

# 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.

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## **CHRI Headquarters, New Delhi**

B-117, First Floor  
Sarvodaya Enclave  
New Delhi - 110 017  
INDIA  
T: +91 (0) 11 4318 0200  
F: +91 (0) 11 2686 4688  
info@humanrightsinitiative.org

## **CHRI United Kingdom, London**

Institute of Commonwealth Studies  
School of Advanced Study, University of London  
Second Floor, South Block, Senate House  
Malet Street, London WC1E 7HU  
T: +44 (0) 207 862 8857  
F: +44 (0) 207 862 8820  
chri@sas.ac.uk

## **CHRI Africa, Accra**

House No.9, Samora Machel  
Street Asylum Down  
Opposite Beverly Hills Hotel  
Near Trust Towers, Accra, Ghana  
T +233 (0) 302 971170  
F +233 (0) 302 244819  
chriafr@africaonline.com.gh

# POLICE COMPLAINTS AUTHORITIES

## Reform Resisted

*authors*

Diya Nag  
Devika Prasad

*edited by*

Navaz Kotwal

Commonwealth Human Rights Initiative  
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# Foreword

In 2006, the Supreme Court directed that each state set up police complaints authorities at the state level and in the districts. The directive was one of seven, designed by the Court to deal with all the major ills that make policing dysfunctional and delinquent today.

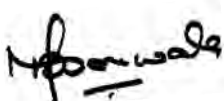
If adopted altogether and honestly implemented, over these past five years, the Court's directives could have transformed the Indian police from a feared and distrusted force to an essential service upholding the law for the entire population without fear or favour. But sadly this has not happened. Instead, state after state across the country has gone to lengths to avoid complying with the Court's prescription to improve police functioning. Some states have legislated their way out of strict compliance and formulated laws, that while appearing to follow the Court's design, defeat its spirit and the objective to be achieved. Others have done violence to the holistic schema by accepting only one or other aspect of it, diluting even that and leaving out components that would have made for a strong framework. Yet others have simply done nothing.

The complaints authorities were a vital part of the Court's scheme and were designed to cure the rampant lack of accountability that the police enjoy. The authorities were meant to be new specialist agencies which would look at complaints against the police and ensure that the public's many grievances against them – that range from discourtesy to disappearances – are dealt with transparently at the local level by an independent authority with powers to oversee police wrongdoing. The hope was that their specialist reports would year on year reveal patterns of institutional weaknesses and wrongdoings, to be read, respected and lead to reform. There is no sign that this is happening.

From the outset, the idea of creating these bodies has been strongly resisted by the police. They argue that it adds one more layer to the several that they must answer to. They point to all the human rights commissions dotted across the country; the thematic commissions dealing with vulnerable groups such as minorities, women, Scheduled Castes and Scheduled Tribes; their own internal mechanisms; and of course, the courts. This point of view does not take account of the difficulties and dangers that ordinary folk face in bringing any complaint against a policeman or the clear evidence that despite all these courts and commissions, police functioning remains all too often outside the law and escapes any consequences.

For the past five years, the Commonwealth Human Rights Initiative (CHRI) has been monitoring the growth and functioning of these new bodies. The picture that emerges in this, our second report on their functioning, is bleak in the extreme. Only eighteen of the twenty-eight states have set up a Police Complaints Authority. Not one of these complies with the schema laid out by the Supreme Court. Where they are functional, they are designed such that they fail or are weak. Even where they struggle to fulfil their function, they are openly disobeyed and defied.

Almost before complaints authorities are born, they are in imminent danger of quickly falling into the same debilitated state of ineffectiveness that many other agencies set up to check police malpractice have fallen. It is only if the public understands their importance and governments support it wholeheartedly will they survive to strength and capability. This report is intended to be one more reminder to policymakers, the police, and the Authorities themselves, to pay heed to the parlous state of public confidence in the police and the seething resentment that arises from consistently ignoring overt injustice.



Maja Daruwala  
Director, CHRI



# Introduction



The Commonwealth Human Rights Initiative (CHRI) has monitored and reported on Police Complaints Authorities in India, following the Supreme Court's decision in the *Prakash Singh*<sup>1</sup> case that ordered their creation in 2006. In 2009, CHRI published its first national-level report on the Authorities, providing information on the legal framework, the number of functioning Authorities, a brief description of inquiry procedures adopted by them, and pointed to gaps in both legislation and practice. This is the second national - level report and focuses on the Authorities in 2010. It assesses how they fared in their operations, with a strong focus on the handling of complaints and the experience of complainants.



# Introduction

The Commonwealth Human Rights Initiative (CHRI) has monitored and reported on Police Complaints Authorities in India, following the Supreme Court's decision in the *Prakash Singh*<sup>1</sup> case that ordered their creation in 2006. In 2009, CHRI published its first national-level report on the Authorities, providing information on the legal framework, the number of functioning Authorities, a brief description of inquiry procedures adopted by them, and pointed to gaps in both legislation and practice. CHRI observed that there were functional Authorities in only seven states – Assam, Chandigarh, Goa, Haryana, Kerala, Tripura and Uttarakhand; while fifteen other states had constituted Authorities only on paper, either as provisions within a new state Police Act or in a Government Order. The 2009 report found that the functioning Authorities seriously failed their mandates and suggested numerous recommendations aimed towards strengthening them.

The current report is the second national-level report, and focuses on Police Complaints Authorities in India during 2010. It provides a national picture of the functioning of these Authorities and assesses how they fared in their operations, with a strong focus on the handling of complaints. Going a step further from the previous report, this report highlights the accessibility and responsiveness of select Authorities, from the perspective of the complainants. CHRI conducted interviews with complainants in two states where Authorities are well established – Goa and Uttarakhand. The findings and analysis presented here are largely based on the personal experiences of complainants through all the stages of an Authority's inquiry. This report subsequently examines in depth, the pattern of police misconduct that emerges from an analysis of the complaints received.

## Police Misconduct and Abuse in India

There is a simmering anger in the Indian population at the police and the impunity which they seemingly enjoy. From too many illegal arrests and detention to refusal to register cases and down right criminal behaviour – the level and extent of police misconduct in the country remains alarmingly high.

Unfortunately, as mentioned in the previous study, reporting on crime statistics in India only takes into account the complaints which are registered by the police. The official reporting does not admit that the police refuse to register a large number of complaints; and this refusal is particularly acute with respect to complaints against police officers. This factor must be taken into account when assessing the official statistics on complaints against the police, which are already disturbingly high.

In its latest available statistics, which date back to 2009, the National Crime Records Bureau (NCRB) stated that 54,873 complaints were filed against police officers in 2009.<sup>2</sup> Of these, 191 complaints involve various serious human rights violations, ranging from extortion, torture, registering false cases, failure to take action, causing indignity to women and committing atrocities against Scheduled Castes and Scheduled Tribes.<sup>3</sup> The 2009 listing of complaints of human rights violations by police

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<sup>1</sup> *Prakash Singh and Others v Union of India and Others* 2006 8 (SCC) 1.

<sup>2</sup> National Crime Records Bureau, Ministry of Home Affairs, *Crime in India: 2009*, Chapter 16, p. 161. The total number of complaints increased from 48,939 in 2008 to 54,873 in 2009.

<sup>3</sup> National Crime Records Bureau, Ministry of Home Affairs, *Crime in India: 2009*, Chapter 16, p. 166; see Table 16(E).

does not include other grave issues such as disappearances, illegal detentions and arrests, extrajudicial killings, or other forms of gender-based violence, which remain regular forms of police abuse in India. These are clearly critical omissions, and it is worrying that complaints of this serious nature have not been recorded for 2009. There is also a miscellaneous category titled “others” in the list of reported human rights violations by the police, with no explanation or details on what this category comprises, even when it has 162 registered cases – the highest number.

Additionally, in another example of the ways in which official statistics fall short, the critical states of Jammu and Kashmir and Manipur do not even appear in the list of states from which complaints of human rights violations by police were compiled. The numbers of complaints pertaining to the states which are on the list are unrealistically low, and as mentioned above, many serious types of violations have not been taken into account.

NCRB reports that there were twenty-five deaths in police custody in 2009, and fifty-nine deaths of people who were in police custody without judicial sanction.<sup>4</sup> Both under constitutional provisions and statutory law the police only have a maximum of twenty-four hours in which they can keep someone in custody without a Magistrate’s order and continued scrutiny. Deaths in police custody are already a major source of concern, and it is shocking that there were even higher numbers of deaths in potential cases of illegal custody by the police.

The National Human Rights Commission (NHRC) presents another set of data on complaints against the police. The latest available Annual Report of the Commission is the 2006-2007 report. It reveals that of complaints related to police abuses, the NHRC registered 119 cases of death in police custody, 301 relating to police encounters, 760 of illegal arrest and detention, 15 of enforced disappearances, 489 of “false implication” cases, four relating to custodial violence, 89 extrajudicial deaths, 2,682 relating to police failure to take required action, and 3,740 related “to other alleged police excesses”. For some categories, these reflect more realistic numbers of complaints than the NCRB statistics, since complaints can be sent freely to NHRC. For instance, NCRB reported only two cases of custodial rape in 2009 while NHRC received ten cases, as stated in its 2006-2007 Annual Report.

Disappointingly, police accountability has not improved in the slightest since CHRI’s last national-level report on Police Complaints Authorities. The NCRB statistics reveal the poor quality of police accountability in India. Of the total complaints registered against police officers in 2009, departmental, magisterial and judicial inquiries were instituted in only about 46 per cent of the complaints. Of the total complaints filed against police officers, 51.2 per cent remained un-investigated because they were discovered to be untrue or were just simply unsubstantiated.<sup>5</sup> As before, there is no explanation regarding the steps that were taken, if any, before it was decided that these complaints were to be disposed. In 2009, 1,279 cases against police officers were sent for trial.<sup>6</sup> Of these, 132 cases, or 10 per cent, were either withdrawn or disposed, while 142 trials were completed. Of these, 99 police personnel, or 70 per cent, were acquitted, while 43 police personnel, or 30 per cent, were convicted. No explanation is given for the tremendous imbalance in the high rate of acquittal and low rate of conviction of police officers.

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<sup>4</sup>The exact wording used is “...deaths in police custody of people who were taken into custody by police themselves”, National Crime Records Bureau, *Crime in India: 2009*, Chapter 13, p. 152. These figures appear on pp. 151-152.

<sup>5</sup>National Crime Records Bureau, Ministry of Home Affairs, *Crime in India: 2009*, Chapter 16, p. 161.

