

CHRI 2023

POLICE COMPLAINTS AUTHORITIES IN INDIA

STATUS | GAPS | CHALLENGES



CHRI

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

EXECUTIVE SUMMARY

September 2023 marked 17 years since the Supreme Court of India (SCI) directed all States and Union Territories to constitute Police Complaints Authorities (PCAs) in its landmark judgement on police reforms.¹ The Court mandated PCAs to be set up both at the state as well as district levels to inquire into public complaints against the police and push for their accountability. They were envisaged as independent and dedicated oversight bodies headed by retired judges, and comprising of independent members to function as a forum accessible to citizens for seeking redress against police wrongdoings.

The Commonwealth Human Rights Initiative (CHRI) has been monitoring and reporting on PCAs since the Supreme Court's judgement in 2006. It published its first national-level report on the Authorities in 2009² in which it pointed to gaps both in the legal framework constituting the PCAs as well as in their functioning on the ground. An updated edition was subsequently published in 2012³ and then again in 2020.⁴

Building on these efforts, this report examines the current status of PCAs in India with the aim of highlighting both their potential, as well as limitations, in enforcing greater police accountability in India. The findings are primarily intended to inform policy and legal review of PCAs' role and relevance in the context of police accountability. Additionally, we hope the research will inspire deeper scholarship, increase civil society and media engagement with these institutions and mobilise public pressure on governments that are yet to set up such Authorities.

AIM AND STRUCTURE OF THE REPORT

The report provides an update on PCAs in all the States and Union Territories (UTs) in India. It highlights gaps in the legal and policy framework that establish both the state and district PCAs in every State/UT. The operational challenges, however, are examined only of the state PCAs (SPCAs). This is mainly to keep the analysis focused on the issues and challenges at the state level and encourage cross learning across the state PCAs. We hope this review spurs closer analysis of district PCAs throughout the country.

Where SPCAs are operational, the report evaluates their composition against the standard laid down by the SCI; patterns in terms of complaints received, inquiries held, and action recommended; and select aspects of their administrative functioning such as adoption of rules of procedure, their budget and their annual reports. This is intended to throw light on the trends with regard to police misconduct frequently being reported to the Authorities, the extent of the Authorities' reach across districts within states, and the manner of their disposal of complaints which are in essence people's demands for police accountability for

1 *Prakash Singh & Ors. v. Union of India & Ors*, 2006 (8) SCC 1.

2 Commonwealth Human Rights Initiative, *Complaints Authorities: Police Accountability in Action*, 2009: https://www.humanright-sinitiative.org/publications/police/complaints_authorities_police_accountability_in_action.pdf. Accessed on 3 September 2023.

3 Commonwealth Human Rights Initiative, *Police Complaints Authorities in India: A Rapid Study*, 2012: https://www.humanright-sinitiative.org/publications/police/PCA_Rapid_Study_December_2012_FINAL.pdf. Accessed on 3 September 2023.

4 Commonwealth Human Rights Initiative, *India's Police Complaints Authorities: A Broken System with Fundamental Flaws – A Legal Analysis*, September 2020: <https://www.humanrightsinitiative.org/download/Briefing%20Paper%20on%20Police%20Complaints%20Authority%20CHRI%202020.pdf>. Accessed on 4 September 2023.

wrongdoing. Where SPCAs are yet to be operationalised, the report provides an update on legal and/or policy developments relating to their establishment. Based on the findings, the report recommends actionable measures to Governments and the Authorities for strengthening their role and functioning.

The report is structured under three chapters. The **first chapter** summarises the legal and policy framework governing PCAs in India. It describes the Supreme Court directive on PCAs that forms part of its judgement on police reforms. Next, it explains standards relating to PCAs as laid down in the Model Police Act, first prepared in 2006 and then updated in 2015, which provides a legislative guidance for states. Finally, it presents an update on action taken by states in order to establish PCAs, either by enacting police laws and/or legislative amendments, or through executive orders.

The **second chapter** presents the analysis of state PCAs. It consists of **five parts**:

Part A evaluates States/UTs where state-level Authorities are operational on the ground. Operational is understood to mean:

- Authorities have a Chairperson and/or Members at present; and
- Authorities are receiving complaints, conducting inquiries and recommending action.

Part B focuses on newly appointed SPCAs. It includes states that have appointed SPCAs in 2023 and where the Authorities are yet to begin operation, or states that made appointments in late 2022 but the Authorities began operation only in 2023.

