

Police Complaints Authorities in India

A Rapid Study

Researched and Written By
Devika Prasad

Edited By
Navaz Kotwal



Commonwealth Human Rights Initiative (CHRI)
B-117, First Floor, Sarvodaya Enclave, New Delhi – 110 017
Tel: 011- 43180201/43180215, Fax: 011-2686 4688
Website: www.humanrightsinitiative.org

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Introduction

It is now six years since the Supreme Court directed all states to begin reforming their police. In its 2006 judgement in the *Prakash Singh* case, the Supreme Court of India passed seven directives for structural reform of the police.¹ These directives taken together were designed to kick start the process of reform. As one of the seven directives, the Court ordered all state governments and union territories to establish Police Complaints Authorities (PCAs) at the state and district levels, with immediate effect. In response to the huge volume of complaints against the police and the endemic lack of accountability, the creation of dedicated police complaints bodies has been a long-standing recommendation in relation to police reform in India. In 2006, the Court finally provided the push for implementation.

The sixth anniversary is an appropriate occasion to take stock of how the Supreme Court judgement and the ensuing reforms have served the cause of police accountability in the country.

Background

The intention behind setting up police complaints authorities was to ensure that a local mechanism specialised in handling a wide ambit of complaints against the police, including the most serious, was readily available to the public at large. The long-term goal was to create a change in policing culture by drawing attention to and ensuring accountability for police abuses. The Court envisioned that state-level Authorities would look into complaints against officers of the rank of Superintendent of Police and above and look into only allegations of “serious misconduct” which includes but is not limited to death, grievous hurt, and rape in custody. In many states, “arrest or detention without due process of law” has also been added to the category of serious misconduct. At the district level, Authorities would inquire into complaints against police officers of and up to the rank of Deputy Superintendent of Police. In the districts, in addition to the serious misconduct listed above, the Authorities would also look into complaints that include allegations of extortion, land/house grabbing, or any “incident involving serious abuse of authority”.

In October 2006, a month after the Supreme Court’s judgement, a legislative template in the form of a Model Police Bill 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 judgement, the Court referred to the Committee’s draft and advised state governments to frame new Police Acts based on the Draft Model Police Bill. The Draft Model Bill contains a detailed section that establishes police complaints bodies in the form of Police Accountability Commissions at both the state and district level.² In fact, it not only conforms to the Court’s framework, but fills 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 Bill complements the Supreme Court judgment in that it provides the detailed nuts and bolts through which the directions of the Supreme Court can be most effectively implemented. It puts in a place a *system* to manage complaints against the police in its legislative model.

To date, 14 states have passed Police Acts in response to the Court’s judgement.³ Virtually all of them have established Police Complaints Authorities, but the Authorities are not operational in every state where they have been established in the state Police Act. In some

¹ *Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1

² Clauses 158 to 180, Draft Model Police Bill

³ Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Kerala, Meghalaya, Punjab, Rajasthan, Sikkim, Tripura and Uttarakhand

states and union territories, Police Complaints Authorities are constituted through and operating under government orders, pending the passage of legislation.⁴

Purpose of the Study

Police Complaints Authorities are relatively new bodies – the oldest one now functional for a little over five years. These few years have produced limited information on the actual functioning of these Authorities. With the increasing abuses by police officials and the growing demand for police accountability, these statutory institutions assume tremendous importance. They have the potential to check police abuse, recommend punitive steps against errant officers, identify patterns of misconduct and criminality within the police, and suggest policy improvements for overall change in police behaviour and performance. Given that these bodies are presently in their nascent and teething stages, it becomes even more important that their performance is monitored, and they are provided the necessary assistance to grow into their roles. This study both examines and evaluates key aspects of the establishment and working of the Police Complaints Authorities of India – their structure, composition and aspects of the actual operations. At the same time it provides insight into the strengths and omissions of legal frameworks governing Police Complaints Authorities within state Police Acts. As the two main pieces of legislative guidance, both the Court's directive and the Model Police Bill's provisions on Police Complaints Authorities are taken as the standard by which to measure legal frameworks and the design of operational Authorities.

In this brief study, we have included the following parameters relating to the structures and working of the Complaints Authorities:

- I. Operational State and District Level Authorities
- II. Current Composition and Background of Chairpersons and Members
- III. Selection Process of Chairpersons and Members
- IV. Appointment of Independent Investigators
- V. Time Frame for Inquiries
- VI. Binding Powers
- VII. Rules of Procedure
- VIII. Annual Reports of Authorities
- IX. Budgets of the Authorities
- X. Training of Members and Authorities
- XI. Outreach Efforts of the Authorities
- XII. Availability of Dedicated Websites
- XIII. Fulfilment of Proactive Disclosure Obligations

There could be other parameters for assessing the working of the Authorities; however, the study focuses only on the specified parameters as they permit a rapid study. Presently, there is little knowledge or monitoring of Police Complaints Authorities by civil society groups. We hope that this study can catalyse a larger civil society effort to monitor the functioning of these seemingly independent bodies.