<sup>6</sup>All figures on prosecutions of police officers are taken from *Crime in India: 2009*, Chapter 16, p. 162.

Police departmental inquiries were initiated against a total of 28,818 police personnel in 2009.<sup>7</sup> In 4,687 of these, or 16 per cent, the cases against police officers were either withdrawn or disposed. The highest number of police officers, comprising 18,085 (or 63 per cent) received only minor punishments, while 4,227 (15 per cent) received major punishments. Departmental inquiries were completed for 15,356 (53 per cent) police officers. Resulting from these, 647 were dismissed or removed from service.

These figures reveal that both the judicial and departmental processes produce a weak measure of accountability, with an exceedingly high occurrence of acquittals and minor punishments.

NHRC is also not a strong source of accountability, as it is beset with structural weaknesses that seriously affect the quality and outcome of its investigations. The need for strengthened police accountability is as strong today, as it was shown in the 2009 report.

## Remedies Available to Victims of Police Abuse

There are several remedies available to a victim of police misconduct or abuse.

Any victim of police abuse:

- Can register a First Information Report (FIR) against the errant officer at any police station;
- If his complaint is not accepted (which is most often the case) he can send the complaint to the District Superintendent of Police who will then look into the matter and order the registration of the FIR;
- If both these avenues do not produce results the victim can go to the nearest Magistrate and have his complaint registered. The Magistrate will then order the police to register the FIR;
- The victim can even send his complaint to the National Human Rights Commission or the state human rights commission if there is one in his or her state.

Unfortunately most institutions set up to deliver justice to victims have failed miserably in their mandates. As a result, dissatisfaction with the police has reached an all-time high with the public convinced that the police can get away with anything – from being rude and unresponsive to corrupt and murderous.

Since the last report, there has been a slightly heightened state response to these serious gaps in accountability, through the drafting of new legislation. Most relevant to the mandate of the Police Complaints Authorities, are the drafting of the Prevention of Torture Bill, 2010 and the new provisions on sexual violence that would amend criminal law, particularly the law on rape. The Prevention of Torture Bill establishes a definition of torture and holds public servants accountable; while the new provisions on sexual violence would introduce a more comprehensive and wider definition of what constitutes sexual violence. The government was forced to consult civil society for both pieces of legislation, after its first draft was strongly criticised by civil society.<sup>8</sup> As of January 2011, neither has passed into law.

<sup>7</sup> All figures on police departmental inquiries are taken from *Crime in India: 2009*, Chapter 16, p. 162, Table 16 (C).

<sup>8</sup> In fact, the Prevention of Torture Bill, 2010 was not permitted to be passed into law and was referred to a Parliamentary Select Committee for further debate and discussion by Members of Parliament from several political parties in the Rajya Sabha, the Upper House of the Indian Parliament, in August 2010.

# The Supreme Court's Directive on Police Complaints Authorities

In its directive to create Police Complaints Authorities, the Supreme Court in the *Prakash Singh v Union of India*<sup>9</sup> case provided specific guidelines to shape the Authorities. A brief summary of the guidelines relating to the mandate, composition and powers laid down by the Court for the Authorities is listed below.

## Mandate

The Supreme Court laid down a very specific mandate for the Authorities. First and foremost, state governments were to set up these bodies at *both* state and district levels. The former would be empowered to look into allegations of “serious misconduct”, which includes but not limited to:

- Death;
- Grievous hurt;
- Rape in police custody.

The district-level Authorities would look into complaints that include:

- Death;
- Grievous hurt;
- Rape in police custody;
- Allegations of extortion;
- Land/house grabbing;
- Any incident involving serious abuse of authority.

## Composition

According to the Supreme Court's directive, the head of the state-level Authority is to be a retired Judge of the High Court/Supreme Court, selected by the state government from a panel of names proposed by the Chief Justice. The district-level Authorities are to be chaired by a retired District Judge, chosen from a panel of names proposed by the Chief Justice of the High Court or by a High Court Judge nominated by the Chief Justice. Additional members are to be chosen by the government from a panel prepared by the State Human Rights Commission/Lok Ayukta/State Public Service Commission.

## Powers

Every Authority can take cognizance of complaints made either by the victim or the victim's representative. In some states, the National Human Rights Commission or state human rights commission can submit complaints. Other states allow the Authority to initiate inquiries *suo moto*, on their own accord without a complaint having to be filed.

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<sup>9</sup> (2006) 8 SCC 1.

All established Authorities have the same powers as a civil court trying a suit under the Code of Civil Procedure, 1908. This means it has the power to summon witnesses and compel their appearance, receive evidence in the form of affidavits, etc. Following its inquiries, the Authorities can issue recommendations and the Court specified that these recommendations are binding. Authorities can either compel the registration of a First Information Report (FIR) against the errant officer, or initiate a departmental inquiry.

In the course of monitoring established Authorities, and as mentioned in the 2009 CHRI report, it is clear that the Supreme Court's model for the Authorities has not been fully adopted in any state. This report sheds light on the various ways in which state governments diluted and/or brazenly violated the Court's guidelines in the design, mandate and powers of the Authorities.

## The Role of the Monitoring Committee

Recognising the dilution of its directives, the Supreme Court set up a Monitoring Committee to oversee the implementation process. Justice K. T. Thomas (a retired Supreme Court Judge) was appointed the Chairperson of the Committee, accompanied by Mr Kamal Kumar (a retired IPS officer), and Mr Dharmendra Sharma, the Joint Secretary of Police Modernisation.

The Committee held several sittings at New Delhi and across the country. The objective of these meetings was to evaluate state compliance with the Court's directives by reviewing government notifications and orders, or newly introduced police legislation. Four interim reports by the Committee were filed before the Supreme Court – the first report was filed in October 2008, the second in May 2009, the third in September 2009 and the fourth in December 2009. The Committee's final report, which was presented to the Court in August 2010, condemned every state of not following the directives.

The Committee examined all available documents, including the affidavits filed by the central and state governments before the Supreme Court. It also decided to take stock of the new Police Acts legislated by some of the states, in order to review whether or not they conformed to the Supreme Court guidelines.

Unsatisfied with the level of compliance as well as attempts by states to comply only on paper, the Committee believed that there was a need to move beyond legislation and appraise ground realities. However, considering that it would be impossible for the Committee to visit all the states and Union Territories, it decided to visit four states – Maharashtra (West Zone), Uttar Pradesh (North Zone), Karnataka (South Zone) and West Bengal (East Zone). Besides being populous, all these states, in the Committee's assessment, were defaulters of the Supreme Court's orders. In addition, none of them have constituted functioning Authorities till date.

Based on the Committee's report, the Apex Court took serious note of the lack of compliance and issued notices to the four errant states telling their Chief Secretaries to appear before the Court at the next hearing to clarify as to why the six directions given in its order were not complied with. The Court noted that it did not want its judgement to lie in the courtroom.

The matter still remains pending in the Court. States continue to exploit every opportunity to challenge the directives and simply let time go by. There is no indication that the admonishments

states have repeatedly received from the Committee and the Court will spur them towards greater compliance of the directives.

## Do We Need One More Accountability Mechanism?

Critics argue that there are already several bodies<sup>10</sup> set up to examine police misconduct and that another institution would only be an additional drain on the exchequer. Whilst we wholly support the argument and believe that the existent bodies have several structural deficiencies, it should be noted that they are not specialised bodies set up solely to oversee the police. Additionally, their recommendations are not binding and they are overburdened with their current, extensive mandates.

The law requires police excesses to be thoroughly investigated, and those police personnel responsible for unlawful actions be prosecuted and convicted. This is necessary both to: fulfil the state's obligations to provide accountability in the individual case and justice for the victim and their family; as well as to fulfil the states' due diligence obligations to prevent future violations. If violations are left unpunished, a culture of impunity is created, which in turn encourages further violations.

The police argue that they are in fact the most disciplined force and that their internal accountability mechanisms are robust enough to handle misbehaviour. However, there needs to be acknowledgement from police circles that this is a myth. The truth is that internal procedures cannot be appreciated because they are veiled, slow paced, and uncertain in outcome. Too frequently the complainant cannot sustain the grievance and remains unsatisfied.

Even where internal procedures are adequate, well structured and properly resourced, by their very nature they are susceptible to bias. There is also the strong temptation to protect their own.

The Complaints Authority is one chance to address the growing public discontent with policing which has remained unaddressed for decades. External civilian oversight of the police can, where set up appropriately, be an important complement to the other mechanisms in place, and can help fill the gaps in the country's system of accountability by avoiding some of the inherent or likely inadequacies of the other mechanisms.

## Aim of the Report

Unlike the previous report, which analysed the Authorities in their nascent stage of existence, this report sheds light on trends and developments as Authorities have slowly become institutionalised in some states. As mentioned above, the impressions and experiences of complainants in two states form the basis of the findings of this report.

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<sup>10</sup> National and State Human Rights Institutions, Women's Commissions, Scheduled Castes and Scheduled Tribes Commission, Children's Commissions, to name a few.



## The Functional Authorities



Since the last report and more than four years after the Supreme Court delivered its judgement in the *Prakash Singh* case, only three new Police Complaints Authorities have been established, bringing the total to merely eight functioning Authorities on the ground, in the states of Assam, Chandigarh, Haryana, Goa, Kerala, Puducherry, Tripura and Uttarakhand. Other states have either only created an Authority on paper, or manifestly ignored the Court's directive.<sup>11</sup>



# The Functional Authorities

Since the last report and more than four years after the Supreme Court delivered its judgement in the *Prakash Singh* case, only three new Police Complaints Authorities have been established, bringing the total to merely eight functioning Authorities on the ground, in the states of Assam, Chandigarh, Haryana, Goa, Kerala, Puducherry, Tripura and Uttarakhand. Other states have either only created an Authority on paper, or manifestly ignored the Court's directive.<sup>11</sup>

This chapter contains brief descriptive information on the *functional* Authorities. 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. As the pace of change in relation to Police Complaints Authorities is so slow, most of the state-specific information provided in this chapter mirrors the information that appeared in the last report. Any new legal or other developments are highlighted, particularly where there are minor changes in parts of the text. However, the Authorities set up in Chandigarh, Haryana and Puducherry being new, have been added in this report.

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*.

The Assam Act has a provision which is loaded against a complainant or victim. The Act requires that a complaint against a police officer must be accompanied by a sworn statement. This creates unnecessary hurdles that will complicate the process and discourage persons from accessing the Authority. Additionally, there is the provision of a fine/penalty for vexatious or frivolous complaints. Taken together, it is difficult to see how this provision will help the cause of police accountability which the Apex Court's order was intended to bring about. Indeed, these provisions are sure-fire ways of severely limiting complaints and will intimidate potential complainants from accessing the Authorities.

