

COMPLAINTS AUTHORITIES

Police Accountability in Action



CHRI

Commonwealth Human Rights Initiative

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

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

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ISBN: 81-88205-71-0

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In late 2006, the Supreme Court of India ordered the creation of Police Complaints Authorities, along with other directions towards systemic police reform, across the country. The objective of this report is to provide an assessment of the first year of operation of these newly created Police Complaints Authorities, for the year 2008. Primarily, it will offer basic background information of the Authorities which are functioning. It will showcase the inquiry procedure, step by step, of the district level Authorities from Kerala.

It is hoped this report, while only an initial and basic examination, will shed light on the burgeoning Complaints Authorities. The report will conclude by pointing out the substantial failings at this formative stage, and recommendations for improvement.

This Report and the accompanying research and dissemination have been made possible with the financial support of the British High Commission, New Delhi.

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Introduction



One critical measure of the success of a democracy is the extent to which the police are held accountable. With their full arsenal of law enforcement powers, the police must be accountable at every step. In a truly democratic state, there must be sufficient and easily accessible channels where people can file complaints, without fear, against police officers for acts of misconduct or possible criminality, and receive prompt, proper investigation.



Complaints Against the Police

One critical measure of the success of a democracy is the extent to which the police are held accountable. With their full arsenal of law enforcement powers, the police must be accountable at every step. In a truly democratic state, there must be sufficient and easily accessible channels where people can file complaints without fear against police officers for acts of misconduct or possible criminality, and receive prompt, proper investigation.

In India, on the basis of government statistics alone,¹ it is plain to see the high number of complaints made against police officers, and also, the very serious nature of the complaints. The National Crime Records Bureau (NCRB) reports that 51,767 complaints were made against police officers in 2007.² These include complaints of human rights violations as serious as disappearances, illegal detention and arrests, extrajudicial killings, extortion, torture, atrocities on scheduled castes and tribes, and crimes against women.³ These are complaints which were made at police stations, against police officers, requiring tremendous courage on the part of the complainants. 118 deaths in police custody were reported for 2007.⁴ What of the response? Departmental, magisterial, and judicial inquiries were instituted. Of the total complaints received against police personnel, more than 50% were either not substantiated or found “untrue” by the inquiring authorities, which means, in effect, that more than half the complaints were disposed of.⁵ No information is provided on the investigative steps taken before disposing complaints, and no reasons beyond “not substantiated” or “not found true” are given to explain why the majority of complaints are being disposed of. In the 64 complaints of human rights violations, charges were laid against 37 police officers, but “none of them was convicted for these human rights violations”.⁶ Even though 33 cases were registered against police officers, the report reveals that there was not a single conviction for any custodial death.⁷

Since their inception, the highest number of complaints to come before human rights commissions in India is of human rights violations at the hands of the police. A full range of the most serious police excesses are a regular feature of complaints: refusal to register complaints, custodial death and violence, extrajudicial killings, illegal arrest and detention, disappearances, false implications and crimes against women. This is evidenced by the last available figures from the National Human Rights Commission, which are shockingly already four years old dating from 2004-2005. The total number of cases registered by the Commission in 2004-2005 was 74,401, and of these, 72,775 were complaints of human rights violations.⁸ Of the cases involving police officers disposed of after calling for reports from the concerned authorities, 24 related to disappearances, 1086 to illegal detention and arrest, 1213 to false implication by the police, 16 to custodial violence, 84 *fake* encounters, 6833 related to “failure to take appropriate action”, and 6488 “related to other alleged police excesses”.⁹ Of custodial deaths reported in 2004-2005, seven were reported in the custody of defence/paramilitary forces, and 136 in police custody.¹⁰ No information on the reports received (whether received at all) and further consideration and action taken by the Commission in these cases is provided in the Annual Report. The inherently limited powers and structural weaknesses of human rights commissions produce the same denial of justice as the mechanisms above.

The demand for police accountability is tremendously high, as it has always been – this is illustrated by the large number of complaints and their very serious nature. Moreover, the complaints give rise to important equality issues, such as police brutality towards vulnerable groups such as scheduled castes and tribes, women, minorities and the poor in general. On the face of it, India meets the democratic demand of multiple mechanisms for accountability, both within and outside the police. The internal disciplinary mechanisms within the police are handled by the police themselves with insufficient public involvement in the process. As a result, the system is not perceived to be independent. A process which is not open and does not follow principles of natural justice is always likely to be perceived as unfair or biased with the intention to protect the rank and file, no matter how objectively it is carried out. Besides the internal inquiry process, statutory remedies are also available to a victim. The police is an indispensable element of all stages of the criminal process, beginning with the registration of a First Information Report (FIR), an investigation, and then a prosecution. One is only too well aware that all across India, courts are slow, expensive and complex. The criminal justice system is mired in huge backlogs, lengthy delays at trial, as well as the more serious issues of acknowledged corruption. Victimised people are frequently

unable to access the courts and even when they can, they are defeated in their quest for justice because they cannot understand the substance or processes. Even where adequate structures and systems for dispensing justice are available, they are not used by the larger citizenry due to lack of knowledge of systems and procedures.

Independent of the police, there are numerous accountability bodies like the National and State Human Rights Commissions, the Scheduled Tribes/Scheduled Castes Commission, the Women's Commission and the Minorities Commission. Each of these bodies have specific mandates to look into violations of human rights, or negligence in the prevention of violations, by public servants. However there are serious weaknesses in these institutions. The National Human Rights Commission has made positive contributions in the past, but its powers (including the power to conduct investigations) have not been effectively deployed in relation to complaints against police officers. Clearly, there is no dearth of mechanisms but the absence of any demonstrable accountability indicates that these mechanisms fail in every way.

The courts have proven a powerful tool, but are often hampered by lack of evidence, and cases against police officers have to cross the additional hurdle of immunities offered under the Criminal Procedure Code, especially the protection under Section 197. The endemic problem of judicial delay continues to plague our system of justice.

Police Reform and Complaints Bodies

It is high time that critical questions regarding the conduct of police officers and their observance of human rights standards are seen as central to the evaluation of the police. Dedicated complaints bodies, established solely to inquire into complaints against police officers, can play this crucial role – but only if they are sufficiently independent and adequately resourced. Police reform debates in India have recognised the potential of complaints bodies, but not gone far enough to give them the independence they need. In the long list of recommendations for police reform in India, given by various official commissions and committees over several decades, a constant feature is a proposal for police complaints bodies. Since independence, four official commissions have debated and drafted extensive recommendations for police reform – all of them have suggested the creation of dedicated complaints bodies. The National Police Commission (NPC) produced eight reports, including a Model Police Act, between 1979 and 1981. In its first report, the NPC called for the setting up of a District Inquiry Authority in each district with powers to inquire into complaints as well as monitor the police handling of complaints. Both the Ribeiro Committee (1998-1999) and the Padmanabiah Committee (2000) called for District Police Complaints Authorities to be set up in every district. Each time, the government effort would entirely cease once the Committee reports were published. None of the recommendations were implemented.

In 1996, two former Director Generals of Police filed a public interest petition in the Supreme Court of India, asking the Court to order the central and state governments to implement the recommendations of the National Police Commission. A decade later in September 2006, the Court ruled that given the “gravity of the problem” and “total uncertainty as to when police reforms would be introduced”, it would issue “appropriate directions for immediate compliance”.¹¹ In its judgement, the Supreme Court reminded us that *“the basic and fundamental problem regarding police taken note of was as to how to make them functional as an effective and impartial law enforcement agency fully motivated and guided by the objectives of service to the public at large, upholding the constitutional rights and liberty of the people”*.¹² The Court condensed the NPC recommendations into seven directives for police 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. Despite the court order most states are dragging their feet and have been most reluctant to comply with this directive.

The Need for Dedicated Police Complaints Bodies

The sheer volume of complaints against the police, and the endemic lack of justice, is the compelling argument for the need for these bodies which can dedicate themselves to police accountability. There are larger arguments too. In countries that have embarked on extensive police reform, it has increasingly

been recognised that it is vital to establish a specialised agency responsible for proper investigation of complaints against police, in the larger interests of building public trust and better protecting human rights. South Africa and Northern Ireland provide two leading examples. In both jurisdictions, the creation of independent police complaints bodies was a major component of profound shifts in policing.

In 1999, the Independent Commission on Policing for Northern Ireland (often referred to as the Patten Commission) issued a report on the future of policing in Northern Ireland. The report contained 175 recommendations, to refashion the Royal Ulster Constabulary into a publicly acceptable police service. One recommendation was to strengthen the Police Ombudsman to make it “fully independent” in its job of investigating complaints against police officers. The Commission stressed:

We cannot emphasise too strongly the importance of the office of Police Ombudsman in the future policing arrangements proposed in this report. The institution is critical to the question of police accountability to the law, to public trust in the police and to the protection of human rights.¹³

Similarly, the Independent Complaints Directorate (ICD) was born out of the transition to democracy in South Africa in 1994 – 95, established in the new 1995 South African Constitution, and was also a recommendation of the South African Truth and Reconciliation Commission. In both places, the emphasis regarding the role of these bodies is that complaints of police misconduct and offences are investigated in an *effective and independent* manner.

Nigeria’s Police Service Commission is a unique hybrid oversight body. It would be one of the most powerful and autonomous civilian oversight institutions in the world, if strengthened and allowed to function as an independent organisation as laid down in the 1999 Nigerian Constitution.

The Commission has been in existence since 1960, but was awarded wider powers with a broader membership in the 1999 Constitution of the Federation. The membership of the Commission includes representatives of the human rights community, the organised private sector, women and the media, as well as a retired justice of a superior court, and only one retired police officer.

According to the Constitution, the Commission has the power to appoint persons to offices (other than the office of the Inspector General of Police) in the Nigeria Police Force, (NPF) and to dismiss and exercise disciplinary control over persons holding police office. Section 6 of The Police Service Commission (Establishment) Act 2001 further charged the Commission with the responsibility of formulating the guidelines for the appointment, promotion, discipline and dismissal of officers of the NPF; for identifying factors inhibiting and undermining discipline in the NPF; for formulating and implementing policies aimed at efficiency and discipline within the NPF; for performing such other functions as, in the opinion of the Commission, are required to ensure optimal efficiency in the NPF; and carrying out such other functions as the President may from time to time direct.

The power to dismiss and discipline individual police officers, coupled with the statutory obligation to establish an investigative department, provides the Police Service Commission with the ability and legal powers necessary to receive complaints on police conduct, investigate these complaints, and enforce any disciplinary measures it deems fit. Although it has no powers of criminal prosecution, it is able to dismiss officers and refer their cases for criminal prosecution where appropriate. It also has the powers to develop and implement policy for the police force, making a significant contribution to setting higher standards in the force as a whole.

The Commission is equipped to build public confidence in the police by acting to combat impunity. It has been designed as a channel for citizens to exercise some control over the

police – unprecedented in Commonwealth Africa. However, the Commission has not been able to realise its full potential as an effective external oversight body due to the lack of resources, the delegation of some of its powers to the police, the absence of an adequate legal framework, and the interference of politicians. There are tremendous lessons here for India and its Police Complaints Authorities – particularly in warning against a wasted opportunity!

In both South Africa and Northern Ireland, the complaints bodies report to the legislature every year through their annual reports. In their reporting, they use statistical data in interesting ways which shed light not only on details of the complaints received against police officers, but also on the quality of their own oversight.

In its annual reports,¹⁴ South Africa's Independent Complaints Directorate provides statistical data – on the number of deaths as a result of police action and in police custody (the police must report all these deaths to the ICD) and on the number of complaints lodged by members of the public with the ICD. The annual report also contains indicators on the ICD's institutional performance. These indicators include: "average number of days taken to finalise investigations", "percentages of investigation reports finalised", number of cases "substantiated", number of prosecutions recommended and convictions obtained.

The Police Ombudsman's annual reports contain comprehensive data including the full scale and details of all complaints handled by the Ombudsman for that year. The following information is fully disclosed in every annual report and is also available for free download on the Ombudsman's website:¹⁵

- Number of complaints received from the public.
- Number of complaints received on referral from the head of police or the Public Prosecution Service.
- Outcomes of cases investigated, which includes information on:
 - ▶ number of cases referred for prosecution with criminal charges;
 - ▶ number of criminal charges recommended in total;
 - ▶ nature and allegations of charges;
 - ▶ number of cases referred to police for disciplinary action;
 - ▶ ranks of officers subject of complaints; and
 - ▶ factors underlying complaints.

The Ombudsman's office keeps up a steady stream of information on complaints flowing to the police, at the level of each district command. Each month, the Ombudsman forwards statistical reports to the police detailing the numbers and types of allegations associated with each station within each district. Also every month, the office reports to local police commanders information on individual officers who have been complained of three or more times in a 12-month period, including the number of complaints, number of allegations and details of the allegations.

In Northern Ireland, equality monitoring is a legal obligation for all public authorities. Section 75 of the Northern Ireland Act, 1998¹⁶ requires designated public authorities to have due regard to the need to promote equality of opportunity between persons of different religious beliefs, political opinions, racial groups, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependants and persons without. Public authorities are obligated to report regularly, following precise guidelines laid down in law and policy, outlining how they propose to fulfil their obligations under Section 75. The Police Ombudsman collects complainant characteristics to fulfil its Section 75 obligations. Complainants are asked to fill out monitoring forms once they have made a complaint. Every annual report contains an equality monitoring section which provides details and breaks down the information collected on the gender, ethnic origin, marital status, sexual orientation, religious belief and employment status of complainants. Collecting this information on the complainants gives the Ombudsman an idea of who is accessing the office, where the need comes from, and importantly, which groups are not accessing the Ombudsman as much as they should. To truly recognise discrimination and bias inherent in the criminal justice system, this is an important

measure which India's authorities can absolutely replicate to suit India's own context. Taking guidance from both the South African and Northern Irish examples, India's Authorities have the opportunity to address both social injustice and police abuse by collecting, disaggregating and widely publishing data on:

- the profile of complainants: gender, religious group, community, level of education, employment status;
- patterns of discrimination (i.e. whether on grounds of gender, etc);
- Patterns of police abuse;
- outcomes of complaints inquired into (strictly including the time taken); and
- suggested policy responses, when relevant and necessary.

These broad categories can be further developed and refined as experience grows, but it will be an important first step to institutionalise the collection of this kind of critical information, analyse it, develop policy and wider responses towards the systemic problems, and also use the information to constantly improve the Authorities' functioning. With the needed political will from governments and the enthusiasm to innovate, these Authorities could bring unprecedented dimensions to their mandates.¹⁷

Aim of the Report

The aim of this report is to provide an assessment for 2008, the first year of operation of India's newly created Police Complaints Authorities. Primarily, this report will offer a broad analysis of legislative provisions, background information on the Authorities which are functioning on the ground, and highlight weaknesses in legislation and practice. The report will end by presenting specific recommendations for the improved functioning of these bodies.



State Complainece: A National Overview



No state government has established Police Complaints Authorities at both district and state level that fully comply with the Supreme Court's orders. The vast majority of states have established Authorities which only partially comply with the Court's directive in terms of composition, mandate and powers. A significant minority of states – Andhra Pradesh, Jammu and Kashmir, Karnataka, Madhya Pradesh, Mizoram, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal have completely ignored this directive.



State Compliance: A National Overview

Since 2006, 15 Police Complaints Authorities have been set up through either new state Police Acts, or Government Orders until a new Act is passed. These are in the states of Uttarakhand, Sikkim, Tripura, Rajasthan, Punjab, Kerala, Himachal Pradesh, Haryana, Chattisgarh, Bihar, Assam, Goa, Maharashtra and Orissa.¹⁸ CHRI has learned that PCAs are not necessarily functional on the ground, even if legislation has been enacted or a government order has been passed. In actuality, PCAs have been constituted and are functional (to some extent) in only five states - Kerala, Uttarakhand, Goa, Assam and Tripura.

