

India's Police Complaints Authorities: A Broken System with Fundamental Flaws

A Legal Analysis

CHRI Briefing Paper

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Commonwealth Human Rights Initiative

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CONTENTS

Pg. No.

Introduction	1
Chapter 1 Legal Framework and Standards	3
Supreme Court Directives, 2006	3
The Model Police Act 2006	3
The Model Police Bill 2015	4
Chapter 2 Police Complaints Authorities: Gaps in Design	
1. Failure to constitute multi-tier authorities	7
2. Political executive dominates the authorities	9
3. Limited number and profile of independent members	10
4. Non-transparent selection process	12
5. Not enough independent investigators	13
6. Arbitrary grounds for removal	15
7. Diluted mandate	16
8. Binding powers frustrated	19
9. No rules of procedures	21
10. Timeframe for completing inquiries not specified	21
11. No attention on training	22
12. Accountability to the legislature ignored	23
13. Proactive disclosure obligations unfulfilled	24
Chapter 3 Litigation on Police Complaints Authorities: A Summary	27
Chapter 4 Conclusion and Recommendations	31
List of Tables	
Table 1: Supreme Court Directive on Police Complaints Authorities	3
Table 2: Provisions on Police Accountability Commission in the Model Police Act 2006 and Model Police Act 2015	5
Table 3: Manner in which the PCAs have been constituted	7
Table 4: Levels at which PCAs have been constituted across states	8
Table 5: Inclusion of provisions in state police acts on different functions of the state police complaints authority as provided in the Model Police Act 2006	18

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A Legal Analysis

Introduction

Police Complaints Authorities (PCAs) were introduced in India in 2006 when the Supreme Court ordered their creation in the *Prakash Singh & Ors versus Union of India & Ors* case.¹ Their mandate is to inquire into complaints of serious misconduct including incidents involving death, grievous hurt and rape in police custody, as well as allegations of extortion, land/house grabbing or any incident involving serious abuse of authority by police officers.

Creation of dedicated police complaints bodies has been a long-standing recommendation in relation to police reform in India. In 2006, the apex Court finally provided the push for its implementation by directing states and union territories to constitute Police Complaint Authorities both at the state and at district levels. It also laid down broad standards in terms of their composition, mandate and powers. These standards were further fleshed out in the Model Police Act 2006 (later revised as the Model Police Bill 2015) prepared by a high-level committee constituted by the Ministry of Home Affairs.² Together, the Court's directive and the Model Police Act provided sufficient guidance for developing a robust legal framework.

However, successive state and union governments have failed to adopt the proposed legal standard in constituting their complaints authorities. On paper, it may look impressive: 23 states have constituted State Police Complaints Authorities (SPCAs) since 2006 and 16 have constituted District Police Complaints Authorities (DPCAs), either as provisions within their new/amended police acts or through government orders. Yet, not a single authority constituted complies fully with the Court's directions. Instead of reflecting a balanced composition, the authorities are dominated by members of the political executive, thereby defeating the very purpose of serving as an external, independent oversight body. Their mandates have been reduced in scope. With very few civil society representatives, no independent investigators, no binding powers and no rules of procedures, the authorities seemed to have been designed to fail. This stands as true for states that established the authorities immediately following the Court's judgment, as it is of those that have constituted them more recently. Discouragingly, not just the states but even successive union governments have ignored the guidance laid down in the Model Police Act despite having itself constituted the committee for formulating the model act.

The cumulative picture that emerges is political will **not** to act and which appears connected to a deep resistance in the police leadership to uphold accountability, address police misconduct and act under law against errant officials. PCAs have an important role to play not just in holding individual officers to account but also in identifying patterns of criminality within the police and pushing for systemic improvements. The failure to create truly independent police complaints authorities with the requisite resources will only perpetuate impunity and stunt any measure at transforming police behavior and performance.

¹ Prakash Singh and Others vs. Union of India, 2006 (8) SCC1.

² Bureau of Police Research and Development, *The Model Police Bill 2015*: [https://bprd.nic.in/WriteReadData/Orders/Model%20Police%20Bill%202015_21st%20Aug%20\(1\).pdf](https://bprd.nic.in/WriteReadData/Orders/Model%20Police%20Bill%202015_21st%20Aug%20(1).pdf).

The Commonwealth Human Rights Initiative (CHRI) has monitored and reported on the police complaints authorities in India since the court's judgment in 2006. It published its first national-level report on the authorities in 2009³ 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 published in 2012.⁴

This paper presents an assessment of the legal framework surrounding the PCAs and highlights the failure of states and union territories in laying the foundation for truly independent and effective oversight bodies. It builds on the findings of earlier assessments referred to above. As more states have taken steps to constitute PCAs, **the paper provides an up-to-date national assessment of state and district complaints authorities.** It examines and evaluates key aspects of the establishment of PCAs – their structure, composition and powers. **It limits itself to assessing provisions that constitute the authorities against the standard prescribed by the Supreme Court and the Model Police Act 2006.** In doing so, it provides insight into the strengths and omissions of legal frameworks governing the authorities within state police acts. The purpose is to highlight gaps in the very design of the authorities, which until unaddressed, will continue to prevent the authorities from fulfilling their mandate to the fullest.

A significant addition to legislative guidance since 2012 is the revised provisions on PCAs proposed in the updated Model Police Bill 2015. Since most states had issued orders and/or passed their police acts prior to 2015, this paper mainly refers to the 2006 Model Police Act as a benchmark. Nonetheless, where provisions in the 2015 Model Act reflect an improved standard, these have been referred with a view to highlight the evolving articulation of the role PCAs can play in realizing police accountability. Another important feature added in this paper is a summary of litigation and court cases related to Police Complaints Authorities across the country.

The analysis put forward in this paper is intended to inform the continued monitoring of the *Prakash Singh* case and the implementation of the directives on police reforms by the Supreme Court. It is also hoped that the analysis informs efforts within civil society in monitoring, engaging and advocating for truly independent bodies as envisaged by the apex Court.

³ Commonwealth Human Rights Initiative, *Complaints Authorities: Police Accountability in Action*, 2009: https://www.humanrightsinitiative.org/publications/police/complaints_authorities_police_accountability_in_action.pdf.

⁴ Commonwealth Human Rights Initiative, *Police Complaints Authorities in India: A Rapid Study*, 2012: https://www.humanrightsinitiative.org/publications/police/PCA_Rapid_Study_December_2012_FINAL.pdf.

Legal Framework and Standards

1. Supreme Court Directive, 2006

Police Complaints Authorities constitutes one of seven directives on police reform issued by the Supreme Court in the *Prakash Singh & Ors. vs. Union of India & Ors*, 2006. The Court directed states and union territories to constitute a Police Complaints Authority both at the state and at the district levels. The composition, mandate and powers of the authorities laid down by the Court is as follows:

Table 1: Supreme Court Directive on Police Complaints Authorities in India

	State Police Complaints Authority	District Police Complaints Authority
Composition and selection	Chairperson Retired judge of the Supreme court/High Court to be chosen by the state government out of a panel of names proposed by the chief justice	Chairperson Retired district judge to be chosen by the state government out of a panel of names proposed by the Chief Justice or a judge of the High Court nominated by the Chief Justice
	Members 3-5 members selected by the state government from a panel of names prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission.	
Mandate	Inquire into complaints against officers of the rank of Superintendent of Police and above	Inquire into complaints against officers of the rank of Deputy Superintendent of Police and below
	Only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody.	a) allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt or rape in police custody; and b) allegations of extortion, land/house grabbing or any incident involving serious abuse of authority.
Powers	Recommendation for action, either departmental or criminal, will be binding on the state government	

Additionally, the Court recognized that the authorities might need the services of staff to conduct field inquiries. For this purpose, it suggested the authorities use services of retired investigators from the Criminal Investigation Department (CID), Intelligence, Vigilance or any other organization.

2. Model Police Act 2006

In October 2006, a month after the Supreme Court's judgment, a legislative template in the form of a Model Police Act was produced by the Police Act Drafting Committee (PADC) or what is more popularly known as the Soli Sorabjee Committee. This committee was created by the Ministry of Home Affairs to draft a new police act for India, to replace the Police Act of 1861,

which is still the central police act in force. In its judgment, the Court referred to the committee's draft and advised state governments to frame new police acts based on the proposed Model Police Act 2006.

The draft model act contained a detailed section that established police complaints bodies in the form of Police Accountability Commissions at both the state and district level.⁵ In fact, it not only conformed to the court's framework, but also filled in the necessary detail for effective functioning. The court prescribed minimum standards and a basic framework for external oversight of the police. The draft Model Police Act complemented the Supreme Court judgment in that it provided the detailed nuts and bolts through which the directions of the Supreme Court could be most effectively implemented. It put in a place a system to manage complaints against the police in its legislative model.

The standard for composition, selection process, mandate, powers and other details in the Model Police Act 2006 have been referenced in the assessment section below.

3. The Model Police Bill 2015

In 2014, the Ministry of Home Affairs constituted another committee, headed by Mr Kamal Kumar, retired IPS officer, to review and update the 2006 Model Police Act. This committee put forward a revised Model Police Bill 2015. The provisions on police complaints authorities have been further fleshed out, with additional safeguards, in the 2015 Model Bill.

There are two significant improvements. First is in the composition of the authorities. The 2015 Bill increases civil society members to two from one, and further widens the pool of candidates to include persons with knowledge and experience in the field of criminology, human rights and gender issues. The inclusion of this knowledge base in an oversight body is a welcome step towards giving salience to the voices representing interests of communities at large, and lived experiences of victims of police abuse in particular, in pushing towards accountable policing. The second crucial difference is in the mandate. The 2015 Model Police Bill adds to the mandate of the state accountability commission by making it mandatory for district police chiefs to report every custodial death, and death in police action, within 24 hours of receiving the information. The commission will then use its powers to hold an inquiry, and where sufficient grounds are found to exist against the concerned police personnel, recommend disciplinary or criminal proceedings against the officers found guilty of abuse. Notably, any failure or unreasonable delay on part of the state police to report such instances of deaths is itself to be treated as misconduct as defined in the Model Bill, and therefore become liable for disciplinary action.