At this stage it is difficult to understand the value of such a provision. No other complaints body has such a provision including the human rights commissions across the country. Thus there is really little justification for treating police complaints in any different manner or creating higher gate-keeping provisions for such complaints.

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<sup>11</sup> Five states have entirely ignored the directive to create Police Complaints Authorities –Andhra Pradesh, Madhya Pradesh, Mizoram, Tamil Nadu and Uttar Pradesh.

## Assam

The Assam Police Act, 2007 came into force in August 2007 establishing both state- and district-level Police Complaints Authorities. Although the state-level Police Complaints Commission began functioning in January 2008, district-level bodies have not yet been constituted.

### 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”.<sup>12</sup> The members are to include a retired police officer of the rank of Director General of Police (DGP) or Additional Director General of Police; a person with a minimum of ten years experience, either as a judicial officer, public prosecutor, practising advocate, law professor, or a person of repute and standing from civil society; and lastly, a retired officer with experience in public administration, not below the rank of Commissioner or 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.

#### Members

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

Shri S. P. Ram (member): retired IPS officer

Shri D. N. Saikia (member): retired IAS officer

Shrimati Minati Chowdhury (member): member of civil society

### Office, Infrastructure and Funding

The Commission, situated in Guwahati, is funded by the state government under Grants-in-aid. The office functions out of a rented property, paid from the funds allotted to the Commission.

Over and above the four members, it has a staff of twelve persons. These include a secretary, an accounts officer, a general staff member, a computer assistant, a general assistant, a private stenographer and three office messengers for miscellaneous tasks. Most importantly, the Commission has on staff a retired Deputy Inspector General (DIG) of Police as an independent investigator. He has two retired Deputy Superintendents of Police (DySP) assisting him.

### Tenure

The Act gives the Chairperson and members a fixed tenure of three years.<sup>13</sup>

### Mandate

The Commission has the mandate to look into complaints of serious misconduct against the police either *suo moto* or on receiving a complaint.<sup>14</sup> The definition of serious misconduct has been widened

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<sup>12</sup> Assam Police Act, 2007, Section 71.

<sup>13</sup> Assam Police Act, 2007, Section 74.

<sup>14</sup> Assam Police Act, 2007, Section 78.

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.<sup>15</sup>

## 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.<sup>16</sup>

Moreover, the Act gives the Commission powers to monitor the progress of the departmental inquiry and issue appropriate advice to the police department for the expeditious completion of the inquiry, if it is unduly delayed. This is a positive step and if the Commission were to exert these powers, it 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.

## Chandigarh

On 23 June 2010, the Chandigarh Home Department issued a notification setting up a Police Complaints Authority, which is now operational.<sup>17</sup> Based on information obtained from a Right to Information (RTI) request filed by CHRI, as of December 2010, the Chandigarh Authority held its first hearing on 6 September 2010, and was conducted by Justice Aggarwal. It meets from Monday to Friday from 10:30 a.m. to 1 p.m. However, the Authority has not operated as successfully as one would hope, and is burdened with several problems related to its location and powers. Since it began operating, the Authority has received a total of 97 complaints.<sup>18</sup>

## Membership

### Members:

Justice N. K. Aggarwal (Chair): retired High Court Judge  
Ms Joyshri Lobo (member)  
Mr Kanwal Jit Singh (retired DGP)

The Authority is headed by retired Justice N. K. Aggarwal, who is joined by two other members, Ms Joyshri Lobo and Mr Kanwal Jit Singh (retired DGP).<sup>19</sup>

## Tenure

All members have a tenure period of three years.<sup>20</sup>

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<sup>15</sup> Ibid.

<sup>16</sup> Assam Police Act, 2007, Section 82.

<sup>17</sup> Chandigarh Administration Home Department, Notification No. 1/1/114-H111(1)-2010/11667, dated 23 June 2010.

<sup>18</sup> Telephone conversation with Ms Joyshri Lobo, Member of the Chandigarh Police Complaints Authority, 7 June 2011.

<sup>19</sup> Chandigarh Administration Home Department, Notification No. 1/1/114-H111(1)-2010/11667, dated 23 June 2010.

## Office, Infrastructure and Funding

The Authority is located at the secretariat building, which, according to the Chairman, many complainants may find too intimidating and unapproachable.<sup>21</sup> The Chairman mentioned this problem to the relevant officials, and the Authority will be shifting to a building opposite the government press.<sup>22</sup> Unfortunately, the staff from the vigilance department currently deployed at the Authority will not remain once the move takes place.<sup>23</sup>

## Mandate

The Authority is mandated to look into allegations of “serious misconduct” committed by police personnel, either *suo moto* or based on complaints received by the victim or complainant, human rights commissions, the police themselves, or the state or central government.<sup>24</sup> In terms of types of misconduct, there have been no cases till date involving allegations of custodial rape or death. A majority of the complaints relate to property disputes in which the police have refused to take action or file FIRs. The Authority has interpreted this to be “serious misconduct”.

## Powers

The Authority is empowered to direct the police department to register an FIR, or to initiate departmental proceedings.<sup>25</sup> The Authority’s recommendations are binding unless the government disagrees with its findings, which it should then record in writing.<sup>26</sup> The Authority is to submit its findings within sixty days from the date the complaint was received.<sup>27</sup> If it is unable to do so, it must submit a report to the Union Territory (UT) Administrator, enumerating reasons for this.<sup>28</sup> Though the Authority has ordered the suspension of two police officers, they remain unaware as to whether or not any action has been taken by the police.<sup>29</sup>

## Goa

The state-level Police Complaints Authority was established through a Government Order on 20 April 2007, and it met for the first time on 12 May 2007. In 2008, as mentioned in the last report, a new Police Bill was drafted. The Bill has since been under review by a Select Committee.

## Membership

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

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Telephone conversation between Ms Navaz Kotwal, Coordinator of Police Reforms Programme (CHRI), and Ms Joyshri Lobo, Member of the Chandigarh Police Complaints Authority, 24 January, 2011.

been directly selected by the government. The Authority is headed by a retired High Court Judge and comprises three other members who are all retired government servants. These members have not changed since the last report.

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. 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 Moraes (member): retired Bureaucrat

Prof. Shantkumar Bhat (member): retired professor

M. G. Naik: retired Bureaucrat

## Tenure

Tenure is not mentioned in the Government Order. The Chair says the informal arrangement is that members' tenure is subject to notice of one month from either side. The Chair also mentioned 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 thereafter expected to start work right away.

## Office, Infrastructure and Funding

When the Authority was first set up, it was given a small flat as an office, three policemen and a secretary as secretarial staff. There were no telephones and no computers. The Chair stated that it took over a year to get the current facilities and office, which is more spacious and well resourced. The Authority is now located in the Serra Building in Panaji. The clerical and secretarial staff were not paid by the government for the first seven to eight months of functioning. The Chair, who was keen that staff did not leave, paid them from his own pocket. The staff has increased substantially since then. At present, the Authority has a secretary, a superintendent, a personal secretary for the Chair, a stenographer, an assistant, two junior assistants (one of whom is on contract from the government), and two peons (one of whom is also on contract from the government). The Authority is dependent on the government to renew the contracts of the staff that are on contract, and there have been occasions when these renewals were delayed. The Authority does not have funds to hire retired investigators from the CID, Intelligence and Vigilance as provided in the Government Order. The Chair believes that investigators are necessary for the better functioning of the Authority.

## Mandate

The Goa Authority has a broad mandate. It reviews complaints alleging serious misconduct, which includes death, grievous hurt or rape in custody. It is not explicitly mandated to look into extortion, land/house grabbing, or general abuse of authority. However, Justice De Silva interprets the mandate quite broadly. He considers all genuine cases of police misconduct that reach him, regardless of their nature.

## Powers

The Authority has binding powers and the state government is obliged to follow the recommendations given by it and take appropriate action. In total, there have been five instances in which the Authority has recommended action be taken against an errant police officer.

In 2010 on its own initiative, the Authority began issuing action-taken reports to the police, inquiring what action has been taken on its recommendations in individual cases three months after these are issued. This is a positive precedent.

The Goa Police Bill, 2008 was introduced in the state legislature on 25 August 2008 and since then was referred to a Select Committee with a mandate to examine the provisions of the Bill. Unfortunately, the Committee has worked in complete secrecy. It failed to invite comments or suggestions from anyone and it is uncertain whether the Committee has met even internally. The Bill has serious implications for the Complaints Authority – going as far as disbanding it. Faced with an Authority that is asserting itself, the government has decided to nip it in the bud by including a provision in the Bill that transfers the Authority’s powers to the Lokayukta<sup>30</sup> (ombudsman). This institution does not even exist in the state currently, and clearly its set-up is not a priority for the government of the day. It is truly objectionable that this provision has been written into the Goa Police Bill. The Goa Authority has been in existence since 2007, has an active caseload, and public awareness of its existence is slowly spreading. A brand new body, however, would have to begin from scratch. Further, the Lokayukta is not a body specialising in complaints against the police, this would be one of many issues that would come under its ambit. Considering the huge number of complaints against the police, this will prove to be counter-productive and will overburden the Lokayukta. 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.

## Haryana

The Haryana Police Act came into force in 2008, and it set up a Police Complaints Authority at the state level, leaving the option of creating district-level Authorities to the state government.<sup>31</sup> According to the Act, the Authority has a single member – a retired judge or civil servant with experience in criminal law.<sup>32</sup>

## Membership

On 16 August 2010 the Haryana government set up a state-level Police Complaints Authority, headed by H. S. Rana, a former IAS officer, who was given a term of three years.<sup>33</sup> This is of great concern, as it clearly defies the Court’s guidelines.

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<sup>30</sup> Goa Police Bill, 2008, Section 91.

<sup>31</sup> Haryana Police Act, 2007, Section 68.

<sup>32</sup> Haryana Police Act, 2007, Section 59.

<sup>33</sup> *Headlines India*, “Haryana Gets Police Complaint Authority”: <http://headlinesindia.mapsofindia.com/state-news/haryana/haryana-gets-police-complaint-authority-60450.html> as on 19 December 2010.

## Tenure

According to Section 61 of the Haryana Police Act, all the members, including the chairperson, are to have a tenure period of three years.