Quick Overview of State Compliance

Authority	Established by	Set up on paper/ ground level	Presence of serving government officers	Powers Binding/ Not binding	Rules framed by	Office
Assam State Level	Police Act	Ground	Yes	Binding (May monitor DP*)	Authority	Temporary
Assam District Level	Police Act	Paper	No	Not binding	Silent	None
Bihar District Level	Police Act	Paper	Yes	Not binding (May monitor DP)	Silent	None
Chhattisgarh State Level	Police Act	Paper	No	Not binding	Silent	None
Gujarat State Level	Amendment Act	Paper	Yes	Not binding	Silent	None
Gujarat District Level	Amendment Act	Paper	Yes	Not binding (May monitor DP)	Silent	None
Haryana State Level	Police Act	Paper	No	Binding	Authority	None
Himachal Pradesh State Level	Police Act	Paper	Lok Ayukta to function as PCA	Binding	Silent	None
Himachal Pradesh District Level	Police Act	Paper	Yes	Not binding (May monitor DP)	Silent	None
Kerala State Level	Police Act	Ground	Yes	Binding	Silent	Temporary
Kerala District Level	Police Act	Ground	Yes	Binding	Silent	Temporary
Rajasthan State Level	Police Act	Paper	Yes	Not binding (May monitor DP)	Silent	None
Rajasthan District Level	Police Act	Paper	Yes	Binding (May monitor DP)	Silent	None
Sikkim State Level	Police Act	Paper	No	Not binding (May monitor DP)	Authority	None
Tripura State Level	Police Act	Ground	No	Not binding (May monitor DP)	Authority	Temporary

Authority	Established by	Set up on paper/ ground level	Presence of serving government officers	Powers binding/ not binding	Rules framed by	Office
Uttarakhand State Level	Police Act	Ground	No	Not binding (May monitor DP)	Authority	Temporary
Goa State Level	Government Order	Ground	No	Binding	Silent	Temporary
Maharashtra State Level	Government Resolution	Paper	Yes	Not binding	Silent	None
Maharashtra District Level	Government Resolution	Paper	Yes	Not binding (May monitor DP)	Silent	None
Orissa State Level	Government Notification	Paper	Lok Ayukta to function as PCA	Not binding	Silent	None

*DP: Disciplinary Proceedings

Composition

The Supreme Court expressly ordered that the Chairman of the state-level PCA be a retired judge of the High Court/Supreme Court chosen by the state government out of a panel of names proposed by the Chief Justice. 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. The composition was designed to ensure that members appointed would by and large be independent-minded individuals who would go about their work without fear or favour.

In practice, however, this direction has been systemically undermined by every state government which has enacted legislation or government orders establishing PCAs. All present members of PCAs across India have been appointed directly by state governments without exception. As these members are essentially political appointees, they will be beholden to the executive, and it is extremely unlikely that they will risk taking actions that may displease the government or the police. Some states, like Kerala subvert the compositional aspect of the Apex Court's direction to the extent that they have appointed *serving police officers* to their authorities. Others, like Gujarat, have appointed *sitting MLAs* as members of their district authorities. With such a composition, it is highly improbable that these PCAs will function as robust, independent oversight mechanisms as intended by the Supreme Court.

To add insult to injury, Orissa and Himachal Pradesh have vested the PCA's powers with its Lokpal and Lokayukta respectively, and Sikkim has charged its newly constituted PCA to also function as its State Human Rights Commission. These "innovations" totally flout the idea of PCAs being bodies that will look *solely* into cases of police misconduct.

Remuneration and Funding

The Supreme Court judgement envisioned that members of the Police Complaints Authorities would work full time and would be suitably remunerated for their services. Whilst most states which have passed legislation have provided for remuneration in their statutes, reality has shown that there has often been a long delay before members actually began receiving their salaries. In Goa, both members and staff waited nearly a year before they were paid, until which the Chairman kept the institution functioning with his own personal funds. Throughout the country, it appears that states have been reluctant to properly fund PCAs. This has led to them operating in conditions that are far from satisfactory. Almost everywhere, PCAs lack permanent offices and even basic facilities such as computers and telephones.

One of the surest ways to cripple an institution is to dry up its funding. In the statutes, no state government has clearly specified where the funding for PCAs will originate from within the state budget. State governments

across the country are in non-compliance of the Apex Court's order in letter and in spirit by delaying and/or denying adequate funding for their PCAs. It is no surprise that the PCAs are struggling to fulfil their onerous mandates and produce results. State governments have not given them the chance to succeed.

Mandates

The Supreme Court laid down a mandate for the Police Complaints Authorities in its 2006 judgement.¹⁹ The Court required each state government to set up a Police Complaints Authority at the state and district-level. The state-level Authority is empowered to look into allegations of "serious misconduct", which includes but is not limited to:

- death;
- grievous hurt; and
- rape in police custody.

The district-level Authorities are empowered to look into complaints which include:

- death;
- grievous hurt;
- rape in police custody;
- allegations of extortion;
- land/house grabbing; and
- any incident involving serious abuse of authority.

The Court laid down that the jurisdiction of the state and district level Authorities are tied to the *ranks* of officers being complained against. The state-level Authority will look into complaints against officers of the rank of Superintendent of Police and above. The district-level Authority will inquire into complaints against officers of the rank of Deputy Superintendent of Police and below. Importantly, in relation to their mandate, the Court laid down that the recommendations of the Complaints Authorities at both the state and district levels "for any action, departmental or criminal, against a delinquent police officer shall be binding on the concerned authority".

The Court provided a model. In the states where Complaints Authorities have been established, the trend is that states have instituted variations of the Court's formulation for Authorities' mandates, in terms of the Authorities' jurisdiction for both the nature of complaints and ranks of officers. It is important to note that the Court did not lock down the definition of what constitutes "serious misconduct" or lesser "misconduct", leaving room for the possibility of expansive interpretations of the law by Authority Chairs to cast as wide a net as possible over all manner of police misconduct (in just one example, for instance, dereliction of duty). In fact, a few states do reflect such minor innovations.

Widening the Net

The states of Uttarakhand, Tripura and Assam have experimented slightly with the Court's formulation. In these states, the Complaints Authorities can only inquire into complaints of "serious misconduct". The definition of "serious misconduct" is considerably wider, and thereby, the Authorities in these states can receive a greater variety of complaints. Also, and notably, the Authorities in these states have the power to monitor the status of police internal disciplinary inquiries or action, for complaints of "misconduct" which the Authorities themselves do not have jurisdiction over.

In terms of "serious misconduct", the Uttarakhand Police Act, 2007²⁰ expands the definition to include (in addition to death, grievous hurt, and rape in custody):

- i) arrest or detention without following the due process of law;
- ii) violation of human rights; and
- iii) corruption.

Further, the Act prescribes that the Uttarakhand Police Complaints Authority can inquire into any case that in “the opinion of the Authority” is “fit for independent inquiry”.

The 2007 Tripura Police Act mirrors these sections, verbatim.²¹

In Assam, the mandate is also widened to include:²²

- i) arrest or detention without due process of law;
- ii) forceful deprivation of a person of his rightful ownership or possession of property;
- iii) blackmail or extortion; and
- iv) non-registration of First Information Report.

Accessibility

The Supreme Court explicitly ordered that Authorities be constituted at both district and state levels. This is a crucial element in India’s context, due to the sheer size and physical distances in the country. In this regard, the Court’s reasoning was that people will have easier access to a complaints body in their district, and would not be forced to travel to the state capital. Unfortunately, most states have taken the view that constituting district-level authorities was optional and not a mandatory part of the Court’s order. Till date, Kerala remains the only state to have actually established functioning PCAs at the district level. Some states, such as Sikkim, Tripura and Uttarakhand have blatantly ignored the Supreme Court judgement by not mentioning district-level authorities in their legislation. Several other states have inserted provisions for district-level authorities in their new police statutes but have done nothing to actually establish them on the ground.

Certain states have also created unnecessary hurdles that complicate the process and discourage persons from accessing PCAs. Assam, Chhattisgarh, Orissa and Haryana require a sworn statement against police personnel to be submitted by the complainant along with the complaint. Orissa has gone even further by requiring every complaint to be accompanied with a court fee of Rs. 50, if the complaint involves an officer of the rank of Assistant Superintendent of Police and above, and Rs. 25, if the complaint concerns any other police officer.²³ Himachal Pradesh even threatens complainants with a fine of up to Rs. 25,000 if the complaint is found to be “intentionally false, vexatious or malafide”. It is difficult to see how these provisions help the cause of police accountability which the Apex Court’s order was intended to bring about. Indeed, these provisions are sure-fire ways for state governments to intimidate potential complainants from accessing PCAs.

Powers

◆ *Taking Cognisance*

All Authorities that have been set up have the power to take cognisance of complaints made by the victim or someone complaining on their behalf. Some states, such as Assam, Sikkim, Tripura, Himachal Pradesh and Haryana, also allow the National Human Rights Commission/State Human Rights Commission to make complaints. In addition, Assam, Haryana, Himachal Pradesh and Rajasthan provide for their complaints authorities to initiate inquiries *suo moto* (on their own initiative).

◆ *Procedural Powers*

All states have vested their Authorities with the powers of a civil court trying a suit under the Code of Civil Procedure, 1908. As such, whilst carrying out their inquiries, they have the powers of summoning and enforcing the attendance of witnesses, receiving evidence of affidavits, requisitioning any public record, etc. Despite these powers on paper, however, the Authorities’ work has been severely hampered by the fact that none of them have been provided with their own investigating staff till date. Goa is an exception, as the PCA is explicitly authorised to utilise the services of retired investigators. To make matters worse, the funding crunch prevents Authorities from recruiting independent investigators on their own. This is despite the fact that the Supreme Court’s judgement clearly states that authorities may utilise the services of retired investigators from the CID, Intelligence, Vigilance or any other organisation. Without independent

investigators, authorities face grave limitations on the extent to which they can actually ascertain the facts of cases before them.

◆ *Power to Frame Rules*

Being the nascent institutions that they are, PCAs face a pressing need to establish formal rules of procedure detailing how they will deal with complaints received. In most cases, state governments have reserved the power to frame these rules but have yet to notify them. However, even where governments have vested the power to frame rules with the PCAs themselves, such as in Assam, Haryana, Sikkim, Tripura and Uttarakhand, no rules have been framed. An absence of established rules of procedure means that proceedings occur in an ad-hoc and haphazard manner based on the whims and fancies of the Chair, making the entire process opaque and confusing for all parties involved. It is an irony that Authorities intended to bring about accountability have not yet framed rules despite functioning for over a year.

◆ *Recommendations*

After completing their inquiries, most PCAs have the power to either register an FIR if an offence is made out, or to initiate departmental action if a breach of discipline is found. Sikkim and Tripura go further in providing their PCAs with the power to direct the government to pay monetary compensation to the victims of police misconduct.

The role of most PCAs comes to an end after submission of their recommendations to the concerned authority. However, Assam, Tripura and Uttarakhand allow their PCAs to call for periodic reports from the Director General of Police (DGP) to monitor the progress of disciplinary inquiries that they have initiated, and communicate to the DGP periodically to expedite the proceedings of such an inquiry. The DGP has no power to refuse these reports. In cases where the complainant informs the Authorities in these states of any inordinate delay in or dissatisfactory outcome of the disciplinary proceedings, the Authorities have the power to follow up on the matter. They can ask the DGP to report on the same, recommend further action or even order a fresh inquiry. Some acts also go on to state that the PCA can point out trends of police misconduct and even make recommendations for more accountability.

These are welcome initiatives and cast a positive obligation on the PCA to regularly call for such reports. If this reporting becomes regular practice as it should, it can go a long way in documenting observed trends in delay and inadequacy of departmental inquiries, frame recommendations about individual cases, and suggest guidelines for systemic improvements that must be acknowledged and acted upon.

Toothless Tigers?

Dilution of PCAs' Power to Recommend Binding Action Against Police Officers

The Supreme Court judgement made it clear that the recommendations of the Authority against delinquent police officers shall be binding. With the honourable exceptions of Assam, Goa, Himachal Pradesh and Kerala, most states have watered down the powers of their Authorities considerably, by not making their recommendations binding.

Without binding powers, state governments and the police are free to disregard the recommendations of the Authority whenever they find it convenient to do so. PCA reports recommending action against police officers who have political connections will never see the light of day. As such, these "toothless" PCAs will not bring about accountability within the police and will certainly not be able to change the culture of impunity that currently exists within the force.



The Working Authorities



CHRI's research reveals that it is only in the states of Uttarakhand, Goa, Assam, Tripura and Kerala that Police Complaints Authorities have been established, staffed and are receiving and inquiring into complaints – thus, these are the only *functional* Authorities. This section contains brief descriptive information on the Authorities in these states, particularly around membership, offices and infrastructure, funding, tenure and outreach. The information was collected through a combination of phone and live interviews with Authority Chairpersons, correspondence with the Authorities and requests made under the Right to Information Act.



The Working Authorities: Uttarakhand, Goa, Assam, Tripura and Kerala

CHRI's research reveals that it is only in the states of Uttarakhand, Goa, Assam, Tripura and Kerala that Police Complaints Authorities have been established, staffed, and are receiving and inquiring into complaints – thus, these are the only *functional* Authorities. This section contains brief descriptive information on the Authorities in these states, particularly around membership, offices and infrastructure, funding, tenure, and outreach. The information was collected through a combination of phone and live interviews with Authority Chairpersons, correspondence with the Authorities, and requests made under the Right to Information Act.

The Supreme Court established certain minimum standards for the Complaints Authorities in its 2006 judgement. At this juncture, it is useful to reiterate those standards, to assess what has been established on the ground:

- Membership in the Authority must be a *full time* occupation.
- The members of the Authority should be provided *suitable remuneration*.
- The members of the Authority can use the assistance of *regular staff* to conduct field inquiries. Such staff can be composed of retired investigators from the Criminal Investigation Department, Intelligence, Vigilance or any other organisation.
- The recommendations of the Authority for any action, both disciplinary and criminal, shall be *binding*.

To reiterate, in jurisdictions outside India where independent oversight mechanisms have been set up, the emphasis in the role of these bodies is that complaints of police misconduct and offences are investigated in an *effective and independent* manner. As independent agencies, they have the discretion to decide which cases they investigate, and the bulk of complaints are still investigated by the police – though it is a general rule that those complaints classified as “serious” will be investigated by the oversight bodies. All these bodies have investigative duties and powers; and death as a result of police action or in police custody are considered “serious” complaints in all jurisdictions.

In terms of composition, again the general rule is that the head of the agency will be appointed by government and the rest of the staff is *recruited*, such as in the private sector. These agencies do not simply provide posts for government officials to fill – they are full time, highly specialised and professional bodies that depend on technical and legal expertise to properly and fairly investigate complaints of police misconduct. Across all these jurisdictions, the number of staff in these bodies runs into the hundreds.

Uttarakhand

The Uttarakhand Police Act, 2007 establishes a state-level PCA, with a Chair and four other members. The Act does not establish any Complaints Authorities at the district level. Though drafted in 2007, the Police Act was passed by the State Assembly only in January 2008. The Police Complaints Authority was formally established in September 2008. Before that, the Authority functioned under a government order and was headed by a retired Indian Administrative Service (IAS) officer.²⁴

Membership

The Uttarakhand Police Act, 2007 stipulates that all members must demonstrate a “credible record of integrity and commitment to human rights”.²⁵ Further, the Act requires that at least one member has to be a retired police officer not below the rank of Inspector General of Police, at least one member must possess “good knowledge of law”, at least one member must be a woman, and there cannot be more than one police officer as a member. Appointments to these Authorities will rest in the hands of the state government. At present, the Authority is headed by a retired High Court judge, and consists of a retired police service officer, a retired IAS officer, a retired army officer and a woman social worker.