This lends much-needed weight to the police accountability commission. It is important to note that at present, district police chiefs have to report this information to the National Human Rights Commission.⁶ To avoid duplication and overlap, a suitable arrangement between the NHRC and

⁵ Chapter XIII, Police Accountability, The Model Police Act 2006

⁶ National Human Rights Commission, Guidelines: Custodial Deaths/Rapes: <https://nhrc.nic.in/sites/default/files/sec-1.pdf>

the accountability commissions will become necessary. Having said this, vesting this role with a state-level oversight body may facilitate closer and more prompt monitoring. It will also make it easier for the families to seek accountability for this egregious violation.

Table 2: Provisions on police accountability commission in the Model Police Act 2006 and Model Police Bill 2015

Model Police Act 2006	Model Police Bill 2015
<p>State Police Accountability Commission <i>(new provisions in the 2015 Bill are highlighted in red)</i></p>	
<p>Composition 5 members in total: a) Retired High Court judge as chairperson; b) Retired police officer from another state cadre, superannuated in the rank of Director General of Police; c) A person with a minimum of 10 years of experience either as a judicial officer, public prosecutor, practicing advocate, or a professor of law; d) A person of repute and standing from civil society; and e) A retired officer with experience in public administration from another state <i>Provided that at least one member of the Commission shall be a woman and not more than one member shall be a retired police officer.</i></p>	<p>Composition 5 members in total: a) Retired High Court judge as chairperson; b) One Member who has been a Police Officer in the police service of a different State, superannuated in the rank of Director General of Police: <i>Provided that if such an officer is not available for appointment, an officer from within the state may be selected, after recording reasons in writing;</i> c) One Member to be appointed from amongst persons with a minimum of ten years' experience as a judicial officer, public prosecutor or practicing advocate, or in public administration; d) Two Members to be appointed from amongst persons having expert knowledge of, and a minimum of ten years' experience in, the field of criminology, psychology, law, human rights, or gender issues: <i>Provided that at least one member of the Commission shall be a woman: Provided further that not more than one member of the three appointed under sub-clauses (c) and (d) shall be a retired Police Officer: Provided also that not more than one member of the three appointed under sub-clauses (c) and (d) shall be a retired government servant.</i></p>
<p>Selection Chairperson to be appointed by the state government from a panel of three retired High Court judges suggested by the Chief Justice of the High Court Members shall be appointed on the recommendation of a Selection Panel consisting of a) the Chairperson of the Commission; b) the Chairperson of the State Public Service Commission; c) the Chairperson or a member of the State Human Rights Commission or, in the event of there being no such Commission in the State, the 'Lokayukta' or the</p>	<p>Selection Chairperson to be appointed by the state government from a panel of three retired High Court judges suggested by the Chief Justice of the High Court Chairperson of the District Authorities <i>and</i> Members appointed by the state government from a panel of names recommended by a Selection Panel consisting of: a) Chairperson of the police accountability commission; b) Chairperson of the State Public Service Commission; c) Chairperson of the State Human Rights Commission, or a member nominated by the chairperson;</p>

<p>Chairperson of the State Vigilance Commission.</p>	<p><i>Provided</i> that in the event of there being no such Commission in the State, the Lokayukta of the State shall be a member of the Selection Panel: <i>Provided</i> further that in the event of there being neither such Commission or Lokayukta in the State, the Chairperson of the State Vigilance Commission shall be a member of the Selection Panel;</p>
<p>Functions</p> <ol style="list-style-type: none"> 1. Inquire into allegations of ‘serious misconduct’ against any police personnel relating to <ol style="list-style-type: none"> a) Death in police custody; b) Grievous hurt, as defined in Section 320 of the Indian Penal Code, 1860; c) Rape or attempt to commit rape; and d) Arrest or detention without due process of law 2. Inquire into any other case referred by the Director General of Police; 3. Monitor the status of departmental inquiries or departmental action on the complaints of “misconduct”⁷ against gazetted officers of and above the rank of Deputy/Assistant Superintendent of Police through a quarterly report obtained periodically from the Director General of Police and <ol style="list-style-type: none"> a. Issue appropriate advice to the police department for expeditious completion of inquiry; or b. Issue direction to the Director General of Police for a fresh inquiry by another officer in instances where a complainant reports to the Commission of being dissatisfied with the outcome of, or an inordinate delay in the process of departmental inquiry into his complaint of “misconduct” as defined. 4. Lay down general guidelines for the state police to prevent misconduct on the part of police personnel 	<p>Functions</p> <ol style="list-style-type: none"> 1. Inquire into allegations of misconduct against any police personnel above the rank of Superintendent of Police; 2. Inquire into allegations of serious misconduct against any police officer relating to <ol style="list-style-type: none"> a) death or hurt in police custody; b) death or grievous hurt other than in police custody; c) molestation, rape or attempt to commit rape or any other offence against a woman; d) arrest or detention without adherence to due process of law; e) such other types of misconduct as may be prescribed by Government from time to time; and 3. Inquire into any instance of alleged misconduct referred to by the state police chief or the district authorities. 4. The district police chief is to report every custodial death or death in police action to the commission within 24 hours of receipt of information and further submit all relevant post mortem reports, inquest reports and inquiry reports. 5. Receive from the state police chief a quarterly progress report of all departmental inquiries against, or action taken on, complaints of misconduct against officers of and above the rank of Superintendent of Police, and issue appropriate advice to the Police Service for expeditious completion of any inquiry or inquiries. 6. Any unexplained failure or unreasonable delay by the state police chief in reporting every case of custodial death or death in police action, or quarterly progress reports of departmental inquiries, shall itself be construed as misconduct and reported by the commission to the government.

⁷ Misconduct” in this context shall mean any willful breach or neglect by a police officer of any law, rule, regulation applicable to the police that adversely affects the rights of any member of the public.

Police Complaints Authorities: Gaps in Design⁸

To constitute PCAs, 9 states have issued executive orders and 17 states passed legislation through new police acts or legislative amendments. For the union territories, the Ministry of Home Affairs passed a notification to constitute the authorities.

Table 3: Manner in which the PCAs have been constituted

States with new police acts	
Assam	Assam Police Act 2007
Bihar	Bihar Police Act 2007
Chhattisgarh	Chhattisgarh Police Act 2007
Gujarat	Bombay Police (Gujarat Amendment) Act 2008
Haryana	Haryana Police Act 2007; Haryana Police (Amendment) Act 2014
Himachal Pradesh	Himachal Pradesh Police Act 2007
Karnataka	Karnataka Police (Amendment) Act 2012
Kerala	Kerala Police Act 2011
Maharashtra	Maharashtra Police (Amendment and Continuance) Act 2014
Meghalaya	Meghalaya Police Act 2010
Mizoram	Mizoram Police Act 2011
Punjab	Punjab Police Act 2007; Punjab Police (Amendment) Act 2014
Rajasthan	Rajasthan Police Act 2007
Sikkim	Sikkim Police Act 2007
Tamil Nadu	Tamil Nadu Police (Reforms) Act 2013
Tripura	Tripura Police Act 2007
Uttarakhand	Uttarakhand Police Act 2007; Uttarakhand Police (Amendment) Act 2018
States with executive orders	
Andhra Pradesh, Arunachal Pradesh, Goa, Jharkhand, Madhya Pradesh, Manipur, Nagaland, Uttar Pradesh, West Bengal	

Not a single state, however, complies with either the Court's directive or the design laid down in the Model Police Act.

1. Failure to constitute (on paper) multi-tier complaints authorities

Non-compliance with the court's directive starts from the very first step of providing for a PCA at multiple levels. In order to put in place an effective system for handling public complaints, the apex court as well as the 2006 Model Police Act required states to constitute a PCA at *both* the state and the district levels. This is important in order to promote accessibility of the civilian

⁸ This paper reports on the status of compliance in the erstwhile state of Jammu and Kashmir. Following the enactment of the Jammu and Kashmir Reorganisation Act, 2019, that led to the bifurcation and conversion of the state of Jammu and Kashmir into two separate Union Territories of Jammu and Kashmir and Ladakh, the Government of India is yet to issue orders on the implementation of the Supreme Court directives.

oversight body to the public. Majority of states have deviated from this set-up in their legislations and executive orders. Even the notification issued by the Union Ministry of Home Affairs setting up PCAs for the Union Territories deviates from the Supreme Court’s standard.⁹

Table 4: Levels at which PCAs have been constituted (on paper) across states

<u>Only at the state level</u>	<u>Only at the district level</u>	<u>State and district levels</u>	<u>No authority</u>
Arunachal Pradesh	Bihar	Andhra Pradesh	Uttar Pradesh
Chhattisgarh	Madhya Pradesh	Assam	Jammu and Kashmir
Goa	Himachal Pradesh ¹⁰	Gujarat	Telangana
Meghalaya		Jharkhand	<u>Assigned to Lokayukta</u>
Sikkim		Karnataka	Odisha
Tripura		Kerala	Himachal Pradesh
West Bengal		Maharashtra	(State police
Nagaland		Manipur	complaints
		Mizoram	authority)
		Punjab	
		Rajasthan	
		Tamil Nadu	
		Haryana ¹¹	
		Uttarakhand ¹²	
Total: 8 states	Total: 3 states	Total: 14 states	Total: 4 states (plus Himachal Pradesh SPCA)
Number of states with a State PCA: 22			
Number of states with a district PCA: 17			

Main findings:

- ✓ 23 states provide for a state PCA and 18 for a district PCA.
- ✓ **18 states** (see Table 4) provide for a police complaint authority *both* at the state and district levels in their police acts/notifications. Of the remaining states:
 - 8 states – Arunachal Pradesh, Chhattisgarh, Goa, Meghalaya, Sikkim, Tripura, West Bengal, and Nagaland – constitute PCA *only* at the state level;
 - 3 states – Madhya Pradesh, Bihar and Himachal Pradesh – constitute PCA *only* at the district level;

⁹ Government of India, Ministry of Home Affairs, Notification No. 14040/45/2009-UTP dated March 2010.