## Office, Infrastructure and Funding

For several months the Authority operated without staff or an office, both of which are to be provided by the state government. Only recently has a space in the Office of Technical Education in Panchkula been allotted for the Police Complaints Authority.

## Mandate

The Authority is empowered to look into police misconduct *suo moto* or address complaints passed on from human rights commissions or the victims themselves.<sup>34</sup> The state government or the DGP may also forward complaints to the Authority.<sup>35</sup> As of June 2011, the Authority had received six complaints.<sup>36</sup>

## Powers

The Act does not give the Authority any binding powers.<sup>37</sup> Further, according to the Act, the Chair is to draft his own set of rules dictating the daily functioning and operation of the Authority.<sup>38</sup> Additionally, the Authority has been given all the powers of a civil court.<sup>39</sup> Once an inquiry is complete, it will communicate its findings and recommendations to the state government, after which the government is to consider them and take appropriate action against the errant officers.<sup>40</sup>

The fledgling Authority is clearly still trying to find its feet. So far, it has received only a handful of complaints despite large-scale dissatisfaction against the state police. The complaints primarily allege inaction by the police even after registering an FIR. Rana claims that in most cases, grievances were redressed after he sought a report from the Superintendent of Police (SP) concerned.

In last year's state budget, no funds were allocated to the Authority. However, this year around Rs. 73 lakhs have been earmarked for it. There have been little or no efforts to increase public awareness regarding the Complaints Authority. It therefore should not come as a surprise that only a handful of complaints have been received till date.

## Kerala

There have been significant developments in Kerala relating to the Police Complaints Authorities since the last report, specifically legal developments and the appointment of new Chairs of the state-

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<sup>34</sup> Haryana Police Act, 2007, Section 65(1).

<sup>35</sup> Haryana Police Act, 2007, Section 65(2).

<sup>36</sup> Telephone conversation between CHRI, and Mr H. S. Rana, Chairman of the Police Complaints Authority, Haryana, 8 June 2011.

<sup>37</sup> Haryana Police Act, 2007, Section 67.

<sup>38</sup> Haryana Police Act, 2007, Section 64.

<sup>39</sup> Haryana Police Act, 2007, Section 66.

<sup>40</sup> Haryana Police Act, 2007, Section 67.

and district-level Authorities. The Kerala Police (Amendment) Act, 2007 originally established Police Complaints Authorities, at both state and district levels. Notably, the 2007 Act did not replace the original Kerala Police Act, 1960; it only amended it to create the institutions for police reform as directed by the Supreme Court in its 2006 judgement in *Prakash Singh v Union of India*. A legislative Select Committee, headed by the state Home Minister, was constituted in 2010 to examine the old Police Act, consult widely and gather opinion on changes. This culminated in passing a new Police Act in the state in January 2011.

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

## Membership

The 2011 Act holds that the state-level Authority shall consist of the following members:<sup>41</sup>

- 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
- A retired officer of the rank of Inspector General empanelled by the state human rights commission, selected by the state government and Opposition Leader from a three-member panel
- A retired District Court Judge empanelled by the State Lokayukta, selected by the state government and the Opposition Leader from a three-member panel.

The district-level Authorities are chaired by a retired District Court Judge, and has two additional members – the District Superintendent (and Commissioner of Police depending on the district) and the Collector.

According to CHRI's consultant based in Kerala, in May 2010, the Chairs of the state- and district-level Authorities were changed. As they were appointed and removed directly by the state government, this is essentially a political decision. Currently, the Chairman of the seven PCAs of the southern districts is T. A. Wilson, a retired District Court Judge. The Chairman of the seven PCAs of the northern districts is K. N. Satheeshan, also a retired District Court Judge. The current State PCA is headed by former High Court Judge, Justice Sivarajan.

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 Complaints Authorities are to function on a full-time basis. Yet the majority of members, both at the state and district level, are serving government officers, leaving them little time for their responsibilities as Authority members. There are *no* independent members who do not wear 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.

For the present, the district Authorities 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 Authority's Secretary in each district.

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<sup>41</sup> Kerala Police Act, 2011, Section 110(2).

## Office, Infrastructure and Funding

Currently, the district Authorities function with discretionary funds from the Collector's office. None of the Authorities in Kerala till date have received any independent funding from the government. This not only affects the functioning of the Authorities' members, but also the victims and witnesses who come to depose before them, who do not perceive it to be an independent body.

## Puducherry

On 3 January 2011 the Puducherry Home Department issued a notification setting up a Police Complaints Authority.<sup>42</sup>

### Membership

The Police Complaints Authority of Puducherry is to be composed of four members. At its inception the Authority was headed by a retired Judge of the Madras High Court, P. Shanmugham, however, as of the first week of June 2011, the Chair resigned from his post, but has not been replaced as yet.<sup>43</sup> The other members are Mr Ramanathan, a retired IAS officer, the Joint Secretary of the Home Department, and Mrs Victoria, a member of civil society.<sup>44</sup>

### Tenure

The Chairperson and the members of the Authority have been given tenure periods of five years.<sup>45</sup>

## Office, Infrastructure and Funding

In addition to the Chairperson and members, the Authority will have a Superintendent; a stenographer well-versed in computer skills of Grade III, and a general staff member for miscellaneous tasks.<sup>46</sup>

### Mandate

The Authority is mandated to review complaints of serious misconduct by officers, such as custodial death, serious hurt, rape, attempted rape, illegal arrest or detention, extortion, and any incident which involves serious abuse of authority by any police personnel. There is no distinction made regarding rank.

Various parties may bring forth complaints to the Authority, and the ability to do so is not limited to the victims themselves. The Authority itself may look into complaints *suo moto*, or take cases referred

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<sup>42</sup> Puducherry Home Department, Government Notification, dated 3 January 2011: <http://styandptg.pondicherry.gov.in/gazette/2011/January/EXTRAORDINARYPART-I/003-PART-I%20No.%20003%20dated%2019-1-2011.pdf> as on 1 June 2011.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

to it by the National Human Rights Commission, the police, or any other source. However, the Authority must submit its findings within sixty days of the complaint being filed. This new Authority has not received a single complaint as yet.

## Powers

Once the inquiry process is completed, the Authority may recommend that an FIR be filed against the errant officers, or that departmental action be initiated. In some cases, it may recommend both. These recommendations are binding unless the government disagrees with the Authority's findings, in which case it must record these reasons in writing.<sup>47</sup>

## Tripura

The Tripura Police Act, 2007 came into force 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 composed 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 or 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 P. K. Sarkar (Chair): retired 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.<sup>48</sup>

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<sup>47</sup> Ibid.

<sup>48</sup> Tripura Police Act, 2007, Section 62.

## Office, Infrastructure and Funding

The Commission is currently housed within a government quarter about five kilometres from Agartala. The new Chairman has had discussions with the Chief Minister about changing the location. It has been agreed that the Commission will soon be located in the centre of town, near the Secretariat building and the High Court. According to the Secretary, this will probably result in more complainants being filed with the Commission, because the location will be more accessible to the public.<sup>49</sup>

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.) Though funding is not an issue at all, the Commission has not retained the services of any 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. Since the new Chairman's tenure began, the Commission has looked into several cases *suo moto*.<sup>50</sup> It has also widened its mandate by having powers to look into the most frequent complaints of corruption, illegal arrest and detention, and human rights violations. Since its inception, the Commission has only received 39 complaints.<sup>51</sup>

Here again, the Commission can call for periodic reports from the DGP on the status of departmental inquiries, based on which it 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 those followed in jurisdictions where such bodies work 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 Commission has to communicate its findings to the DGP to register an FIR or initiate a departmental inquiry. However, as in Assam, there is a provision which allows the Commission to review its decision upon receiving additional information from the DGP. The Commission can also recommend the payment of monetary compensation by the government to the victim.<sup>52</sup>

## Uttarakhand

A single Authority at the state level is set up under the Uttarakhand Police Act, 2007 with a Chair and four other members. No Authorities have been set up at the district level. Though drafted in

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<sup>49</sup> Telephone conversation between Ms Diya Nag, CHRI, and Mr Manik Dasgupta, Secretary of the Tripura Police Complaints Commission, 31 January 2011.

<sup>50</sup> Ibid.

<sup>51</sup> Telephone conversation between Mr Pooja Badarinath, and Mr Manik Dasgupta, Secretary of the Tripura Police Complaints Commission, 6 June 2011.

<sup>52</sup> Tripura Police Act, 2007, Section 70.

2007, the Police Act was passed by the State Assembly only in January 2008. The Complaints Authority was formally established in September 2008. Before that, the Authority functioned under a Government Order and was headed by a retired bureaucrat.

## Membership

The Uttarakhand Police Act, 2007 stipulates that all members must demonstrate a “credible record of integrity and commitment to human rights”.<sup>53</sup> It requires at least one member to be a retired police officer not below the rank of Inspector General of Police, at least one member possessing “good knowledge of law” and at least one member to be a woman. The membership cannot comprise more than one police officer. Appointment of the Chairperson rests in the hands of the state government.<sup>54</sup> 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. The members have not changed since the 2009 report.

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

### 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 officer (Brigadier)  
Dr Kusum Nautiyal (member): social worker

## Tenure

The Act gives a fixed tenure period of three years to each member.<sup>55</sup>

## Office, Infrastructure, and Funding

The Authority is located in a quiet residential neighbourhood in Dehradun, the state capital. It has permanent staff, and administrative support. The Chair is satisfied with the funding for the Authority, and informed CHRI that the state budget has delineated funds for it.

## 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;<sup>56</sup> rape or attempted

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<sup>53</sup> Uttarakhand Police Act, 2007, Section 65(1).

<sup>54</sup> Uttarakhand Police Act, 2007, Section 65(4).

<sup>55</sup> Uttarakhand Police Act, 2007, Section 67.

<sup>56</sup> As defined under the Indian Penal Code, 1860, Section 320.

rape.<sup>57</sup> The Authority also has powers to inquire 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.

The Act requires the DGP of police to submit periodic reports on the status of departmental inquiries into allegations of misconduct. Based on these reports, the Authority can advise the state government appropriately, to conclude the inquiries at the earliest and 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 ensuring that the Authority meets its mandate.

The Authority may draft its own rules of operation, but these will come into effect only after government notification. According to the Authority, rules were framed in September 2008 and sent to the government, but a letter returning them was received on 28 May 2011 asking the Authority to reconsider them.<sup>58</sup>

## Powers

The Authority has only recommendatory powers where it is obliged to submit its finding to the state government recommending suitable action.<sup>59</sup>

Additionally, it is required to prepare an annual report, which is a public document and will be placed before the state assembly. The report will cite the number and type of cases investigated, recommendations made for further action, and the patterns of misconduct observed. The Authority also has the discretion to issue special reports regarding specific cases it hears.