Part C covers States/UTs that have assigned SPCA functions to other state institutions such as the Lokayukta or include only serving state officials. CHRI categorises these states as non-compliant with the Supreme Court directive even though they are inquiring into public complaints alleging police wrongdoing.

Part D includes States/UTs that are yet to operationalise SPCAs. This could be due to several reasons: states are yet to make appointments despite providing for them either in legislation or through an executive order; or states are yet to pass orders setting up PCAs in the first place.

Part E includes States/UTs where no information is publicly available on their SPCAs' functioning, either in the public domain or through the Right to Information.

In the **third chapter** we present our overall findings and make recommendations to the State Governments, PCAs, police departments and civil society.

METHODOLOGY

The report is based on information gathered in two phases through information requests made under the Right to Information Act, 2005 (RTI Act), first in 2021 and then in 2023. In 2021, the RTI applications were sent only to functional state-level PCAs. In 2023, in addition to the functional SPCAs, RTI applications were also submitted to the Home Departments in States/UTs where the SPCAs were not functional as well as to the Lokayuktas in Odisha and Himachal Pradesh where they had been vested with the functions of the SPCAs. The RTI applications sought information about the SPCAs' current composition, copies of the government order constituting them, their annual reports, rules of procedure, budget & expenditure and information on the complaints received, their status and action recommended. A detailed methodology is explained in Appendix I whereas RTI application format is given in Appendix II. Current contact details of all the SPCAs (where available) is

provided in Appendix III. Information has been kept up to date until September 2023.

There are significant gaps in the information CHRI received through RTI that are highlighted in the opening paragraph of each state section as well as throughout the analysis. Despite these gaps, the information we were able to gather along with other sources of information, such as the annual reports of PCAs, media reports about their functioning or otherwise and on-going litigation before the respective High Courts, offer important insights regarding the status and the working of PCAs across the country.

FINDINGS

PCAs are yet to have any measurable impact on police accountability. Governments have shown little or no will at establishing complaints authorities that are equipped to function in an impartial and effective manner. Long period of vacancies, delayed appointments and dominance of the political executive in the Authorities characterises the journey of most SPCAs. Where SPCAs have been able to function with some semblance of independence, Governments are taking measures to curtail their powers. SPCAs themselves have been reluctant in taking *suo motu* cognizance of reported police misconduct or ensure timely completion of inquiries, calling into question their relevance and credibility among the people. Overall, there is an urgent need to repurpose the role and composition of SPCAs such that they can truly fulfil their mandate of independent oversight to enhance police accountability.

A summary of the main findings is as follows:

- 1. Police Complaints Authorities operational in less than half of the states:** Since the Supreme Court directive in 2006, only 26 of the 28 States (except Uttar Pradesh and Bihar), and six of the eight Union Territories except Jammu and Kashmir and Ladakh, have put in place a legal and/or a policy framework for setting up state-level Police Complaints Authorities.⁵ Out of these, only 11 Authorities are operational on the ground while three are newly appointed and yet to become fully operational. The remaining States/UTs are either yet to set up SPCAs in the first place or the Authorities are currently non-functional due to failure of the Governments to make appointments, or information is not available in the public domain including through the Right to Information.
- 2. Serving Government or Police Officials are members of Police Complaints Authorities:** In direct violation of the 2006 Supreme Court directive that emphasised the importance of independent police oversight, at least **nine States/UTs** have serving government or police officials in their PCAs. While Tamil Nadu, West Bengal and Dadra & Nagar Haveli and Daman & Diu have only serving officials in their Authorities, Arunachal Pradesh, Gujarat, Jharkhand, Karnataka, Kerala and Rajasthan have serving police officials either as Members or Member-Secretary of the SPCAs.
- 3. Only two State Police Complaints Authorities have civil society representation:** Despite the requirement to include at least 3-5 independent members in the SPCAs including from civil society, only Rajasthan and Delhi at present have representation from civil society. In Rajasthan, the civil society members are known to have political affiliations; therefore, Delhi is the only Authority with an independent civil society representative currently serving as a member.
- 4. Diluted mandate:** In several states, the mandate of the SPCAs has been narrowly defined from the very beginning. The state police laws, under which PCAs are established, have

⁵ See, Table 3, Chapter 1- Police Complaints Authorities: Legal & Policy Framework, pg. 14.

diluted the definition of ‘serious misconduct’ into which they must inquire, thereby limiting the jurisdictional powers of the Authorities in checking police illegalities. Instead of augmenting their resources and powers, more States and UTs are diluting the SPCAs mandate than ever before. For instance, the *Assam Police (Amendment) Act, 2021*, has curtailed the definition of ‘serious misconduct’ to exclude the following: arrest or detention without due process; forceful deprivation of rightful ownership or possession of property; blackmail or extortion; and non-registration of FIRs. Consequently, the SPCA will no longer be able to address complaints alleging such serious misconduct. Notably, complaints data from Assam shows non-registration of FIRs as the second largest category of complaints the SPCA has received till date.

