order to make its mandate successful, the Authority should know the police internal disciplinary processes well. It should strive to develop an atmosphere of mutual trust and confidence with the police, but always maintain its duty of holding the police accountable foremost in its relationship with the police. To this end, the Authority should provide input to the police on finding solutions for systemic weaknesses, and improving its internal disciplinary processes.

Obligatory Nature of Recommendations

The Supreme Court in its judgement unequivocally stated that recommendations by the Police Complaints Authorities shall be binding on the state government. In this case, where the Authority has given its findings or recommendations, the police department has, instead of acting on the recommendations, appointed an inquiry officer to re-examine the findings. The effectiveness of a Police Complaints Authority depends in large measure on whether the police department is obliged to pay heed to its recommendations. If the police department and the government do not take the findings of the Authority seriously, then it is unlikely that any change in police behaviour or public perception of the police will take place.

ANNEXURE

Uttarakhand Police Act

CHAPTER VIII

POLICE ACCOUNTABILITY

63. In addition to the existing mechanisms, functions, duties and responsibilities of the departmental authorities, accountability for the police shall be further insured through the additional mechanism detailed in this chapter.

64. The State Government shall, within six months of the coming into effect of this Act, establish a State Police Complaints Authority, (hereinafter referred to as the 'Authority') consisting of a Chairperson and maximum four other Members to inquire into public complaints against the police personnel for serious misconduct and to perform such other functions, as stipulated in this Chapter.

65. (1) The Authority shall consist of maximum five member, to be appointed by the State Government, with a credible record of integrity and commitment to human rights. The Authority shall consist of the following:-

- (a) four persons of eminence with experience in public dealing and having credible record of integrity and commitment to human rights as independent members.
- (b) a Police officer superannuated in the rank not below the rank of Inspector General of Police;

(2) At least one member of the Authority shall be a woman and not more than one member shall be a police officer.

(3) Out of the four independent members, at least one member of the Authority shall be from amongst persons, having a good knowledge of law.

(4) The State Government shall appoint one of the independent members, as Chairman of the Authority.

66. A person shall not be eligible to be a member of the Authority, if he/she –

- (a) is not a citizen of Indian;
- (b) is above 70 years of age;
- (c) is serving in any police, military or allied organisation;
- (d) is employed as a public servant;

- (e) holds any elected office, which include Member of Parliament or Member of State Legislature or of any Local Body;
- (f) is a member of, or is associated, in any manner, with an organisation, declared as unlawful under an existing law;
- (c) is an office bearer or a member of any political party;
- (d) has been convicted for any offence or against who charges have been framed by any court of law; or
- (e) is a person of unsound mind and has been so declared by a competent court.

67. (1) The term of office of a member and the Chairperson shall be three years unless:-

- (a) he resigns at any time before the expiry of his term; or
- (b) he is removed from the office on any of the grounds, mentioned under section 68.

(2) The Chairperson and the members shall be eligible for reappointment.

(3) The remuneration, allowances and other terms and conditions of service of the members shall be such, as may be notified by the State Government from time to time.

68. The Chairperson or any member of the Authority may be removed from his office by an order of the Governor on the following grounds:-

- (a) Proven misconduct or misbehaviour;
- (b) Persistent neglect to perform duties of the Authority;
- (c) Occurrence of any such situation, that would make a member ineligible for appointment to the Authority under Section 66; or
- (d) Any member engaging himself, during his term of office, in any paid employment outside the duties of his office.

69. (1) The State Government shall provide staff to the members of the Authority.

(2) The strength of the staff shall be prescribed by the State Government.

(3) The Staff shall be selected by the Authority in accordance with the procedure, prescribed by the Government.

(4) The remuneration and other terms and conditions of service of the staff shall be notified from time to time by the State Government.

70. The Authority shall frame its own Rules for the conduct of its business with the approval of the Government.

71. (1) The Authority shall forward the complaints of misconduct, received directly by it, to the Director General of Police for further action, however, no cognisance shall be taken of anonymous complaints.

(2) The Authority may inquire into allegations of "Serious misconduct" against police personnel, on a complaint received by it.

Explanations: "Serious misconduct" for the purpose of this Chapter, means any act of a police officer, due to which charges may be framed for the following:-

- (a) death in police custody;
- (b) grievous hurt, as defined under section 320 of the Indian Penal Code, 1860.
- (c) rape or attempt to commit rape;
- (d) arrest or detention without due process of law;
- (e) violation of human rights; or
- (f) Corruption.