¹⁰ In contravention of the Supreme Court directives to establish an independent complaints body, the Himachal Pradesh Police Act, 2007, assigns the function of the State Police Complaints Authority to the state Lokayukta (Section 93).

¹¹ The Haryana Police Act, 2008, had created only the State Police Complaints Authority with a provision stating district PCAs will be set up as and when required (Section 59). The state provided for the creation of District Police Complaints Authorities under the Haryana Police (Amendment) Act, 2014.

¹² Like Haryana, Uttarakhand Police Act 2007 also created only the State Police Complaints Authority (Section 63). The state provided for the creation of District Police Complaints Authorities under the Uttarakhand Police (Amendment) Act, 2018.

- 2 states – Uttar Pradesh¹³ and Jammu and Kashmir¹⁴ – have not yet constituted a PCA at all; and
 - Odisha along with Himachal Pradesh (for its state police accountability commission) assign the function of police accountability commission to the state Lokayukta.
- √ Maharashtra,¹⁵ Punjab,¹⁶ and Uttarakhand¹⁷ provide for constituting divisional PCAs for a group of districts combined, instead of at the district level.
- √ Each Union Territory has set up a single-tier PCA following the notification of the Union Home Ministry. The notification does not make room for setting up more bodies based on the rise in the number of complaints against police.

Bad Tidings

The trend of vesting the power of the PCA with another oversight body continues to exist in Himachal Pradesh and Odisha. The Lokayukta functions as the complaints body in both states. This not only burdens the Lokayukta, but also undermines the need for a specialized authority that exclusively handles complaints of police misconduct.

Apart from being non-compliant with the court’s directive, single-tier bodies are inaccessible and ineffective in their role as an oversight body. In segregating complaints based on rank structure within the police between the state PCA and the district PCA, the court recognized that a complaint of misconduct against a police constable would vary in nature from a complaint against a supervisory rank officer. There are also practical difficulties where only a state PCA is constituted in the capital. Complainants as well as the concerned police officers have to travel to the capital city for hearings, which is likely to deter many complainants from approaching the authority to seek redress. A single body, comprising four or five members will be over-burdened by the volume of complaints they receive.

2. Political executive dominates the authorities

A major concern in the design of the police complaints authorities is the dominance of the political executive in their composition. Instead of adopting a balanced composition reflecting a mix of experience in public administration, judicial services, and civil society, several states have serving officers including civil servants, police officers and even legislators as members of both state and district bodies. This is in blatant disregard of the requirement to constitute independent oversight bodies by the court and the Model Police Act.

Main Findings

- √ Of the 23 states that have constituted State Police Complaints Authorities (see Table 4):

¹³ Uttar Pradesh submitted an affidavit to the Supreme Court stating that there are sufficient mechanisms to deal with police misconduct.

¹⁴ Jammu and Kashmir appealed to the Supreme Court to quash the implementation of the directives for the state.

¹⁵ Maharashtra has set up six divisional authorities at Amaravati, Aurangabad, Nagpur, Nasik, Navi Mumbai and Pune. CHECK ORDER

¹⁶ Section 2, Punjab Police Amendment Act, 2014

¹⁷ Section 3, Uttarakhand Police (Amendment) Act, 2018

- **Eight states deviate from the requirement of having retired judges as chairperson.** While Gujarat, Meghalaya, Mizoram and Punjab include retired civil servants of the rank of principal secretary/chief secretary or retired IPS officer of Director General of Police rank as the head, Haryana keeps the criteria broad to include persons of eminence from various fields with twenty years of experience. Tamil Nadu designates the secretary in-charge of the home department as the chairperson of the state PCA. Rajasthan and Jharkhand designate an independent member as the chairperson.
 - Alarmingly, **nine states have serving police officers and/or serving civil servants as members of the authority.** While Gujarat and Kerala both have the principal secretary and the additional director general of police as members, Karnataka, Maharashtra, Tripura and Tamil Nadu have two senior police officers of the ranks of Deputy Inspector General of Police and above. Rajasthan and Jharkhand have the Additional Director General of Police serve as the member secretary of the PCA whereas West Bengal PCA includes the Commissioner of Police, Kolkata, as a member.
- √ Similarly, of the 18 states to have constituted District Police Complaints Authorities (DPCA):
- **Only 7 states¹⁸ provide for a retired district judge to serve as the head of the DPCA. At least five other states have members of the executive serving as the head of the DPCA:** while Bihar, Himachal Pradesh, Karnataka and Tamil Nadu have the District Magistrate/Divisional Commissioner as the head, Gujarat is most alarming where the district Superintendent of Police is made the head of the DPCA. Similarly, Madhya Pradesh has designated a minister in charge of the district as the head. In the remaining states including Rajasthan, Jharkhand and Punjab, either an independent member or a retired civil servant/police officer serves as the chairperson.
 - **Eight states** allow serving police officers, members of legislative assemblies and serving civil servants to be members of the DPCA. These are: Bihar, Gujarat, Karnataka, Kerala, Maharashtra, Rajasthan, Tamil Nadu, and Jharkhand. For the Chennai Police Commissionerate, the District Collector and the Commissioner of Police are the members. In case of Commissionerates other than Chennai, the Superintendent of Police of the district and the Deputy Commissioner of the Commissionerate are the members.¹⁹
- √ Among the union territories, Daman & Diu and Dadra & Nagar Haveli have a unified single-member PCA, headed by a civil servant.²⁰ Andaman & Nicobar, Puducherry and Chandigarh PCAs are to comprise of three persons, headed by a retired judge or civil servant.

3. Limited number and profile of independent members

The numbers and profiles of the independent members across states reveal little intent at creating a credible accountability body:

- √ The total number of independent members has been reduced from the maximum five suggested by the Model Police Bill to an average of 3 at both the state and district levels.

¹⁸ Assam, Kerala, Maharashtra, Mizoram, Andhra Pradesh, Manipur and Uttarakhand.

¹⁹ Section 12, Tamil Nadu Police (Reforms) Act, 2013

²⁰ Information received through Right to Information.

- Of the **state PCAs**, Maharashtra, and Tamil Nadu do not include a single independent member.
 - Of the **district PCAs**, Bihar, Gujarat, Kerala, Tamil Nadu, and Madhya Pradesh do not include a single independent member.
- √ **The proportion of members from the civil society or academia is far less than that of retired police officers and retired civil servants among the independent members.** Most states include just one representative from civil society. Daman & Diu, Dadra & Nagar Haveli and states like Kerala, Meghalaya and Himachal Pradesh (for the district complaints authorities) include only retired officials as the independent members without any representation from civil society:
- In Kerala, of the two independent members, one is a retired police officer and the other is a retired district judge.
 - In Himachal Pradesh, the District PCA has three non-official members. The three members may be retired senior police officers of the rank of Superintendent of Police and above, retired prosecutors of the rank of District Attorney and above or retired judicial officers of the rank of Additional District Judge and above.
 - In Meghalaya, the two non-official members are: a retired police officer superannuated of the rank of IGP or above and a person with minimum experience of 10 years as a judicial officer or is a professor of law or a retired officer experienced in public administration.

The concerns relating to the appointment of retired government officials is not on the suitability for the job but about maintaining the independence of the PCA. A majority membership of retired police and government officers creates an imbalance in the representation of members. This makes it important for the PCA to have members from diverse backgrounds so that it remains a civilian oversight body.

- √ **There is no provision for including women in the complaints authorities in as many as eight states.** These are: Bihar, Uttarakhand, Gujarat, Himachal Pradesh, Kerala, Tamil Nadu, West Bengal, Meghalaya as well as the MHA memo for PCAs in UTs. Most other states adhere to the minimum requirement of at least having one woman represented in the authorities. While most provisions on women refer to non-official members, **Karnataka stands out in specifying that the IPS officer not below the rank of Deputy Inspector General who is to serve as the member secretary of the state police complaints authority is to be a woman officer.**²¹
- √ The Ministry of Home Affairs issued Notification No. 14040/45/2009-UTP in March 2010 setting up PCAs in UTs. In complete violation of the *Prakash Singh* directive, the notification prescribes a single-member Authority for Daman & Diu, Dadra & Nagar Haveli and Lakshadweep. A retired judge, a retired person experienced in Public Administration or a person experienced in law, may head these.

Ensuring a balance between retired government officials and independent civil society members is crucial for maintaining the credibility of the police complaints bodies. Interestingly, the Model Bill lays down that the retired police officer and civil servant must have served in another state.²² This

²¹ Section 20(C) (v), Karnataka Police Amendment Act 2012.

²² Ibid.

is an effort at maintaining the independence of the authority by ensuring that the retired officers have not worked with the political, bureaucratic or police establishment of the state where they are appointed as members of the PCA. While preference to retired officials from other state cadres is an important check, providing a cooling-off period (ensuring at least a year since the government officials retired from service) in the appointment of retired officials would have further strengthened this safeguard against the executive's dominance.

Promising provisions

Mizoram is the only state that states that the independent member from the pool of retired persons experienced in public administration should have served in another state. However, this does not apply to the retired police officer superannuated from the rank of Deputy Inspector General of Police or above who may be appointed as a member.

Rajasthan is the only state that requires representation from the weaker sections in its accountability committees. Out of the four independent members in both its state and district accountability committees, one member is required to be from weaker sections of society.²³

4. Non-transparent selection process

Where the background and profile of the chairpersons and members adheres to the court's requirements, the states fail to follow an independent selection process. The Supreme Court and the Model Police Act provided for a transparent selection procedure for the chairperson and the members. The state government is to appoint the chairperson of the state and the district PCAs from a panel of names of retired judges proposed by the Chief Justice of the High Court.²⁴ For the selection of the members, the court suggested the state government choose members from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. The Model Act provides more details on the selection of the members as follows: other members must be appointed on the recommendation of a Selection Panel consisting of (i) the Authority Chairperson; (ii) the Chairperson of the State Public Service Commission; and (iii) the Chairperson or a member of the State Human Rights Commission or, in the absence of a State Human Rights Commission, the Lokayukta or the Chairperson of the State Vigilance Commission.²⁵

Main findings:

- √ Selection of Chairperson: Only five states – Karnataka, Maharashtra, Sikkim, Andhra Pradesh and Manipur – provide for the chairperson of the state police complaints authority to be chosen from a panel of names proposed by the chief justice. In other states, the state government appoints the chairperson directly.