5. **Vacancies:** Delays in appointments and long periods of vacancies, particularly of the Chairperson’s post, characterises several SPCAs. Only four Authorities – in Assam, Kerala, Tripura and Uttarakhand – have been active since 2008 and have had regular appointments. Goa and Haryana SPCAs were active initially but vacancies remained unfilled until recently. Jharkhand and Maharashtra do not have Chairpersons at present, though they continue to receive public complaints. SPCAs in Andhra Pradesh, Arunachal Pradesh and Rajasthan were constituted as recently as 2023.
6. **Only half of the operational SPCAs have adopted Rules of Procedures:** Assam, Andhra Pradesh, Haryana, Jharkhand, Karnataka, Maharashtra and Tripura SPCAs have adopted rules of procedures to govern their functioning. Arunachal Pradesh, Delhi, Goa, Gujarat, Kerala, Rajasthan and Uttarakhand are yet to develop and/or publish their set of rules.
7. **High number of public complaints received against police personnel:** To some extent, the PCAs have become a forum people feel comfortable approaching, as is evident from hundreds of complaints the active SPCAs receive every year, not just from select pockets but from across the state. Delhi PCA stands out as having received the highest number of complaints consistently. Since 2020, it has dealt with over 2,000 complaints every year. Maharashtra and Kerala SPCAs come distant second with an average of 600-700 complaints every year from 2018 and 2022. This shows why independent police accountability bodies are needed.
8. **Small percentage of complaints received admitted for inquiries:** Not all complaints received are admitted for inquiry by the Authorities. Gujarat accepted less than two per cent (just 68 out of 3,502) of complaints it received between January 2018 and December 2022. From January 2018 till March 2023, Maharashtra admitted less than a quarter (1,102) of the 4,515 complaints it recorded for inquiry. During the same period, Kerala accepted only 45 per cent of the total complaints for inquiry. Complaints are admitted for inquiry when the Authority decides that they fall within its mandate. **This underscores the need to review and expand the mandate of SPCAs in order to address a wider range of grievances against police personnel that are at present going unattended.**
9. **Limited use of *suo motu* powers to initiate inquiries:** Despite the legal mandate, SPCAs are hardly using their *suo motu* powers to initiate an inquiry into reported instances of police misconduct, choosing instead to rely on public complaints. Assam and Maharashtra are the only Authorities to have initiated *suo motu* inquiries. From 2018 to March 2023, Assam initiated 58 complaints in total, although the number of instances in which the Authority invoked this power has fallen from 21 in 2018 to 8 in 2022. Maharashtra has used it in only three cases since 2018.
10. **Very few referrals by state institutions:** Assam, Maharashtra and Haryana are the only states to report on complaints referred to the state SPCAs from other authorities in the state. Referrals in Haryana from the State Government, in particular, have increased substantially from 2 (out of total 134 complaints) in 2019 to 74 (out of 443) by 2022. That the Government is approaching the Authority to look into cases of police misconduct that come to their notice is a positive development.