The main findings of the study are given below.

I. Operational State and District Level Authorities

The Supreme Court directive and the Draft Model Police Bill, 2006 call for the establishment of Police Complaints Authorities at both the state and district level. The guidance to create these police complaints bodies at the district level is particularly significant, as it is in the

⁴ Goa, Delhi, Daman & Diu, Dadra & Nagar Haveli and Chandigarh

districts where institutional remedies for police abuse and violence are the least accessible. This was clearly recognised by the Court and the Police Act Drafting Committee.

Main Findings

Of the fourteen states which have passed Police Acts post 2006 that create Police Complaints Authorities:

- Six states - Assam, Gujarat, Himachal Pradesh, Karnataka, Kerala and Rajasthan have established Authorities at both the state and district level in their Police Acts;
- Five states - Chhattisgarh, Meghalaya, Sikkim, Tripura and Uttarakhand - have legislated only state-level Authorities, neglecting the districts altogether;
- The Bihar Police Act, 2007 creates Authorities only at the district level. The Haryana Police Act, 2007 firmly establishes a state-level Authority, leaving the state government the option to set up Authorities at the district-level which, to date, the government has not chosen to do;
- While the Karnataka Police (Amendment) Act 2012 was passed in June 2012, the Police Complaints Authorities have still not been fully constituted and thereby are not operational. A state Chair was appointed in 2010, under a government memorandum but to date, he has not been able to assume his position.

The Working Authorities

To date, more than six years after the Court passed its judgment, only **six states** - Assam, Goa, Haryana, Kerala, Tripura and Uttarakhand and **four union territories** - Chandigarh, Dadra & Nagar Haveli, Daman & Diu and Delhi - have Authorities which are **actually operational at the ground level**. Kerala is the only state which has Authorities functioning at both the state and district levels.

Bad Tidings

There is a disturbing trend which as yet is not prevalent, but it has surfaced in a few states. This is vesting the Police Complaints Authority's functions in another oversight body. Both the Himachal Pradesh Police Act, 2007⁵ and the Goa Police Bill 2008⁶ vests the powers of the state-level Authority in the state Lokayukta. In a similar way, the Delhi Police Complaints Authority is currently functioning out of the already established Delhi Public Grievances Commission. Likewise in Orissa, a government order states that a Police Complaints Authority will be formed at state level under the Lokpal and Lokayuktas Act, 1955, with the Lokpal as the head of the Authority. Unfortunately, the order is silent on the members and powers of the Authority. Moves such as this not only stunt the Police Complaints Authority, but also creates an insurmountable burden for already overburdened oversight bodies. The volume of complaints against police officers requires dedicated, specialised police complaints bodies as the Court directed. It is hoped this trend to subvert Police Complaints Authorities will not continue.

⁵ Section 93, Himachal Pradesh Police Act 2007.

⁶ Clause 91, Goa Police Bill, 2008. Fortunately, the 2008 Bill has been stalled from being passed since it was tabled in 2008. The clause on the Police Complaints Authority is a major cause for concern in the Bill.

II. Current Composition and Background of Chairpersons and Members of Police Complaints Authorities

The Court specified that the Chairpersons of state-level Authorities are to be retired High Court or Supreme Court judges and accordingly, the district-level Authorities are to be chaired by retired district judges. The other members were to be drawn from “retired civil servants, police officers or officers from any other department, or from the civil society”. The Court provided only this much detail in terms of background. It omitted to mention any qualifications or skills as necessary for an eligible candidate’s background.

The Draft Model Bill provides some additional, albeit brief, criteria. The Chairs at the state and district level remain retired judges as stipulated by the Court. In terms of the members, the Model Bill’s criteria is slightly wider than the Court’s as it includes relevant qualifications for some members, but qualifications do not always translate into the necessary skills and knowledge for the unique requirements of independent police oversight. Nonetheless, the criteria laid down in the Model Police Bill provide for qualified candidates with varied backgrounds. The criteria are the following:

- five members with a “credible record of integrity and commitment to human rights”
- one member must be “a retired police officer from another state cadre, superannuated in the rank of Director General of Police”
- one member must have a “minimum of 10 years of experience either as a judicial officer, public prosecutor, practicing advocate, or a professor of law”
- one member must be “a person of repute and standing from the civil society”
- one member must be “a retired officer with experience in public administration from another state”
- at least one member must be a woman and not more than one member must be a retired police officer.

A notable aspect of the Draft Model Bill's criteria in terms of the retired officers is that both are to be from another state, this is obviously an effort towards maintaining the independence of the Complaints Authority by bringing in retired officers who have never worked with the state political/bureaucratic or police establishment.

