

## Recommendations

### An Effective Police Complaints Authority for Delhi

June 2018

On 19 June 2018, civil society organisations, research bodies, individual experts, government and police representatives came together at a Consultation organised by the Commonwealth Human Rights Initiative for discussions on a Police Complaints Authority<sup>1</sup> (PCA) for Delhi - a police oversight body that would receive and inquire into complaints from the public against Delhi Police personnel. Key resource persons in attendance were Justice K. Narayana Kurup, former Chairperson of the Kerala state Police Complaints Authority; and Mr. Manoj Parida, Principal Secretary (Home) of the Delhi government.

This consultation took place in the backdrop of immediate preparations to set up a PCA in Delhi, to be a platform for diverse stakeholders to collectively deliberate and engage on what is needed to establish a model PCA. To situate the enabling factors required, the discussions shared experiences, good practices, and challenges faced by operational PCAs in other states.

The Office of the Lieutenant Governor, in consultation with the Delhi government, has drafted a Notification (No. F.No.28/1/2017/HP-I/Estt./Part file-635-641, dated 29 January 2018) constituting a Police Complaints Authority for Delhi. It sets out the basic framework for the PCA.

During the consultation, the participants gathered took the opportunity to analyse the Notification. This note identifies gaps in it and collective key concerns; and provides recommendations to address them. We urge these are incorporated.

#### **Concerns and Recommendations**

##### 1. Single-tier PCA

The notification creates a single PCA to receive and conduct inquiries into complaints against Delhi Police personnel presumably of all ranks. This contravenes the 2006 Supreme Court directive to set up PCAs at multiple levels. Additionally, the Delhi Police is one of the largest police departments in the country and receives a high number of complaints of alleged police misconduct (in 2014 alone, most of the police districts of the city each received more than 500 complaints). A single Authority will quickly get overburdened and bogged down. This could affect the efficient functioning of the Authority and result in loss of public trust.

**Recommendation: We recommend that a multi-tier PCA be constituted for Delhi, at the city and range levels. The city level PCA can deal with complaints received against police personnel of the rank of Deputy Commissioner and above, and the range level PCAs for complaints against personnel of the rank of Assistant Commissioner of Police and below.**

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<sup>1</sup> The Supreme Court of India ordered the Centre and all states to establish Police Complaints Authorities at the state and district levels in its 2006 judgment in *Prakash Singh and Others v. Union of India and Others*, among other directives towards police reform.

## 2. Sworn affidavit on submission of complaints

Clause 4(i)(a) mandates the submission of a complaint by a victim or any person on his/her behalf on a sworn affidavit. The Principal Secretary (Home) clarified that the requirement of a sworn affidavit applies only to persons who will file complaints on behalf of victims, to safeguard against vexatious complaints. This premise is faulty. It assumes distrust when a complaints body must be accessible and receptive to all. It will unjustifiably burden potential complainants who are acting on behalf of victims. It would be contrary to the established process - none of the statutory Commissions require complaints to be submitted on sworn affidavit.

**Recommendation: Affidavits should not be required for anyone to submit a complaint to the PCA. We strongly recommend that the requirement to submit complaints on sworn affidavit is deleted.**

## 3. Bar on inquiry into complaint which is before other statutory bodies

Clause 4(iii) restricts the PCA from conducting an inquiry into complaints which are being looked into by other statutory bodies and courts. This is presumably to prevent unnecessary multiple inquiries. We agree that complaints which are pending adjudication by a court cannot be looked into by the PCA. But it is unreasonable and restrictive to bar the PCA from inquiring into complaints before any other statutory body. Each statutory body has a specialised mandate and takes up complaints based on this specificity. For instance, the National Commission for Scheduled Castes is to “inquire into specific complaints with respect to the deprivation of the rights and safeguards of the Scheduled Castes” (Article 338(5), Constitution of India). There may be a complainant who is a Scheduled Caste victim of custodial torture by the police and would like to file complaints with both the NCSC and the PCA. The NCSC inquiry will be geared to determine whether caste-based discrimination fuelled torture by the police. This is different from a PCA inquiry which would delve into whether enough preliminary evidence can be gathered to establish, *prima facie*, that the police officer committed torture. There is variance in the mandates of each of these bodies which makes it all the more important that an aggrieved person can approach as many of them as possible.

**Recommendation: We recommend that the prohibition on the PCA to receive complaints before the NHRC or any other statutory body is removed.**

## 4. Independent investigators

The Supreme Court directive advises that PCAs can appoint independent investigators to conduct the fieldwork for inquiries. They can be retired persons from the CID, Vigilance, etc. The underlying principle is to safeguard the independence of PCA inquiries and prevent dependence on the police for inquiry functions. The notification does not provide for independent investigators. This is a critical gap.

**Recommendation: We recommend that the necessity to appoint independent investigators is incorporated in the notification. It can be left to the PCA Rules of Procedure to prescribe the selection process and criteria to select and recruit the independent investigators.**

## 5. Decisions and directions of the Authority

Clause 6 of the notification provides that the recommendations of the Authority “shall ordinarily be binding unless for reasons to be recorded in writing, the Government decides to disagree with the findings of the Authority”. This violates the Supreme Court directive which requires

that the recommendations of a PCA for any action, departmental or criminal, against an implicated police officer *shall* be binding on the concerned authority.

**Recommendation: We recommend that the notification is amended to unequivocally state that the decisions and directions of the Authority are binding.**

## 6. Additional recommendations

### **A. Protection from threats/intimidation**

The serious possibility of complainants being subjected to threats, intimidation and/or harassment in the course of inquiry must be considered. This is absent from the deliberations at present. It is imperative that policymakers recognise the importance of this, and the PCA is oriented to have processes in place to respond when needed.

### **B. Outreach measures**

Sufficient and widespread outreach measures should be taken to inform the public about the existence of the PCA, its mandate, powers, and how a member of the public can access it to file a complaint.

### **C. Necessity of Rules of Procedure**

To date, very few of the operational PCAs work according to prescribed Rules of Procedure. Rules have not been formulated or notified largely due to political apathy. The absence of Rules leads to arbitrariness and lack of clarity in the day-to-day procedures of PCAs. Procedures are entirely unknown to complainants, disadvantaging them in the inquiry process. The drafting, and notification with no delay, of comprehensive Rules of Procedure must be prioritised in parallel with making the Delhi PCA operational. Rules must be in place as soon as the PCA begins receiving complaints.

## **Endorsed by:**

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