Members:

Justice Shambu Nath Srivastav (Chair): retired High Court judge

P.K. Joshi (member): retired IPS officer

Madan Singh (member): retired IAS officer

V.K. Aggarwal (member): retired army (Brigadier) officer

Dr. Kusum Nautiyal (member): social worker

On paper, the government has ensured that the Act's requirements are met. But it can be argued that even if there is not a second police officer, including a retired army officer in the Authority introduces an abundance of security forces personnel to the Authority, which seeks to destroy the proviso of *not* more than one police officer.

Tenure

The Act gives a fixed tenure of three years to each of the members.²⁶

Outreach

Immediately after assuming office, the Chairperson held a press conference to publicise the creation of the Authority, and appealed to people to submit their complaints against the police. This was the single lone attempt at raising awareness about the Authority.

Offices and Funding

The Authority is housed in a temporary office in the state capital, Dehradun. The Chair is satisfied with the funding for the Authority, and informed CHRI that the state budget has delineated funds for the Authority. In fact, the Authority returned unused funds to the state government for the present financial year. The Chair has requested additional staff as he foresees a steadily increasing caseload.

Mandate

The Authority has the mandate to look into allegations of "serious misconduct" against police personnel. Serious misconduct is defined as death in police custody; grievous hurt;²⁷ rape or attempted rape.²⁸ The Authority also has some unique powers of inquiring into allegations of human rights violation, corruption and arrest or detention without following the law. Since illegal arrest and detention is amongst the largest complaints received against the police, it is a welcome step that the Authority is mandated to look into such complaints. Besides these, there are several innovative provisions which can actually realise the mandate of the PCA to ensure an accountable police. The Act requires the DGP to submit periodic reports on the status of departmental inquiries into allegations of misconduct. Based on these reports, the Authority can give appropriate advice to the state government to conclude the inquiries at the earliest and also suggest guidelines for the state police to prevent misconduct. If these powers, even though recommendatory, are intelligently and effectively used, it will go a long way in making the Authority meet its mandate.

Powers

The Authority has been given only recommendatory powers where it is obliged to submit its finding to the state government recommending suitable action.²⁹

Goa

The state-level Police Complaints Authority was established through a government order dated 20 April 2007, and met for the first time on 12 May 2007.

Membership

The government order that set up the Authority directly named the persons that were to sit on it. The Order does not go into any specifications about who will/can be members. All members have been

directly selected by the government. The Authority is headed by a retired High Court judge and consists of three other members who are all retired government servants.

Clearly, besides the Chair, none of the members have a legal, police, or human rights background. This lack of legal or human rights expertise does not sit well with the demands of the Authority's mandate, which is focused only on allegations of serious misconduct, involving death, grievous hurt, or rape in police custody. The government order provides that the Authority may depute retired investigators from the Criminal Investigation Department (CID), Intelligence, Vigilance, or any other department to conduct fieldwork and investigation.

Members:

Justice Eurico De Silva (Chair): retired (Bombay) High Court judge

Norbert Morares (member): retired as Director, Accounts Department

Prof. Shantkumar Bhat (member): retired college professor

M.G. Naik: retired as assistant Director, Statistics and Planning Department

Tenure

Tenure is not mentioned in the government order. The Chair says the informal arrangement is that members' tenures are subject to notice of one month from either side. The Chair also shared that the government did not seek the agreement of members to actually take up their posts after they were appointed. They were notified of their appointments through letters, and were thereafter expected to start work immediately.

Outreach

The members confirmed that there was little awareness amongst the public about this body. From the few complaints that the Authority had received, none were from the weaker sections of society. According to the members, this was a clear indication that people were generally not aware of its existence.

Offices and Funding

When the Authority was first set up, it was given a small flat as an office, three policemen and a secretary. There were no telephones and no computers. The Chair shared that it took over a year to get the current facilities, which are much better. The Authority has been moved to a better office space, but is still short on basic infrastructure such as sufficient desks.

The clerical and secretarial staff was not paid by the government for the first 7-8 months of functioning. The Chair who was anxious that staff did not leave, paid them from his own pocket. The staff has increased substantially since then. At present, the Authority has six clerks, three peons and one sweeper. Three clerks and two peons are working on a contract basis. The Authority also has one secretary and one superintendent who are also working on contract. The Authority does not have funds to hire retired investigators from CID, Intelligence and Vigilance as provided in the government order. The Chair feels investigators are necessary for the better functioning of the Authority.

Hard Times Ahead

Times were hard for the fledgling Goa Authority which was crippled from its inception by a lack of resources and funding. As one of the members, Mr. Naik, explained, the Authority was hardly publicised and was treated as an "unwanted child" by the Goa government.

Things have not been smooth for the Authority even after a year of its existence. Members informed us that they rarely received complaints from the weaker sections of society because

of a lack of awareness and the fact that the police have made an active effort to discourage complaints from being filed. Indeed, it was reported that some of the complainants have been intimidated by the police who have threatened them with “death by encounter”.

The Goa Police have also often refused to cooperate with the Authority. Although the DGP was initially very cooperative, he later sent a complaint to the Chief Secretary that was leaked to the press. In this letter, he alleged that the Authority was “humiliating, summoning and parading” police officers and thus badly damaging the morale of his police force. After this, police officers stopped reporting to the Authority’s hearings and said that they would conduct their own inquiries on the complaints. The Chairman felt that their intention was to reduce the Authority to powerlessness. Justice De Silva informed us that he wrote to the High Court discussing this state of affairs. The High Court, in October 2008, took *suo motu* action and issued one civil and two criminal contempt proceedings against the DGP. As a result, the police issued an apology and policemen have recently started appearing again before the Authority.

Goa’s case is illustrative of the struggles faced by newly constituted Police Complaints Authorities across India. With governments who have only reluctantly acquiesced to establishing them and police who are openly hostile to them, Authorities often lack the funds and powers required to function as effective accountability mechanisms. However, Goa also highlights how a determined and dedicated Chairperson and membership can single-handedly persevere and ensure some degree of cooperation from both the government and the police.

All these efforts of the Chairman, however, may yet be in vain. Faced with an Authority that is asserting itself, the Goa government has decided to nip it in the bud by introducing a new Police Bill in the Assembly that transfers the power of the Authority to the Lokayukta (Ombudsman). As there is presently no Lokayukta in Goa, this appears to be a convenient way for the government to undermine the Supreme Court’s orders and do away with the Complaints Authority as an institution altogether. If the bill is passed as is, the hard-earned efforts of the Authority in bringing a small modicum of accountability within the Goa Police will be reversed.

Mandate

The Authority has the mandate to look into complaints of serious misconduct which would include death, grievous hurt or rape in custody. However, the Chairman stated that he has interpreted the government order in such a way so as to empower him to take cognisance of *all* cases of police misconduct.

Powers

The Authority has been given binding powers and the state government is obliged to follow the recommendations given by the Authority and take appropriate action.

Goa Statistics: A Cause for Concern

Through a Right to Information request, we discovered that the Goa Authority had received 95 complaints between April 2007 and January 2009. Of these, the Authority has disposed of 47 complaints, all but one of which were closed due to “lack of substance in the complaint”. Only in one case was a complaint report submitted to the government with direction to institute disciplinary proceedings against the concerned police officer at the earliest. The nature of the complaints fell under the categories of non-registration of FIRs, serious abuse of power in police custody and land/house grabbing. There are no available documents which allows the public to ascertain how these decisions were arrived at.

Assam

The Assam Police Act, 2007 was passed in August 2007 establishing both state and district level Police Complaints Authorities. A state-level Police Complaints Commission began functioning in January 2008, but district-level bodies have not yet been constituted.

The Assam Act has a provision which is loaded against a complainant or victim. If a complaint is found to be false or vexatious the Authority has the power to levy a fine on the complainant. The amount of such fine is not specified, but it will act as a clear disincentive for persons already afraid of complaining against the police. It is unlikely that a victim would put himself at the risk of not only complaining against the police, but also taking the risk of having to pay a fine in case his complaint does not meet the required standards of satisfying the Authority on its veracity. Such provisions would ensure the failure of the Authority in terms of realising its mandate.

Membership

The Assam Police Act sets out the composition of the Commission, which “shall have a Chairperson and three members with a credible record of integrity and commitment to human rights”.³⁰ The members are to include a retired police officer of the rank of Director General of Police or Additional Director General of Police, a person with a minimum of 10 years experience either as a judicial officer, public prosecutor, practising advocate, law professor or a person of repute and standing from the civil society, and lastly a retired officer with experience in public administration, not below the rank of Commissioner and Secretary to the state government. At least one member is to be a woman, and not more than one shall be a retired police officer.

Members³¹:

Justice D.N. Chowdhury (Chair): retired Guwahati High Court judge

Shri D.N. Dutt (member): retired IPS officer (former DGP Assam)

Shri D.N. Saikia (member): retired IAS officer (former Commissioner and Secretary to the government of Assam)

At present, there is no woman member, and no person with legal expertise or representative of civil society.

Tenure

The Act gives the Chairperson and members a fixed tenure of three years.³²

Outreach

The government has not made any effort to make the people aware of the Commission. Despite that, between April and December 2008, it received 70 complaints.

Offices and Funding

The Commission is funded by the state government under Grants-in-Aid. It is situated in a temporary office, even after more than a year of its functioning. It has a staff of five people, including a secretary. It does not have resources to hire independent investigators and depends on the government (i.e. police) for conducting inquiries.

A letter received by CHRI in March 2009 from the Secretary of the Commission, reveals that the Commission is “yet to be equipped with the required infrastructure. The state government has been unable to provide suitable and permanent office space to enable the Commission to discharge its responsibilities in an efficient and smooth manner. The Commission has been consistently beset with basic infrastructure problems whether it be the question of making available suitable office accommodation for the Commission or passing of a regular budget for its various administrative and other functions or the inordinate delay being experienced in the matter of posting of secretarial and investigating staff.”

Mandate

The Commission has the mandate to look into complaints of serious misconduct against the police either *suo moto* or on receiving a complaint. The definition of serious misconduct has been widened to include acts ranging from death, rape, attempted rape, molestation, grievous hurt in police custody, to the more frequent acts of non-registration of FIRs, illegal arrest and detention, blackmail and forceful deprivation of property.

Powers

The Commission has to submit a report of its findings to the DGP and the state government. It can make a direction to either register a case against the concerned officer or initiate a departmental inquiry. On the face of it, it appears as though the Commission has binding powers. However, the Act also introduces a provision which requires the Commission to review its findings if the DGP submits any additional information which has some material bearing on the case.³³

Moreover, the Act gives powers to the Commission to monitor the progress of the departmental inquiry and issue appropriate advice to the police department for expeditious completion of inquiry, if the inquiry is getting unduly delayed. This is a positive step, and if the Commission were to exert these powers, they would be able ensure that inquiries which are generally perceived to be closed and unfair, do in fact become a redressal mechanism for aggrieved persons.

Tripura

The Tripura Police Act, 2007 was passed in April 2007. The Act establishes a state-level Police Complaints Commission, but no district-level bodies. The Commission was established in June 2008.

Membership

The Act prescribes that the Commission be made up of a Chair and four other members. In terms of composition, the Act stipulates that the Commission is to be headed by a retired High Court judge, a retired police officer not below the rank of Inspector General of Police, two "persons of repute and standing from civil society", and a retired government officer, not below Secretary/Commissioner level, with experience in public administration. Further, at least one member is to be a woman and not more than one member is to be a police officer.

Members

Justice D.P. Kundu (Chair): retired Kolkata High Court judge

N. Rajendran (member): retired IPS officer

Champa Das Gupta (member): former Chair, Tripura Commission for Women

Deepak Kumar Choudhry (member): former Registrar, Tripura University

Vimal Bhoumik (member): retired IPS officer

There are two retired police officers as members, which defies the proviso laid down in the Tripura Police Act, 2007.

Tenure

The Act gives the Chair and all members a fixed term of three years.³⁴

Outreach

The Acting Chairperson mentioned that they have received only seven complaints so far. He states this is primarily because of non-publicity of the Commission. The government says that they have sent letters to officials in the district administration, but a member, D.K. Chaudhary, says that this has not made an impact. He is frustrated because instead of working, "members chat, read newspapers and books" and leave.

Offices and Funding

The Commission's office remains in a temporary accommodation. They have two cars – one for the Chair and one for the other members. They claim that they want to visit police stations as part of their work. However, the lack of transportation facilities bars them for doing so.

The Commission has three clerks working on contract, and other administrative staff (three lesser qualified clerks, and six Group D employees have been co-opted from the government.) There are no funds to hire independent investigators.

Mandate

Like most other Authorities, the Tripura Commission can inquire into complaints of serious misconduct which include death, grievous hurt, rape or attempted rape in custody. They have also widened their mandate by having the powers to look into the most frequent complaints of corruption, illegal arrest and detention, and human rights violations.

Here again, as mentioned above, the Commission can call for periodic reports from the DGP on the status of departmental inquiries and based on those reports can suggest that inquiries be conducted speedily. It can also lay down general guidelines for the state police to prevent misconduct. These provisions are comparable to some of the provisions that exist and are being followed in jurisdictions where such bodies are working successfully. However they will work only if the members understand the value of these bodies in realising the goal of accountable and democratic policing.

Powers

The Authority has to communicate its findings to the DGP to either register an FIR or initiate a departmental inquiry. However, like in Assam, there is a provision which allows the Authority to review its decision on receiving additional information from the DGP. The Authority can also recommend the payment of monetary compensation by the government to the victim.³⁵

Kerala

The Kerala Police (Amendment) Act, 2007 establishes Police Complaints Authorities, at both state and district levels. It must be noted here that the 2007 Act does not replace the original Kerala Police Act, 1960; it only amends the 1960 Act to create the institutions for police reform as directed by the Supreme Court in its 2006 judgement in *Prakash Singh v Union of India*.

State and district-level Police Complaints Authorities began functioning in November 2007. There is one state-level Police Complaints Authority, seven district level PCAs for southern Kerala, and seven district -level PCAs for northern Kerala – covering all 14 districts of the state.

Membership

The State Authority

The 2007 Act holds that the state-level Authority shall consist of the following members:³⁶

- A retired High Court judge as Chair.
- A serving officer of the rank of Principal Secretary to the state government.
- A serving officer of the rank of Additional Director General of Police.

Having high ranking serving officers both from the IPS and IAS and knowing the power and influence such officers hold negates the very intent and purpose of setting up these bodies. Every façade of an independent body is lost by including these members as even their selection lies in the hands of the state government.

Justice K.K. Denesan, a retired judge of the Kerala High Court, is the Chair of the state-level Authority, and the other two members are the serving officers indicated above.

The District Level Authorities

Justice N. Mohandas (retired district court judge) is the chair of the southern districts' Authorities, and Justice Nissar (also a retired district court judge) is the chair for the northern districts' Authorities. At present, CHRI can only provide detailed information on the southern district Authorities, as Justice Mohandas in particular has provided considerable information.

Justice Mohandas informed us that in two of his districts, Ernakulam and Trivandrum, there are four PCA members, not just three. In these two districts, the Commissionerate system is followed and thereby, the Police Commissioner is also a member of the PCA. In terms of membership, it must be noted that the Kerala model diverges significantly with the Supreme Court directive. The Court laid down that the PCAs are to function on a full-time basis. Yet the majority of PCA members, both at the state and district level, are serving officers, leaving them little time for their responsibilities as PCA members. There are *no* independent members that are not wearing the government hat. Having three high ranking officials – the Collector, the Commissioner and the SP is in clear violation of the Supreme Court order and probably also in clear violation of principles of natural justice.

Currently the district PCAs meet in the office of the District Collector as they have no office space of their own. The Secretary to the Collector functions as the PCA Secretary in each district. At present, CHRI has the members' names for only three of the southern district PCAs, and is in the process of collecting the rest for all the districts.