Main Findings

- Among the new Police Acts that have been passed, only three states have adopted these criteria **almost** in full – these are Assam, Chhattisgarh and Tripura;
- Of these states, Chhattisgarh does not have Authorities functioning on the ground so the use of the criteria cannot be tested as yet. **Of these three states, none have abided by the requirement that the retired officers are to be from other states.** More largely, this means, to date, no state has abided by this requirement.

Generally, within the Police Acts, little attempt has been made to ensure that the composition of Police Complaints Authorities is diverse and balanced. Further, the presence of civil society representatives has also not been assured.

With deepest respect to the wisdom of state governments, it must be pointed out that little attention has been paid to the fact that the selection is being made in the absence of any rules, regulations or guidelines for assessing either “credible record of integrity and commitment to human rights” or “person of repute and standing from the civil society”.

- The functional Authorities, in all states and union territories, are headed by a retired High Court judge, with **two** exceptions: Haryana and Daman & Diu, Dadra & Nagar Haveli;
- The Police Complaints Authority of Haryana is a one member Authority consisting only of the Chair who is a retired IAS officer; similarly the Authority of Daman & Diu, Dadra & Nagar Haveli consists only of its Chair who is an advocate;

All oversight bodies in India are presently headed by retired high court or Supreme Court judges. This has generated a great deal of debate and criticism especially where these institutions have failed to deliver. It is argued that merely possessing a judicial background cannot be considered sufficient to have charge of these posts. Expertise in human rights, criminal law, and sound ideas of due process are also necessary. At the same time, there is no doubt that the presence of judicial members on Police Complaints Authorities has definite advantages. They lend these bodies the much required credibility, guarantee a perception of “political neutrality”, and boost their standing.

- Nowhere across the country have eminent women been appointed as Chairs of Police Complaints Authorities;
- Tripura is the only state which has created a five-member Police Accountability Commission in its Police Act;
- The Uttarakhand Police Act, 2007 stipulates that the Authority will have a “maximum” of five members, not that it is mandatory to have five members.

Incidentally, at present there are only four members on the Tripura Police Accountability Commission, leaving a vacancy of one member. The Uttarakhand Authority in turn presently has only two members which includes the Chair. This leaves a sizeable vacancy on the Authority.

Widening the Diversity

The Uttarakhand Police Act, 2007 establishes a five member Complaints Authority. Four of these members are to be persons of “eminence with experience in public dealing” and a “credible record of integrity and commitment to human rights” as independent members. The fifth member is to be a police officer superannuated in the rank not below the rank of Inspector General of Police. There is no express provision for the Chair of the Authority to be a retired high court or Supreme Court judge, which is a novel departure from the existing models. In fact, the Act provides that any one of the independent members can be appointed as the Chairperson of the Authority. In spite of the existence of this provision, to date, only retired judges have chaired the Uttarakhand Police Complaints Authority.

The most glaring observation of the current makeup of the members of the operational Authorities is that it is largely dominated by the bureaucracy and the police, serving and retired. This does not bode well for the growth of independent police oversight in India. The presence of serving officers, in particular, as adjudicating members reflects a troubling trend.

Contrary to the Court's directive or provisions laid out in the Draft Model Police Bill, the state of Kerala has serving police and government officials as members on its Police Complaints Authorities.⁷ Even though Kerala is only one state, the decision to include serving officers on its Complaints Authorities has significant implications for the proportion of serving officers as members of Police Complaints Authorities in the country. Due to the fact that Kerala is the only state which has functioning Authorities at both the state and district levels, it has the highest number of Authority members across the country. The state-level Authority has two members who are serving officers, one a serving officer of the rank of Principal Secretary to the government and a serving officer of or above the rank of Additional Director General of Police. At the district level with 14 districts making up the state, the District Collector and the District Superintendent of Police are the only members of the Complaints Authorities.

At the same time, retired police or government officers significantly outnumber civil society or non-government members of the Authorities. This is not too much of a surprise, as the legislative framework across states designs Complaints Authorities this way. Taken together, this has resulted in scant representation of civil society, or individuals with a non-police/government background, as members on the Authorities.

- Due to the constitution of Kerala's Complaints Authorities, 61% of members of Police Complaints Authorities are serving police and government officials. This is undoubtedly the highest number of serving officers as members on a police complaints body in any democracy;
- 24% of the membership of currently operational Police Complaints Authorities in India is made up of retired police or government officers;
- Only 8% of the membership of currently operational Authorities is made up of civil society members;
- Retired academics represent 4% of members;
- Women members of the Authorities account for a meagre 8% (all the women members represent civil society, women of other profiles and backgrounds have not been appointed).

This also has to be seen against the legislative guidance. Notably, serving government or police officers are not included as members in either the Court's model or in the Model Police Bill, 2006. In fact, one of the grounds for ineligibility as an Authority member in the Model Police Bill is if a person is "serving in any police, military, or allied organisation, or has so served in the twelve months preceding such appointment".⁸ There are clear reasons why the legal guidance bars serving police officers from being members on bodies which are meant to be independent channels for addressing the most serious of police excesses and violence.