²³ Sections 63 and 66, Rajasthan Police Act 2007.

²⁴ For district complaints authorities, the Model Police Bill 2015 recommends both the chairperson and the members be appointed by the state government from a panel of names recommended by the Selection Panel.

²⁵ Clause 161, The Model Police Act 2006.

- Sikkim Police Act forms an independent selection panel for the selection of all members of its PCA as per the directive.
 - The notification issued by the Home Department, Government of Andhra Pradesh dated 8 August 2013 mandated that the Chairperson and members be selected as per the mechanism laid down by the court.
- √ **Selection of members:** In selection of the independent members, **Sikkim is the only state to adhere with the process laid down by the court.**
- In Nagaland, the State Public Service Commission shortlists persons for the post of independent members. The state government makes the final appointment.
 - In Arunachal Pradesh, the State Public Service Commission appoints independent members to the PCA.
 - In Kerala, the State Human Rights Commission and Lokayukta empanel a list of persons to be appointed as the two non-official members. Interestingly, the State Human Rights Commission and the Lokayukta can only shortlist one post each and the government takes the final call after consulting the Leader of Opposition.
 - In Himachal Pradesh, state government consults the Lokayukta (which also functions as the PCA) while appointing the non-official members.²⁶
 - In Karnataka, the sole independent member of the PCA is shortlisted by the selection panel. It consists representatives from the State Human Rights Commission, Karnataka Public Service Commission, Lokayukta and an officer not below the rank of Deputy Secretary to Government (Home Department) as the convener of the Selection Panel. This deviates from the SC directive since a bureaucratic authority is not just a part of the panel but also the convener of the Selection Panel.

Establishing an independent oversight body requires an independent selection process as the mechanism by which chairs and members are chosen. In this respect, the process is just as important as the outcome, as it is only an independent and legitimate process that can identify and choose independent-minded members.

5. Not enough independent investigators

To assist the authorities perform the difficult task of inquiring alleged police misconduct, the court recognized the need for a dedicated team of investigators recruited by the authorities themselves. The court emphasised that “*the Authority may also need the services of regular staff to conduct field inquiries. For this purpose, they may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization*”. The 2006 Model Police Act does not refer specifically to independent investigators, but it states that the “members of the commission shall be assisted by adequate staff with requisite skills, for efficient discharge of their functions of the Commission”.²⁷ This can be inferred to imply independent investigators. The 2015 Model Police Act goes a step forward in specifying the state accountability commission to create an investigation wing headed by an officer not below the rank of Inspector General of Police.²⁸ The 2015 Act further empowered

²⁶ Himachal Pradesh Police Act, Section 95

²⁷ Clause 165, The Model Police Act 2006.

²⁸ Clause 83, The Model Police Act 2015.

the state commission to “direct other agencies, including the Crime Investigation Department, the Vigilance Department and the Anti-Corruption Bureau of the State to conduct investigations.”²⁹

Main Findings

Only a handful of states specify the authorities to have their own investigators to assist the members carry out inquiries.

- ✓ Goa Home Department issued a government order stating: “The State Level Police Complaints Authority may utilize the services of retired investigators from the CID, Intelligence, Vigilance or any other organization for conducting field inquiries.”³⁰
- ✓ Section 19 of Tamil Nadu Police (Reforms) Act, 2013 sets up a Police Complaints Division with field units prescribed to carry out investigations. It is to work under the administrative control of an Additional Director General of Police, under the overall control of the Director General of Police. Apart from serving police officers, the investigative unit is mandated to consist retired police officers, vigilance or intelligence or crime branch police officers or personnel serving or retired from other departments.
- ✓ In Haryana, Section 63 of the Haryana Police Act, 2007 explicitly refers to the need for staff with investigative skills. It states, “The Authority shall be assisted by adequate number of officers well versed with the law, finances, in **investigative techniques**, and the requisite supporting staff with terms and conditions and allowances as may be prescribed for the efficient discharge of its functions.”
- ✓ Section 22Q(10) of Maharashtra Police Act states that “The State Police Complaints Authority may, for the purpose of field inquiry direct any person as it deems fit to inquire into the subject matter of inquiry and submit a report to the Authority.”
- ✓ Five states – Assam, Meghalaya, Mizoram, Sikkim and Tripura– require appointment of “adequate staff with requisite skills”. This can be inferred to include independent investigators.
 - The notification setting up the PCA in Sikkim states that the Chairperson and the members of the PCAs may utilize the services of retired investigators from the CID, Intelligence or any other organization.
 - Assam is the only state that appointed independent investigators to conduct field inquiries. At the time of research, the investigation team was headed by a retired Deputy Inspector General of Police and assisted by two retired Deputy Superintendents of Police.

Demand for independent investigators

In some states, the complaints authorities have been demanding independent investigators from the state government, with limited success. The **Tripura Police Accountability Commission** in its Annual Report 2014³¹ raised concern over police personnel accused of committing crimes themselves being then assigned for conducting the inquiry for the authority, in the absence of a separate investigating wing of the authority. Similarly, Uttarakhand PCA’s Annual Report for 2015 notes that the absence of independent investigators and an investigation wing in the PCA seriously impedes the working of the PCA. It states that the in-charge of the police station or the

²⁹ Ibid.

³⁰ Goa Government Order No. 2/51/2006-HD(G), dated 3 April 2007, issued by the Department of Home, Home-General Division.

³¹ Secured through Right to Information Act.

circle officers (to which the respondent personnel belong) conduct the investigation and this hampers the impartiality of investigation. To prevent these mishaps, Uttarakhand PCA sought the power to appoint independent investigators or to have a separate investigation wing setup by the State.

In **Kerala**, the state police complaints authority has since long been demanding its own investigation team.³² It was not until April 2017 that the state government finally approved the appointment of a chief investigating officer for the state police complaints authority, and another two years until September 2019 when the government issued a notification seeking application for the post.³³ The position is, however, open only to persons having served in the rank of Superintendent of Police in central investigating agencies such as the Central Bureau of Investigation and the National Investigation Agency, and who have not served in the Kerala police.³⁴ The investigating officer is to assist the authority in its inquiry which will include tasks like obtaining statements from complainants, witnesses and accused persons, recording interviews, organizing scene search, analyzing data, medical and postmortem reports among other things.

The Court's directive is clear on the need of having an *independent* investigative team. Policies must clearly specify that an independent investigative team must assist every PCA. Additionally, the policies (either the Police Acts or notifications or government orders or rules of procedures of the PCAs) must specify desired skills of independent investigators.

6. Arbitrary grounds for removal

An important impartiality safeguard provided in the Model Police Act 2006 is a fixed tenure of three years recommended both for the chairperson and the members, and very specific grounds provided for their premature removal.³⁵ The grounds for removal include proven misconduct or misbehavior, persistent neglect of the duties, engagement during term of office in any paid employment outside of the authorities, or becoming subject to any specified condition of disqualification. These safeguards are necessary to protect against arbitrary decisions of the executive. Unfortunately, very few states provide for these safeguards.

While most states provide for tenure of two or three years, the grounds for removal have been broadened to retain the executive's control.

³² "Police Complaints Authority to get investigation wing," *The Hindu*, 15 July 2015: <https://www.thehindu.com/news/cities/Kochi/police-complaints-authority-to-get-investigation-wing/article7483956.ece>.

³³ "Police complaints authority to get an independent probe officer," *The New Indian Express*, 4 October 2019: <https://www.newindianexpress.com/states/kerala/2019/oct/04/police-complaints-authority-to-get-independent-probe-officer-2042990.html>.

³⁴ Government of Kerala, Home Department, Notification No.Home-SSA5/234/2017-Home, dated 23.09.2019: <https://kerala.gov.in/documents/10180/5ec5701e-7ec2-4f8e-bcdc-64f2cf07f148>.

³⁵ Clause 164, The Model Police Bill 2006.

The policies for UTs and 15 states – Assam, Chhattisgarh, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Maharashtra, Meghalaya, Mizoram, Punjab, Rajasthan, Sikkim, Tripura, Uttarakhand and West Bengal – provide two or three year tenure.

- While Assam, Haryana, Meghalaya and Mizoram allow re-appointment for one additional term, Himachal Pradesh and Uttarakhand have no bar on the number of terms for reappointment.
- Chhattisgarh, Jharkhand, Rajasthan and Karnataka provide a term of two years. In Chhattisgarh, the appointees are eligible for re-appointment for another term.
- In Sikkim, the chairperson has a term of five years and the members have tenure of three years. The chairperson and the members are eligible for reappointment with no cap on the number of tenures they can hold.

Only seven states including Chhattisgarh, Haryana, Meghalaya, Mizoram, Tripura, Sikkim and Uttarakhand adhere with the specific grounds of removal suggested by the Model Police Bill. Some states like Kerala and Maharashtra have not laid down any provision in their police legislation, and leave it instead for the state government to prescribe the terms of condition separately. Some, however, have broadened the grounds of removal to include unclear and vague criteria. Assam, for instance, includes “*incapacitation by reasons of physical or mental infirmity or otherwise becoming unable to discharge his functions as a Member*” as a ground for removal of a member. Similarly, the Punjab Police (Amendment) Act 2014 includes an overarching clause that empowers the state government to remove the chairperson or any member of the state or divisional complaints authority “*for any other reasons to be recorded in writing*”.³⁶ The broad discretion allowed with state governments to remove members of the authorities at any given point coupled with the total control over appointments amounts to the authorities, in effect, working at the pleasure of the state government. This is far from the role envisaged by the apex court in creating an independent oversight body, one that is empowered to check against abuse of power by the police and the executive.