- 11. Police inaction and non-registration of First Information Report constitute the largest proportion of public complaints:** Where information about the classification of offences inquired into by the SPCAs is available (Assam, Haryana, Tripura), the largest number of complaints belonged to the category of “police inaction.” Every year from 2018 to 2022, Assam has had around 200 complaints about police inaction such as delay in investigation, negligence and/or misbehaviour. In Haryana, complaints categorised as “others” have increased from 60 in 2019 to 278 in 2022 making it impossible to reckon as to what kind of ‘misbehaviour’ is being complained about. In Tripura, “police inaction” complaints have gone up from 5 in 2018 to 14 in 2022. “Non-registration of FIR” is the other category that has seen a large number of complaints. While the Tripura SPCA received from nine to 15 complaints of non-registration every year, Assam received nearly 30 complaints every year till 2020.
- 12. High case pendency and inquiries lasting several years:** A rising trend of case pendency even while number of complaints being admitted are falling is a matter of concern in several SPCAs. In Maharashtra, the pendency rate went up from less than one per cent in 2018 to 54 per cent in 2022 while complaints fell from 665 to 82. Similarly, in Kerala, the rate of pendency increased hugely from two per cent in 2018 to 45 per cent in 2022 while the number of complaints admitted for inquiry fell from 435 to 146 during this period. The time taken to complete inquiries is another concern. Although Assam is the only Authority to maintain and provide this data, the findings reveal a grim picture. The Assam Authority has as many as 40 cases from 2018 still pending as on 31 March 2023, nearly five years later.
- 13. PCAs recommended action against police personnel in very few complaints:** The proportion of complaints in which the SPCAs established misconduct and recommended action against the police personnel remains very small. Despite receiving thousands of public complaints, Delhi has recommended departmental action in just 17 cases thus far. Assam SPCA had recommended action in 46 cases in 2018 and 15 in 2019, but these came down to just two cases in 2021, and not even a single case in 2022.
- 14. Poor implementation of PCA recommendations by State Governments:** A major gap in the accountability process remains the poor response from the State Government as well as the state police leadership in terms of acting on the Authorities’ recommendations. Assam, Tripura and Uttarakhand SPCAs have repeatedly raised concern over this in their annual reports.
- 15. Utilisation of SPCA budgets:** SPCAs for the most part are utilising their sanctioned budgets. However, their funds are mostly allocated for salaries/wages/allowances and other office expenditure.
- 16. Few SPCAs publish annual reports:** Assam, Delhi, Karnataka, Tripura and Uttarakhand Authorities stand out for preparing and publishing annual reports regularly through the years since their constitution. The reports from Assam, Karnataka and Tripura in particular are detailed and provide a statistical breakdown of the complaints received and inquiries conducted. Karnataka stands out for publishing its annual reports both in English and the local language (Kannada) therefore making them accessible to a wider audience.
- 17. Separate investigation cell constituted in very few SPCAs:** Assam and Tripura SPCAs are also notable in that they are the only ones to have set up a separate investigation cell to assist in inquiries. Having a dedicated team of investigators is crucial to prevent the PCAs’ dependence on the police departments to conduct inquiries into complaints against police personnel.

IMPLICATIONS AND RECOMMENDATIONS

The limitations, challenges as well as the potential of PCAs highlighted in this report throw up several policy implications. That dedicated and localised police oversight bodies such as the PCAs are needed is evident by the number of complaints the operational authorities have been receiving. But PCAs as they exist today are not serving the purpose. Their structure, mandate and powers need to be enhanced if they are to emerge as an effective remedy for police misconduct and wrongdoings. Only a proactive approach of checking police misconduct and working with all stakeholders to push for accountability will help the Authorities gain public respect, foster a culture of accountability, and drive cultural changes in policing that stand to benefit the people as much as police personnel themselves.

A summary of our recommendations:

For State Governments

1. Establish Police Complaints Authorities at the state, divisional and/or district level.
2. Adopt the standards and criteria for membership laid down in the *Model Police Bill, 2015* to reflect a balanced composition while establishing and/or strengthening existing PCAs.
3. Provide an investigation wing to the State Police Complaints Authorities to assist in conducting inquiries in an impartial manner and without extraneous pressure from the executive and put an end to the current practice where, in the absence of a team of investigators, the police complaints bodies are relying on the state police department itself to inquire into complaints of misconduct against its own personnel.
4. Existing vacancies must be filled without delay. The absence of Chairperson/Members restricts the functioning of the Authorities; while they continue to receive complaints, no action of consequence is taken on them, thus increasing pendency and future workload. Making timely appointments also prevents needless litigation seeking such appointments before the High Courts.
5. Given the difficulties in holding the police to account for misconduct, the role and mandate of the SPCAs needs to be strengthened in line with the *Model Police Bill 2015*. In addition to inquiring into serious misconduct, SPCAs should be empowered to take *suo motu* notice of police misconduct; monitor the progress of departmental inquiries and/or criminal investigation on complaints of misconduct forwarded by the Authorities; inspect any police station, lock-up, or any other place of detention used by the police; advise the Government on measures to ensure protection of witnesses, victims and families in any inquiry conducted by the complaints body; and recommend payment of monetary compensation to victims of alleged misconduct. Recent attempts by states to shrink/narrow down the SPCAs' mandate, either by taking away the power to initiate *suo motu* action or limiting the definition to serious misconduct, render the states non-compliant with the *Prakash Singh* judgment.
6. In complaints where the SPCA's inquiries establish police misconduct, their recommendations, of initiating a departmental inquiry or criminal proceedings by registering an FIR against the concerned officials, must be made binding on the state police department. In cases where the state police disagree with the SPCA's findings, its reasons must be communicated to the State Government in writing.
7. All PCAs must be encouraged to prepare detailed annual reports with information on the Authorities functioning as well as the volume, type and status of complaints received and the manner of their disposal. State Governments must table them in the

State Legislature and ensure that adequate time is given to discuss the annual reports and its recommendations in the plenary or in an appropriate legislative committee.