Firstly on serving police or government officers, CHRI is not in any way questioning their integrity or credibility. But it is our firm belief that they should not be included as adjudicating members on Police Complaints Authorities. CHRI absolutely recognises that Police Complaints Authorities will never succeed without the expertise and cooperation of serving police and government officers. And we also recognise that the inquiry process must be fair to both sides, giving both complainant and respondent equal opportunity to state their case. However, including serving police officers, particularly as adjudicating members, on what are

⁷ The Police Acts of Bihar, Gujarat, and Karnataka also include serving government and police officers as members of their Police Complaints Authorities, but none of these states have operationalised their Authorities, so their impact is not included above.

⁸ Section 162(c), Draft Model Police Bill, 2006

meant to be independent bodies with the specific mandate to inquire into police excesses defeats a fundamental principle of natural justice: that no one can be a judge in their own case. Also, there is the very important and real issue of public/complainant perception of the Authorities, which is let down when serving police officers are adjudicating members on bodies which are meant to protect the public against police abuse.

In terms of retired police and government officers, our concern relates not to their suitability for the job, but to the **imbalance** in the representation of members in terms of their backgrounds, skill sets, and experiences. As bodies which are designed to address public complaints, a fair balance needs to be struck between retired government officers and independent civil society members. At present, this balance does not exist, as evidenced above. Based on our research and expertise, CHRI asserts that truly independent oversight requires newer skill sets and a diversity of experiences as well as knowledge, all of which can be brought by members who come from non-government backgrounds. Independence is determined by the extent to which the body is separated from the executive and the police. Independence and credibility are improved when the oversight body comprises of leadership and staff **equally** drawn from outside government and police.

III. Selection Process of Chairpersons and Members

The background and qualifications of members have to be seen against how they are selected. 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 which can identify and choose independent-minded members.

According to the Supreme Court, the Chair of state-level Authorities is to be selected by the state government from a panel of names of retired high court judges proposed by the Chief Justice of the High Court. The Chair at the district-level is to be chosen by the state government from a panel of names proposed by the Chief Justice of the High Court, or by a single High Court judge nominated by the Chief Justice. The other members are to be chosen by the government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission. In fact, the Court did not provide enough clarity on this particular aspect, so it is not entirely clear whether the empanelment is to be done by all three bodies, or any combination of the three. Nonetheless, it is clear that the Court sought to put in place a selection process which provides for short-listing of candidates by an independent panel.

In the same way, the Draft Model Police Bill also lays down selection through an independent panel and short-listing but with more detail than the Court's framework. As laid down in Section 161, pertaining to both the state and district-level Authorities, this process includes:

- The Chairperson is to be appointed out of three retired high court judges, shortlisted by the Chief Justice of the High Court concerned;
- Other members are to 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;
- It is stipulated that the selection panel is to "adopt a transparent process" when selecting.

Main Findings

Of the Police Acts enacted post 2006, only the **Sikkim Police Act, 2008** has adopted an independent selection panel for the selection of all members of its Police Complaints Authority. In other states, with this omission in legislation and government orders, members to Police Complaints Authorities are appointed at the sole discretion of the state government.

A Selection Panel Sans Independence!

The Meghalaya Police Act, 2010 ostensibly includes a selection panel to select members onto its Police Accountability Commission, but the panel is made up of the Home Minister, Chief Secretary, Home Secretary, and Director General of Police (Section 74(2), Meghalaya Police Act 2010). Made up of the political, bureaucratic and police leadership, this can hardly be called an independent panel, particularly with the state police chief having a say in the membership of the oversight body to keep his officers accountable. This is precisely how legislation erodes the independence of institutions.

The idea of having an independent Selection Committee is to assure a semblance of balance and to safeguard against political appointments. Some state Police Acts have “innovated” in terms of selection processes, but in all cases, the Court’s directive and the Draft Model Police Bill framework have been diluted:

- The Kerala Police Act, 2011 requires the state Human Rights Commission Chair and the state Lokayukta to shortlist candidates, but only for one position each.⁹ This pertains only to the state-level Authority in Kerala.
- The Himachal Pradesh Police Act, 2007 requires that the state government *consult* the state Lokayukta in selecting the non-official members of the district-level Authorities, but there is no independent selection panel. As mentioned above, the Act also stipulates that the Lokayukta is to act as the state Police Complaints Authority.

Similarly, the Karnataka Police (Amendment) Act, 2012 has adopted a selection panel for the selection **only** of the civil society members on the Authorities. It is perplexing as to why the selection of a civil society member requires more scrutiny than the selection of other (largely government) members. The rigour and effort to maintain independence through a separate selection panel should be extended to the selection of all members.