7. Diluted mandate

The Supreme Court vested the police complaints authority with the task of inquiring alleged police misconduct and recommending disciplinary and/or criminal action as necessary to the state police chief/state government. To allow for efficient management of public complaints, the court split the mandate between the state and the district complaints authority. It tasked the state police complaints authority with the mandate of inquiring complaints of serious misconduct involving death, grievous hurt or rape in police custody, against officers of rank Superintendent of Police and above. The district complaints authority was given the mandate of inquiring allegations of serious misconduct as well as other allegations of extortion, land/house grabbing or any incident involving serious abuse of authority against officers of Deputy Superintendent of Police rank and below.

The Model Police Act 2006 significantly expanded the role and mandate of the state police complaints authority. It envisaged a broader oversight role for the state complaints authority and

³⁶ Section 54(c)(v), The Punjab Police (Amendment) Act 2014.

thus, named it as the Police Accountability Commission (PAC). The Model Act strengthened the core function of the PAC, of inquiring into alleged misconduct, in two ways: the PAC was empowered to take *suo moto* notice of alleged misconduct along with receiving complaints, and serious misconduct was expanded to include arrest or detention without due process of law. These provisions added teeth to the authority's mandate.

The Model Act further empowered the state police accountability commission with four other crucial oversight functions:

1. Monitor the status of departmental inquiries on the complaints of "misconduct"- defined as willful breach or neglect by a police officer of any law or rule that adversely affects rights of the public - against officers of Deputy Superintendent of Police and above ranks through a quarterly report obtained from the Director General of Police. The PAC is empowered to take two steps on the progress of inquiries:
 - a. Issue appropriate advice to the police for expeditious completion of inquiry in instances where departmental inquiry is getting unduly delayed; and
 - b. Issue a direction to the Director General of Police for a fresh inquiry by another officer when a complainant reports an undue delay in the completion of departmental inquiry on their complaint of misconduct.
2. Advise the state government on measures to ensure protection of witnesses, victims, and their families who might face any threat or harassment for making the complaint or for furnishing evidence;
3. Visit any police station, lock-up, or any other place of detention used by the police; and
4. Recommend to the state government payment of monetary compensation by the government to the victims of the alleged misconduct.

These functions and powers are necessary to create an effective check against police abuse and chip away at the multiple barriers victims face in seeking justice against police criminal behavior.

While the Model Police Act provided for a strong state complaints authority, it reduced the function of the district police complaints authority. Deviating from the court's requirement, the Model Act vested the district complaints authority *only* with the mandate of reviewing departmental inquiries into complaints of misconduct rather than *actually* inquiring into complaints itself. The district authority was to forward all complaints of serious misconduct to the state complaints authority, and complaints of misconduct to the district superintendent of police. Its main function was to monitor departmental inquiries on the complaints of misconduct against officers of the rank deputy superintendent of police and below through a quarterly report obtained from the district police chief. Reducing the mandate of the district authorities weakens the important check on police abuse at a local level and risks overburdening the state complaints authority.

Against the mandate laid down by the Court and the standard provided by the Model Police Act, the states have whittled down the mandate in different ways, leaving behind authorities constrained in their role to start with.

Main findings

For the State Police Complaints Authority

Of the 17 states that have passed new police acts/legislative amendments:

- √ Power to inquire into complaints against police personnel weakened: States have diluted the core function of the state complaints authority to inquire into alleged misconduct in the following ways:
 - Six states – Chhattisgarh, Gujarat, Kerala, Punjab, Tamil Nadu and Uttarakhand – do not vest their state complaints authority with the power to take *suo moto* notice of an alleged misconduct;
 - Three states – Rajasthan, Gujarat and Punjab – do not specify deaths in police custody in defining serious misconduct, despite being required by the court as well as the Model Police Act;
 - Four states – Gujarat, Haryana, Kerala, and Tamil Nadu – do not cover illegal arrests and detention as part of serious misconduct, as recommended by the Model Police Act;
- √ Power to monitor departmental inquiry not covered: Majority states including Chhattisgarh, Gujarat, Haryana, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan and Tamil Nadu do not vest their state authority with the power to monitor the progress of departmental inquiries on the complaints forwarded by it.
- √ No power to recommend protection of witnesses: Ten states – Assam, Chhattisgarh, Gujarat, Haryana, Karnataka, Kerala, Punjab, Rajasthan, Tamil Nadu and Uttarakhand – do not provide their state authorities the power to recommend measures for protection of witnesses, victims and their families.
- √ No power to recommend monetary compensation: Only four states – Meghalaya, Mizoram, Sikkim and Tripura – have the provision in their police acts that allows the state accountability commissions to recommend to the state government monetary compensation to the victim of alleged police misconduct.

Table 5: Inclusion of provisions in state police acts on different functions of the state police complaints authority as provided in the Model Police Act 2006

Model Police Act 2006	Monitor dept. inquiries on misconduct complaints against DySP rank and above	Advice the state govt. on measures to ensure protection of witnesses	Visit police station, lock-up or any other place of detention	Recommend payment of compensation
Assam State Police Complaints Commission	✓	✗	✗	✗
Chhattisgarh State Police Accountability Authority	✗	✗	✗	✗
Gujarat State Police Complaints Authority	✗	✗	✗	✗
Haryana State Police Complaints Authority	✗	✗	✗	✗
Karnataka State Police Complaints Authority	✗	✗	✗	✗

Kerala State Police Complaints Authority	X	X	X	X
Maharashtra State Police Complaints Authority	X	✓	✓	X
Meghalaya State Police Accountability Commission	✓	✓	✓	✓
Mizoram State Police Accountability Commission	✓	✓	✓	✓
Punjab State Police Complaints Authority	X	X	X	X
Rajasthan State Police Accountability Committee	X	X	X	X
Sikkim State Police Accountability Commission	✓	✓	✓	✓
Tamil Nadu State Police Complaints Authority	X	X	X	X
Tripura State Police Accountability Commission	✓	✓	✓	✓
Uttarakhand State Police Complaints Authority	✓	X	X	X

For the district police complaints authority

Gujarat, Karnataka, Kerala, Maharashtra, Rajasthan, Punjab and Tamil Nadu empower the district/divisional authorities to inquire into complaints of misconduct/serious misconduct against police personnel, as required by the Supreme Court. Assam, Himachal Pradesh, and Mizoram follow the Model Police Act 2006 in making the district authorities forward complaints of serious misconduct to their respective state accountability bodies. In Bihar, the district bodies are only allowed to monitor departmental inquiries on complaints of misconduct against deputy superintendent of police and below through quarterly reports received from the district police chief.

8. Binding powers frustrated

Among the biggest weakness in the design of the complaints authorities is the failure of state governments to vest them with binding powers, despite being clearly required by the Supreme Court. Upon completion of an inquiry, PCAs are to recommend either initiation of departmental inquiries or registration of First Information Report (FIR) against the erring police personnel or both. Since these complaints authorities are not courts, their inquiries can only provide prima facie grounds of whether evidence of misconduct exists to proceed further. Giving them the power of binding recommendations can ensure that those further processes are activated, with some evidence already gathered, properly assessed and on record. Without binding powers, the substance and findings of their inquiries can simply be ignored.

The Model Police Act (2006 and 2015) further empowered the PCAs to recommend the state government to provide monetary compensation to the victims where necessary. This was an important addition in the powers of the PCA. The 2015 Model Police Act further strengthened the complaints authorities by requiring the state police chief to report on the progress of any investigation or inquiry in the cases recommended by the authority.³⁷ Most states do not include this requirement in paper or in practice. The Authority must have the power to monitor the status of initiation of departmental proceedings and the registration of FIRs against the delinquent personnel. This creates sustained pressure to take appropriate action, especially where the state

³⁷ Clause 81 (5), The Model Police Bill, 2015.

government is responsible to take recommendations. Together, these powers stand to make the police complaints authorities a powerful oversight body.

Main findings:

On binding powers

- √ Only **nine states specify that the recommendations of the PCAs will be binding**. This includes six police acts – Assam, Himachal Pradesh, Kerala, Meghalaya, Mizoram and Sikkim – and three state notifications – Andhra Pradesh, Arunachal Pradesh and Nagaland.
- √ Other states and the UTs either have no provision or include provisions that retain the discretion with the state governments to implement, reject or otherwise ignore the PCA recommendations. For example:
 - In the UTs, the recommendations are ‘*ordinarily binding except for reasons to be recorded in writing by the Administrator*’.
 - In Maharashtra, the state government has the power to reject the findings or the report of the PCA in *exceptional cases for reasons to be recorded in writing*.
 - In three states – Chhattisgarh, Gujarat and Rajasthan the PCA submits its report to the state government and makes recommendations wherever *it deems fit*. There is no requirement for the PCA to issue recommendations.
 - In four states – Haryana, Maharashtra, Punjab and Tamil Nadu, the Authority communicates its findings to the state government. Subsequently, the government considers the findings before taking appropriate actions.
 - In Himachal Pradesh, the state government is required to implement the directions of the PCA within 60 days. Where the orders are not completed within 60 days, the state government must inform the Authority about the reasons for delay. The district committee in Rajasthan also has similar provisions where the disciplinary authority must send its decision on the recommendations within three months. The Committee then has the power to monitor the implementation of the directions.

On monitoring departmental inquiries

- √ In 9 states – Assam, Bihar, Himachal Pradesh, Jharkhand, Meghalaya, Mizoram, Rajasthan, Tripura and Uttarakhand – PCAs can monitor the status of implementation of their decisions. But in Himachal Pradesh and Rajasthan, only the district authorities have the power to monitor the status of implementation; and complaints bodies which handle inquiries against officers above the rank of Deputy Superintendent of Police do not have the power to do this.

On compensation to victims

- Only four states PCAs– Meghalaya, Mizoram, Sikkim and Tripura – can order the state government to pay monetary compensation to victims.

The Uttarakhand PCA in its 2015 annual report observed that police officials often neglect its directions. The Authority expressed the need to have the power to penalise police officials who do not implement their directions. Justice Pachhapure, the previous Chairperson of the Karnataka State PCA observed that the Authority only has the power to conduct inquiries and submit

reports. He said that the absence of judicial powers enables the government to neglect the PCA's recommendations. This, he said *would ultimately defeat the objective of setting up the Authority on the Supreme Court*.³⁸ Accordingly, the PCA asked the government for more powers.