(3) The Authority may also inquire into any other case, referred to it by the State Government or the Director General of Police if, in the opinion of the Authority, the nature of the case is fit for independent inquiry.

(4) The Authority may monitor the status of departmental inquiries or departmental action on the complaints of 'misconduct' against gazetted officers, through a quarterly reports, obtained periodically from the Director General of Police, and may give appropriate advice to the State Government for completion of action in such cases.

(5) The Authority may also call for a report from the Director General of Police and may issue appropriate advice for further action or a direction for a fresh inquiry by another officer, when a complainant, on being dissatisfied by the outcome of, or inordinate delay in the process of departmental inquiry into his complaint of "misconduct" as defined above, by any police officer, brings such matter to the notice of the Authority.

(6) The Authority may suggest general guidelines for the State Police to prevent misconduct on the part of police personnels.

72. (1) The Authority shall have the power to require any person, subject to legal privilege, to furnish information on such points or matters as, in the opinion of the Authority, may be useful for, or relevant to, the subject matter of the inquiry and any person so required, shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and 177 of the Indian Penal Code, 1860.

(2) The Authority, for discharging its duties under this Chapter, shall have the power of a Civil Court.

(3) In the cases enquired directly by it, the Authority may, upon the completion of the enquiry, communicate its finding to the State Government and recommend suitable action.

73. (1) The Authority shall prepare an annual report at the end of each calendar year, inter alia, containing the following, with such other things:-

- (a) the number and type of cases of "serious misconduct", which have been inquired into by it;
- (b) the number and type of cases of "serious misconduct", which have been referred to it by the complainants upon being dissatisfied by the departmental inquiry into his complaint;
- (c) The number and type of cases, including those referred to in (b) above, in which advice or direction was issued by it to the police for further action;
- (d) the patterns of "misconduct" committed by the police personnel in the State, which has been identified; and
- (e) recommendations relating to measures to enhance police accountability.

(2) The annual report of the Authority shall be laid before the State Assembly. The report shall be a public document, which shall be accessible to the public.

(3) The Authority may also prepare special report with respect to specific cases, directly inquired into by it. These reports shall also be made accessible to the Public.

74. (1) Any person may lodge his complaint, relating to any "misconduct" or "serious misconduct" on the part of police personnel, with the Authority;

Provided that no complaint shall be entertained by the Authority, if the subject matter of the complaint is being examined by any other Authority or any court established by law.

(2) In cases, where a person has lodged a complaint with the police authorities, he may inform the Authority, at any stage of the departmental inquiry, about any undue delay in the processing of the inquiry.

(3) The complainant shall have a right to be informed of the progress of the inquiry, from time to time, by the Inquiring Authority (the concerned police Authority or the Authority). Upon completion of inquiry or departmental proceeding, the complainant shall, as soon as may be, informed of the conclusions of the same.

75. No suit or other legal proceeding shall lie against the State Government, the State Police Board, its members and staff, the Police Complaints Authority, its members and staff or any person acting under the direction of the Board or the Authority, in respect of anything, which is done or intended to be done in good faith in pursuance of the provisions of this Act.

76. For the efficient performance of duties, a separate component in appropriate major head of the State budget, as the State Government may determine, shall be provided.