## Observed General Trends

### Composition: Failure to Follow Appointment Process

The Supreme Court expressly ordered that the Chairman of the state-level PCA be a retired Judge of the High or Supreme Court chosen by the state government from 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, the Lokayukta and State Public Service Commission. The composition was designed to ensure that the members 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. All present members of the *functional* PCAs have been appointed directly by state governments without exception. An open, fair and transparent process for the appointment of members is the first step that adds legitimacy to the Authorities and instils faith in the public that their grievances will be independently and impartially addressed. The general perception amongst most people is that *being political appointees, it is extremely unlikely that members will risk taking actions that may displease the government or the police.*

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<sup>57</sup> Uttarakhand Police Act, 2007, Section 71.

<sup>58</sup> Telephone conversation between Chairman Srivastav and Ms Diya Nag of CHRI, 3 June 2011.

<sup>59</sup> Uttarakhand Police Act, 2007, Section 73.

The new Authority at Haryana is a single-member Authority with its Chair as a retired IAS officer. This clearly subverts the Court's directive and makes a mockery of the issue of reform and accountability.

In relation to the other members, no state has followed the selection process as laid down by the Court. The selection of members has been conservative at best with appointments made from pools of retired IAS or IPS officers. The so-called *independent members* have also been directly appointed by the government. Even a progressive state like Kerala has completely subverted the compositional aspect of the Apex Court's direction by appointing *serving police officers* to their Authorities. To avoid the risk and appearance of potential bias, the membership of an independent oversight body should not include any members of the police force.

With such a composition, it is highly improbable that these Authorities will function as robust, independent oversight mechanisms as intended by the Supreme Court.

## Failure to Set up Authorities at the District Level

Except for Kerala which has set up Authorities at the state and district levels, all other states have a single Authority functioning at the state level. Tripura and Uttarakhand have blatantly ignored the Supreme Court judgement by not mentioning district-level authorities in their legislation. The Court's directive expressly required Complaints Authorities to be created at the state and district levels. Having just the one Authority for an entire state will inevitably lead to it being severely overburdened with a high volume of complaints. At the same time, a single Authority located at the state capital is likely to present practical problems of access for complainants. As a result, only urban or suburban populations are likely to access the Authorities. Facilitating rather than limiting access should be the aim of any Complaints Authority. One Authority is likely to quickly become dysfunctional by virtue of being overburdened, especially given the very limited staff and facilities provided for in the government orders.

## Cumbersome Complaints Process

The process of registering a complaint is not as straightforward as it should be. Ideally, an oral or written complaint, along with any relevant documentation should be sufficient to begin the investigation process. However, ground realities indicate that the Authorities have needlessly complicated the process. Assam and Haryana, for example, require a sworn statement against police personnel along with a fee to be submitted by the complainant. In Uttarakhand, complaints must be made on stamp paper. This creates unnecessary hurdles that complicate the process and discourage people from accessing the Authority. This is unfortunate because one of the benefits of establishing Complaints Authorities is to avoid the administrative minutia associated with filing complaints with government agencies and the courts. Some states have drafted legislation punishing vexatious or frivolous complaints with a fine or penalty. Taken together with the complicated system of complaint intake, it is difficult to see how such a provision would help the cause of police accountability. Indeed, these provisions are certain to curb complaints. Victims who are already taking the brave step of complaining against police misconduct are likely to abandon their complaint for fear of being punished in the event they are unable to prove it successfully.

## Weak Publicity

None of the Acts or Government Orders setting up Complaints Authorities has provisions to make publicity and outreach an obligation on the government or the Authorities themselves. There have been no funds earmarked for this activity and as a result no Authority has made a vigorous effort to publicise its mandate or raise awareness about its existence. Therefore, in many cases the public is unaware that an Authority exists. In other instances the Authorities are flooded with complaints that fall outside its ambit. This clearly indicates that there is general lack of awareness of what the Complaints Authorities are expected to do. Specific outreach programmes would help bridge this gap. These could involve concerted efforts to liaise with media houses and newspapers, social networking groups and websites, printing of leaflets for widespread distribution, and representatives of the Authorities being present at meetings and events where the public and the police are likely to interact. Without its clientele, these bodies will become defunct and fail. In the worst case, the state itself will close them, deeming them as a waste of resources.

## Lack of Rules

Most state governments have reserved the power to frame rules. Despite the passage of five years not a single Authority can boast of developing regulations that govern day-to-day operations. In states such as Assam, Haryana, Tripura and Uttarakhand, the governments have vested the power to frame rules with the Authorities themselves. However, except for Uttarakhand, no Authority has prepared even a draft. The Uttarakhand Authority consciously drafted a set of rules and sent them to the state government for gazette notification. However the government has been sluggish at best and downright irresponsible at worst by doing nothing about it for the last two years. An absence of established rules of procedure means that proceedings occur in an ad hoc and haphazard manner, making the entire process opaque and confusing for all parties involved.

## Lack of Resources and Funding

Public institutions require adequate funding and resource management in order to function to the best of their ability. Unfortunately, the state governments have not provided even basic necessities to the Complaints Authorities, forcing them to operate at sub-optimal levels. Some continue to operate out of informal offices, with very few staff members to support their work.

The state-level Authority in Kerala functions from the office of the Advisory Board of the Kerala Anti-Social Activities Prevention Act, 2007 (KAAPA). The Advisory Board under KAAPA is mandated to examine whether each case of preventive detention under the Act is justified. The Authority uses the resources available to the KAAPA Board, including, the vehicle, petrol allowances, stationery, staff and clerical assistance.<sup>60</sup> The district-level PCAs function from the same office and

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<sup>60</sup> In fact, the Chairs of the state- and district-level Complaints Authorities are also members of the KAAPA Board, as judges make up Advisory Boards. This is a clear conflict of interest as the two mandates are divergent. Serving as an Advisory Board member necessitates close examination of whether the grounds for detaining someone who may indulge in “antisocial activity” is justified; while the Police Complaints Authority seeks accountability of police officers and thereby representatives of the state. In effect, one function is considering whether detention by the state is justified, and the other is investigating violations by agents of the state. It would be difficult for the same person to carry out both these functions simultaneously, which is what is expected of these judges in Kerala. Also, in our interactions with the judges in their capacity as the PCA Chairs, they themselves have shared how difficult it is to handle two large and different case loads. It is clear that the Complaints Authority work often suffers because of this overburdening.

with discretionary funds from the Collector's office. None of the Authorities in Kerala till date have received any independent funding from the government. This not only affects the functioning of the Authorities' members, but also the victims and witnesses who come to depose before them.

The Chandigarh Authority functions from a government building, the UT Secretariat. From its inception, this Authority faced problems attracting complainants because of the location of its office. It is challenging to assert independence when one is operating within the very seat of the government itself. The cases of Chandigarh and Kerala highlight how essential it is to physically separate Complaints Authorities from government buildings. Not only must the Authorities be independent, they must also be seen to be independent by the public. Otherwise, they will be viewed as part of the government if not at least closely associated with it.

The quickest way to cripple an institution is to curtail funding. In the statutes or Government Orders setting up the Authorities, not a single state government has clearly specified where the funding for these Authorities will originate from within the state budget. State governments across the country are in non-compliance of the Apex Court's order by delaying and/or denying adequate funding for their Authorities. It comes as no surprise then that despite the passage of five years, Authorities are still struggling to fulfil their rather onerous mandates. On the contrary, it almost appears that governments are determined that these bodies fail.

## Failure to Bring Out Annual Reports

Transparency and public reporting are of vital importance to the long-term success of the Authorities. The purpose of these reports is to document the complaints received, as well as to provide a check on the value of the oversight being provided. Reporting requirements have been provided in most statutes or Government Orders setting up these Authorities. However, some states have seen considerable dilution in this requirement.

Till date, the Authorities in Assam and Uttarakhand are the only ones to have submitted a report. However, even these are not brought out with regularity and it is unclear whether they are presented in the state assembly and debated upon. In any case, they are definitely not easily accessible to the public. Most states have ignored this requirement completely – mainly because they are inadequately staffed to produce reports which require extensive documentation of cases and administrative support, not to mention the substantive analysis that must accompany the statistics.

## Weak Follow-Up of Authorities' Recommendations

An external, independent, oversight mechanism is successful only if, it is equipped with the power to institute some change and hold wrongdoers accountable. These Complaints Authorities are given the power to recommend the initiation of a criminal case against errant officers, or at least that a departmental inquiry takes place. However, without sufficient follow up, these recommendations remain hollow. Steps can be taken to assure that the department implements the Authority's final orders without delay. The Authority in Goa, for example, introduced a provision by which the police department must file an action taken report within three months of its final written order. However, Goa is an exception to the rule. The remaining Authorities are unclear about how they oversee the extent to which their recommendations are complied with and are content with simply making recommendations.



## **Trends and Patterns of Misconduct: Complainants' Accounts of Police Abuse**



This chapter is primarily based on CHRI interviews with approximately twenty-five individuals in Goa and Uttarakhand who had complained to the Authorities. These interviews were conducted from 8-11 November 2010 in Goa and 16-19 November 2010 in Uttarakhand.



# Trends and Patterns of Misconduct

This chapter is primarily based on CHRI interviews with approximately twenty-five individuals in Goa and Uttarakhand who had complained to the Authorities. These interviews were conducted from 8-11 November 2010 in Goa and 16-19 November 2010 in Uttarakhand.

Persons interviewed were selected from a list obtained from the Authority in each state. Criteria for selection included that the victim or his representative had filed a complaint with the Complaints Authority after an alleged incident of police misconduct or abuse. In some of the chosen cases, the Authority had issued final orders and disposed the complaint, whilst in others, cases were still pending and hearings were to be conducted at the time of the interviews.

Overall, the interviews were designed to receive first-hand information from the complainants regarding details of police abuse or misconduct as reported to the Authority and their experience with the Authority's inquiry process. Efforts were made as much as possible to follow up on the outcome of cases which were still pending.

Interviews were also conducted with the Chairs and members of the Authorities in order to get a fuller picture of the way in which these bodies function. In addition, RTI requests were made seeking information about the number of complaints that were filed, the nature of these complaints and the number of cases that were disposed.