These are, in one way, non-negotiable for the authorities to be able to fulfill their mandate of pushing towards police accountability. States have, however, paid scant attention to these crucial elements.

9. No Rules of Procedure

Several PCAs have been functioning without detailed rules and standards. The police act or order setting up PCAs only deal with the broad framework. Prescribing rules of procedure is the combined responsibility of the complaints authorities and the state government: while complaints authorities are responsible for formulating the procedures, the state governments must place the rules before the state assemblies, and once passed, notify them in the gazette. Only then will the rules become operational. States are lagging behind on both these counts.

Main Findings:

- ✓ Only eight states – Assam, Haryana, Jharkhand, Karnataka, Meghalaya, Sikkim, Tripura and Uttarakhand – authorize the PCAs to devise the rules of procedure. None of the government orders or notifications that set up PCAs mandate them to frame Rules of Procedure.
- ✓ Only seven PCAs – Chhattisgarh,³⁹ Goa, Haryana, Jharkhand, Maharashtra, Tripura and Uttarakhand – have framed Rules of Procedure. Note, Assam, Karnataka, Meghalaya and Sikkim that authorize the PCAs to formulate rules have not done so as yet.
- ✓ Of these seven, Goa, Maharashtra, Tripura and Uttarakhand are the only PCAs that have framed detailed rules.
- ✓ Of these four states, only Maharashtra state government has officially notified the rules.

For the authorities to function in a fair, timely and efficient manner, it is important to formulate detailed and clear rules of procedure to guide their daily functioning, and invest in regular training of its members and staff. Rules of procedure will provide guidance on nitty-gritty details of an inquiry process such as procedure for filing and registering complaints, screening of complaints, hearing procedure, and time limit for completing inquiries.

10. Time frame for completing inquiries not specified

Very few states till date have prescribed a time period within which the authorities are to complete their inquiries. One of the fundamental tenets of criminal law is to hold inquiries, trials or proceedings *as expeditiously as possible*.⁴⁰ While the 2006 Model Police Act did not specify a time frame, the 2015 Model Police Bill requires both the state and the district authorities to complete the inquiry *as expeditiously as possible*, and pass final orders latest within 90 days from the receipt of

³⁸“Police Complaints Authority seeks disciplinary powers,” *The Hindu*, 21 June 2017: <http://www.thehindu.com/news/national/karnataka/police-complaint-authority-seeks-disciplinary-powers/article19111591.ece>.

³⁹ This was drafted in 2014 and tabled before the State legislation. The Rules are yet to be finalized and notified.

⁴⁰ Section 309 (1), The Code of Criminal Procedure, 1973.

a complaint.⁴¹ The Model Bill further clarifies that if the views of the state police chief is not received within 90 days, the authorities are to proceed without such hearing. Moreover, the Model Bill also specifies that a complaint concerning the life and liberty of a person needs to be dealt with immediately, and within 24 hours of receiving the complaint.⁴² States, however, have failed to lay down clear and specific time frame both in their police legislation and in subsequent rules of procedure.

Main findings:

- ✓ Maharashtra and Tripura are the only states to specify the time frame for completion of inquiries. According to their rules of procedure, the inquiry should be completed within 90 days. In case the inquiry is delayed, the PCA is required to provide reasons for delay.
- ✓ The MHA notification setting up PCAs in UTs states that “*The Authority may submit its findings in a case within a period of 60 days from the date of receipt of the complaint and in case of inability to meet the deadline, the Authority may submit a report showing reasons thereof to the Administrator*”. In Andaman & Nicobar, this period was extended to 80 days by a notification.
- ✓ In Meghalaya, while the police act does not lay down the time frame for conducting inquiries, it states that a complainant can report undue delays in completing inquiries. What constitutes undue delay remains undefined.
- ✓ Uttarakhand PCA’s rules of procedure state that inquiries should be completed within the prescribed time. However, neither the rules nor its police act prescribe the time frame.

It is important for the authorities to not only lay down clear and specific time frame but also emphasize completion of inquiry as fast as possible. Being a quasi-judicial body, approaching the authorities is the first step for a complainant to avail justice for the alleged police misconduct. Prompt inquiries by the authorities will help expedite formal departmental and/or court proceedings against officers found guilty of misconduct. Most PCAs have high pendency of cases. Due to this, complainants gradually lose faith in the authorities. Setting timelines for disposing cases will help address concerns on promptness and efficiency. These may be specified in the rules of procedures since this is a procedural matter.

11. No attention on training

Recognizing the technical nature of the PCAs mandate, the 2006 Model Police Act rightly emphasizes the need for training of the PCA members and staff.⁴³ The Act places the duty on the state police complaints commission “to ensure that all its members, and other staff as well as members of the District Authorities and their staff is regularly trained, about:

- a. Technical and legal issues related to departmental inquiries;
- b. Specific forms of human rights violation; and
- c. Appropriate handling of victims of police abuse.

⁴¹ Clause 86(4), The Model Police Bill 2015.

⁴² Ibid.

⁴³ Clause 180, The Model Police Bill 2006.

The 2015 Model Police Act adds “misuse of power and authority by the police” to the above list of issues for training.⁴⁴

Main findings

- Only four States – Karnataka, Meghalaya, Mizoram and Tripura – include provisions on training of the PCA members in their police acts.

As highlighted in CHRI’s previous assessment,⁴⁵ if complaints authorities themselves recognised the importance of training, the omission in legislation would not prevent any Authority from ensuring that training is designed and delivered to members and staff. At present, there are no training programmes or modules used by any Police Complaints Authority in India. In addition to the necessary legal and policy knowledge required for this job, there is also a need to ensure authority members and staff have the softer skills needed to make the inquiry process easier for complainants, including explaining procedures and answering questions as they come up. As a complaints body develops, training may be required in awareness raising, bringing out public education material, or a whole new host of skills and activities.

12. Accountability to the legislature ignored

Since PCAs are public institutions, they are accountable to the public and the government. One of the methods of holding them accountable is by seeking Annual Reports every year mandatorily. The Supreme Court judgment does not mandate the preparation of the Annual Report. But the Draft Bill contains a detailed provision on annual reporting by PCAs at the state as well as the district levels. The provision states:⁴⁶

“The Commission shall prepare an annual report at the end of each calendar year, inter alia, containing:

- a) The number and type of cases of serious misconduct inquired into by it;*
- b) The number and type of cases of misconduct referred to it by complainants who are dissatisfied by the departmental inquiry into their complaints;*
- 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 action taken by disciplinary authorities concerned in response to the Commission’s recommendations or lack thereof;*
- e) The number of complaints received by the District Authorities, and the manner in which they were addressed;*
- f) The identifiable patterns of misconduct on the part of Police Officers in the State;*
- g) Any matters that highlight the need for reform or change in practice or policy of the Police Service;*
- h) Recommendations on measures to enhance police accountability; and*
- i) The audited financial Statements of the Commission and the District Authorities.*
- j) The annual report of the Commission shall be laid before the State Legislature in the budget session and shall be a public document, made easily accessible to the public.”*

⁴⁴ Clause 95, The Model Police Act 2015.

⁴⁵ *Police Complaints Authorities in India: A Rapid Study*, Commonwealth Human Rights Initiative, December 2012, pg.15.

⁴⁶ Clause 92, Draft Model Police Bill, 2015

It is essential to table the annual reports in the legislature and release them in public domain. It gives an opportunity to the legislators to discuss the issues and concerns brought out in the annual reports. It also

Main findings:

- √ Only **ten states** include provisions in their police acts requiring the complaints authorities to prepare annual reports. Of these:
 - Seven states – Assam, Meghalaya, Mizoram, Punjab, Sikkim, Tripura and Uttarakhand – require that annual reports be prepared *and* tabled before the state assemblies as well as made available to the public.
 - Three states – Bihar, Himachal Pradesh⁴⁷ and Karnataka – don't specify the PCA annual reports to be tabled before the legislature.
- √ Tripura is the only state where the Police Accountability Commission has uploaded annual reports for the years 2011, 2012, 2013 and 2014 on its website. The latest annual reports are not available. As per media reports, the latest annual report of Tripura PCA has been tabled before the state legislature.⁴⁸
- √ Only four states provided a copy of their latest annual reports in response to our Right to Information application. These are Chhattisgarh (2015), Jharkhand, Tripura (2016) and Uttarakhand (2015).
 - To a large extent, the content of the annual reports does not comply with the provisions. Uttarakhand and Tripura PCAs' annual reports provide the number and nature of complaints taken up during the year.
 - Chhattisgarh and Jharkhand PCAs' annual reports provide details of the members, staff, budget, provisions setting up the PCA and details of the meetings held during the year.
 - The annual reports of Tripura and Uttarakhand PCAs also highlight the necessity of recruiting independent investigators, permanent staff, office space accessible to common people and power to penalize police officials defying the directions of the PCAs.
 - Seven states and five UTs- Goa, Gujarat,⁴⁹ Madhya Pradesh, Maharashtra, Meghalaya, Mizoram, Nagaland, Odisha, Andaman & Nicobar, Chandigarh,⁵⁰ Daman & Diu, Dadra & Nagar Haveli and Lakshadweep responded that the PCAs do not prepare annual reports.

Preparing, tabling and making the annual reports public ensures that the Authorities remain transparent and accountable. Publishing details on the number of complaints received, decisions taken, decisions implemented, budget allocation, expenditure of the Authority, and the constraints faced by the Authority during the year ensure that the priorities and functioning of the Authority are kept in check. This not only ensures the long term success of the PCAs but also facilitates policymaking and generates public demand for a more accountable police.

⁴⁷ The District PCA is mandated to prepare the annual report but not the State PCA.

⁴⁸ Tripura: Manik Sarkar 'khalnayak', says law minister, Sarkar promises 'constructive cooperation, Available at <https://thenortheasttoday.com/tripura-manik-sarkar-khalnayak-says-law-minister-sarkar-promises-constructive-cooperation/>.