A major omission in the Draft Model Police Bill and the Court’s judgement, which then extends to all new Police Acts is the fact that there is no requirement for positions to be advertised or selections to be carried out in an open and transparent manner. Though civil society members have been appointed on some Authorities these are either political appointees with almost no credible record or expertise in the area. Further there is no opportunity afforded to any citizen to submit objections or comments on the candidates considered for appointment. This has resulted in ad hoc and arbitrary appointments.

IV. Appointment of Independent Investigators

A key mechanism for truly independent and effective inquiries by Complaints Authorities would be a dedicated team of independent investigators, recruited by the Authorities

⁹ See Section 110(2), Kerala Police Act 2011

themselves, to take the lead on the investigative aspects of the inquiries conducted by the Authorities. Recognising this, 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 Draft Model Police Bill does not refer specifically to independent investigators, but it includes a provision to the effect which states “*members of the Commission shall be assisted by adequate staff with requisite skills, for efficient discharge of their functions of the Commission*”. While it is clear that the need for independent investigators can be inferred from this provision, it would have been more instructive for the Model Bill to include a specific reference to the need to recruit independent investigators to assist the Authority, with some guidance on the necessary skills, qualifications, and extent of seniority required. Nevertheless, the Court’s directions are crystal clear on the necessity of independent investigators.

Main Findings

- Only a handful of Police Acts include the wording on “adequate staff with requisite skills” which can be inferred to include the appointment of independent investigators – these are Assam, Haryana, Sikkim, Meghalaya and Tripura;
- The government order which governs the Goa State Police Complaints Authority reproduces the Court’s instruction as it states “The State Level Police Complaints Authority may utilise the services of retired investigators from the CID, Intelligence, Vigilance or any other organisation for conducting field inquiries”;¹⁰

The Haryana Police Act, 2007 is the only new police legislation which makes explicit reference to the need for staff with investigative skills in its provision which 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”.

- Of the functional Authorities, Assam is the only state that has appointed independent investigators to carry out its investigations. The investigation team is headed by a retired Deputy Inspector General of Police and assisted by two retired Deputy Superintendents of Police;
- In spite of the contents of the Goa government order, the State Police Complaints Authority has been unable to recruit any independent investigators to date due to lack of release of funds by the government;
- The Police Accountability Commission of Tripura has been trying to constitute a team of investigators since 2008, but has faced continual resistance from the police department. In February 2012, two Sub-Inspectors from police headquarters have been brought on as investigators. But their mode of appointment does not give the Commission full supervision over the two investigators. In fact, their supervision mainly rests with police headquarters.¹¹

¹⁰ Government Order (3 April 2007), Department of Home, Order no. 2/51/2006-HD(G)

¹¹ *Annual Report 2011*, Tripura Police Accountability Commission, page 5

V. Time frame for Inquiries

There is no legislative model which provides guidance on setting a time limit for inquiries. There is no time frame set for the conduct of inquiries by Police Complaints Authorities in any state or union territory.

Most Authorities since their establishment are faced with a mounting pendency of cases. This is gradually resulting in complainants losing faith in the ability of Authorities to do justice. It is important that Complaint Authorities set timelines within which cases will be decided. This will help address perceptions and concerns related to promptness and efficiency. There is no time-limit set for the inquiries of Police Complaints Authorities in any new Police Act. This is a crucial requirement for inclusion in Rules of procedure. Complaints Authorities are already mired in tremendous delay, taking a year or more in some States to complete their inquiries. This kind of delay is unwarranted for the limited scope of Authority inquiries.

VI. Binding Powers

Both the Court's judgement and the Model Police Bill emphatically stated that the recommendations of Police Complaints Authorities are to be **binding**. For oversight bodies such as Complaints Authorities, in addition to the need for extensive inquiry powers, the power to order binding recommendations is absolutely necessary for their effectiveness and empowerment. It must be remembered that Complaints Authorities are not courts; their jurisdiction does not extend to definitive pronouncements of innocence or guilt. They are bodies which carry out inquiries which can only provide prima facie grounds of whether enough evidence of misconduct exists to proceed further. But 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 Authority inquiries can simply be ignored. The necessity for legislative frameworks establishing Complaints Authorities to state that Authority recommendations are binding is crucial.

Main Findings

- Only **four** Police Acts – those of Assam, Himachal Pradesh, Kerala and Meghalaya specify that the recommendations of Police Complaints Authorities are binding;
- The government order setting up the Chandigarh Authority states that *the recommendations of the Authority shall ordinarily be binding except for reasons to be recorded in writing*;
- In cases directly inquired into by the Authority the Haryana Police Act, 2008 requires the Authority to communicate its findings to the state government.¹² The government is to consider the findings recommendations and take appropriate action.¹³

VII. Rules of Procedure

While the Supreme Court ruling is silent on the need for framing elaborate Rules of Procedure for the functioning of the Authorities, the Draft Model Police Bill goes on to state that *the Commission shall devise its own rules for the conduct of its business*.¹⁴

¹² Section 67(1), Haryana Police Act, 2008

¹³ Section 67(2), Haryana Police Act, 2008

At present, there is not a single Police Complaints Authority in India which functions on the basis of **officially** notified Rules of Procedure. Most state governments have reserved the power to frame Rules for the Authorities.