In this chapter, we aim to present a comprehensive picture of the significant trends in police misconduct arising out of an analysis of these specific cases. It is the perpetration of systemic and violent police abuses that underpins the need for Police Complaints Authorities. Through the complainants' interviews, this chapter provides a glimpse into personal accounts of the types of abuses and illegality which ordinary people routinely suffer at the hands of the police.

All the information on individual cases in this chapter was collected from interviews with the complainants and their official complaints and supporting documents filed with the Complaints Authorities. The complainants have been kept anonymous owing to the sensitive nature of their cases. Several cases where complainants are implicated in criminal proceedings are ongoing. This chapter is limited to describing the types of police abuses that typify the cases coming before Complaints Authorities.

Whilst these cases are illustrative of continuing police abuse, it does not represent the full extent of their brutality. CHRI could have documented other cases but having taken into account the patterns of misconduct that emerged from the twenty-five or so interviews, the dozens of media reports, and the overall discontent of the public with the police, we believe that the cases described below are sufficient to indicate the urgency of the problem and the need for strengthened and effective oversight bodies.

# Background Information: The States of Goa and Uttarakhand

## Goa

Goa is a small state, covering only 3,702 square kilometres.<sup>61</sup> It consists of only two districts – North and South.<sup>62</sup> As of October 2007, Goa’s population was approximately 1,608,000 people.<sup>63</sup> The police population ratio was close to the United Nations standard with 250 officers to every one lakh of population.<sup>64</sup>

In terms of diversity, the 2001 census indicates 66 per cent of the population as Hindus, seven per cent Muslims, and 27 per cent Christians.<sup>65</sup> Goa is the fourth most literate state in India<sup>66</sup> with a literacy rate of 82 per cent. This was reflected in the twelve complainants the team approached for interviews.<sup>67</sup> Coincidentally, this may be one reason why many of them had a relatively high level of determination to pursue remedies and a general awareness of their constitutional and statutory rights.

## Uttarakhand

Uttarakhand is a state in north-east India with an area of 53,483 square kilometres.<sup>68</sup> As of October 2007, the relatively new state of Uttarakhand had a population of approximately 9,439,000 people.<sup>69</sup> There are approximately 59 police officers for each one lakh of population.<sup>70</sup> In terms of religion, the state is predominantly Hindu.<sup>71</sup> There are two divisions, Kumaon and Garhwal, and 13 districts.<sup>72</sup> About 73 per cent of the population is literate, which is comparatively high.<sup>73</sup>

## Profile of Complainants

In both states, the complainants interviewed represented a range of backgrounds. They included: public servants, employees in medium-sized companies, small business owners, students, lawyers and civil society activists amongst others.

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<sup>61</sup> See <https://www.goa.gov.in.portalweb/login/goaataglance.jsp> as on 20 December 2010.

<sup>62</sup> Ibid.

<sup>63</sup> Bureau of Police Research and Development “Data on Police Organisations in India”, 1 January 2008.

<sup>64</sup> Ibid. Table 1.1, p. 5.

<sup>65</sup> See [http://censusindia.gov.in/Census\\_Data\\_2001/Census\\_data\\_finder/C\\_Series/Population\\_by\\_religious\\_communities.htm](http://censusindia.gov.in/Census_Data_2001/Census_data_finder/C_Series/Population_by_religious_communities.htm) as on 13 December 2010.

<sup>66</sup> See <http://india.gov.in/nowindia/literacy.php> as on 9 December 2010.

<sup>67</sup> See [http://censusindia.gov.in/Census\\_Data\\_2001/Census\\_data\\_finder/C\\_Series/Population\\_by\\_religious\\_communities.htm](http://censusindia.gov.in/Census_Data_2001/Census_data_finder/C_Series/Population_by_religious_communities.htm) as on 13 December 2010.

<sup>68</sup> See <http://gov.ua.nic.in/uaglance/> as on 20 December 2010.

<sup>69</sup> Bureau of Police Research and Development, “Data on Police Organisations in India”, 1 January, 2008. Table 1.2, p. 13.

<sup>70</sup> Bureau of Police Research and Development, “Data on Police Organisations in India”, 1 January, 2008. Table 1.1, p. 10.

<sup>71</sup> See <http://gov.ua.nic.in/uaglance/> as on 15 December 2010.

<sup>72</sup> Ibid.

<sup>73</sup> See <http://gov.ua.nic.in/health/Uttarakhand.html> as on 20 December 2010.

Interviews were conducted in the states' capital cities and their suburbs, or in other districts, depending on the convenience of the complainant. In Goa, the complainants were from Panaji, Mapusa and Margao. In Uttarakhand, they were from Dehradun, Rishikesh and Haridwar. The team noticed that in both states, public awareness of the Authorities is slowly increasing, but even this extends only to urban and semi-urban areas; not to rural ones. Another discernable trend was that awareness was increasing not because of deliberate efforts by the Authorities themselves, but because the cases heard by the Authorities and their decisions were reported in local newspapers, and discussed in conversations between people. Again, it is only a certain pool of people – the literate urban classes, or lawyers and activists' circles for instance – that hear about the Authorities and their mandate in these ways.

CHRI was unable to access a significant number of women complainants. The team spoke to only two female complainants in Goa and just one in Uttarakhand. Overall, the proportion of women complainants is less than men, a reflection of the fact that there are additional constraints that women have to contend with when complaining against a police officer. It is perhaps in recognition of these constraints that the Supreme Court ordered that every Police Complaints Authority must have a woman member. This direction has been adhered to in the composition of the Authorities in Uttarakhand, Tripura, Puducherry and Chandigarh; but not in Assam, Kerala, Goa and Haryana.

## Legal Standards

Before delving into the cases themselves, it is useful to briefly review the constitutional and legal standards which establish legal rights, particularly at arrest and detention, and also highlight the legal duties of the police at arrest and detention.

Part III of the Constitution (Fundamental Rights) sets the relationship between the individual and the collective and also determines the limits of state action. No rule or action can overrun the guarantee of Fundamental Rights. Part III then, is a composite code binding state or state-like action<sup>74</sup> to law and legitimacy. In this sense, Articles 21, 14, and 19 draw from each other and state action must stand the test of each of them.

There are certain non-negotiable constitutional imperatives in the field of criminal law. No one can be charged with or convicted for an act unless the same was an offence in the law on the date on which it was committed.<sup>75</sup> No one shall be prosecuted and punished for the same offence more than once<sup>76</sup> and there exists a right against self-incrimination.<sup>77</sup> It is also important to take note of the vital constitutional protection set out in Article 21. It states: "No person shall be deprived of his life or personal liberty except according to procedure established by law". It not only bestows the right to life and personal liberty to all persons, but the Supreme Court has taken this a step further by broadening its protective scope. The Court has interpreted Article 21 to guarantee further rights including: the right to legal aid,<sup>78</sup> the right to a speedy trial,<sup>79</sup> and the right to claim compensation for the violation of rights in Article 21.<sup>80</sup>

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<sup>74</sup> Constitution of India, Article 12.

<sup>75</sup> Constitution of India, Article 20(1).

<sup>76</sup> Constitution of India, Article 20(2).

<sup>77</sup> Constitution of India, Article 20(3).

<sup>78</sup> *M. H. Hoskot v State of Maharashtra* AIR 1978 SC 1548.

<sup>79</sup> *Hussainara Khatoon v Home Secretary, Bihar* (1979) SC 1360.

<sup>80</sup> *Rudul Shah v State of Bihar* (1983) 4 SCC 141.

There are numerous protections which a person is entitled to at arrest and while in custody. Particularly, Article 22 of the Constitution of India extends three key protections to all arrested persons:

- The right to be informed of the grounds for arrest;
- The right to consult and be represented by a legal practitioner of choice;
- The right to be produced before a magistrate within twenty-four hours of arrest and not detained beyond that period without the approval of a magistrate.

The police must carry out arrests according to the established procedure, and also ensure that guaranteed constitutional and statutory rights of the arrested person are protected at all times. Criminal procedure and safeguards are designed to uphold constitutional guarantees. An arrest can be made with or without a warrant depending on the circumstances of the alleged offence.

## Reasonable Grounds for an Arrest

Warrantless arrests made by the police have justly caused concern at all levels. This power is wide-ranging and exists in all cognizable cases. The Supreme Court has cautioned that arrests are not to be made in a routine manner on the mere allegation that the person suspected has committed an offence. The landmark *Joginder Kumar* case laid down the principle that the officer making the arrest must act on a *reasonable belief* both as to the person's complicity in committing the offence and the *need* to effect an arrest – the necessity of the arrest must be justified on the basis of preliminary investigation.<sup>81</sup> The lawfulness of arrest is one thing but the justification for it is quite another, as the Supreme Court has noted.<sup>82</sup> It is not necessary that an arrest should be made merely because the power to do so exists.

## Rights of Arrested Persons

The rights of an arrested person arise from the Constitution,<sup>83</sup> the Code<sup>84</sup> and from repeated directions from High Courts and the Supreme Court.<sup>85</sup>

The Constitution states that no person who is arrested shall be detained in custody without being informed of the grounds of arrest.<sup>86</sup> When police officers make an arrest without a warrant, they have a duty to inform the arrested person of the “full particulars of the offence or other grounds” on which the arrest is made, immediately.<sup>87</sup> For arrest under a warrant, the police have to inform the arrested person of the substance of the warrant, and if required, show him/her the warrant.<sup>88</sup>

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<sup>81</sup> *Joginder Kumar v State of Uttar Pradesh* (1994) SCC.

<sup>82</sup> *Ibid.*

<sup>83</sup> Constitution of India, Articles 20(3), 22(1) and 22(2); Code of Criminal Procedure, 1973, Chapter V; and *D.K. Basu v. State of West Bengal* AIR 1997 SC 610.

<sup>84</sup> Code of Criminal Procedure, 1973, Chapter V.

<sup>85</sup> More particularly, the directions given in *D. K. Basu v State of West Bengal*. Violation of the D. K. Basu guidelines will render the police officials liable to contempt proceedings, besides other things.

<sup>86</sup> Constitution of India, Article 22(1).

<sup>87</sup> Code of Criminal Procedure, 1973, Section 50(1).

<sup>88</sup> Code of Criminal Procedure, 1973, Section 75.