Members:

Ernakulam:

Justice N. Mohandas (Chair): retired district court judge

Dr. M. Beena (member) : District Collector

Mr. Manoj Abraham (member): Commissioner of Police, Kochi

Mr. P. Vijayan (member): Superintendent of Police, Aluva

Thiruvananthapuram:

Justice N. Mohandas (Chair): retired district court judge

Mr. Sanjay Kaul (member): District Collector

Mr. Ravada Chandrasekhar (member): Commissioner of Police, Thiruvananthapuram

Mr. P.K. Madhu (member): Superintendent of Police

Kollam:

Justice N. Mohandas (Chair): retired district court judge

Mr. Shajahan (member): District Collector

Mr. Ajithkumar (member): Superintendent of Police

Offices and Funding

At present, the district PCAs function with discretionary funds from the Collector's office. None of the PCAs in Kerala till date have received any independent funding from the government. This not only affects the functioning of the Authority's members, but also the victims and witnesses who come to depose before a PCA. Justice Mohandas told us that he has requested the government to provide at least a stenographer and a driver-cum-peon for the district PCAs. No heed till date has been paid to this request.

Outreach

Justice Mohandas said that he ordered all Station House Officers in the seven southern districts to fix specific PCA information boards in every police station, listing the functions and details of the Authorities. We asked if this order had been implemented in all police stations, and Justice Mohandas said very confidently that it had. In February 2009, a CHRI team visited Palarivattom Police Station (which

proclaimed itself a "people-friendly police station") in Cochin city to check if a PCA information board was up. There was no board. The Station House Officer (SHO) was not in the station at the time, but none of the other officers knew anything about the PCAs, much less about the information board. The policemen kept pointing to a board on anti-corruption, thinking it was what we were referring to. If the police themselves had no idea about the existence of the PCAs, then the public would know nothing.

To increase awareness of the PCAs among the police, Justice Mohandas told us that announcements are regularly made through the police wireless system, to give information about the PCAs to the police and to communicate to them that strict action will be taken against erring officers. At Palarivattom Police Station, an Assistant Sub-Inspector (who happened to be the police writer for that station) told us that he remembered hearing the announcements in November 2007 (when the PCAs first started functioning), but not since then.

Observed General Trends

Almost all the established Authorities are under-resourced, as there is no fixed allocated budget for their functioning. Tenure for members is fixed only in seven states (Uttarakhand, Assam, Haryana, Himachal Pradesh, Maharashtra, Sikkim and Tripura); none of the Authorities have independent investigators; and all of them are still functioning out of temporary offices. The greatest problem though is that all the Authorities are under-worked due to little effort towards raising public awareness about their existence, mandate and function. This clearly indicates that there is almost no genuine concern about the mounting complaints against the police and the total lack of accountability in the police force. Political will to make complaint forums available to the aggrieved public seems to be completely absent.

The main purpose of setting up civilian oversight mechanisms is to ensure that complaints against the police will not be influenced in an untoward or biased manner, particularly by the Executive. Independence is determined by the extent to which the body is at arms length from the Executive and the police. Independence and credibility are also improved when an oversight body comprises leadership and staff drawn from outside government and police. As observed in most states, the selection of members lies in the hands of the state government. The retired members are almost always from within the police and Executive. In some states, there are even serving members on the Authority. This is a lost cause. The closed processes and narrow pool from which Chairpersons and members are chosen, will seriously erode perceptions of impartiality, and policing will continue to be seen to be particularly malleable at the hands of the political Executive.

As stated above, most Authorities are starved of funds. There is no fixed allocated budget for their functioning. No permanent offices have been set up for them and most are still functioning out of temporary offices. None of the Authorities have independent investigators. Even with a plethora of powers, oversight bodies are constrained in their ability to hold the police accountable without sufficient financial resources. Shortage of funds is a serious limiting factor.

Several Authorities have members that do not have the requisite skills, experience or background to be on such a body. Lack of skills can seriously hamper the work of these oversight bodies. In turn, they will not be able to handle complaints if they have to rely on serving investigators from within the police force.

Experience shows that even independent oversight agencies with sufficient resources and strong investigative powers have proven ineffective, if the police and governments routinely ignore their recommendations. Even where these agencies cannot make binding decisions, impact is felt if they have strong powers to monitor police implementation of recommendations and to call for explanations from government when recommended remedial steps or reforms are not acted upon. If these bodies are to be given only recommendatory powers then they, like other existing bodies, will be reduced to toothless institutions, causing public hopes to obtain effective remedies to be quickly lost.

COMPLAINT

He was constantly subjected to beating and ill treatment while
in custody. This illegality



The Complaints Process

Enquiry

examination

recommendation

While each allegation of misconduct raises unique issues, it is crucial for Complaints Authorities to lay down a thorough standardised process for handling all such allegations. A definite process outlining the journey of a complaint can only assist Authorities to improve their functioning and streamline the process of deciding on complaints, leaving little scope for allegations of bias or lack of transparency within the Authorities.

Amongst all the Complaints Authorities that have been set up, none has a definite complaints process drawn up which is available in writing. It is left to the Chairperson and members to decide what the fate of each allegation will be.

The Complaints Process

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The Working of Kerala's Southern District Authorities

It is of vital importance to document the working of the Complaints Authorities, particularly to capture the details of the journey of a complaint once it reaches an Authority. The step-by-step inquiry procedure used by Kerala's southern districts' Authorities is described below. The information was collected through two in-depth interviews with the Chair, Justice N. Mohandas. It must be stated here that this procedure is not laid down in any guiding document; it has simply become the regular practice of the Authorities under Justice Mohandas after the experience of dealing with complaints for more than a year. It is imperative that this procedure is institutionalised by drafting it into an official manual.³⁷

As stated above, Justice N. Mohandas is the Chair of seven district PCAs, covering southern Kerala.³⁸ He is also a member of an Advisory Board (a quasi-judicial body that monitors preventive detention cases in Kerala), and due to his workload, he has designated Thursday, Friday and Saturday as the days of the week he devotes to the PCA.

According to Justice Mohandas, each PCA meets once every month. The meetings last an entire day. Every stage of an inquiry is carried out at each meeting. He clarified that the PCAs would be able to meet more often only once they have independent staff.³⁹

Before going into procedure, it is important to highlight the mandates of the Complaints Authorities in Kerala, which are laid down in Section 17(E) of the Kerala Police (Amendment) Act, 2007. Kerala has both state and district-level Authorities, and their mandates differ in terms of the ranks of officers, and the nature of complaints they each have jurisdiction over. The state-level Authority is to look into:⁴⁰

- (i) complaints of grave misconduct of all types against police officers of and above the rank of Superintendent of Police; and*
- (ii) serious complaints against officers of other ranks relating to molestation of women in custody or causation of death to any person or infliction of grievous hurt to any person or rape.*

In effect, this mandate prescribes that the state-level Authority has jurisdiction *over the entire rank structure* of the Kerala Police for "grave" and "serious" complaints. Our interviews clarified that "officers of other ranks" was being interpreted in practice as officers of *all* other ranks. So while the 2007 Act lays down that the district-level PCAs shall "look into complaints against police officers of and up to the rank of Deputy Superintendent of Police"⁴¹ – serious complaints of death, grievous hurt, rape or molestation in custody by officers even in these ranks, starting from constable, were being forwarded to the state-level Authority. This is important to note, as it diverges from the Supreme Court direction on the jurisdiction of the state-level Authority.⁴² It is unique to Kerala, and places a wide responsibility on the state-level Authority. It is also relevant to note in terms of the mandate that the 2007 Act does not define what constitutes "grave misconduct" or how far "of all types" can stretch. Similarly, the mandate of the district-level PCAs is silent on the precise nature of complaints that can be sent in against officers of and up to Deputy Superintendent. Interestingly, the interviews revealed that Justice Mohandas is interpreting this loose mandate as widely as possible, by taking on a diverse variety of complaints ranging from atrocities such as ill-treatment in custody, and illegalities such as improper or biased investigation.

Main Duty

In a useful articulation, Justice Mohandas spelled out that the main duty of PCAs is “to collect evidence to pass to the disciplinary authority”. Essentially, the PCA conducts a preliminary inquiry to put forward “*prima facie*” grounds for the start of either a police disciplinary inquiry, or the registration of a criminal case, or both (which is possible).

The Inquiry Procedure

At the interview with Justice Mohandas we learned that there are three major steps that make up the inquiry into a complaint.

Step 1:

Reading Complaints, Police Preliminary Inquiry

The first step adopted by Justice Mohandas' Authorities is to depute an officer of their choice (it has mainly been Deputy Superintendents of Police) to conduct a *prima facie* inquiry. S/he carries out steps such as investigations at the scene, talking to witnesses, and the victim. S/he is given *one month* (until the next PCA meeting, essentially) to carry out this preliminary inquiry and submit a report to the PCA. The report is to contain:

- the allegations made;
- evidence gathered after the examination of the victim, witnesses, the implicated officer and other officers; and
- his/her own opinion on the matter.

When asked if these preliminary inquiry reports are actually submitted within one month, Justice Mohandas assured us that they are.

Step 2:

PCA Inquiry-Issuing Summons, Examining Concerned Parties

The PCA then reads the preliminary report. Whether the police report finds *prima facie* grounds or not, the Authority serves summons to witnesses, the victim, and expert opinion such as doctors, to collect its own *corroboratory evidence*.

Summons is first served through registered post, and if not answered, they are issued in person through a village police officer. The victim is summoned first to record his/her statement, and interviewed *alone* before the Authority. The victim is also told what the police preliminary inquiry found. Once the victim's statement is recorded, the witnesses are called (officials first, then women if any, followed by all others, in that order).⁴³ As most of the complaints involve injuries, doctors are often called to provide their expert opinion on the history and nature of the injuries to help the PCAs determine whether *prima facie* grounds exist. Doctors are interviewed before the Authority on the nature of injuries and are made to write in their own hand the nature of the injuries.⁴⁴ These “certificates” are then marked and kept by the Authority.

Justice Mohandas said confidently, that victims and witnesses are highly cooperative – 90% to 93% come forward to give evidence. Victims and witnesses have not been reimbursed for their travel to the PCAs due to lack of funds. Justice Mohandas feels strongly that they should be reimbursed, and has brought this up with the Chief Secretary of the state government.

Lastly in this step, once the victim and witnesses have been examined, the officer against whom the complaint is made is also examined and asked if s/he has any defence to offer.

Step 3: The Issue of Recommendations

After the PCA inquiry, the Chair writes the final order, the PCA members discuss it internally, and then each member signs the order. The view of the majority is taken as final. A copy of the final order is immediately given to the parties concerned – the complainant, the implicated officer and to the disciplinary authority.

Two actions can be recommended. The institution of:

- i) a disciplinary inquiry and/or
- ii) the registration of an FIR.

If a recommendation for disciplinary inquiry is given, the PCA order is sent straight to the inquiring officer and the inquiry begins right away. If criminal charges are recommended, then the PCA order is immediately sent to the concerned Station House Officer, the PCA statement is taken as the FIR and registered right away.

As this comes as *prima facie* grounds from an Authority vested with the power to inquire against the police, Justice Mohandas stressed that the SHO has no discretion to alter the offences laid by the PCA.

- ▶ This is a major breakthrough. As complaints to the Authorities across the country reveal, the police routinely refuse to register FIRs, usually through threats and intimidation. This will only be amplified when a member of the public seeks to file a case against a police officer. With a ready-made FIR coming from a recognised Authority, Station House Officers will be forced to register complaints against their colleagues. The SHO will also not have any control over the offences and no opportunity to dilute the offences as listed by the Authority. This precedent, set by the Kerala southern district Authorities, must be widely publicised to Authorities in other states.

It is important to re-examine Section 17E(9) of the 2007 Act here, which establishes that the recommendations of the Authorities are “binding” so far as “initiation of departmental proceedings or registration of a criminal case is concerned”. No matter what, the Authority’s recommendation must be carried out, and that process – whether it is a disciplinary inquiry or registration of a criminal case it *must start* as soon as the recommendation is given. It is encouraging that this space has opened up, and at least, accountability processes can finally be initiated without hindrance. However, the same provision also states that “such recommendation shall, however, not prejudice the application of mind by the enquiry officer or the investigating officer when he is conducting the departmental enquiry or criminal investigation”. According to the law, this is valid because according to Chapter XII of the Code of Criminal Procedure, investigation is a power given to police officers, and there can be no interference from any external agency. However in this case barring initiation, the Authority’s recommendation does not retain even a persuasive value.

According to Justice Mohandas, the entire process from receipt to the final order takes about three to four months, which is a reasonable time, considering that the Chair has to travel across seven districts.

Aspects of Procedure in Goa and Tripura

Goa: At present, the Authority follows a fairly straightforward process for dealing with complaints. Upon receiving the complaint, either by post or in person, the Authority as a whole decides whether or not to investigate the matter further. The Chair holds that in approximately 50% of cases, the Authority takes further action. In cases where they take cognisance of the complaint, the Chairman issues notices for the concerned policemen to appear before the Authority. On the basis of their hearings, the Authority would give a

written order either disposing of the case or recommending that disciplinary or criminal proceedings be initiated against the officer. Till date, however, the Authority has not been provided with investigators, despite a provision for the same in the government order. This, the members told us, has seriously handicapped their work.

Tripura: The Commission is mandated to inquire only into allegations of serious misconduct. Less serious complaints are forwarded to the Director General of Police. In terms of procedure, members consider complaints, and often ask for more information at this stage. Then, they decide whether the complaint has to be forwarded to the DGP, or whether they inquire themselves. So far, most complaints have been forwarded to the DGP.

Complaint Trends

Across the South zone, 179 complaints have been received in total since November 2007. They are mainly from Trivandrum and Ernakulum, which are both urban areas. More than half have been disposed, though only after conducting a preliminary inquiry in all these cases, according to Justice Mohandas. The majority of complaints are "manhandling by the police" and biased police investigation (siding with the accused, improper investigation). Justice Mohandas clarified that "manhandling" is taken as simple "hurt" as defined in Section 319 of the Indian Penal Code (IPC) which reads: "*whoever causes bodily pain, disease or infirmity to any person is said to cause hurt*". Correspondingly, the majority of complaints inquired into by the district PCAs are those in which the victims have sustained injuries at the hands of the police, and admitted in hospital.

According to Justice Mohandas, about 30% of the complainants are women. When asked if any special measures are taken for women complainants, he replied in the negative, and moreover, he did not even seem to see the need for any special measures.

Trends from Other States

Uttarakhand: According to the Chair, in its first year of functioning, the Authority has received 66 complaints. The Authority found approximately one-fourth of these to be frivolous.

Goa: In response to a request under the Right to Information Act, the following information was collected from the Authority in Goa:

Number of complaints received from April 2007 to January 2009: 95.

Number of complaints examined: 47.

Nature of complaints received from 2007-2009: Non-registration of FIR, serious abuse of power in police custody, and land/house grabbing.

Action taken by the Authority: Of the 47 complaints received, 46 were closed due to "lack of substance". In one complaint, the Authority recommended disciplinary proceedings against the charged police officer.

Assam: In official correspondence with the Commission, the following information was collected: In 2008, a total of 66 complaints were received, of which 29 were disposed. This includes cases which the Commission could not take on as they were already being examined by courts or other oversight bodies.

Nature of complaints received in 2008: Non-registration of FIR, police inaction after registration of FIR, unauthorised detention in police custody, failure to apprehend accused person, release of accused person without proper investigation, harassment/assault.

Tripura: According to the Chair, seven complaints have been received in total so far, and two of these were disposed. The five inquired into were primarily against Station House Officers, who refused to register FIRs and subjected the complainants to harassment.