Main Findings

- In six states – Assam, Haryana, Meghalaya, Sikkim, Tripura and Uttarakhand - the Police Acts vest the power to frame Rules with the Authorities themselves.
- All Authorities set up under government orders or notifications are silent on the need for framing Rules.
- Three of the operational Police Complaints Authorities – Uttarakhand, Goa and Tripura have drafted a set of Rules of Procedure. The state governments in all three states are still to notify these draft Rules.

Any legislation only becomes truly operational when rules are notified. Thus in practical terms, this means the Authorities have been functioning for several years without the guidance and standard process that Rules provide. The absence of Rules is leading to numerous difficulties, constraining the efficiency and service delivery of the Authority. There is a vital need for strong, clear procedures which not only ensure that the Authorities are efficient and responsive, but also that the Authorities can maximize the use of their powers. The absence of Rules is leading to delay in the Authority's inquiries and an inability to effectively respond to police non-cooperation. Well thought out Rules of procedure coupled with the will to enforce a stringent process will address many of these problems. Most importantly, this will strengthen and institutionalize the Authorities' role in police accountability.

VIII. Annual Reports of the Authorities

By virtue of being a public institution, Complaints Authorities are also accountable for their actions. One of the ways in which this accountability is ensured is by requiring the submission of Annual Reports. The Court judgement did not refer to the need for annual reporting, but this is perhaps too much of a detail for a Supreme Court judgement. The Draft Model Police Bill contains a detailed provision on annual reporting by Police Complaints Authorities, at both state and district levels. The provision states:

“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 the complainants upon being dissatisfied by the departmental inquiry into his complaint;
- (c) the number and type of cases including those referred to in (b) above in which advice or direction was issued by it to the police for further action;
- (d) the number of complaints received by the District Accountability Authorities, and the manner in which they were dealt with;
- (e) the identifiable patterns of misconduct on the part of police personnel in the state;
- (f) recommendations on measures to enhance police accountability.

Importantly, the Draft Model Police Bill provision concludes by stating “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”. Essentially, Police Complaints Authorities have to submit annual reports to state governments for tabling in the State

¹⁴ Clause 166, Draft Model Police Bill, 2006

Assembly. It is then up to legislators to take the opportunity to actively discuss the issues and concerns brought out in the annual reports, with a view to strengthening Authorities' police oversight role. The entire exercise of reporting by Authorities will be a waste of time and resources if annual reports are not carefully read and vigorously discussed in state Assemblies.

Main Findings

- Seven state Police Acts – Assam, Bihar, Karnataka, Meghalaya, Sikkim, Tripura and Uttarakhand - include the obligation for Police Complaints Authorities to produce an annual report. The rest exclude this obligation altogether;
- Of the functional Authorities, only the Police Complaints Authorities of Assam and Tripura have drafted annual reports. The Assam has most regularly reported since its inception, producing annual reports for 2008, 2009, and 2010. The Tripura Police Accountability Commission has drafted an annual report for 2011 and the Chandigarh Authority has drafted a brief report for 2011-12;
- The report of the Tripura Commission is available on its website. None of the other reports have been made publicly accessible;
- None of these reports have been tabled in the state legislature, including all of the Assam Commission's reports from 2008;
- None of these reports also provide any information on the work plan or goals that would be useful to evaluate its vision and performance.

Absence of Financial Reporting

Though both the Assam and Tripura Commissions have submitted annual reports, they fail to include the nature of the spending and allocation of funds. Ideally, annual reports must provide an account of the expenditure by the Commission in the financial year. It should also have a financial statement, such as the balance sheet, costs and expenses, as well as additional details of the expenditure. If included within Annual Reports, such information will help identify the priorities of the Commission, and offer suggestions on what areas require greater financial allocation.

IX. Budgets of the Authorities

Police Complaints Authorities require adequate and independent funding to function to their best capacity. In fact, there are a handful of good legislative provisions in some state Police Acts that give some degree of independence for funding, though these are the exception rather than the rule. For example:

- Tripura Police Act, 2007 (Section 77): "The State government shall ensure that adequate funds are provided to the Commission for the effective performance of their functions by way of separate component in appropriate major head of the State budget, as the State Government may decide";
- Uttarakhand Police Act, 2007 (Section 76): "For the efficient performance of duties, a separate component in appropriate major head of the State Budget, as the state government may determine shall be provided";

- Meghalaya Police Act, 2010 (Section 92): “The State Government shall ensure that required funds are provided to the State Security Commission, Police Accountability Commission for effective performance of their functions and that the police shall not be required to provide them with any material or human resources for their smooth functioning”;
- Himachal Pradesh Police Act, 2007 (Section 103): “The State Government shall ensure that adequate funds are provided to the State Police Complaints Authority and the District Police Complaints Authorities for the effective performance of their functions. The Police shall not provide any material or human resources to the State or the District Police Complaints Authorities other than in accordance with the general or specific directions of the State Government.”

