

Union Government Compliance with Supreme Court Directives on Police Reform

Union Territories Police Complaints Authorities

Following plans to establish a Security Commission for Union Territories, the Commonwealth Human Rights Initiative (CHRI) welcomes the second move of the Ministry of Home Affairs (MHA) to implement the Supreme Court's directive on police reform for Union Territories, namely the setting up of Police Complaints Authorities. Though belated, coming more than three years after the Supreme Court laid down the directives in the Prakash Singh case, it is encouraging that plans are being shaped to establish Police Complaints Authorities for Union Territories. However, we remain deeply concerned at the design and consequent ability of the police complaints authorities to be fit for purpose – which is to ensure police accountability and minimise police abuse of power and criminality year on year.

Through an official Memorandum the Ministry of Home Affairs has announced the establishment of Police Complaints Authorities in Union Territories:

- 1) one Authority for Daman & Diu, Dadra & Nagar Haveli, and Lakshadweep,
- 2) one Authority for Puducherry, Andaman & Nicobar Islands and Chandigarh, and
- 3) one Authority for Delhi.¹

In CHRI's view, this is the directive which most urgently needed an order from the Supreme Court, as human rights violations and illegalities, with impunity, have become routine in policing, and none of the existing channels for redress appear to be working to the satisfaction of the public or to improve policing through its consistence and effective interventions. Police complaints bodies have been a regular feature in all the official proposals for police reform in India right from the first report of the National Police Commission in 1979, to the Ribeiro Committee (1998-1999), and the Padmanabiah Committee (2000), all of which called for the set up of these bodies at state and district level. These recommendations culminated in the 2006 Supreme Court judgement which ordered the establishment of Police Complaints Authorities at the state, union territory, and district levels.

To date, 15 states have ostensibly set up Complaints Authorities, through either new legislations or government orders, but so far, implementation has not set any positive precedents or benchmarks that indicate that their functioning has curbed police malpractice or led to systemic changes to reduce and address these. This is the particular purpose of setting up a specialised Police Complaints Authority. Our findings indicate that across the board, the composition and functioning of these authorities is routinely in breach of the letter and spirit of the Court's directions and the implementation of mandate is ineffective due to built in structural infirmities that appear to be deliberate in design. Police Complaints Authorities are severely under-resourced, lack independent members with diverse skill sets, have not been allocated a fixed budgets or adequate personnel. This failed implementation

¹ Find the Memorandum here: <http://mha.nic.in/pdfs/PCA-230310.pdf>.



across states makes genuinely effective design and implementation of this directive for Union Territories all the more important.

A weak Police Complaints Authority in the Union Territories (particularly in Delhi) that are directly under the Central government risks copycat role modelling in states that are already reluctant to comply with the Supreme Court's orders, set up Commissions or repair the ones they already have.

One more failed attempt to address the wrongs of policing in the form of a weak Commission will add to the quotient of public discontent with policing which has remained unaddressed for decades now. Most importantly the diminishing confidence in policing and its consequent lack of public cooperation will further reduce the ability of the police to make Delhi a safer city against crime and terrorism while adding unnecessary expense to the exchequer.

In this light, CHRI would like to express several points of serious concern in relation to the proposed composition, modes of setting up, as well as accessibility of these Union Territories Police Complaints Agencies.

While it is correct to have a separate Authority for Delhi it is our view that given the geographical distances involved in the groupings of the other two single Authorities for two sets of three Territories is untenable. It will inevitably lead to unrepresentative bodies that may or may not have a permanent location; that are overburdened with the volume of complaints and at the same time will present practical problems of access for complainants. The geographic distances to be traversed by complainants and the possible periodicity of visits will make it impossible for ordinary folks especially the poor and powerless to ever approach these bodies and gain satisfaction against powerful well connected mobile suspects. We believe the unequal power of the opponents must be taken into account when such bodies are designed or they will be seen as additional obstacles to justice and breed discontent.

In relation to Delhi we would urge the setting up of range wise Police Complaints Authorities in order to bring the remedy closer to the local public. Given that one in every 10 police persons in the Delhi force has a complaint against him we believe that numbers and decentralisation counts. One Authority is likely to be swamped especially given the very limited staff and facilities provided for in the governments order.

Secondly, based on several weaknesses in composition, CHRI questions the ability of the Authorities to act as independent and effective external oversight mechanisms that inquire into complaints against the police, as well as oversees and monitors how serious complaints against the police are handled internally by the police.

Finally, CHRI believes that it is crucial for the Authority to have binding powers. Experience shows that even independent oversight agencies with sufficient resources and strong investigative powers have proven ineffective if the police and governments routinely ignore their recommendations.