CHRI was able to procure hard copies of the Authorities' recommendations in six cases from Justice Mohandas. While they constitute a small sample size, these cases provide interesting and troubling insights into the nature of complaints, and thereby police misconduct. Very broadly, here are some trends and observations based on them:

◆ **Complainant Profiles**

Marble layer (Complaint # 1/08), Autorickshaw driver (Complaint # 20/07), Manual labourers (Complaint # 16/08 and Complaint # 32/08), member of Congress Party (Complaint # 27/08), and tuition teacher (Complaint # 3/07). All the complaints, except in the case of the Congress Party member, involved beatings by police officers and illegal custody. All these complainants had to be admitted to hospital for their injuries.

◆ **"Hurt" Amounts to Grievous Hurt**

While the district-level bodies are not mandated into allegations of grievous hurt in police custody, it becomes clear that the district PCAs are inquiring into what amounts to "grievous hurt" (as defined in Section 320 IPC)⁴⁵ in some cases. For instance, in one case, after being beaten by a Sub Inspector of Police in a police station, the complainant's back-bone was injured.⁴⁶ In another complaint, the complainant is a manual labourer and was unable to work after being admitted to hospital with severe injuries received at the hands of police *in illegal custody*.⁴⁷ Justice Mohandas told us anecdotally about a case in which the PCA recommended both a disciplinary inquiry and registration of a criminal case because the complainant suffered a fractured shoulder and broken tooth. All these injuries, or their effect, amount to grievous hurt according to the law.

◆ **Complaints of False Cases Almost Always Also Include "Manhandling" and Illegal Arrest and Detention:**

In one glaring case (32/08), the police mistook the complainant as the suspect in a criminal case. A "police party" (all sub inspectors) came to the complainant's home in the early evening, beat and kicked him in front of his wife and children, and then dragged him away to the police station. The policemen realised their mistake after they had arrested him and kept him in custody for several hours. The complainant was released late at night, and had to be admitted to hospital. He had to miss several days of work due to his injuries.

In another case (20/07), a sub inspector held the complainant in police custody for eight hours, beat him with a lathi, and kicked and punched him. The police officer was "mediating" a dispute and acting on behalf of two private complainants.

In yet another case (1/08), the police filed about 25 cases against the complainant from 1999 to 2007. The complainant was made to do repeated rounds of police stations, and served jail terms in between. He was always picked up on some pretext or another once he finished a term. He was constantly subjected to beating and ill-treatment while in custody.

From the nature of the complaints above it is glaringly obvious how acts amounting to torture are routine police practice. This illegality and serious human rights violation also breeds another evil, as it is the poor who are most often the victims of police abuse. The lack of accountability has created a dangerous perception amongst the police that they are above the law.

◆ **Threats by Police After Complainants Exercised Legal Rights**

Where the complainant submitted complaints against the police officers to the Human Rights Commission, or Lok Ayukta, or to the Deputy Superintendent of Police under the Code of Criminal Procedure, the police in retaliation registered petty cases against the complainants. Complainants were routinely threatened by the police.

◆ Authorities' Decisions Greatly Influenced by Police Officer's Report

It was found that the Authorities' decision-making process almost always followed a similar pattern. Where the police officer deputed by the Authority to enquire into the complaint reported back that there was *prima facie* evidence against the respondent, the Authority recommended that disciplinary action be taken against the same. This was seen in complaints 32/08 and 20/07. Conversely, where the enquiring police officer reported that there was insufficient evidence against the respondent, as seen in complaint 16/08, the Authority dismissed the complaint on the grounds that there was "no material evidence" to support the complainant other than his own testimony.

This highlights the reality that the ability of the Authorities to arrive at and deliver the right decision is almost solely dependent on the integrity and investigation skills of the serving police officer it deputed to enquire into the complaint.

◆ Authorities Unwilling to Recommend Disciplinary Action Where Cases are Pending Before Criminal Courts

It was observed in the orders that the Authorities were unwilling to recommend disciplinary action where a criminal case was pending against the respondent(s). This was seen both in complaint 27/08 and complaint 3/07. The Authority clearly expressed this view in its order in complaint 3/07 by stating that "as cases are pending before the criminal court for trial, the district-level PCA found that it does not have jurisdiction to recommend disciplinary action against the respondents or conduct enquiry into the veracity of the two cases."

Thus, despite the strong probability that criminal trials may take years to finish, the Authorities are clearly disinclined to provide any measure of interim justice to the complainant once the matter has been seized by the courts.

Who Can File a Complaint

Justice Mohandas clarified that anyone can file a complaint – not just the victim. The family or relatives of the victim, a witness, a social worker, an NGO or association, a Panchayat head, a political worker (mentioned in the context that the complainant may be scared to approach the police) can send a complaint by post or in person to the Secretary. He mentioned that complaints have been presented either as letters, or in person – though the vast majority are letters. If a complaint is submitted in person, the complainant is asked to write it down immediately, and seal it before submitting to the Secretary – so only written complaints are finally accepted. Complaints may be in any form and in any language. The Secretary formally registers all complaints received. The complainant is immediately given a written acknowledgement by the PCA once the complaint is received. Justice Mohandas stressed that the Secretary is not allowed to open any complaints. They are only opened and read at PCA meetings in the presence of all the members.

Complaint Format

There is as yet no prescribed format for complaints, which is undoubtedly a factor in the high rate of disposal. Because there is no format, Justice Mohandas says many of the complaints contain unnecessary information, and sometimes contain references to grievances against private persons not police officers (which reflects how little the PCAs have done to foster public awareness of the Authorities and their precise role). He told us that a large number of complaints are dismissed because they do not fall within the mandate of the PCA – which again reveals the failure of the Authorities in public education and awareness. Almost all complaints come as letters, and according to Justice Mohandas, many of them do not contain any material facts on the basis of which a PCA inquiry can be conducted. He said that he has had discussions with the Director General of Police and state Home Department about a format for PCA complaints, but the wait for Rules seems to be the excuse all are hiding under for delay in improvements.

In Assam, the Authority provides a printed form for filing complaints, which has to be supported by a sworn affidavit. This could serve as a model for other Authorities who do not have a prescribed format for complaints. The Authority accepts complaints on plain paper as well. Complaints can be filed in person or through the post. The lack of a prescribed format is a major factor in the high rate of unsubstantiated complaints, as complainants are not told what information and supporting documents are needed to make a strong case.

Best Practice Outside India

In the American city of Chicago, the Independent Police Review Authority (IPRA) was created to investigate allegations against Chicago Police Department (CPD) members of excessive force, domestic violence, coercion, verbal abuse, discharge of firearms and tasers, and extraordinary occurrences in CPD custody even where there is no allegation of misconduct. The IPRA's annual report 2007-2008 enumerates its investigation procedure as follows:

Step 1: Intake

- Registration of complaint by phone, in person, by mail or over the Internet. No complaint format. Letter setting forth the alleged misconduct and the complainant's contact information suffices.
- Log number assigned to each complaint. Depending on the nature of complaint either the IPRA or the CPD investigates the complaint.
- Acknowledgement letter identifying the IPRA/CPD as the investigative agency sent to complainant. IPRA investigator named.

Step 2: Gathering Evidence

Investigation conducted in three steps:

- Interviewing witnesses – information through sworn statements by complainant, victim and witnesses.
- Gathering physical and documentary evidence – audio and video recordings from government and private sources, medical records, autopsy reports, photographs and CPD reports gathered and analysed.
- Interview of the accused officer.

Step 3: Conclusion of Investigation

- Final Report: summarising evidence and the recommendation (if any).
- Recommendations made based on whether proven conduct violates CPD Rules and Regulations.

For each allegation in an investigation the IPRA's final report makes one of five findings based on its assessment of facts and CPD policy:

Sustained	▶	Sufficient evidence to justify disciplinary action.
Not sustained	▶	Insufficient evidence to either prove/disprove allegation.
Unfounded	▶	Allegation false or not factual.
Exonerated	▶	Incident occurred, actions justified.

Step 4: Post-Investigation Review

- CPD reviews: The Superintendent may disagree with any recommendation in writing.
- A three member sub-committee of the Police Board is constituted to resolve any disagreement between the Superintendent and Chief Administrator.
- Both the complainant and the CPD member are informed of the outcome of the investigation.



Ultimate Justice: Internal Discipline or Criminal Process



Complaints eventually have to be handled either through the police internal disciplinary system, or through criminal process. The Authorities have opened up a new space for complainants, but ultimate justice can come only from either internal discipline or the criminal process.



Ultimate Justice: Internal Discipline or Criminal Process

Complaints eventually have to be handled either through the police internal disciplinary system, or through criminal process. The Authorities have opened up a new space for complainants, but ultimate justice can come only from either internal discipline or the criminal process. The constraint of police-investigating-police leads to officers escaping accountability. The loyalties of the police generally rest with their departments and it is unreasonable to expect them to deliver an unbiased opinion. There is an endemic accountability deficit. Even more than the criminal process, which at least has inherent checks and balances and provisions for complainants, police internal discipline is entirely closed and opaque, is done by the police for the police, and provides no role for the complainant. Once the complaint is filed, the complainant is simply forgotten which refutes assertions that internal disciplinary processes follow the principles of natural justice.

Principles of Natural Justice

- (i) The right to be heard by an unbiased Tribunal;
- (ii) The right to have notice of charges;
- (iii) The right to be heard in answer to that charge; and
- (iv) The right to a reasoned decision.

“Principles of natural justice” is an expression used for describing the criteria of procedural fairness of the administrative process. They ensure that decisions are taken objectively, impartially, without prejudice and after hearing the person likely to be affected. All actions must be accompanied with reasons. A reasoned decision negates arbitrariness.

The internal disciplinary process allows action to be taken against erring police officers for acts or omissions:

- (ii) where policemen are either themselves involved in criminal activities or helped criminals; and
- (iii) on disciplinary grounds.

The All India Service (Discipline and Appeal) Rules lay down the procedure⁴⁸ for disciplinary proceedings for senior police officers (though procedures in Police Manuals and Rules, which apply to junior ranks, are similar). By highlighting features of the procedure, it becomes clear how closed the disciplinary process is:

- a board of two senior officers is to conduct the inquiry, at least one of which is to be a member of the same service as the charged officer.⁴⁹ This only reinforces the culture of brotherhood that is so prevalent in police organisations and does not lead to an objective inquiry.
- The charged officer is given the right to deny the charge, enter a written statement containing his/her defence and call for a personal hearing. The charged officer is to be provided with copies of all the documents used,⁵⁰ which will include witness statements, admissions, confessions, evidence and all other relevant information. The complainant, who is not even mentioned in the procedure, has none of these rights.
- The inquiring Board must prepare a report following their inquiry containing the charge, statements, written defence, an assessment of evidence and reasoned findings on each charges. The Rules provide that the orders of the Board are to be communicated to the charged officer and he/she is to be given a copy of their report, as well as a statement of their findings. There are no provisions for the complainant to be informed of the outcome, or to be provided with any copies of the final report filed.
- There are similar provisions in state police manuals – internal discipline is truly a closed process across the country. The Bihar Police Manual makes all complaints against police or ministerial officers confidential. These complaints must be entered into a separate register, and dealt with by

the Superintendent personally.⁵¹ In Andhra Pradesh, the police manual holds that non-police complainants cannot examine or cross-examine any witnesses; if they want a witness examined, they can only suggest this to the inquiry officer.⁵²

Punishments

Types of sanctions depend on the seriousness of the offence and range from a salary cut, stopping leave, suspension or demotion, through to dismissal and recommending criminal charges. However, experience has shown that there is considerable leeway in prescribing punishment.

Registering a Criminal Case

The police don't register crimes easily because it means they have to investigate, when they are undermanned, badly deployed and often subverted from their duties. High and rising crime rates reflect badly on a police establishment. The easier option is to keep the number of complaints filed at a constant every year. Thus the barriers to registration of an FIR are too well known to merit reiteration. When a complaint is to be registered against a police officer himself, it will simply not be registered. The complainant will inevitably be subjected to threats, harassment or even physical assault. It is a dangerous ordeal for anyone to exercise their legal right to bring criminal charges against a police officer. With the precedent set by the Complaints Authorities, FIRs must be registered. The delays and obstructions perfected by the police in investigation will have to be tackled, but it is a welcome first step.

Is the Implicated Officer Suspended Pending a PCA Inquiry?

Provisions in various police manuals leave almost no scope for suspension pending inquiry. All manuals uniformly state that suspension may be resorted to only when it is necessary in public interest or during the investigation or trial of a grave charge against the officer.

The Bihar Police Manual goes on to say that where the suspension of the officer appears as an attempt to or actually cause prejudice to the decision in the case, the officer may be transferred to other duty without loss of pay.⁵³

Any Monitoring by the PCA after Recommendation is Given?

Only a few states allow for monitoring of the internal inquiry process. The PCA can call for periodic reports from the DGP and based on the progress of the inquiries give recommendation for the speedy disposal of the inquiry. Some states do not allow for an independent monitoring, but if the PCA receives a complaint from the victim saying that no action has been taken or nothing has moved in relation to the departmental inquiry, then the PCA may call for a report from the DGP.

Since the Kerala amendment does not give the Kerala Authorities the powers to monitor the inquiry process, there is not much role left for the Authority. Justice Mohandas confirmed this by mentioning that the PCA does not monitor the action taken after they pass their recommendations – unless the victim reports lack of action on the recommendations, or delay in implementing the recommendations. For instance, if the police delay the investigation following the registration of an FIR, the victim can re-approach the PCA to complain of the delay. The victim would have to go through the entire PCA inquiry process again, as this would be considered a fresh complaint.

In Assam, under the 2007 Police Act, the Commission can monitor the status of departmental enquiries or departmental action on the complaints of "misconduct" against officers of and above the rank of Deputy/Assistant Superintendent of Police, and issue appropriate advice to expedite the inquiry process.

Relationship of the PCAs with National and State Human Rights Commissions or Other Bodies

Apart from PCAs, a victim of police abuse is most likely to complain either to the National or State Human Rights Commissions. Considering the general lack of faith people have in such systems of redress, they usually exploit all remedies hoping that at least one body will respond. The table below summarises legislative provisions indicating whether or not victims of police abuse can simultaneously approach PCAs *as well as* other bodies, for the same complaint.

State Legislation	Limitation
Assam	Section 88(1) of the Assam Police Act, 2007 states that no complaint shall be entertained by the Commission or the District Authority if the subject matter of the complaint is being examined by any other commission, or any court.
Bihar	Section 62(1) of the Bihar Police Act, 2007 forbids the Authority from considering any complaint being enquired into by "any other commission or any court".
Gujarat	Section 32G(1) of the Bombay Police (Gujarat Amendment) Act, 2007 limits the Authority to looking into complaints not covered by the Vigilance Commission, National Human Rights Commission, State Human Rights Commission, Commission for Minorities, Commission for Scheduled Castes and Scheduled Tribes, Commission for Women and Commission for Backward Communities, or any other commissions as may be appointed from time to time either by the central government or by the state government.
Chattisgarh	Section 43(2) of the Chattisgarh Police Act, 2007 states that the Authority shall not take cognisance of a complaint in cases which are already being enquired into by the National Human Rights Commission, State Human Rights Commission or is a subject matter under the Commission of Enquires Act or is sub-judice.
Goa	No limitation.
Haryana	No limitation.
Himachal Pradesh	No limitation.
Kerala	No limitation.
Maharashtra	No limitation.

State Legislation	Limitation
Rajasthan	No limitation.
Sikkim	Section 146(1) states that no complaint shall be entertained by the Commission if the subject matter of the complaint is being examined by any other commission, or any court.
Tripura	Section 72(1) of the Tripura Police Act, 2007 prevents complaints from being entertained by the Commission if the subject matter of the complaint is being examined by any other commission or any court.
Uttarakhand	Section 74(1) of the Uttarakhand Police Act, 2007 states that no complaint shall be entertained by the Authority, if the subject matter of the complaint is being examined by any other authority or any court established by law.

As the table illustrates, six of the PCAs have an explicit provision that bars them from looking into any complaints if it is being examined by any other statutory body or court.⁵⁴ For the remaining PCAs there is nothing available on their relationship with any other bodies. In the absence of legal or policy provisions, there will be little streamlining of the overlapping jurisdictions of the human rights commissions and the PCAs.