These provisions are designed to ensure that the Authorities are not starved of resources. Notably, they call for separate budgets for the Authorities and most specify that the Authorities are not to be reliant on the police for funds. The shortcomings of these provisions are that they do not clearly state under which specific budget head the Authorities’ funding will originate. Nor do they impose an obligation on the Authorities to report on their spending to the state legislature.

At present, the budgets of Complaints Authorities are administered through the state Home Department. Authorities themselves do not have a role in suggesting an appropriate budget estimate for themselves. This not only clips their independence¹⁵, but also prevents Complaints Authorities from prioritizing for extra necessary measures which will have financial implications, such as producing public education material or taking proactive measures to publicise their mandates through a dedicated website. Without adequate financial independence, the institutions will not be able to realize their mandate. Subjecting them to the financial control of the government seriously compromises its independence. Institutions may be unwilling to challenge the government for fear of finances being cut off. Authorities need to be given the power to prepare their budget estimate on their own, with parallel responsibilities of accounting for funds spent.

X. Training of Members of the Authorities

The Court’s judgement did not include any training requirement for members and staff of the Authorities. On the other hand, the Draft Model Police Bill contains a provision on training, which truly is an essential component of a legal framework on police complaints bodies. The provision states it is the “duty” of the state-level Authority to ensure that all members and staff of both the state and district-level Authorities are “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”.

This is a unique provision which unfortunately either absently minded or deliberately has been excluded from all the state level Acts passed till date.

¹⁵ For instance, most of the clerical, secretarial and administrative staff of the operational Authorities is on deputation from different departments and ministries of the state government, or police headquarters. Due to both administrative and funding arrangements, there is little direct recruitment of staff by Complaints Authorities. Authorities need the autonomy to appoint their own staff as per their needs and requirements. They should be able to advertise for staff. They should not have to depend on the government to provide them with resources. It is not desirable to have staff members deputed from government departments as they may not have the requisite knowledge and expertise to deal with issues at hand. In turn they may also bring certain bureaucratic baggage with them which might hinder the accessibility of the Authorities.

Main Findings

- Of the 14 new Police Acts, only **three** state Police Acts, namely Karnataka, Meghalaya and Tripura, include a provision on training. This omission in the legislation across the country points to the lack of priority accorded to training of Police Complaints Authorities by policy makers and legislators.

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 effect, there is no training at induction and definitely no “regular” training given to any members or staff of Police Complaints Authorities.** 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.

XI. Outreach Efforts of the Authorities

Neither the Court nor provisions of the Draft Model Police Bill provide any guidance on public outreach measures that can be initiated by Police Complaints Authorities. There is no provision on promoting public outreach in any Police Act. While this is a significant omission in legislation in terms of the design of the Authorities, the lack of a legislative provision does not prevent Authorities from taking their own initiatives to promote public awareness of their Authority, its mandate, functions, and powers. Slowly, some proactive Chairs have taken definitive steps toward public outreach.¹⁶ It is our hope that more Police Complaints Authorities will initiate public outreach activities.

Main Findings

- The Police Accountability Commission in Tripura has taken several steps to increase general awareness of its functioning and mandate. It has created legal literacy pamphlets in Bengali and distributed these through various channels. Since the current Chair took over in 2011, the Commission has held four district level seminars, which police officers, civil society organisations, elected representatives and the media attended. The objective of these seminars was primarily information sharing and publicising the Commission's mandate;
- The Chair of the Haryana Police Complaints Authority launched the Authority's website in early 2012 and he ensured that the launch was widely covered in the local press. This generated numerous articles in the media, on the Authority. The Chair has also taken the initiative to visit seven districts of Haryana in an effort to strengthen public awareness, by posting information boards in key district-level government offices and holding small public meetings.

¹⁶ The Chair of the Uttarakhand Police Complaints Authority has come up with good ideas to carry out the outreach and publicity efforts of the Authority in partnership with the State Legal Services Authority (SLSA), mainly involving the publication of pamphlets on the Authority. While these efforts have still to be implemented, the Authority's proposals have been accepted by the SLSA. These kinds of collaborations can provide funding and institutional support for Police Complaints Authorities to help them further public outreach.