Endnotes

- ¹ *Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1.
- ² Almora, Pauri Garhwal, Tehri Garhwal, Bageshwar, Chamoli, Haridwar, Champawat, Nainital, Dehradun, Udham Singh Nagar, Uttarkashi, Pithoragarh, Rudraprayag.
- ³ Bureau of Police Research & Development (BPR&D), *Data on Police Organisations in India as on 1 January 2008*, 2009, pp. 13, 39, 40 and 55.
- ⁴ National Crime Records Bureau, 12 August 2009, *Complaints/Cases Registered Against Police Personnel During 2007 (State and UT-wise) Table 16.1*, [electronic version] viewed on 2 February 2010 <<http://ncrb.nic.in/cii2007/cii-2007/Table%2014.1.pdf>>.
- ⁵ Rakesh Ranjan, *Did Uttarakhand police torture youth to death?*, *Hindustan Times*, first published 6 July 2009 [electronic version] viewed on 8 February 2010 <<http://www.hindustantimes.com/india-news/northindia/Did-Uttarakhand-police-torture-youth-to-death/Article1-429052.aspx>>.
- ⁶ The State-level Police Complaints Authority was set up by Office Memorandum No 2329/XX(1)-48/Writ/2006 dated 29 December 2006.
- ⁷ The Uttarakhand Police Act, 2007 (Act No 01 of 2008), published in the Uttarakhand Gazette of January 2008.
- ⁸ Section 64, Uttarakhand Police Act, 2007.
- ⁹ Section 65, Uttarakhand Police Act, 2007.
- ¹⁰ Section 65 (3), Uttarakhand Police Act, 2007.
- ¹¹ Section 69, Uttarakhand Police Act, 2007.
- ¹² Section 70, Uttarakhand Police Act, 2007.
- ¹³ Section 320 of the IPC designates *the following kinds of hurt as grievous*
- Firstly* – Emasculation
- Secondly* – Permanent privation of the sight of either eye
- Thirdly* – Permanent privation of the hearing of either ear
- Fourthly* – Privation of any member or joint
- Fifthly* – Destruction or permanent impairing of the powers of any member or joint
- Sixthly* – Permanent disfiguration of the head or face
- Seventhly* – Fracture or dislocation of a bone or tooth
- Eighthly* – Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.
- ¹⁴ Section 71 (2), Uttarakhand Police Act, 2007.
- ¹⁵ Section 71 (3), Uttarakhand Police Act, 2007.
- ¹⁶ Section 71 (4), Uttarakhand Police Act, 2007.
- ¹⁷ Section 71 (5), Uttarakhand Police Act, 2007.
- ¹⁸ Section 71 (1), Uttarakhand Police Act, 2007.
- ¹⁹ Section 73, Uttarakhand Police Act, 2007.
- ²⁰ Section 73(3), Uttarakhand Police Act, 2007.
- ²¹ Section 72(2), Uttarakhand Police Act, 2007.
- ²² Section 72(3), Uttarakhand Police Act, 2007.
- ²³ Section 76, Uttarakhand Police Act, 2007.
- ²⁴ Sections 66 and 67, Uttarakhand Police Act, 2007.
- ²⁵ Section 74(1), Uttarakhand Police Act, 2007.

CHRI PROGRAMMES

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, in addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

HUMAN RIGHTS ADVOCACY

CHRI makes regular submissions to official Commonwealth bodies and member governments. CHRI conducts fact-finding missions periodically. Since 1995, it has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit ensures that human rights issues are in the public consciousness.

ACCESS TO INFORMATION

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

ACCESS TO JUSTICE

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major area is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pretrial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

In early 2007, the Uttarakhand state government created three Police Complaints Authorities – one at the state level and two at the regional level (situated at Paudi and Almora) in compliance with the sixth directive in the 2006 Prakash Singh Supreme Court judgement on police reforms. In 2008, a new Police Act for Uttarakhand came into force. The Act created a single Police Complaints Authority for the state situated in Dehradun. At present, this is the only Police Complaints Authority that is functional in Uttarakhand.

The Authority is made up of a Chair and four members. It has little resemblance to what the Supreme Court had directed in terms of its composition, with all members directly appointed by the state government without an open and transparent selection procedure. In a state with the terrain and spread of Uttarakhand, the absence of Complaints Authorities in the districts will further severely restrict the access to justice of those living away from the capital.

With its generous funding, unprecedented among the working Complaints Authorities in other states, the Uttarakhand Authority is well resourced to properly implement its mandate and also innovate and bring new approaches to complaints redressal. However, it is disheartening to see the Authority not developing its institutional capacity as it could.

With the right combination of diversity of skills, perspectives and professions among members, Police Complaints Authorities could bring new and better approaches to the handling of complaints from the public. In this way, Complaints Authorities can play a significant role in repairing the systemic weaknesses in the police, improving police behaviour, and most importantly, gradually reducing public distrust of the police.

This report gives a broad and holistic analysis of the functioning of the Uttarakhand Police Complaints Authority. The report concludes with a set of recommendations for the state government, as well as for the Complaints Authority. These recommendations provide practical solutions on how to strengthen the Authority. We do hope that the Uttarakhand government and the Complaints Authority itself seriously consider our recommendations. It is only political will and strong leadership of both the police and the Authority that will build a truly accountable and responsive policing system.



COMMONWEALTH HUMAN RIGHTS INITIATIVE

B-117, 11nd Floor, Sarvodaya Enclave, New Delhi - 110 017

Tel.: +91-(0)11 43180200

Fax: +91-(0)11 2686 4688

info@humanrightsinitiative.org

www.humanrightsinitiative.org