Background to the Union Territories Police Complaints Authorities: The Court Directive

The Supreme Court's directive in the *Prakash Singh* case expressly laid down a composition, selection process, and mandate for the Complaints Authorities. We recognise that the Court provided guidance on Complaints Authorities only at the state and district levels. It did not refer to the Union Territories, which are smaller in size and differently administered from states. The Court also did not clarify whether the Centre should set up one Complaints Authority for all the Territories, or an Authority in each Union Territory, or single Authorities for many Territories. As a result, inevitably, the Centre would have to improvise somewhat when designing Complaints Authorities for the Union Territories, each of which differ in size, population, police strength, and most importantly nature and volume of complaints against the police. Additionally the geographical distance between the Union Territories is a central factor to consider when deciding where to physically situate Complaints Authorities, as any Authority should be as easily accessible as possible to all potential complainants.

In terms of Composition the Court required that:

At the state level:

- the Chair of the Complaints Authority 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 3 to 5 members "depending upon the volume of complaints";
- other members 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.

In terms of Mandate the Court required that:

The state-level Authority 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 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”.

In addition to these broad prescriptions, the Supreme Court provided for a number of features common to state and district level Police Complaints Authorities:

- Membership in the authority must be a **full time** occupation
- The members of the authority should be provided **suitable remuneration**
- The members of the authority can use the assistance of **regular staff to conduct field inquiries**. Such staff can be composed of retired investigators from the Criminal Investigation Department, Intelligence, Vigilance or any other organisation
- The recommendations of the authority for any action, both disciplinary and criminal, shall be **binding**. Once the inquiry is completed, the Complaints Authority can recommend disciplinary action, or can also recommend the registration of a FIR against the erring police officer. To note, where Police Complaints Authorities have been set up, state governments have adopted a binding power for the Authorities.

No Independence: Problems in Composition

Present Composition:

According to the MHA Memo, the Ministry has proposed two single Authorities for two sets of three Union Territories, and a separate Authority for Delhi. The proposed Authorities, with their composition as stated in the MHA Memo, are:

- 1) **Daman & Diu, Dadra & Nagar Haveli and Lakshadweep**: this will be a one member Authority i.e. the Chairperson, who may be from amongst any of the following categories:
 - i. A retired District Judge or retired Civil Service Officer of the rank of Additional Secretary and above;
 - ii. A person having 10 years of experience in law, either as Judicial officer, Public Prosecutor, Lawyer, or Professor of Law; and
 - iii. A retired officer with experience in Public Administration.



- 2) **Puducherry, A&N Islands and Chandigarh**: This Authority will comprise of the Chairperson and two Members. The Chairperson may be from the category (i) below and the Members may be drawn from amongst any of the remaining categories and one of the Members should be a woman:
- (i) A retired High Court/District Judge or retired Civil Service Officer of the rank of Secretary;
 - (ii) A person having 10 years of experience in law, either as Judicial officer, Public Prosecutor, Lawyer, or Professor of Law;
 - (iii) A person of repute and stature from civil society;
 - (iv) A retired officer with experience in Public Administration; and
 - (v) A retired Police Officer of appropriate rank.
- 3) **Delhi**: The Police Complaints Authority will comprise of the Chairperson and three Members. The Chairperson may be from the category (i) below and the Members may be drawn from any of the remaining categories and one of the Members should be a woman:
- (i) A retired High Court/District Judge or retired Civil Service Officer of the rank of Secretary;
 - ii) A person having 10 years of experience in law, either as Judicial officer, Public Prosecutor, Lawyer, or Professor of Law;
 - (iii) A person of repute and stature from civil society;
 - (iv) A retired officer with experience in Public Administration; and
 - (v) A retired Police Officer of appropriate rank.

In terms of selection process, the Memo indicates that the Chairperson and members of the Authority for Puducherry, Andaman & Nicobar Islands and Chandigarh, as well as for the Delhi Authority, "may be appointed by the Administrator of the Union Territory concerned". The Chairperson of the Dadra & Nagar Haveli, Daman & Diu and Lakshadweep Authority "may be appointed by the Union Territory Administration in consultation with the Central Government". Significantly, the Memo does not lay down any security of tenure for either the Chair or the members, and gives the Administrator the power to remove the Chair or any member, with insufficient basis or safeguards (elaborated further below).

The problems in composition are glaring and will impact the extent of the Authority's independence. With regard to both membership and the selection process, we are disappointed that checks and balances have not been written in to help ensure that the Complaints Agencies function independent of executive and police influence.