XII. Availability of Dedicated Websites

This provision reiterates what is already a legal obligation for all public authorities. Like all public authorities, Complaints Authorities have a statutory obligation under the Right to Information (RTI) Act 2005 to proactively disclose a wide range of information on their own, even if no one has specifically requested it. Section 4(1)(b) of the RTI Act requires all public authorities to routinely publish 17 categories of information, which should be regularly updated.¹⁷ The Act provides the modalities of what information is to be disclosed. Section 4(1)(b) of the Act requires all public authorities to disseminate basic information about their organisations, structure, working, finances and norms proactively. Section 4(1)(c) requires all public authorities to disclose all facts while announcing important decisions. Section 4(1)(d) requires every public authority to proactively disclose reasons behind its administrative and quasi-judicial decisions to the persons affected by such decisions. Dissemination of information through **internet websites** is one of the measures stipulated in Section 4(4) of the RTI Act.

Main Findings

As public authorities, Police Complaints Authorities have to abide by their responsibilities under the RTI Act which includes creating a dedicated website. However the compliance with this provision is disappointing.

- Of the nine operational Authorities, the Haryana Police Complaints Authority (<http://spcahry.nic.in/english/index.html>) and the Tripura Police Accountability Commission (www.tpac.nic.in) have created a dedicated website. The Haryana website is available in English and Hindi, whilst the Tripura website is available in English;
- The Chandigarh Police Complaints Authority has a webpage (http://chandigarh.gov.in/dept_pca.htm) within the website of the Chandigarh administration. This is available only in English;
- While both the Haryana Authority's site and the Chandigarh Authority's page provides basic information in terms of mandate, powers, and disposal of complaints, neither has the option of a search function for the final orders of Authorities, and neither provides links to any reports published by the Authorities.

XIII. Fulfilment of Proactive Disclosure Obligations

The RTI Act requires all public authorities to publish *suo moto*, or proactively, a wide range of information on their own, even if no one has specifically requested it. This is a key provision because it recognises that some information is so useful and important to the public that it should be given out regularly, without anyone specifically requesting it. More broadly, it recognises that transparency is generally in the public interest and that public authorities should therefore strive to make as much information public as possible.

As public authorities under the RTI Act, Police Complaints Authorities have an obligation to volunteer a deal of information about the structure, working, finances and activities to the public, without waiting for formal requests for such information. Within 120 days of their

¹⁷ The information to be published falls under the following general areas: 1) structure of the organisation – functions and duties, powers and duties of its officers, a directory of its employees, monthly remuneration received by each employee, 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.

establishment, the Authorities have a duty to prepare the following categories of information and disseminate them for the use of the general public:

- 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;
- A statement of the categories of records and documents held by the Authorities/Commissions in hard copy and electronic form;
- 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;
- Directory of officers and employees including salary packages and benefits they receive;
- Details of budget and expenditure of the Authorities/Commissions including reports on disbursement of funds;
- Name and designation of the Public Information Officer (PIO).

Complaints Authorities are required to update this information at regular intervals and in any case at least once a year. These categories of information must be disseminated in the local language of the area and through a variety of methods of dissemination such as internet websites, notice boards, newspaper advertisements, public announcements and media broadcasts.

Main Findings

- Of the operational Authorities, only the Haryana Authority has prepared its proactive disclosure information and placed it on its website. This is not however the most detailed of disclosures provided and could be improved upon;
- The Tripura Authority has been diligent in appointing the PIO, an assistant PIO as well as the appellate Authority. However it is still to prepare its proactive disclosure material;

In a letter received from the Goa Police Complaints Authority¹⁸, the Chair has expressed the inability of the Authority to fulfil its proactive disclosure obligations. According to him the Authority is struggling to function with a "skeleton staff" appointed either on contract basis/deputation. The government has paid no heed to the Chair's requests for additional staff or investigators. According to him, the government is still to appoint a PIO for the Authority. In the absence of a PIO, the Secretary of the Complaints Authority discharges the duties of PIO and requests for information sought by the public are processed as per provisions of the RTI Act and the State Rules. In his letter, Justice Da'Silva states *"it will be a difficult task for this presently beleaguered Authority to convince the Government to set up a cell on proactive and voluntary disclosure of information as suggested by you which perhaps may be done with the concurrence of the Government after regular staff is appointed"*.

¹⁸ Letter to CHRI from Justice Eurico Da Silva, dated 9th October 2012

Conclusion

Complaints Authorities are still in their nascent stage of evolution. While many of them across the country are making earnest efforts to fulfil their mandates, they face structural as well as practical problems which are impeding their functioning. Their effectiveness or success if plainly put rests on the will of the government. Its financial dependence on the government has reduced it to a subordinate department. It lacks operational autonomy to appoint its own staff or frame regulations to determine its procedures. The Acts governing them are also flawed in this regard. It does not secure the independence of the Authorities in any way. Instead the Acts provide ample scope for governments to interfere in their working. Our endeavour through this brief study is to reveal the extent of some of these problems and also where they stem from. Regrettably for CHRI, all of our main points of advocacy for strengthening of the Authorities still hold true, six years after the Court's directive. It is our hope that Police Complaints Authorities can be strengthened to become the accessible, independent and effective police oversight bodies they are intended to be.