Upon arrest, the police should inform the arrested person whether the offence he/she is accused of is bailable or non-bailable. Where the police arrest a person in connection with a bailable offence, they must inform the person that he is entitled to be released on bail and that he may arrange for sureties on his behalf. The police must facilitate the granting of bail for those charged with bailable offences.<sup>89</sup>

Every person accused of a crime is entitled to free legal aid, a right that attaches from the time of arrest.<sup>90</sup> It is the duty of the Magistrate to inform persons of this inalienable right during the first production in court. However, it is the duty of the police officer to intimate the nearest legal aid committee about the arrest of an accused seeking legal aid.<sup>91</sup> An arrested person has the right to inform a friend, relative, or any other person of their choice that they have been arrested, as well as their location of arrest. The police must record the name of the person informed in the police station diary.<sup>92</sup>

In the landmark judgement of *D. K. Basu v State of West Bengal*,<sup>93</sup> the Supreme Court laid down procedural guidelines on arrest and detention for the police to follow. These are popularly referred to as the D. K. Basu guidelines. These guidelines are binding on the police throughout India (many of them were enshrined into the Code of Criminal Procedure in amendments passed in 2005) and should be displayed in every police station. Failure to follow these guidelines makes police officers liable to contempt proceedings that can be initiated in any High Court. Unfortunately, even years after they were passed, diligence in following them is lacking in most states.

- Use of third degree methods or any form of torture to extract information is not permitted;
- Police officers conducting an arrest or interrogation “should bear accurate, visible and clear identification and name tags with their designations”;
- Police officers conducting an arrest should produce a memo of arrest at the time of arrest, with at least one witness, and countersigned by the arrestee;<sup>94</sup>
- An arrestee or detenu is entitled to inform his or her friend or relative “as soon as practicable”;
- The time, place of arrest, and venue of custody of an arrestee must be notified by the police, where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of eight to twelve hours after the arrest;
- The arrestee must be informed of his or her right to inform someone of the arrest;

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<sup>89</sup> Code of Criminal Procedure, 1973, Section 50(2).

<sup>90</sup> *Khatri & Others v State of Bihar and Others* 1982 AIR SC1068 (1981).

<sup>91</sup> *Sheela Barse v State of Maharashtra* 1993 AIR SC 378.

<sup>92</sup> Code of Criminal Procedure, 1973, Section 50A.

<sup>93</sup> AIR 1997 SC 610.

<sup>94</sup> The memo must include the name of the arrested person, the place of arrest and the time and date of arrest. This must be signed by the arresting officer and countersigned by the arrested person. When the arrested person is first brought before a Magistrate (within twenty-four hours) the Magistrate is required to check the arrest memo to ensure the legality of the arrest. Details in the memo are to be cross-checked with the arrested person.

- An entry must be made in the diary at the place of detention with regards to the arrest. The name of the friend/relative who has been informed, and the names of the police personnel in whose custody the arrestee is being kept, should be kept in the register;
- The arrestee should be entitled to an examination of his or her injuries at the time of arrest and any injuries should be recorded;
- The arrestee should have a medical examination every forty-eight hours of detention by a trained doctor who has been approved by the state health department;
- Copies of all documents including the memo of arrest, referred to above, should be sent to the magistrate for his record;
- The arrestee may be permitted to meet his/her lawyer during interrogation;
- A police control room should be provided at all district and state headquarters where information regarding arrests should be prominently displayed. The police officer making the arrest must inform the police control room within twelve hours of the arrest.

Additionally, the police are forbidden from certain actions. They must not confine the body of the person being arrested unless the person refuses to submit to custody. Handcuffs may only be used in the most exceptional circumstances, and in many cases would be barred by Section 49.<sup>95</sup> Using lethal force during or after arrest is prohibited by the statute. “All means necessary”<sup>96</sup> may be used if the person resists arrest – however this does not imply a right to kill (especially if the person is not accused of an offence carrying either the death penalty or imprisonment for life).<sup>97</sup>

The aim of the police is to put the accused through trial and deliver justice through the court system. Killing (when their lives aren’t threatened) or otherwise injuring an accused does not further this aim. Lethal force is only justifiable under the right to private defence, available alike to the police and other individuals under the Indian Penal Code.<sup>98</sup> Finally, the police cannot arrest a woman after sundown or before sunrise except in exceptional circumstances (in which case permission has to be sought from a Judicial Magistrate). Even then, the arrest may only be made by a female police officer.<sup>99</sup>

As one can glean from the narratives which follow, it is hard to escape the reality that the police continue to rely on both violence and illegality during arrests and investigations. Judging police abuses against established legal standards reflects the magnitude of the problem and how far the police continue to stray from adherence to established rule of law.

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<sup>95</sup> *Prem Shankar Shukla v Delhi Administration* (1980) AIR 1535.

<sup>96</sup> Code of Criminal Procedure, 1973, Section 46(2).

<sup>97</sup> Code of Criminal Procedure, 1973, Section 46(3).

<sup>98</sup> See Indian Penal Code, 1860, Chapter IV, Sections 96-106. See also Guidelines of the National Human Rights Commission on encounter deaths, 2 December 2003: <http://nhrc.nic.in/Documents/RevisedGuidelinesDealingInEncounterDeaths.pdf> as on 30 August 2011.

<sup>99</sup> Code of Criminal Procedure, 1973, Section 46(4).

## Trends in Police Misconduct and Abuse

A similar pattern of misconduct appeared in both Goa and Uttarakhand. Complaints to the Authorities were generally about illegal arrest and detention, custodial torture, non-registration of First Information Reports (FIRs), extortion, implication of people in false cases and further threats and reprisals from the police if anyone complained or even attempted to complain. One challenge in identifying trends in police misconduct and abuse is that illegal and brutal actions by the police are often interconnected in practice. Illegal arrest and detention can, and often do, involve custodial torture, non-registration of complaints, extortion and could potentially involve the prevalent abuses identified – and vice versa with reference to any of the other abuses. This is amply reflected in the complainants' cases. All this taken together demonstrates that patterns of abuse and misconduct continue on a daily basis despite all the legal and procedural safeguards put in place. The rest of this section discusses these patterns with case illustrations as found through complainant interviews in Goa and Uttarakhand.

### Arbitrary Arrest, Detention and Torture

In spite of the protections one finds in the law, arbitrary arrests and illegal detention by the police are common occurrences. In some cases, a pattern of repeated arbitrary arrest emerges, highlighting that the police can and will escape accountability on repeated occasions. Also, the skirting of procedure poses a daunting problem. It is a pity that despite existing legal protection, people fall victim to this extent of police misconduct. What makes it worse is that the judiciary, though noticing these glaring lapses, takes no action to punish the officers. The cycle repeats itself. The powers of arrest afford a vast scope for misconduct by police personnel in different ranks, particularly at the operational level, causing harm and harassment to the citizens.

Those interviewed all shared the same sentiment – that the police are not there to protect, but to harass and victimise; and to be feared. At any given moment, one can be arrested and detained without just cause. And once this happens, one is completely at the mercy of this broken system. This is made worse by the extent of violence perpetrated against detainees in police stations.

Torture in police custody remains a widespread and systematic phenomenon. The pattern that emerges from the interviews suggests that victims suffer high risks of torture following detention. There are no safeguards to ensure that a person taken into custody will: have their detention recorded; have prompt access to a lawyer; or be given an impartial medical examination on their arrival at the place of detention, or at the time of release. The lack of any effective system of independent monitoring of all places of detention facilitates torture.

In the course of the interviews, it became clear that cases of illegal arrest and detention are often coupled with custodial torture, and obviously based on a complete violation of procedural law. The cases recounted below attest to the routine violation of procedural law by the police during arrest and detention.

### Case I

This case highlights one of the most shocking instances of police abuse of powers. X was arrested by the police for the offence of desecrating and defiling temples and insulting the religious beliefs of

people. First arrested by the police in December 2008 for the offences mentioned above X's trust with the police started from then. Between 6 December 2008 and 20 July 2009, X was arrested by the police for as many as nine times under eight separate FIRs registered against him.

During this period, he remained in either police custody or judicial custody. The timings of each arrest suggest an intriguing pattern of police manipulation. Each time X was forwarded to judicial custody after extended periods of detention in police custody, he was re-arrested for another offence and taken back to police custody. The pattern could by no means suggest mere coincidence.

What is also intriguing is the fact that five of the offences for which X was arrested were committed between June and December 2008. Two of the offences for which he was arrested were committed in December 2007. Thus till December 2008, no headway was made in any of the cases. Only a year later, did the police begin making the arrests.

According to the complainant, at his first arrest, he was not informed of the grounds for his arrest. In addition, the complainant recounted how the police repeatedly used serious threats and torture to induce a confession out of him. During the total amount of time in police custody, the complainant was subjected to electrical shocks, especially around his genitals, and regular beatings. He was even forcibly stripped naked by a group of police constables and Sub-Inspectors, who proceeded to take nude photographs of him on their mobile phones, before he was beaten again.

The complainant in the same period was subjected to two rounds of brain mapping, polygraph and narco analysis tests in two states. The first round of tests was conducted in Bangalore. Within a month the tests were repeated – this time in Mumbai. Even though the results of the tests in each instance were negative the same were repeated at great mental, emotional and physical torture to X. Though permission for conducting these tests was obtained from the Magistrate, at no point was X's consent sought.

## Narco Analysis

Narco analysis, polygraph and brain mapping tests have been hotly contested legal issues in India. Various High Courts have given conflicting rulings on these issues. It is no longer so. The Supreme Court has now held that these tests cannot be administered on any accused person without their consent. Further, the courts should not take the process of obtaining the consent of the accused lightly. The courts must ensure that the “consent” of the accused for such tests is in fact voluntary. For this purpose, the Supreme Court has not only endorsed the guidelines issued by the National Human Rights Commission in this regard but has held them as binding.

The Supreme Court in *Selvi and Others v State of Karnataka*<sup>100</sup> held that: “The compulsory administration of the impugned techniques violates the ‘right against self-incrimination’. This is because the underlying rationale of the said right is to ensure the reliability as well as voluntariness of statements that are admitted as evidence.”

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<sup>100</sup> *Selvi and Others v State of Karnataka* AIR 2010 SC 1974.

The Court also stated that: “Forcing an individual to undergo any of the impugned techniques violates the standard of ‘substantive due process’ which is required for restraining personal liberty. Such a violation will occur irrespective of whether these techniques are forcibly administered during the course of an investigation or for any other purpose, since the test results could also expose a person to adverse consequences of a non-penal nature.”

The Court further said: “The protective scope of Article 20(3) extends to the investigative stage in criminal cases and when read with Section 161(2) of the Code of Criminal Procedure, 1973 it protects accused persons, suspects as well as witnesses who are examined during an investigation. The test results cannot be admitted in evidence if they have been obtained through the use of compulsion.”