It is clear that the PCAs have overlapping jurisdictions with other statutory bodies. The NHRC guidelines on custodial deaths and rapes require the prompt communication of any death or rape in custody (both police and judicial) by the DM/SPs to the Commission within 24 hours of the occurrence. The same guideline is silent on the action that the NHRC has to take once it receives such information. But it would also imply that the NHRC is in such cases seized of the said matter. Therefore it is not clear whether a victim of custodial rape or a family/friend of the person that died in custody can complain to the PCA. One could say that since the complainant has not approached the NHRC s/he is free to approach the PCA. But ultimately, this does leave the relationship between the bodies ambiguous.

In the absence of a bar, there is the danger of more than one body looking into or inquiring into the same complaint. This would lead to duplication of efforts and a huge waste of time and resources. In the wake of such eventualities, the relationship between all these bodies needs to be clearly spelt out. There must be frequent communication between these bodies. In the long run, if the PCAs grow to be effective powerful bodies with skilled human as well as financial resources, then all complaints against the police can be forwarded and inquired into solely by them, as they are the only mechanisms designated to exclusively look at complaints against the police.


Gujarat, through its Bombay Police (Gujarat) Amendment Act, has come up with a unique provision relating to the functioning of its state-level Complaints Authority. It says that the Authority shall look into complaints against police officers of the rank of Deputy Superintendent of Police and above in cases of serious misconduct, dereliction of duty and misuse of power. However it cripples the Authority by adding a clause which bars the Authority from looking into any matter which comes under the mandate of the Vigilance Commission, NHRC, SHRC, Minorities Commission, Commission for Scheduled Caste and Scheduled Tribes. A complaint will definitely fall under one of these categories and the PCA will not be able to look into it.



Conclusion and Recommendations



The opportunity to initiate change provided by the Supreme Court's judgement is being wasted. Responding to an acute lack of police accountability, in 2006, all states and union territories were ordered to set up Police Complaints Authorities at both the district and state level. Almost three years after the judgement, only five states have actually established Complaints Authorities – and this implementation is shoddy at best.



Conclusion

The opportunity to initiate change provided by the Supreme Court's judgement is being wasted. Responding to an acute lack of police accountability, in 2006, all states and union territories were ordered to set up Police Complaints Authorities at both the district and state level. Almost three years after the judgement, only five states have actually established Complaints Authorities – and this implementation is shoddy at best.

In the majority of cases, even after a year of being established, the functioning Authorities are choked due to a severe lack of funds. Most do not have permanent offices, are critically under-resourced, and none have been able to employ independent investigators. None of the Authorities have been guaranteed a fixed allocated budget. Across the board, the members of the Authorities are almost exclusively either retired government servants and police officers, or serving government servants and police officers. This is in blatant defiance of the Court's demand for independent members, and a serious impediment to the development of truly empowered police complaints bodies. The public has not been properly informed of the existence and mandate of the Authorities, much less provided guidance on how to use the Authorities suitably. With the exception of minor innovations, the Authorities themselves have not yet established clear procedures for their functioning. This has a serious impact on the outcome of complaints, and more largely, on the degree of accountability assured to complainants.

In sum, the first year of operation of these newly created Complaints Authorities has produced serious failings. The record of implementation is virtually nil; and the quality of implementation is so poor that the Authorities are struggling to just live up to their mandates, much less deliver their mandates. These Authorities are under the care of state governments, who have the obligation to fund and resource these bodies to equip them to carry out their legal mandate. State governments have a responsibility to realise the Court's demand for truly independent bodies, and forge recruitment and membership that can withstand political pressure as well as link the diverse skill-sets and experiences needed to create Complaints Authorities that address human rights and social justice issues head on.

In the absence of any real political will or corrective action, these bodies will become accountability mechanisms only in name, with no demonstrable action or impact. They have already started down the path of other oversight bodies which continue to spend public money but have failed their mandates in every way. In the long-term, this will do even more damage, with the continuation of serious violations at the hands of the police and no accountability, in spite of the existence of dedicated accountability mechanisms.

CHRI appeals to all state governments to turn around this failed first year of operation, by sufficiently equipping these bodies, and paying heed to the Court's requirement that they be truly independent. In the next section, we provide specific recommendations geared towards improved functioning.

Minimum Requirements from a Successful Oversight Body

- Independence: Should be independent of the Executive and the police and empowered to report directly to Parliament.
- Sufficient powers: Should have the authority to independently investigate complaints and issue findings. This requires concomitant powers to conduct hearings, subpoena documents and compel the presence of witnesses including the police. It should also be able to identify organisational problems in the police and suggest systemic reforms.
- Adequate resources: Should have sufficient funds to investigate at least the more serious complaints referred to it. Skilled human resources to investigate and otherwise deal with complaints should also be available.
- Power to follow up on recommendations: Should be empowered to report its findings and recommendations to the public, and to follow up on actions taken by the police chief in response to its recommendations. It should also be able to draw Parliament's attention to instances where police take no action.

Recommendations

In view of the urgency, CHRI puts forth the following recommendations:

Membership

Across all the states, in both legislation and practice, the members are either mainly retired government servants and police officers, or serving government servants and police officers. It goes without saying that the overwhelming presence of police officers and IAS officers, serving or retired, kills the spirit behind the urgent necessity of the set-up of these bodies. The presence of *serving* police officers, particularly, entirely defeats any independence for these bodies.

CHRI recommends that serving police officers be barred from becoming members of the Police Complaints Authorities. We suggest that serving police officers who are currently members of Authorities be asked to step down.

The profile of the members – predominantly elder male, and from either a government or security force background – does not even begin to be diverse enough to ensure that functioning will be truly independent, and decisions will be unbiased and fair. A key failing of India's human rights commissions has been that members are not required to have a background or expertise in human rights, and they are all government officers from diverse departments arbitrarily assigned to act as members. At this point, the PCAs are primed to go the same way.

CHRI recommends that a fair balance be struck in membership between retired government officers and independent members, with exactly half as retired officers and half as independent members. To facilitate this, we recommend that applications are opened up and invited from the general public, through newspapers, the Internet and general publicity. We highly recommend that a wider skill set is sought for PCA members, such as social workers, psychologists and lawyers.

Funding

Even with a plethora of powers, oversight bodies are constrained in their ability to hold the police accountable without sufficient financial resources. Even if these are not withheld for illegitimate political reasons, shortage of funds is a serious limiting factor. The debilitating effect of lack of funding on the Authorities is clear – with no permanent offices, no basic infrastructure and no pool of independent investigators. Financial independence can only be ensured when budgets are approved by state legislatures, not the Executive, and then administered by the Authorities themselves without interference.

CHRI recommends that the release of funding for the PCAs is immediately prioritised. We emphasise that the funding for the PCAs must be independent and not part of the police budget. The budget should be approved by the State Legislature and then administered by the Authorities themselves, with the obligation to report on their spending to the State Legislature.

Publicity

There is no public awareness of the Authorities. If the public is not aware that these bodies exist, and they do not have the proper information concerning their mandates, the Authorities will continue to be under-worked and run foul of their mandates.

CHRI recommends that each state government prioritise an extensive public awareness campaign focused on the PCAs, down to the district level. Every attempt should be made to facilitate access. All the critical information on the PCA mandates, the stages of the complaints process, the names of the members, the full contact details of the Authorities and the rights of complainants, must be spread far and wide. Standards for functioning of the PCAs should be clearly set down and regular feedback from its users should be sought in order to constantly monitor whether the body is realising its mandate or not. Civil society organisations must be co-opted to spread awareness. Awareness could be raised by advertisements in newspapers or holding public meetings.

Minimum Criteria for Complaints

Across the country, the Authorities are disposing of the majority of complaints – largely because they either do not meet the PCA mandate or they do not contain necessary information. The reason for this is the lack of guidance on what to include in a complaint and lack of public knowledge on the PCA mandates.

CHRI recommends that guidelines are immediately issued by the Authorities, providing the basic information needed to substantiate a complaint, with a clear explanation of the types of complaints that fit the Authorities' jurisdiction. We strongly urge that all fines and/or liabilities on the complainant for "vexatious" or "false" complaints are removed.

Powers and Obligations

The Authorities in almost all states have the power to initiate internal inquiry or register an FIR. There are inherent problems of recommendations with these powers. Sending back a complaint to disciplinary action is as good as giving a clean chit.

CHRI recommends that there is recognition amongst the PCAs that all serious misconduct amounts to criminal misconduct and they begin to see police misconduct for what it really is. PCAs should invite public scrutiny to check the trends and nature of decisions and to see if criminal charges are even being recommended in the cases.

It cannot be assumed that on receiving and registering complaints and even initiating disciplinary inquiry into the allegations levelled against police personnel, that the disciplinary authority will follow the due process of law within a reasonable time, conclude its inquiry and render its findings.

CHRI recommends that the powers granted to Police Complaints Authorities at both state and district levels be used in concerted action of rigorous, periodic and consistent monitoring of disciplinary inquiry and action to ensure delays are kept out of such proceedings and justice is truly rendered – such as provided for in the Police Acts of Assam, Tripura and Uttarakhand. This monitoring can include calling for periodic quarterly reports from the DGP on departmental inquiries, assessing the progress of inquiries, and advising the police department on completing inquiries without delay. This process carries the potential to inject and instil the notion of scrutiny into internal proceedings.

Experience shows that even independent oversight agencies with sufficient resources and strong investigative powers have proven ineffective if the police and governments routinely ignore their recommendations. If these bodies are to be given only recommendatory powers then they will, like other existing bodies, be reduced to toothless institutions causing public hopes of effective remedies to be quickly lost.

CHRI recommends that all Police Complaints Authorities be given the power to make binding recommendations. The police must be obligated to report back to an Authority on action taken on Authority recommendations, within a stipulated time.

Strong investigative powers are a key factor for the success of oversight agencies. The most effective oversight bodies require not only powers to investigate independently but also to call for evidence and compel police cooperation. They must also be able to make recommendations about individual cases as well as systemic improvements that will be acknowledged and acted upon. Lack of independent investigators – one evil (no funds) leads to another (inability to hire a pool of investigators), will result in PCAs always being dependent on the police and never independent!

CHRI recommends that all Police Complaints Authorities be given investigative powers. For this, they must have a fixed pool of investigators or be able to draw from a pool of investigators on a regular basis. The funding and budgets should be adequately raised to ensure that this happens.

Rights of Complainants

An inquiry process that professes to follow the principles of natural justice must accord the rights due to the complainant in the process. This is vital for both the legitimacy of the process itself, as well as to win public trust.

CHRI recommends that every new Police Act enshrines rights for complainants, to ensure that the complainant is kept informed throughout the inquiry process, can participate in the proceedings and is adequately protected from any threats. The Acts of Assam, Tripura and Uttarakhand contain replicable legislative provisions.

Witness Protection Programmes

No inquiry process can be fair or procedurally thorough without witnesses. It is of utmost importance to protect and support witnesses in the inquiry process, and the onus is on the Authorities to realise this.

CHRI recommends that all Authorities put in place witness protection programmes.

Rule-Making Powers

Experience shows that in the absence of rules/guidelines for effective functioning, monitoring bodies are rendered useless. Till date, none of the PCAs that have been set up have made rules for functioning. Some are dependent on the government to make rules while certain state PCAs have the power to draft their own rules.

CHRI recommends that rules for the functioning of the PCAs be framed and notified without any further delay. Where PCAs have been given the powers to frame their own rules, this should be done at the earliest to ensure the smooth functioning of these bodies.

ANNEXURES

State Police Complaints Authority: Legal Provision Concerning Constitution

State Acts	Constitution and Composition
Assam Police Act, 2007	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> State Level Police Accountability Commission.</p> <p><i>Composition:</i> Chairperson: A retired High Court judge. Other Members: (i) A retired police officer - DGP or Addl. DGP; (ii) A person with at least 10 years experience as a judicial officer, public prosecutor, practising advocate, professor of law, or a person of repute and standing from civil society; and (iii) A retired officer with experience in public administration - not below the rank of Commissioner and Secretary to the state government.</p> <p><i>At least one member of the Commission is to be a woman and not more than one member is to be a retired police officer.</i></p> <p><i>Term of Chairperson and members:</i> Three years. Members are eligible for reappointment for a second term.</p>
Bihar Police Act, 2007	<p>The Act does not provide for the setting up of a State Level Police Complaints Authority.</p>
Chhattisgarh Police Act, 2007	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> State Police Accountability Authority.</p> <p><i>Composition:</i> Chairperson: A retired High Court judge or a retired judge of higher judicial service qualified to be judge of the High Court. Other Members: (i) A retired police officer – Addl. DGP or above; (ii) A retired civil servant - rank of Secretary to the state government or above; and (iii) A person of repute and standing from civil society ordinarily residing in Chhattisgarh.</p> <p><i>At least one member of the Authority is to be a woman.</i></p> <p><i>Term of Chairperson and members:</i> Two years. Chairperson and members are eligible for reappointment for a second term.</p>

State Acts	Constitution and Composition
Goa Government Order No. 2/51/2006-HD(G)	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> State Level Police Complaints Authority.</p> <p><i>Composition:</i> The Authority is to consist of four members. The order enumerates the members of the Authority without prescribing any qualifications or mode of constituting the Authority.</p>
Bombay Police (Gujarat Amendment) Bill, 2007	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> State Police Complaints Authority.</p> <p><i>Composition:</i> Chairperson: A retired High Court judge or a retired officer - rank of Principal Secretary to the state government or above. Member: An eminent person. Ex-officio member: Principal Secretary to the state government, Home Department. Ex-officio Member Secretary: An officer not below the rank of Addl. DGP.</p> <p><i>Term:</i> Not prescribed by the Act.</p>
Haryana Police Act, 2007	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> State Level Police Complaint Authority. The Authority is to be established within three months of this Act coming into force.</p> <p><i>Composition:</i> The Authority is to consist of a single person. Member: A retired judge or a retired civil servant - rank of Secretary to state or above or a lawyer well versed with criminal law with a minimum of 20 years experience in the relevant field.</p> <p><i>Term of Member:</i> Three years.</p>
Himachal Pradesh Police Act, 2007	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> State Police Complaints Authority.</p> <p><i>Composition:</i> The Lokayukta also acts as the State Police Complaints Authority.</p> <p><i>Term of Member:</i> Three years. Member is eligible for re-nomination.</p>

State Acts	Constitution and Composition
Kerala Police (Amendment) Act, 2007	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> State Level Police Complaints Authority.</p> <p><i>Composition:</i> Chairperson: A retired High Court judge. Member: (i) a serving officer of the rank of Principal Secretary to government; and (ii) A serving officer of the rank of Addl. DGP.</p> <p><i>The Kerala State Authority differs from most other PCAs by including a serving police officer as a member.</i></p> <p><i>Term of Chairperson and Member:</i> The Act requires the conditions of service to be prescribed by the state government. Till date no such rules have been notified defining either the terms or conditions of service.</p>
Maharashtra Government Resolution No. NPC 1008/2/CR-6/POL-3	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> State Level Police Complaints Authority.</p> <p><i>Composition:</i> Chairperson: A retired High Court judge or a retired police officer - DGP or retired officer - Chief Secretary/ Additional Chief Secretary/Principal Secretary in the state government. Other Members: (i) Officer of the rank of Secretary to state government; and (ii) An eminent person. Member Secretary: Addl. DGP or higher ranking officer.</p> <p><i>Term of Members:</i> (i) For eminent person three years; and (ii) All other members as may be prescribed by the state government.</p>
Orissa Notification No. 22123/D.\$A.,dt. 1.05.2008 PDA-II-95/2007	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> Police Complaints Authority.</p> <p><i>Composition:</i> The Lokpal also acts as the Police Complaints Authority.</p>
Punjab Police Act, 2007	<p>The provision on police accountability only enables the state government to constitute a Police Complaints Authority at state and district-levels through notification.</p>