⁴⁹ Gujarat responded that the report is not prepared since it is not require under the Gujarat Police Act, 2007.

⁵⁰ Chandigarh responded that this function is "Not Applicable" to it.

13. Proactive disclosure obligations unfulfilled

All public authorities are statutorily obligated to disseminate information about their organisations, structure, working, finances and norms proactively. This is provided under Section 4(1)(b) of the Right to Information Act (RTI), 2005.⁵¹ Section 4 creates a legal obligation to disclose 17 categories of information through various sources, internet being one of the sources.⁵² These details must be regularly updated as per the RTI Act. Being public authorities, the police complaints authorities have an obligation to comply with the RTI Act, and provide the following information at the minimum:

1. How the authorities/commissions are organised, their functions, the powers and duties of their officers and employees, procedures followed in decision making processes, channels of supervision and accountability, norms, rules, regulations, instructions and manuals used by them in the discharge of their functions;
2. A statement of the categories of records and documents held by the Authorities/Commissions in hard copy and electronic form;
3. A list of boards, committees, councils constituted for the purpose of public consultation or advice and also indicating whether minutes of their meetings will be available to the public;
4. Directory of officers and employees including salary packages and benefits they receive;
5. Details of budget and expenditure of the Authorities/Commissions including reports of disbursement of funds; and
6. Name and designation of the Public Information Officer (PIO).

This information has to be updated regularly, must be available in the local language and circulated through websites, notice boards, newspaper advertisements and media broadcasts.

Main findings:

- Haryana and Tripura PCAs have disclosed basic information about their organizational framework and the rules and regulations they are subject to.
- No PCA has disclosed the details on the categories of records and documents held by the PCA; list of boards/committees/councils constituted for public consultation or advice; minutes of the meetings with boards/committees; directory of officers and employees; and budget and expenditure.

⁵¹ The information to be disclosed proactively falls under the following heads: 1. Structure of the organization – functions and duties, powers and duties of its officers, a directory of its employees, monthly remuneration received by such employees; 2. Process of functioning – the procedures followed in decision-making, norms, rules and regulations, categories of documents held by the public authority; 3. Financial details and schemes relating to the organization; 4. Details of consultative arrangements; and 5. Details related to accessing information.

⁵² Explanation to Section 4(4), Right to Information Act, 2005.

On dedicated websites

- Of the operational Authorities, Assam, Haryana, Gujarat, Chandigarh and Tripura have dedicated websites for the PCAs. Of these, the websites of Assam and Gujarat are not functional.⁵³
- Chandigarh PCA has a webpage within the website of Chandigarh administration. Similarly, Goa and Karnataka have web pages within the website of their respective Home Departments. The websites are available in English.
- Haryana, Tripura and Chandigarh websites provided basic information about the mandate of the Authority and its powers. The websites are not regularly updated about any changes in the composition of the Authorities.
- The annual reports, details regarding budget allocation, expenditure of the Authorities, inquiries conducted and final orders are not published on the websites.

On appointing Public Information Officers (PIOs)⁵⁴

- Kerala is the only state to share the names and designations of PIOs assigned at each district PCA. But the contact numbers of the PIOs were not provided.
- Chhattisgarh, Goa, Gujarat, Karnataka, Jharkhand, Tripura, Uttarakhand, Chandigarh, Daman & Diu and Dadra & Nagar Haveli⁵⁵ have one PIO for the PCAs. Of these, Gujarat PCA provided the contact details of the PIO.
- Mizoram, Nagaland, Odisha, Sikkim, Andaman & Nicobar and Lakshadweep⁵⁶ have not appointed PIOs.

⁵³ Erstwhile Delhi Police Complaints Authority which was composed of two members of the Public Grievances Commission only, had a website. This website was regularly not updated and details regarding the inquiries conducted and disposed were not updated on the website.

⁵⁴ Information received through right to information applications and refers to status as of 2018.

⁵⁵ Dadra & Nagar Haveli and Daman & Diu have the same PIO since there is a combined PCA for both UTs.

⁵⁶ Lakshadweep responded that there is no need of appointing a PIO for a PCA since it is a one-person Authority.

Litigation on Police Complaints Authorities: A Summary

This chapter summarises litigation across various states on the matter of establishment of PCAs, their composition, jurisdiction, decision-making powers and appeals of PCAs' directions.

Establishment of independent Police Complaints Authorities

Delhi

Commonwealth Human Rights Initiative vs. Union of India and Ors. (06 February, 2018) High Court of Delhi, 2 judges bench

The Delhi government asked the Public Grievances Commission to function as the PCA. This not only stunts the PCA but also creates an insurmountable burden on other oversight bodies. The volume of complaints against police officers requires dedicated, specialized police complaints bodies as directed by the Court. In 2014, CHRI filed a petition in the Delhi High Court seeking the quashing of this notification and constitution of a PCA that is compliant with the Supreme Court's directive. In January 2018, the Lieutenant Governor's of Delhi issued a fresh notification setting up a PCA that is broadly compliant with the Court's directive.

Note: The Delhi High Court is now hearing a challenge of the manner of finalising the fresh notification setting up the Delhi PCA.⁵⁷

Tamil Nadu: The government of Tamil Nadu is yet to set up PCAs at the state and district levels on the ground. Under the Tamil Nadu Police (Reforms) Act, 2013, the Home Minister is the Chairperson of the State Police Complaints in violation of the SC directive. Advocate Saravanan Dakshinamoorthy challenged this in the Tamil Nadu High Court.⁵⁸ The petition is pending disposal. Notably, the Respondents (representatives of the Tamil Nadu Government) argued that the state does not require a PCA because there are sufficient mechanisms in place to handle complaints against the police.⁵⁹

⁵⁷“PIL against LG's move to form Police Complaints Authority,” *The Hindu*, 8 August 2018: <https://www.thehindu.com/news/cities/Delhi/pil-against-l-gs-move-to-form-police-complaints-authority/article24627602.ece>.

⁵⁸“Police complaints authority formation challenged,” *The Hindu*, 11 January 2015: <http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/police-complaints-authority-formation-challenged/article6776760.ece>.

⁵⁹“No need to set up Police Complaints Authority, says TN govt,” *Business Standard*, 5 January 2015: http://www.business-standard.com/article/pti-stories/no-need-to-set-up-police-complaints-authority-says-tn-govt-115010500844_1.html.

Andhra Pradesh & Telangana: The High Court of Andhra Pradesh and Telangana is hearing a matter on the constitution of PCAs. It passed several orders consisting deadlines for setting up the Authorities.⁶⁰

Composition of the Police Complaints Authorities

Jharkhand

*Aloke Kumar Sengupta vs. The State of Jharkhand and Ors.*⁶¹ High Court of Jharkhand at Ranchi, 1 judge bench

The petitioner is a retired District & Session Judge, Godda. Subsequently he was appointed as the member and Acting Chairperson of the Jharkhand State Public Service Commission (JSPSC). After the Petitioner turned 62, the National University of Study & Research in Law, Ranchi (NUSRL) appointed him as the Registrar of the Law University. Meanwhile, he was appointed as Member of the SPCA. On his appointment, he resigned from NUSRL. Within six months, the SPCA cancelled his appointment for contravening Article 319 of the Constitution of India, 1950.⁶² The Petitioner challenged the notification cancelling his appointment. Article 319 precludes a former Chairperson of the JSPSC from holding a post in any other central or state body except the Public Service Commission. The Court observed that the state government exercises pervasive control over the SPCA. Due to this, the petitioner's nomination to the SPCA was held invalid.

Kerala

*Thomas Pallickaparambil vs. State of Kerala (10 January 2019)*⁶³ High Court of Kerala at Ernakulam, 1 judge bench

Kerala state government appointed the petitioners as non-official members of the Kerala PCA for three years. Meanwhile, the PCA drafted the Rules of Procedure that fixes the tenure of non-official members as five years. In this petition, the petitioners argue that their appointment must not be quashed in view of the draft Rules of Procedure which prescribes a five-year tenure. The Court held that the state government is empowered to frame rules, fix the term and tenure of the PCA's members. Since the government did not frame the rules of procedure, it can issue executive orders prescribing conditions of service, fixing the tenure of the non-official members. The law does not permit the Chairperson or the members to draft or make the rules. In this view, the executive order of the state government is valid.

⁶⁰ "Andhra Pradesh gets four months to set up police complaints authority," *The New Indian Express*, 25 January 2018:

<http://www.newindianexpress.com/states/andhra-pradesh/2018/jan/25/andhra-pradesh-gets-four-months-to-set-up-police-complaints-authority-1763005.html>.

⁶¹ 2018 (2) JLJR 79

⁶² Article 319(d), Constitution of India, 1950: "A member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State."

⁶³ WP(C). No. 41070 of 2018

Karnataka

*Adarsh G.K. v. State of Karnataka*⁶⁴ High Court of Karnataka at Bangalore, 1 judge bench

A doctor was appointed as an independent member of the Karnataka State PCA in 2014. This was challenged in the Karnataka High Court on the grounds that the member, being a doctor and a member of the Medical Council Board, will not be able to devote sufficient time towards the functions of the PCA. The appointment was upheld since the independent member had attended the meetings of the PCA as required. However, in the course of the petition, the Court noted that district PCAs were not set up as per the Supreme Court directive.

Haryana

*H.C. Arora v. Union of India*⁶⁵ High Court of Punjab & Haryana, 2-judges bench

The Haryana Government appointed a retired civil servant as the PCA Chairperson. This was challenged in the High Court of Punjab and Haryana for being violative of the directive. The Court quashed the circular on the appointment of the civil servant. It observed that appointing police officers and civil servants in adjudicatory capacities defeats the purpose of the constitution of the Authority. The Court held that the officers do not possess the acumen and expertise expected of an adjudicatory body. This would also lead the public to perceive that the PCA is not independent in nature since it is not immune to police and executive influence. The Court reiterated that the Chairperson must be from an organization which is separate from the executive and the police.