8. Where SPCAs have been operational for more than five years, a performance and compliance audit is necessary to evaluate their activities and budget. The audit findings can help identify ways in which the authorities can better meet their objectives.

For Police Complaints Authorities

9. All SPCAs must develop rules of procedure to govern their functioning and that of the district PCAs within the state. In formulating rules of procedure, states must ensure that the rights of the complainant as listed in the *Model Police Bill, 2015* are protected. These include: the right to be informed from time to time of the progress of the inquiry by the State or District PCAs looking into any complaint; of the findings of any such inquiry as well as final action taken in the case; and to attend all hearing in any inquiry related to the complaint. Additional safeguards such as providing the services of an interpreter where hearings are held in a language the complainant does not know, and laying down a process whereby a complainant may appeal the finding of an inquiry will further strengthen the credibility of these accountability bodies.⁶
10. SPCAs must specify a clear timeframe for completing inquiries, preferably no later than 90 days from the receipt of complaint, as specified in the *Model Police Bill, 2015*. States must further consider the *Model Police Bill, 2015* recommendations that any complaint concerning the life or liberty of any person shall be attended to immediately, and within 24 hours of the receipt of the complaint.
11. To inspire public confidence in the independent working of the Authority, each SPCA must maintain an up-to-date website that provides clear information in English and the official language(s) of the state about the Authority's functions, Chairperson, Members, contact details and procedure for filing complaints among other information.

For the Police Department

12. Prioritise action on the recommendations of Police Complaints Authorities including ensuring timely departmental inquiries against the personnel concerned, providing regular updates on action taken to the PCAs, reviewing patterns of misconduct commonly being reported and, accordingly, working to strengthen departmental processes, procedures and training for all personnel with a view to reducing the causes for the emergence of complaints from the people.
13. Take steps to ensure up-to-date information about the state and district/division-level PCAs – their role, mandate, procedure to make a complaint and contact details – is made available in English and in the official language(s) of the state at all administrative units including the police headquarters, district headquarters and police stations; is widely shared through social media including the state police website; and disseminated through other state institutions such as the State Human Rights Commission and the State/District Legal Services Authorities for wider public knowledge.

⁶ These were included in the Model Police Act, 2006 under Clause 177(5) and (6).

For Civil Society

14. Encourage the use of the PCAs whenever necessary in order to bring to light police misconduct and push for accountability.
15. Spread awareness about the role, mandate and functioning of the Authority and support victims in filing complaints.
16. Raise with the State Governments the issue of timely appointments to the Authorities in line with the Supreme Court directive, and preventing attempts at limiting the mandate of the Authorities.
17. Facilitate cross learning and sharing of practices that demonstrate the ability, and intent, of the Authorities in pushing for accountability.

Seventeen years ago, in its landmark judgement on police reforms-Prakash Singh & Ors. v. Union of India & Ors, (2006), the Supreme Court of India directed all States and Union Territories to set up Police Complaints Authorities (PCAs) at the state as well as the district level. Envisaged as independent and dedicated oversight bodies that would inquire into the functioning of the police, they also function as a forum for citizens to seek redress against police wrongdoings.

CHRI has monitored and reported on the status of PCAs since inception. Our first national-level report on the PCAs was published in 2009 in which we pointed to gaps, both in the legal framework constituting them as well as in their functioning. Subsequently we published similar status reports in 2012 and 2020. Building on these efforts, in our latest report we examine the current status of PCAs at the state level with the aim of highlighting both their potential, as well as limitations in enforcing greater police accountability across the country. Information was collected for this analytical study through requests made under the Right to Information Act, 2005, in two phases- first in 2021 and later in 2023.

The findings from our study and recommendations are primarily intended to encourage policy and legal review of the PCAs' role and relevance in the context of police accountability. Additionally, we hope the research will inspire deeper probing of the efficacy of these institutions, increase civil society and media engagement with them and mobilise public pressure on governments that are yet to set up such authorities.



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