State Acts	Constitution and Composition
Rajasthan Police Act, 2007	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> State Level Police Accountability Committee.</p> <p><i>Composition:</i> Chairperson: An independent member is to be appointed Chairperson. Members: Eminent persons with experience in public dealings and credible record of integrity and commitment to human rights. Member-Secretary: Addl. DGP.</p> <p><i>One of the independent members is to be from the weaker sections and the other a woman.</i></p>
The Sikkim Police Act, 2008	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> Police Accountability Commission.</p> <p><i>Composition:</i> Chairperson: A retired High Court judge Members: (i) A retired officer- Secretary to state government or higher ranking officer, or a retired police officer - rank of IGP or higher; and (ii) A retired judicial officer of state superior judicial service - rank of District or Sessions judge or higher.</p> <p><i>The Chairperson may nominate a woman with proven record of social service.</i></p> <p><i>Term of Chairperson and Members:</i> Three years.</p>
Tripura Police Act, 2007	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> State Level Police Accountability Commission. The Commission is to be established within six months of the Act coming into force.</p> <p><i>Composition:</i> Chairperson: A retired High Court judge Members: (i) A retired police officer - rank of IGP or higher; (ii) Two persons of repute and standing from civil society; and (iii) A retired officer - rank of Secretary/Commissioner to state government or higher with experience in public administration.</p> <p><i>At least one member of the Commission is to be a woman and no more than one police officer.</i></p> <p><i>Term of Chairperson and Members:</i> Three years.</p>

State Acts	Constitution and Composition
<p>Uttarakhand Police Act, 2007</p>	<p><i>Establishing Authority:</i> State government.</p> <p><i>Authority:</i> State Level Police Complaints Authority. The Authority is to be established within six months of this Act coming into force.</p> <p><i>Composition:</i> <i>Chairperson:</i> An independent member is appointed as Chairperson. <i>Members:</i> (i) Four eminent members with experience in public dealings and credible record of integrity and commitment to human rights; and (ii) A retired police officer - Inspector General of Police.</p> <p><i>At least one member is to be a woman, and no more than one police officer. One member must be knowledgeable in law.</i></p> <p><i>Term of Chairperson and Members:</i> Three years.</p>

State Police Complaints Authority: Complaints, Recommendations and Reports

State Acts	Nature of Complaints	Complainant	Mandate and Power	Reporting Obligations
Assam Police Act, 2007	<p><i>Complaints Against:</i> any/all police personnel.</p> <p><i>Nature of Complaints:</i></p> <ul style="list-style-type: none"> i) death in custody ii) grievous hurt iii) molestation, rape or attempt iv) illegal arrest or detention v) forceful deprivation of ownership rights vi) blackmail or extortion vii) non-registration of FIR viii) dissatisfactory result of departmental proceedings (ix) other cases referred by SP or DGP. <p><i>Complaint supported by a sworn statement.</i></p>	<p><i>Complaints received from:</i></p> <ul style="list-style-type: none"> i) victim or any person on his behalf. (ii) NHRC/SHRC (iii) police (iv) any source. <p><i>Rights of Complainant:</i></p> <ul style="list-style-type: none"> i) informed of progress, completion of inquiry, final action taken ii) informed of date and place of hearings (iii) services of a translator. 	<p><i>Enquiry:</i></p> <ul style="list-style-type: none"> i) suo moto ii) upon complaints received iii) upon reference by government/DGP. <p><i>Monitoring the status of departmental inquiry or action:</i></p> <p>Monitor cases of undue delay by receiving quarterly reports from DGP on complaints of misconduct against DSP/ASP/ ranks and above, and advise expeditious completion of inquiry.</p> <p><i>May call for reports upon receiving complaints of dissatisfactory DP and advise fresh inquiry.</i></p> <p><i>May impose a fine for making false complaints.</i></p>	<p><i>Annual report to contain:</i></p> <ul style="list-style-type: none"> i) number and nature of complaints inquired into ii) number and nature of complaints of dissatisfactory departmental proceedings made to it iii) advice and directions of further action issued iv) number of complaints received by District Authority and manner of disposal v) identifiable patterns of misconduct vi) recommendations on measures to enhance police accountability. <p>Report to be laid before the State Legislature and be a public document.</p> <p><i>Specific cases inquired into also to be reported and made available to the public.</i></p>
Chhattisgarh Police Act, 2007	<p><i>Complaints Against:</i> any/all police personnel.</p> <p><i>Nature of Complaints:</i></p> <ul style="list-style-type: none"> i) death ii) rape or attempt iii) grievous hurt in custody 	<p><i>Complaints received from:</i></p> <ul style="list-style-type: none"> i) a victim or close relative supported by affidavit ii) state government. <p><i>Limitation:</i> six months.</p>		<p><i>Reports made to the state government whenever necessary.</i></p>

State Acts	Nature of Complaints	Complainant	Mandate and Power	Reporting Obligations
	iv) other acts specified by state government.			
Goa Order No. 2/51/2006-HD(G)	<i>Complaints Against:</i> all/any police personnel. <i>Complaints of:</i> i) death ii) grievous hurt iii) rape in police custody.			No reporting obligations.
Bombay Police (Gujarat Amendment) Act, 2007	<i>Complaints Against:</i> police personnel of and above rank of DySP. <i>Nature of Complaints:</i> i) serious misconduct ii) dereliction of duty iii) misuse of powers iv) any other matter specified by state government not covered by the mandate of existing Commissions.	<i>Complaint received from:</i> any person.		No reporting obligations.
Haryana Police Act, 2007	<i>Complaints Against:</i> all/any police personnel. <i>Nature of Complaints:</i> i) death in police custody ii) rape or attempt iii) grievous hurt in custody iv) other cases referred to it by DGP/state government.	<i>Complaints received from:</i> i) victim or any person on his behalf on sworn affidavit ii) NHRC/SHRC iii) DGP/state government. Complainant cannot be anonymous, synonymous, or pseudonymous.	<i>Enquiry:</i> i) <i>suo moto</i> ii) upon complaint received iii) upon reference by government/DGP.	No reporting obligations.
Himachal Pradesh Act, 2007	<i>Complaints of:</i> i) criminal misconduct.	<i>Complaints received from:</i> i) a victim or any person on his/her behalf ii) public servant	<i>Enquiry:</i> i) <i>suo moto</i> ii) upon complaint received	<i>Report of the Lokayukta is to include complaints received, inquiry conducted and</i>

State Acts	Nature of Complaints	Complainant	Mandate and Power	Reporting Obligations
		iii) statutory authority. <i>Rights of Complainant:</i> i) informed of progress, completion of inquiry, and final action taken ii) informed of date and place of hearings iii) receive written transcripts in Hindi/English.	Power to use and modify procedures of the Lokayukta to conduct inquiry. May impose a fine for making false complaint.	recommendations made in the capacity of PCA.
Kerala Police (Amendment) Act, 2007	<i>Complaints Against:</i> (i) complaints of grave misconduct against officers of and above the rank of Superintendent of Police (ii) other serious complaints against all/any police personnel. <i>Nature of Serious Complaint:</i> (i) molestation of women in custody (ii) death (iii) grievous hurt (iv) rape.	<i>Complaints received from:</i> any person		
Maharashtra Government Resolution No. NPC 1008/2/CR-6/POL-3	<i>Complaints Against:</i> police officers of and above rank of DySP/ACP. <i>Nature of Complaints:</i> i) misconduct ii) dereliction of duty iii) misuse of power iv) corruption v) negligence vi) any other matter referred by state government.			

State Acts	Nature of Complaints	Complainant	Mandate and Power	Reporting Obligations
Orissa Notification No. 22123/D.\$A.,dt. 1.05.2008 PDA-II-95/2007	<p><i>Complaints Against:</i> all/any police personnel.</p> <p><i>Complaint Format:</i> Form 'A'.</p> <p><i>Affidavit:</i> Form 'B'.</p>	<p><i>Limitation:</i> 12 months.</p>	<p><i>Fees:</i> Rs. 50 for complaint against officers of and above rank of ASP and of Rs. 25 for complaint against all other police personnel.</p> <p><i>Persons exempt from paying fees:</i></p> <ul style="list-style-type: none"> i) women ii) physically challenged person iii) SC/ST iv) BPL persons v) persons in police/judicial custody. 	
Punjab Police Act, 2007	State may set up PCAs at state and district-level through notifications.		No reporting obligations.	
Rajasthan Police Act, 2007	<p><i>Complaints Against:</i> police officers in supervisory ranks.</p> <p><i>Nature of Complaint:</i></p> <ul style="list-style-type: none"> i) grievous hurt ii) illegal detention iii) any offence for which maximum punishment exceeds 10 years iv) extortion. 	<p><i>Complaints received from:</i></p> <ul style="list-style-type: none"> i) a victim or any person on behalf iii) District Police Accountability Committee. 	<p><i>Enquiry:</i></p> <ul style="list-style-type: none"> i) <i>suo moto</i> ii) upon complaint received. 	No reporting obligations.
The Sikkim Police Act, 2008	<p><i>Complaints Against:</i> any/all police personnel.</p> <p><i>Nature of Complaint:</i></p> <ul style="list-style-type: none"> i) death in custody ii) grievous hurt iii) rape or attempt iv) illegal arrest/detention 	<p><i>Complaints received from:</i></p> <ul style="list-style-type: none"> i) victim ii) NHRC/SHRC iii) police iii) any source iv) DGP. <p><i>Rights of Complainant:</i></p> <ul style="list-style-type: none"> i) informed of progress, completion of inquiry, and final 	<p><i>Enquiry:</i></p> <ul style="list-style-type: none"> i) <i>suo moto</i> ii) upon complaint received. <p>Power to visit lock-ups and places of detention.</p> <p>May monitor status of departmental</p>	<p><i>Annual report to contain:</i></p> <ul style="list-style-type: none"> i) number and nature of complaints inquired into ii) number and nature of complaints of dissatisfactory departmental proceedings made to it

State Acts	Nature of Complaints	Complainant	Mandate and Power	Reporting Obligations
	v) other cases referred by DGP.	<p>action taken</p> <p>ii) informed of date and place of hearings for attending the same</p> <p>iii) services of a translator.</p>	<p>inquiries through quarterly reports from DGP and advise expeditious completion of inquiry.</p> <p><i>Call for reports upon complaints of undue delay in or dissatisfactory outcome of departmental proceedings and advise further action or fresh enquiry if necessary.</i></p> <p>May impose a fine for making false complaints.</p>	<p>iii) advice and directions</p> <p>iv) identifiable patterns of misconduct</p> <p>vi) measures to enhance police accountability.</p> <p>Report to be laid before the State Legislature in the budget session and made a public document.</p> <p><i>Specific cases inquired into are also to be reported and made public.</i></p>
Tripura Police Act, 2007	<p><i>Complaints Against: any/all police personnel.</i></p> <p><i>Nature of Complaint:</i></p> <p>i) death in police custody</p> <p>ii) grievous hurt</p> <p>iii) rape or attempt</p> <p>iv) illegal arrest/ detention</p> <p>iv) violation of human rights</p> <p>v) allegations of corruption</p> <p>vi) other cases referred by DGP.</p>	<p><i>Complaints received from:</i></p> <p>i) a victim or any person on his behalf</p> <p>ii) NHRC/SHRC</p> <p>iv) police</p> <p>v) any source.</p> <p><i>Rights of Complainant:</i></p> <p>i) informed of progress, completion of inquiry and final action taken</p> <p>(ii) informed of date and place of hearings</p> <p>iii) services of a translator.</p>	<p>Power to visit lock-up and places of detention.</p>	<p><i>Annual report to contain:</i></p> <p>i) cases of serious misconduct enquired</p> <p>ii) number and nature of complaints of dissatisfactory departmental proceedings made to it</p> <p>iii) advice and directions</p> <p>iii) identifiable patterns of misconduct</p> <p>iv) measures to enhance police accountability.</p> <p>Report to be laid before the State Legislature and made a public document.</p> <p><i>Specific cases inquired into are also to be reported and made public.</i></p>

State Acts	Nature of Complaints	Complainant	Mandate and Power	Reporting Obligations
Uttarakhand Police Act, 2007	<p><i>Complaints Against:</i> any/all police personnel.</p> <p><i>Nature of Complaint:</i></p> <ul style="list-style-type: none"> i) death in police custody (ii) grievous hurt iii) rape or attempt iv) illegal arrest or detention v) violations of human rights vi) corruption. vii) cases referred by DGP. 	<p><i>Complaints received from:</i> any person not being anonymous.</p> <p><i>Rights of Complainant:</i> to be informed of progress, completion of inquiry and final action taken.</p>	<p><i>Monitor the status of departmental inquiry or action;</i> review reports received from DGP and advise expeditious completion of inquiry.</p> <p><i>Call for reports</i> upon complaints of undue delay in or dissatisfactory outcome of departmental proceedings and advise further action or fresh enquiry if necessary.</p>	<p><i>Annual report to contain:</i></p> <ul style="list-style-type: none"> i) cases of serious misconduct enquired ii) number and nature of complaints of dissatisfactory departmental proceedings made to it iii) advice and directions iii) identifiable patterns of misconduct iv) measures to enhance police accountability. <p>Report to be laid before the State Legislature in the budget session. It will be a public document. The report is to be made easily available to the public.</p> <p><i>Specific cases</i> inquired into are also to be reported and made easily available to the public.</p>

Constitution, Composition, Complaints, Recommendations and Report

State Acts	Constitution and Composition	Nature of Complaints and Rights of Complainant and Witnesses	Functions and Recommendation	Reporting Obligations
<p>Assam Police Act, 2007</p> <p>Authority: District Accountability Authority</p>	<p><i>Establishing Authority:</i> State government.</p> <p><i>Composition:</i> Chairperson: Retired district judge Other Members: (i) Retired senior police officer (ii) Retired senior civil servant (c) Eminent person from civil society.</p>	<p><i>Complaints Against:</i> Any/all police personnel.</p> <p><i>Nature of complaints:</i> i) death in police custody ii) grievous hurt iii) molestation, rape or attempt iv) illegal arrest and detention v) forceful deprivation of ownership rights vi) blackmail/ extortion vii) non-registration of FIR viii) undue delay in departmental inquiry ix) dissatisfactory outcome of disciplinary proceedings.</p> <p><i>Rights of Complainant:</i> i) to be informed of progress, completion of inquiry, final action taken ii) informed of date and place of hearings iii) services of translator.</p>	<p><i>Functions:</i> i) forward complaints of serious misconduct to state PCA ii) forward, complaints of misconduct to DSP/DGP iii) advise DSP to expeditiously complete inquiry iv) report cases of inaction by DSP despite advice, to state PCA.</p> <p><i>Complaint of inordinate delay in departmental proceedings or dissatisfactory outcome:</i> request and review reports from DSP and advise expeditious completion of inquiry.</p>	<p><i>Annual report to the State Authority to contain:</i> i) all cases of serious misconduct forwarded to the Commission and DSP ii) all cases monitored by it iii) number and nature of complaints of dissatisfactory departmental proceedings made to it (iv) advice or direction on further action issued by it upon complaints of dissatisfactory DP iv) measures to enhance police accountability.</p>
<p>Bihar Police Act, 2007</p> <p>Authority: District Accountability Authority</p>	<p><i>Establishing Authority:</i> State government.</p> <p><i>Composition:</i> Chairperson: District Magistrate</p>	<p><i>Nature of Complaints:</i> Misbehaviour.</p> <p><i>Rights of Complainant:</i> i) to be informed of progress and completion of</p>	<p><i>Monitoring the status of departmental inquiry or action:</i> receive quarterly report from DSP relating to complaints of misbehaviour</p>	<p><i>Annual report to the Government to contain:</i> i) number and nature of cases of misbehaviour forwarded by it to government and SP</p>

State Acts	Constitution and Composition	Nature of Complaints and Rights of Complainant and Witnesses	Functions and Recommendation	Reporting Obligations
	Members: i) SP ii) Senior Additional District Magistrate Member Secretary: Additional District Collector.	inquiry and final action taken.	against officers and issue appropriate advice. <i>Call for reports:</i> request and review reports from DSP and advise expeditious completion of inquiry or fresh inquiry.	ii) number and nature of cases monitored by it iii) number and nature of complaints of dissatisfactory departmental proceedings made to it iv) advice or direction on further action issued by it upon complaints of dissatisfactory DP v) recommendations to enhance responsibility of police.
Bombay Police (Gujarat Amendment) Act, 2007 <i>Authority:</i> The District Police Complaints Authority	<i>Establishing Authority:</i> state government. <i>Composition:</i> Ex-officio Chairperson: DSP Members: Two members of the Gujarat Legislative Assembly elected from the district Ex-officio Member: Addl. DM Ex-officio Member Secretary: DySP. <i>Term:</i> Not prescribed by the Act.	<i>Complaints against:</i> any police officer posted in the district up to the rank of Police Inspector <i>Complaints can be made by:</i> any person <i>Nature of complaints:</i> i) serious dereliction of duty ii) grave misconduct iii) misuse of powers iv) non-registration of FIR v) state government may direct any matter to the Authority for enquiry.	<i>Powers and functions:</i> i) inquire into complaints received by it ii) forward complaints against higher ranking officers to state PCA (iii) monitor progress of departmental inquiries on complaints of misconduct. <i>Meeting and reporting:</i> assess record of at least one-fourth of all police stations in the district with respect to the following matters and prepare a rating on it. Report the same to concerned disciplinary	<i>Reports:</i> no reporting obligations expect quarterly meetings and ratings.