One of our primary concerns is that the Memo leaves the option of choosing either a retired Judge or a retired Civil Service Officer as the Chair of the Authority. The Court left no ambiguity in the directive in its requirement that the Chairs of Complaints Authorities only be retired judges. With all due respect, we are of the view that a retired Civil Service Officer does not have the appropriate profile or experience to head a body with a quasi-judicial



function, and more significantly, which deals with inquiring into human rights violations by police.

The composition also suggests that the other members may be from a pool of retired officers with experience in public administration or retired police officers. Taking into account the fact that the Authorities will work in tandem with the police while conducting their inquiries (as envisaged in the Memo), we feel that the police point of view will be adequately addressed in the course of inquiries. In this light, a retired police officer as a member will just tilt the balance too far in favour of police concerns. It is often argued that the presence of a retired police officer, given his inside experience will in fact enhance the functioning of the authority. We do not accept this argument. Should an Authority need expert advice it can always call on retired police officers to provide them the same without having one sit on the Authority itself. It is all the more concerning as there is no requirement that a "civil society" (or non-government) member be on the Authority – civil society members are listed as one of the options for members, but there is no 'mandatory' requirement that one member must be the civil society member. So for the two Authorities where this applies², depending on which "categories" of members are chosen, there could very well be no civil society member and a predominance of 'police minded' members.

If the Authority is to live up to its mandate a fair balance needs to be struck in membership between retired government officers and independent civil society members, with exactly half as retired officers and half as independent members and that there be a mandatory requirement that at least two members on the Delhi Authority, in particular, be civil society members.

Further, the selection process for members must be such as assures the appearance of impartiality and independence. However, at the moment this is at a discount. There are no comprehensive objective selection criteria nor any independent selection panel to select any of the members, thereby defeating any semblance of openness, and objectivity in selection or independence in the final product who would be obliged for their posts to the government against whose agencies they will often be required to proceed. According to the Memo, all the members (including the Chair) of the Authorities for Delhi and Puducherry, Andaman & Nicobar and Chandigarh are to be appointed by the "Administrator of the Union Territory concerned". For the remaining Authority for Dadra & Nagar Haveli, Daman & Diu and Lakshadweep, the single member Chair is to be appointed by the "UT Administration in consultation with the Central Government". Alarming, there is no security of tenure for anyone serving on a Union Territory Police Complaints Agency. Added to that, the Administrator of the Union Territory can remove any member of an Authority, admittedly after giving them "an opportunity to be heard". But in the absence of stated grounds for removal, the "opportunity to be heard" may amount to a mere formality. These arrangements create a subservient organisation rather than an independent panel to oversee policing malpractice and abuse.

² Applies to the Authority of Puducherry, A&N Islands and Chandigarh and the Authority at Delhi



Untenable Models: Location, Representation and Access

It is our view that the single Authorities for Daman & Diu, Dadra & Nagar Haveli and Lakshadweep on one hand, and Puducherry, Andaman & Nicobar Islands and Chandigarh on the other, will not work. Though we acknowledge that some of these territories have in the past had almost no complaints recorded against the police the reasons for this have not been sufficiently analysed. It could be that the police are absolutely faultless in these jurisdictions in which case having one that is close at hand to the local population pose no great problem as it will not be worked very much. On the other hand it could be that the populations of these places are for the most part unaware of their rights, uncertain of procedures and near certain of getting little redress and therefore silent and distant from the possibility of making complaints or seeking better policing. In which case it becomes doubly important for the Central authorities to afford them equal facilities and not create distant and inaccessible venues of redress.

There are too many important questions in terms of location and access which are left unanswered in the Ministry's formulation with regard to these Authorities. Firstly, the Memo does not indicate where the single Authorities will be situated, which is not an easy question considering that they are mandated to inquire into complaints against the police across several jurisdictions, which are far away from each other. There is no clarity on who will decide the location of the Authorities and on what parameters these decisions will be taken. If they are to be "floating" Authorities so they can have a presence in each Union Territory they are vested to represent then there are likely concerns to arise in terms of the receipt and flow of complaints.

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 Ministry. It is unreasonable and unrealistic to expect complainants to travel the length of India just to access the Authority. Simply put, these Authorities are not going to be accessible to all potential complainants based on the geographical spread alone. CHRI strongly recommends that the Ministry reconsider its proposals, consult with local players regards the ground level situation, and then decide upon a suitable model before putting in firm plans.