Powers of the Police Complaints Authorities

Kerala

*C. Mohanan and Ors. Vs. State Police Complaints Authority and Ors.*⁶⁶ High Court of Kerala at Ernakulam, 1 judge bench

The Court combined three petitions of similar nature challenging the power of the Chairperson or members of the State or District PCA to function independently. They referred to Section 110 of the Kerala Police Act, 2011⁶⁷ which specifies that the members and Chairperson have to perform their functions in unison. In several complaints (except those of the petitioners), the Chairperson/members of the SPCA passed orders individually either dismissing the complaints or finding guilt against the erring police personnel, recommending disciplinary enquiry and payment of compensation. The Court held that Section 111, Kerala Police Act, 2011 does not distribute work between the Chairperson and the Members. Moreover, it does not enable any member to function independently. The Court quashed all orders where the Chairperson/members decided

⁶⁴ *Adarsh G.K. v. State of Karnataka And Ors.*, Writ Petition No. 32054/2014.

⁶⁵ *H.C. Arora and Ors. v. Union of India and Ors.*, 2015 (4) SCT 564 (P&H).

⁶⁶ 2018 (3) KHC 54

⁶⁷ Section 110(3), Kerala Police Act, 2011: The Government is vested with powers to constitute the Police Complaints Authority at District level for examining and enquiring the complaints against the Police Officers of and up to the said rank of Deputy Superintendent of Police, which shall be consisted of: (i) a retired District Judge, who shall be the Chairperson; (ii) the District Collector; and (iii) the District Superintendent of Police.

independently and ordered them to re-examine the matters according to the law. The Court also kept all orders of departmental enquiries and payment of compensation in abeyance till the PCA re-examined them.

Mahipal Yadav vs. The State of Kerala High Court of Kerala at Ernakulam, 1 judge bench

The PCA summoned the Petitioner, an Inspector General of Police in connection with the murder of Jisha and tampering of evidence in the said case. In this petition, the petitioner argued that the PCA is not empowered to entertain a complaint of this nature and also that the PCA is interfering with the ongoing investigation. The court held that no authority may interfere with the investigation since it is the police's domain. Moreover, the jurisdictional Magistrate monitors the investigation and in appropriate cases, it is the function of the jurisdictional Magistrate to issue necessary directions to the Investigating Officer concerning the investigation.

PCA has the power to examine matters undergoing investigation. The PCA's jurisdiction is to examine and inquire into instances of police misconduct. Exercising this jurisdiction neither interferes with the investigation nor usurps the jurisdictional magistrate's function. The PCA must exercise caution and care while inquiring into matters which are in the course of investigation. Moreover, considering the stature of persons occupying the PCA, it should not be presumed that the PCA will examine complaints in a manner affecting the investigation. It is also important that the PCA looks into the genuineness of the complaint, especially when *superior officers are arrayed as parties*. The Court warned that in such sensitive matters, there may be a possibility to gain media attention. The accused may cause complaints to divert the focus from the investigation to harass and demoralize investigating officers.

The Court held that the law permits the PCA to ask accused officers to produce evidence and cross-examine witnesses, irrespective of their rank and stature. Therefore, the officers must participate in the proceedings.

*Ranjith Singh Bath and Ors. vs. Union of India and Ors.*⁶⁸High Court of Punjab and Haryana, 2 judges bench

A dispute arose from an agreement to sell. The investigating officer stated that no cognizable offence was made out. Later, the Senior Superintendent of Police found the dispute to be of a civil nature where no cognizable offence was made out. The PCA then examined the matter and did not find any merit in the complaint. Yet, it held that there was scope for further investigation. The petitioners prayed for quashing the PCA's orders. The Petitioners argued that a civil dispute between two parties cannot be decided by a PCA according to the SC's judgment. The respondents in the present case argued that this case is fit for registration of FIR against the police officer. The Court examined the SC judgment and the notification setting up the Chandigarh PCA. It held "*Nowhere in the notification constituting the Authority, any power has been given to the Authority to go into the merits of the complaint filed by any person against another person.*" It also observed that a dispute arising from an agreement to sell does not fall under the PCA's jurisdiction.

⁶⁸ 2016 (4) RCR (Criminal) 540

Conclusion and Recommendations

Despite the Supreme Court directive and legislative guidance provided under the Model Police Act 2006, the design and structure of police complaints authorities is full of gaps and problems. Their composition is heavily tilted towards the executive with very few representatives from civil society, thereby defeating the very purpose of creating an independent oversight body. In fact, the trend of including serving police officers as members of the complaints bodies makes a mockery of accountability. Their mandate and powers have been diluted, to the extent of reducing the bodies to mere advisory forums rather than oversight bodies as envisaged by the court. In the absence of rules of procedures, no accountability to the legislature, and no binding powers, the police complaints authorities seem to have been designed to fail. These problems are just as true of the states that were quick to pass their police acts following the court's judgment in 2006 as it is of states that are the latest to incorporate the directives through legislative amendments. This points to a deep resistance both within the political class as well as within police departments in embracing accountability in a bid to transform the policing culture from that of a coercive force to one of service to the society it serves.

CHRI puts forward the following recommendations to strengthen the police complaints authorities:

Multi-tier accountability bodies

1. **Establish Police Complaints Authorities both at the state and at the district level.** As required by the Supreme Court, states must establish a police complaints authority both at the state and at the district level to provide for an effective oversight system.

Composition

2. **Adopt the standards and criteria for membership laid down in the Model Police Act 2015.** Creating independent and balanced police complaints authorities is central to how effectively they are able to deliver their mandate. The prevailing trend of having serving government and/or police officials make up the PCAs need to be reversed urgently. Specifically, the states must ensure the following conditions laid down in the Model Police Act 2015:
 - a. State and District Police Complaints Authorities are headed by retired judges of the High Court and District Court respectively;
 - b. The chairpersons of the complaints authorities are chosen from a panel of names suggested by the state High Court;
 - c. No serving government and/or police officer is included in either the state or the district complaints authority;
 - d. Not more than one retired police officer from a different state cadre is included as a member in the state police complaints authority;
 - e. At least 3 independent members are included in every complaints authority, drawn from varied fields including judicial services, public administration, criminology, law and human rights;

- f. At least one member in every complaints authority is a woman;
 - g. The members are appointed through an independent selection process in a transparent manner, and against objective criteria;
 - h. Members are appointed on a full-time basis and enjoy tenure of three years, with grounds of removal kept to the minimum and specified in clear terms.
3. **Provide an investigation wing to the police accountability bodies:** To assist the authorities inquire alleged police misconduct in an impartial manner and without extraneous pressure from the executive, state police accountability bodies must be provided with an investigation wing as required under the 2015 Model Police Act. This is important to 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. An officer not below the rank of Inspector General of Police can head the wing.

Mandate

4. **Expand the mandate of State Police Complaints Authorities:** Given the difficulties in holding the police to account for misconduct, the role and mandate of the state police complaints authority needs to be strengthened in line with the Model Police Act 2015. Specifically, the state accountability bodies should be empowered to:
- a. Take *suo moto* notice of police misconduct;
 - b. Inquire into serious misconduct which must include, at the minimum, deaths in custody, grievous hurt, rape/attempt to rape and illegal arrest and detention, along with any other misconduct as prescribed by the state government from time to time as needed;
 - c. Monitor the progress of departmental inquiries and/or criminal investigation on complaints of misconduct forwarded by the state police complaints authority through a quarterly report received from the Director General of Police;
 - d. Inspect any police station, lock-up, or any other place of detention used by the police;
 - e. Advise the government on measures to ensure protection of witnesses, victims and families in any inquiry conducted by the complaints body; and
 - f. Recommend payment of monetary compensation to victims of alleged misconduct.
5. **Empower district complaints authorities to conduct inquiries:** As against the current practice of limiting the district complaints authorities to the function of monitoring departmental inquiries alone, states must empower the bodies to conduct inquiries on complaints received of misconduct against personnel up to the rank of, and including, Deputy Superintendent of Police, as required by the Supreme Court.

Binding Powers

6. **Make recommendations of Police Complaints Authorities binding on the state police department/state government:** The decision of the police complaints authorities, to either register a criminal case against the concerned police officials or initiate a departmental inquiry or both, must be binding on the state police and the government. This is vital in the current climate where lack of political will and the police sub-culture of protecting its own is impeding efforts at pushing for a culture of accountability. Towards this, provisions of the Model Police Act 2015 need to be adopted, as follows:

- a. the state police chief shall submit a quarterly progress report of any investigation or departmental inquiry initiated on complaints of misconduct to the state police accountability commission; and
- b. any unexplained failure or unreasonable delay in the submission of progress reports be construed as misconduct, as defined in the state police acts/government orders for the function of the police complaints authorities, and shall also be reported by the state accountability commission to the state government.

Rules of Procedure

7. **Develop Rules of Procedure:** Each state police complaints authority/accountability commission must develop rules of procedure to govern its functioning and that of the district authorities within the state. As recommended by the Model Police Act 2015, *“such rules shall be framed with a view to establishing easily understood procedures involving minimal obligations on the part of the complainant, and encouraging ease of access and participation of all parties.”*⁶⁹
8. **Specify timeframe for completing inquiries:** It is important for the police complaints authorities to complete their inquiries as fast as possible as their findings will then set in motion other steps for holding the police to account. Each state must specify a clear timeframe for completing inquiries, which must be no later than 90 days from the receipt of complaint, as specified in the Model Police Act 2015. States must further consider the Model Police Act 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.
9. **Guarantee rights of the complainant:** In formulating rules of procedure, states must ensure that the rights of the complainant as laid down in the Model Police Act 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 complaints authority 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 unintelligible to the complainant, and laying down a process whereby a complainant may appeal the finding of an inquiry will further strengthen the credibility of the accountability bodies.⁷⁰

Annual Reports

10. **Prepare Annual Reports to be submitted to the legislatures in the budget session:** State authorities must ensure the annual reports provide detailed information on the authorities functioning as well as the volume, type and status of complaints received. The reports must be made available in the public domain, through the authority websites and submitted before the state assembly during the budget session.

⁶⁹ Clause 86(5)(b), The Model Police Act 2015.

⁷⁰ These were included in the Model Police Act 2006 under Clause 177(5) and (6).