State Acts	Constitution and Composition	Nature of Complaints and Rights of Complainant and Witnesses	Functions and Recommendation	Reporting Obligations
			<p>authority for action:</p> <ul style="list-style-type: none"> i) prompt registration of FIR ii) custodial violence iii) extortion of money from complainants and victims iv) drunken behaviour v) misbehaviour. <p><i>Recommendations:</i> made to the concerned Disciplinary Authority.</p> <p>Act does not state nature and scope of recommendations except registration of FIR in case of non-registration.</p>	
Haryana Police Act, 2007	The Act mandates the state government to notify and constitute a district PCA for each district <i>when required</i> .		<i>May monitor departmental inquiries</i> when ordered by the State Authority. Advice expeditious completion of case.	
Himachal Pradesh Act, 2007 Authority: District Police Complaints Authority	<p><i>Establishing Authority:</i> State government.</p> <p><i>Composition:</i> Chairperson: Divisional Commissioner Non-official Members: i) retired senior police officer (SP or above) ii) retired prosecutor (district attorney and above) iii) retired judicial officer</p>	<p><i>Nature of complaints:</i> i) criminal misconduct ii) misconduct.</p> <p><i>Complaints against:</i> non-gazetted police officer.</p>	<i>Call for report</i> from disciplinary authority. Issue advice for further action including fresh inquiry by another officer.	<p><i>Report to state PCA:</i> (i) Undue delay in departmental enquiry, despite advice of the district PCA.</p> <p><i>Annual report</i> to the state Authority to contain: i) cases forwarded by it to the state Authority and disciplinary authority</p>

State Acts	Constitution and Composition	Nature of Complaints and Rights of Complainant and Witnesses	Functions and Recommendation	Reporting Obligations
	<p>(Addl. District judge and above).</p> <p><i>Meeting and records:</i> Meet at least once a month and record all proceedings.</p> <p><i>Records to be made open to the public.</i></p>		<p><i>Functions:</i> i) forward complaints of criminal misconduct to state Authority ii) forward complaints against non-gazetted officers to DSP or other concerned authority iii) forward complaints of misconduct to state government under intimation to the state Authority.</p> <p><i>Fine:</i> May impose a fine of less than Rs. 25,000 for baseless complaints.</p>	<p>ii) number and type of cases monitored iii) number and nature of complaints of dissatisfactory departmental proceedings along with advice issued iv) identifiable patterns of police misconduct v) measures to enhance police accountability.</p>
<p>Kerala Police (Amendment) Act, 2007</p> <p><i>Authority:</i> District Level Police Complaints Authority</p>	<p><i>Establishing Authority:</i> State government.</p> <p><i>Composition:</i> Chairperson: retired district judge Members: (i) District Collector (ii) DSP.</p>	<p><i>Complaint against:</i> police officers of and below the rank of DySP.</p> <p><i>Nature of complaints:</i> All complaints except those the state Authority is competent to inquire.</p>	<p><i>Functions:</i> inquire into the complaints received by it.</p>	<p><i>Reports:</i> No reporting obligation.</p>
<p>Maharashtra Government Resolution No. NPC 1008/2/CR-6/POL-3</p> <p><i>Authority:</i> District Police Complaint Authority. (District Authority)</p>	<p><i>Establishing Authority:</i> State government.</p> <p><i>Composition:</i> Chairperson: retired district judge or retired judge of equivalent rank.</p>	<p><i>Complaints against:</i> police personnel up to the rank of Inspector.</p> <p><i>Nature of complaints:</i> i) serious dereliction of duty ii) grave misconduct iii) misuse of powers</p>	<p><i>Functions and powers:</i> i) forward complaints against higher ranked officers to state Authority. ii) monitor progress of departmental enquiries against officer up to the rank of Inspector.</p>	<p><i>Reports:</i> No reporting obligations.</p>

State Acts	Constitution and Composition	Nature of Complaints and Rights of Complainant and Witnesses	Functions and Recommendation	Reporting Obligations
	<p>Members: i) officer of the rank of Collector/ Deputy Collector ii) eminent person Member Secretary: officer of the rank of SP or DySP</p> <p>Term: i) eminent person - three years ii) all other members as may be prescribed by state government.</p>	<p>iv) corruption v) negligence vi) non-registration of FIR vii) other matters as may be referred by state government.</p>	<p>Recommendations: Not defined.</p>	
Orissa Notification No. 22123/D.S.A.,dt. 1.05.2008 PDA-II-95/2007	The Lokpal acts as the state and district PCA. Relevant provisions of the notification have been discussed under state Authority at Annexure II.			
Punjab Police Act, 2007	Police Complaints Authority at state and district-level may be constituted through notification.			
Rajasthan Police Act, 2007 Authority: District Accountability Committee	<p><i>Establishing Authority:</i> State government.</p> <p><i>Composition:</i> Chairperson: independent member Members: eminent persons, with experience in public dealings, and credible record of integrity and commitment to human rights. Member Secretary: Addl. SP.</p>	<p><i>Complaints against:</i> police personnel of subordinate ranks.</p> <p><i>Nature of complaints:</i> i) grievous hurt ii) illegal detention iii) any offence for which maximum punishment prescribed is 10 years iv) extortion.</p>	<p><i>Enquiry:</i> i) <i>suo moto</i> upon receiving a complaint.</p> <p><i>Functions:</i> i) inquire into allegations of serious misconduct ii) monitor departmental enquiry iii) refer complaints against officers in supervisory ranks to the state Committee.</p>	<p><i>Report:</i> No reporting obligations.</p>

State Acts	Constitution and Composition	Nature of Complaints and Rights of Complainant and Witnesses	Functions and Recommendation	Reporting Obligations
	<p>One of the independent members is to be from weaker sections and another, a woman.</p> <p><i>Term:</i> two years. Members are not eligible for reappointment after the expiry of the term.</p>		<p><i>Recommendations:</i> Not defined.</p> <p><i>Effect of recommendation:</i> disciplinary authority receiving such recommendation is bound to take decision upon such recommendation and send a copy of the same to the Committee within three months.</p>	

List of Abbreviations

PCA	Police Complaint Authority
ICD	Independent Complaint Directorate
NPF	Nigeria Police Force
DP	Disciplinary Proceedings
IPC	Indian Penal Code
Cr.P.C	Criminal Procedure Code
DGP	Director General of Police
IAS	Indian Administrative Service
IPS	Indian Police Service
SP	Supritendent of Police
Dy	Deputy
CID	Criminal Investigation Department
FIR	First Information Report
ACP	Assistant Commissioner of Police
NHRC	National Human Rights Commission
CPD	Chicago Police Department
IPRA	Independent Police Review Authority
Addl	Additional

Endnotes

¹ It must be noted here that the government figures are not a reliable measure of crime statistics. These figures are gathered from registration of crime at the police station level. There are many factors at play which make these figures unreliable – all of them to do with police abuse and illegality in registration of crime. These are simply the only figures available to show some aspect of the complaints scenario, but they are grossly inadequate.

² National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2007*, Chapter 16: <http://ncrb.nic.in/cii2007/cii-2007/CHAP16.pdf>.

³ National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2007*, Chapter 16: <http://ncrb.nic.in/cii2007/cii-2007/CHAP16.pdf>, see Table 16(E).

⁴ National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2007*, Chapter 13: <http://ncrb.nic.in/cii2007/cii-2007/CHAP13.pdf>.

⁵ National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2007*, Chapter 16: <http://ncrb.nic.in/cii2007/cii-2007/CHAP16.pdf>.

⁶ National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2007*, Chapter 16: <http://ncrb.nic.in/cii2007/cii-2007/CHAP16.pdf>.

⁷ National Crime Records Bureau, Ministry of Home Affairs, *Crime in India 2007*, Chapter 13: <http://ncrb.nic.in/cii2007/cii-2007/CHAP13.pdf>.

⁸ National Human Rights Commission, *Annual Report 2004-2005*, page 23, paragraph 4.3.

⁹ National Human Rights Commission, *Annual Report 2004-2005*, page 24, paragraph 4.5.

¹⁰ National Human Rights Commission, *Annual Report 2004-2005*, page 23, paragraph 4.3.

¹¹ *Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1.

¹² *Prakash Singh and Others v Union of India and Others* (2006) 8 SCC 1.

¹³ The Report of the Independent Commission on Policing of Northern Ireland, Chapter 6, page 38, http://www.nio.gov.uk/a_new_beginning_in_policing_in_northern_ireland.pdf.

¹⁴ For links to all the annual reports, see <http://www.icd.gov.za/documents/index.html>.

¹⁵ For the latest annual report, see Police Ombudsman for Northern Ireland, *Annual Report and Accounts, 2007-2008*, <http://www.policeombudsman.org/Publicationsuploads/PONI%20Annual%20Report.pdf>. For information on the website on Complaints Outcomes, see <http://www.policeombudsman.org/modules/cases/caseoutcomes.cfm>.

¹⁶ http://www.opsi.gov.uk/acts/acts1998/ukpga_19980047_en_1.

¹⁷ It is very encouraging that in Assam, Uttarakhand, and Tripura, the Authorities are mandated to report on similar categories in their Annual Reports, as laid down in the Police Acts – Section 71 of the Tripura Police Act; Section 83 and 86 of the Assam Police Act and Section 73 of the Uttarakhand Police Act.

¹⁸ To note, the Punjab Police Act, 2007 states that these bodies “may” be set up.

¹⁹ On a comparative note, the mandate laid down by the Court falls in line with the mandates of similar police oversight bodies in South Africa, Northern Ireland, and England and Wales, which all include the investigation of deaths in police custody. Based on this trend, it may be argued that the core mandate of these types of bodies is an obligation to investigate, independently and promptly, deaths in police custody – the only variation is in the other jurisdictions, unlike India, where deaths as a result of police action (in police firing for instance) are also included in the mandates.

²⁰ Section 71(2), Uttarakhand Police Act, 2007.

²¹ Section 66.

²² Section 78, Assam Police Act, 2007.

²³ Five categories of persons are exempt from paying this fee. These include i.) women; ii) physically challenged persons; iii) persons belonging to the SC/ST community; iv) people falling in the BPL category; and v) persons in custody.

²⁴ Via an Office Memorandum dated 29 December 2006.

²⁵ Section 65(1), Uttarakhand Police Act, 2007.

²⁶ Section 67, Uttarakhand Police Act, 2007.

²⁷ As defined under Section 320 of the Indian Penal Code, 1860.

²⁸ Section 71, Uttarakhand Police Act, 2007.

²⁹ Section 73, Uttarakhand Police Act, 2007.

³⁰ Section 71, Assam Police Act, 2007.

³¹ There was a third member, a retired professor Mrs. Jahanara Saikia, who passed away in January 2009. The state government has already requested that another member be appointed in her place.

³² Section 74, Assam Police Act, 2007.

³³ Section 82, Assam Police Act, 2007.

³⁴ Section 62, Tripura Police Act, 2007.

³⁵ Section 70, Tripura Police Act, 2007.

³⁶ Section 17E(2), Kerala Police (Amendment) Act, 2007.

³⁷ While Kerala is showcased here, information received from other Authorities, where relevant and available, is referenced throughout this chapter.

³⁸ The seven southern districts are: Thiruvananthapuram, Kollam, Pathanamthitta, Kottayam, Alapuzha, Ernakulam and Idukki

³⁹ In his view, "independent staff" would be a panel of retired police officers. This view was shared by the state level PCA Chair. It is troubling that retired judges are so set in their view that the only options for investigators are police officers.

⁴⁰ Section 17E(1), Kerala Police (Amendment) Act, 2007.

⁴¹ Section 17E(3), Kerala Police (Amendment) Act, 2007.

⁴² In its 2006 judgement, the Supreme Court held that the state-level Complaints Authority would look only into complaints of "serious misconduct" involving death, grievous hurt or rape in police custody, and only against officers of the rank of Superintendent of Police and above.

⁴³ Justice Mohandas assured us that if any PCA is of the opinion that a police officer is interfering in any inquiry, particularly by threatening any witnesses or the victim, then the PCA will take *suo moto* action against the officer and recommend his suspension. This has not happened as yet in practice, but it is good to know that Justice Mohandas is thinking proactively about such an eventuality.

⁴⁴ This follows an already existing legal requirement in Kerala – when a person is admitted to hospital, they have to state before the doctor how they received their injuries and the history of the incident. This information is entered into an "Accident-cum-Wound" register.

⁴⁵ Section 320 designates "the following kinds of hurt" as "grievous"

Firstly – Emasculation

Secondly – Permanent privation of the sight of either eye

Thirdly – Permanent privation of the hearing of either ear

Fourthly – Privation of any member or joint

Fifthly – Destruction or permanent impairing of the powers of any member or joint

Sixthly – Permanent disfiguration of the head or face

Seventhly – Fracture or dislocation of a bone or tooth

Eighthly – Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

⁴⁶ Complaint No. 16/08.

⁴⁷ Complaint No. 32/08.

⁴⁸ Inquiries are to be conducted in accordance with Rule 7 and Rule 10 of the All India Services Discipline and Appeal Rules, 1969. or under the Public Servants (Inquiries) Act, 1850 (37 of 1850).

⁴⁹ Rule 8 (3) states, "Where a Board is appointed as the inquiring authority it shall consist of not less than two senior officers provided that at least one member of such a board shall be an officer of the Service to which the member of the Service belongs".

⁵⁰ Rule 8(5), All India Service Discipline and Appeal Rules, 1969.

⁵¹ Rule 1210(a), Bihar Police Manual.

⁵² Rule 169 (10), Andhra Pradesh Police Manual, Volume I, 2002, page 154.

⁵³ Rule 840, Bihar Police Manual.

⁵⁴ Similar provisions are available in Section 36(1) of the Human Rights Act, 1993 which states: "The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force". Section 21(5) of the Protection of Human Rights Act, 1993 states: "Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter." This can be interpreted to mean that any State Human Rights Commission shall not take cognisance of any complaint pending before a PCA.

CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, in addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Human Rights Advocacy:

CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact-finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

Access to Information:

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

Access to Justice:

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major area is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.



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