Another factor to consider is how representative these bodies are. Any public body which seeks to serve several jurisdictions should be representative of all the jurisdictions under its care. The proposed single member Authority for Daman & Diu, Dadra & Nagar Haveli and Lakshadweep will not be representative of all three Union Territories. With no provision for representation written in, there is no guarantee that the three member Authority proposed for Puducherry, Andaman & Nicobar Islands and Chandigarh will be truly representative either. The proposal for Delhi is also relevant here, considering the fact that it is the capital and India's largest metropolitan city with a population of approximately 12 million people, made up of people from all over the country and from all walks of life. While we recognise that it is virtually impossible for any body to be truly representative of the diversity of Delhi, CHRI argues that the Delhi Authority requires a higher number of "civil society" members than the other Union Territories.



The proposed numbers of staff for the Authorities also come up short. The Ministry has not considered – as the Court advised – that the number of members be decided based on the “volume of complaints” received by the Authorities. In terms of Delhi, we have already mentioned that the population is 12 million (and steadily growing), and it is important to note that the Delhi Police constitutes the largest metropolitan force in the world with almost 60000 personnel, with 1 out of every 10 policemen having a complaint against him. Taking this factor into account, it must be considered whether an Authority made up of four members with jurisdiction over all of Delhi will be able to adequately respond to the potential number of complaints. To address this concern, the Ministry can consider setting up three Authorities for Delhi at the range level. This model may be able to deal with the volume of complaints.

Powers and Functioning: Falls Short of Court’s Mandate

The addition of a Police Complaints Authority, to other existing mechanisms of police oversight addresses several needs. First, the on-going persistence of far too much wrongdoing within the police despite built in statutory safeguards; two the clear weakness and opacity of the internal management, vigilance, disciplinary and inquiry systems to address and repair persistent wrong-doing; three the need for a specialist body to continuously examine and document wrongdoing so that it can - based on patterns of misbehaviour seen over the years - suggest reforms and make recommendations to the police and to the political executive that will minimise repetitions.

As such the police complaints authority must have powers not only to look into serious complaints, but to observe and make reports on the internal handling of complaints by the public against police. It must in addition have powers much beyond the present ones to make suitable orders that go beyond merely recommending the filing of an FIR or initiating a departmental inquiry. It must have powers to summon persons and documents and make periodic reports to the Central and UTs governments and to parliament about its findings.

We are also concerned that the Police Complaints Authority will be seen by the police as a convenient means to delay its own responsibility to act speedily to discipline and punish its errant officers. But will rather wait on directions from the police complaints authorities before making any move to remedy complaints.

We are concerned that the binding power of the Complaints Authorities has been diluted in the Ministry's model. The Memo states that the directions of the Authority shall "ordinarily be binding", unless the UT Administration disagrees with the Authority's findings. This is in violation of the Court's directive, which clearly states that the recommendations of Complaints Authorities for any action "shall be binding". 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.³ Without binding powers, the

³ In just one example, in 2004, the National Human Rights Commission reported that the National Commission for Scheduled Castes and Scheduled Tribes was disheartened that the majority of recommendations in its Annual Reports were not accepted. The NHRC stated, "the issue of non-acceptance of recommendations is a crucial one and needs to be dealt with seriously in the larger interest of the vitality of these institutions and their credibility with their client group" National Human Rights Commission, Report on Prevention of Atrocities against Scheduled Castes, New Delhi (2004), p. 102



Union Territory Complaints Agencies will be crippled by the Union Territory Administrations' power to disagree with their findings. As described in the Memo, refusals of an Authority's findings can be made at the discretion of the UT Administration. This will reduce the Authorities to toothless bodies.

In Conclusion

While encouraged by the Home Ministry's move to implement the Supreme Courts directives on police reform CHRI is concerned that the Police Complaints Agencies designed for the Union Territories do not at all conform to the Court's directives and significantly dilute the Court's intent. The bodies set up will not be independent or effective.

Before embarking on any plans, we strongly urge the Ministry to hold consultations with the Administrations of the Union Territories and design suitable models in close collaboration with them, keeping local realities and needs at the forefront.

In all of the Ministry's reform proposals so far for Union Territories, we have noticed a trend of domination of the bureaucracy and the police (serving and/or retired) as members of oversight bodies. CHRI cautions against this trend, and urges the Ministry to consider new innovations to shape truly independent accountability bodies by trusting and relying on increased civil society membership. As representatives of civil society, we urge the Ministry to recognise the need for a broader membership in light of the numerous ineffective accountability institutions in place that are failing their mandates. Importantly,

In addition we unequivocally call for binding powers for the Authorities, as ordered by the Supreme Court. It must be remembered that Police Complaints Authorities are bodies designed to serve the public's need and address serious public grievances. It is only the composition and powers of these bodies that will ensure they do not become accountability bodies merely in name.