Upholding the right to remain silent, guaranteed by Article 20(3) of the Constitution, the Supreme Court held that the forcible “conveyance of personal knowledge that is relevant to the facts in issue” violates Article 20(3) of the Constitution.

In the concluding paragraph of the *Selvi* case, the Supreme Court held the “Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused” issued by the National Human Rights Commission in 2000, as binding. The Court said that these guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the “narco analysis technique” and the “brain electrical activation profile” test. These guidelines were reproduced in the *Selvi* judgement. They are:

1. No lie detector tests should be administered except on the basis of the consent of the accused. An option should be given to the accused whether he wishes to avail such a test or not.
2. If the accused volunteers for a lie detector test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.
3. The consent should be recorded before a judicial magistrate.
4. During the hearing before the magistrate, the person alleged to have agreed should be duly represented by a lawyer.
5. At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a “confessional” statement to the magistrate but will have the status of a statement made to the police.
6. The magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.
7. The actual recording of the lie detector test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.
8. A full medical and factual narration of the manner of the information received must be taken on record.

## NHRC Guidelines Relating to the Administration of the Polygraph Test (Lie Detector Test) on an Accused

- (i) No lie detector tests should be administered except on the basis of the consent of the accused. An option should be given to the accused whether he wishes to avail such test;
- (ii) If the accused volunteers for a lie detector test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer;
- (iii) The consent should be recorded before a judicial magistrate;
- (iv) During the hearing before the magistrate, the person alleged to have agreed should be duly represented by a lawyer;
- (v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a “confessional” statement to the magistrate but will have the status of a statement made to the police;
- (vi) The magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation;
- (vii) The actual recording of the lie detector test shall be done in an independent agency (such as a hospital) and conducted in the presence of a lawyer;
- (viii) A full medical and factual narration of the manner of the information received must be taken on record.

In March 2009, X was released on statutory bail in all seven cases as the police failed to file a charge sheet within the mandatory period of sixty days.<sup>101</sup> This clearly indicates that even in a two-month time period, the police were unable to gather any evidence to substantiate the allegations made against X.

In the bail order passed by the trial judge, it was emphasised that despite a long detention period, the officers had failed to connect the accused with the crime thus resulting in no *prima facie* case against the accused. Though this is only a bail order and does not discharge X of all the offences he is accused of, it is a telling statement on the manner of arrest and investigation conducted by the police and the nature of harassment X faced.

After being released on bail in March, X was again arrested in May 2009 for similar offences. He spent another seven days in police custody before being released by the trial court.

Within two months of the release, X was arrested again for desecrating temples and hurting religious sentiments. The alleged offence took place in October 2008. He was subjected to a third round of brain mapping, polygraph and narco tests in Gandhinagar, Gujarat. The first time he was taken to Gandhinagar, the doctor declined to conduct the tests saying that he would do so only on persons in judicial custody or those out on bail. The police team along with X returned only to head back to

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<sup>101</sup> According to Section 167(2)(a) of the Code of Criminal Procedure a person is entitled to be released on statutory bail if the police fail to file a charge sheet within ninety days for offences punishable with death, imprisonment for life or imprisonment for a term not less than ten years and within sixty days where the investigation relates to any other offence.

Gandhinagar within less than a week to conduct the said tests. The test results once again proved negative. And once again, X's consent was not sought before conducting the tests.

This case is a classic example of how easy it is for people to get trapped in the system and become victims of police abuse. It also brings to light the failure of the judiciary to see through the pattern of the police's abuse of powers.

X has throughout maintained that there is no evidence linking him to the commission of the alleged crimes. He complained to the Complaints Authority and also challenged his illegal detention and the torture inflicted by the police in the High Court.

## Case II

This case demonstrates the arbitrary nature in which people are accused of crimes and thereafter arrested at random without any care for the procedures set in place to avoid arbitrary arrests and illegal detention. Y, a teacher in Uttarakhand, was arrested under Sections 323, 332, 504 and 506 of the Indian Penal Code (IPC) and taken into police custody.<sup>102</sup> Y was not informed of the grounds for his detention, or the fact that he was entitled to a lawyer. If an arrest memo was drawn up he had no clue about its contents.

The saga of illegalities continued as Y was not produced before the magistrate within twenty-four hours. He was instead detained in police custody overnight and the following morning was asked to sign a document in the presence of twenty-five other policemen. A Sub-Inspector threatened to beat him, leaving him so traumatised and concerned for his safety that he felt lucky to have his cousin who happened to be a member of the police department, to keep vigil at the station all night. The experience was so terrifying for Y, that even if he knew of his right to be produced before a magistrate (which he did not), the twenty-four hour period would have lapsed before he realised it.

## Case III

Another complaint demonstrating the pervasive problem of arbitrary arrest and illegal detention which came before the Authority related to the staging of a peaceful protest on environmental issues on Independence Day, directly opposite a prominent government office. The complainant chose this spot specifically as it was in plain view of the various government officials due to arrive at that particular office for an Independence Day function. He had displayed several banners with environmental messages and criticism of the state government, and he wanted the government officials to see his banners and messages. He maintains that he was sitting alone and unarmed, and

**A lie detector test is much too invasive to argue that the authority for such tests comes from the general power to interrogate and answer questions or make statements (Sections 160-167, CrPC). However, in India, based on the Constitution and the law of evidence, we must take the view that holding of lie detector tests is a prerogative of the individual not an empowerment of the police. In as much as this invasive test is not authorised by law, it must perforce be regarded as illegal and unconstitutional unless it is voluntarily undertaken under non-coercive circumstances. If the police action of conducting a lie detector test is not authorised by law and is impermissible, the only basis on which it could be justified is, if it is volunteered.**

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<sup>102</sup> The Indian Penal Code (IPC): Section 323, "Punishment for voluntarily causing hurt"; Section 332, "Voluntarily causing hurt to deter public servant from his duty"; Section 504, "Intentional insult with intent to provoke breach of peace"; and Section 506, "Punishment for criminal intimidation".

had no intention to disturb public peace or disrupt the official function. Before the arrival of the officials, uniformed police officers approached him and demanded that he dismantle his banners and stop his protest. When he refused, the policemen tore up his banners and an Inspector threatened to forcibly remove him from the spot. The same Inspector ordered the other policemen to take the complainant to the police station. He was detained for three hours, and not allowed to contact his family, friends or a lawyer. He was not formally arrested at any point. He was released only after the intervention of a group of non-governmental organisations.

## Unrelenting Custodial Torture by the Police

As evidenced above, many complainants cited grievous hurt and torture in custody as one of their reasons for approaching the Police Complaints Authority. Torture is used routinely by the police to extract what would amount to illegal confessions. The crudeness of criminal investigation is often blamed on a paucity of available resources: the lack of scientific equipment and professionally trained persons to do the job properly. Although this is an element in the problem, it is not the central one. More important is the sheer impunity enjoyed by law enforcers. This impunity is allowed to flourish for want of laws criminalising and punishing custodial torture, and also due to corruption and the wanton degeneration of courts and other institutions charged with upholding the law. Where a torture victim must wait for years in hope that a judge may one day take up his/her case, while the perpetrator is being promoted, the very concept of justice is undermined. It was hoped that the newly set up Complaints Authorities would provide much needed speedy justice and also bring some check on police abuse. However this is still to happen.

## Non-Registration of First Information Report

A first information report (FIR) is a report of information that reaches the police about an alleged cognizable offence. As stated above, cognizable offences are more serious than non-cognizable ones and require a more urgent response by the police. This is why the police can take notice of cognizable offences directly, register an FIR and immediately begin the investigation. Investigations into non-cognizable offences can start only after a magistrate has taken the complaint on record and directs the police to investigate. A criminal case does not begin without filing an FIR. The procedure for filing of FIRs is established in Section 154 of the Code of Criminal Procedure.

The police are known to cause extreme annoyance to the public by not performing their mandatory duties in various situations. A large number of persons are affected by the malady of non-registration of complaints at police stations. Even when cases are registered, slackness and indifference in follow-up action are another cause for public complaints. The refusal to register FIRs is mainly a result of extraneous pressures on the police. Stations are expected to keep records of criminal activity in their area as low as possible, so as to appear “effective”. A fallout of this requirement is a routine illegality and violation of procedural law which unfortunately comes without any consequences. Another reason for non-registration of FIRs is the police being unduly influenced to protect an individual from being named in an FIR. In practice, the police often dilute the offences and treat the cases as non-cognizable. A discernable and disturbing trend is that the police often threaten complainants to withdraw their complaints, after they have refused to register them as FIRs in the first instance.

A considerable number of persons who are aggrieved on account of police inactivity or indifference belong to the weaker sections of society, who have inadequate resources to pursue their complaints in higher quarters. This only leads to growing public discontent and mistrust of the police.

## Case IV

The complainant's minor son was physically assaulted by the landlord and owner of the residential building where she and her two sons reside. According to the complainant, her landlord has been harassing her and her family for the last three years. Despite there being witnesses to the assault, the Station House Officer (SHO) did not register an FIR. The complainant made repeated visits to the police station to get her complaint registered, but to no avail. Instead, the SHO treated the case as non-cognizable. The complainant petitioned superior officers and thereafter, she was summoned to the police station, along with her landlord. At this "inquiry", her landlord asked her to withdraw her complaint in the presence of the same officer. She refused, and the landlord left the station. About ten days later, the complainant discovered that both her sons had been implicated by the same officer in a likely "breach of peace" case, and were served official notice by the Deputy Collector and Sub-Divisional Magistrate. At CHRI's interview with her, the complainant shared that both her sons live in constant fear of the officer and their studies are seriously affected owing to the mental and emotional strain.

## Juvenile Justice (Care and Protection) of Children Act

The Juvenile Justice (Care and Protection of Children) Act, 2000 governs the procedures to be followed in circumstances where children are in conflict with the law. The Act provides for certain safeguards. Children or minors under eighteen years should generally not be arrested unless absolutely necessary, and only as a last resort. Even if arrested, they cannot be kept in a lock up. The child's parents need to be informed immediately about the arrest. Even if the offence is non-bailable the child has to be let out on bail. In the police station he should be kept under the charge of a Special Police Officer who is trained to deal with children or he must be dealt with by the Juvenile Police Unit, which must be established in every police station. The child's case will be decided upon by a Juvenile Justice Board which is a special court for children.

## Case V

In another case, the complainant, embroiled in a property dispute with his elder brother, was unable to get an FIR registered despite repeated threats and physical attacks by his brother on the complainant and his wife. In one incident, the complainant's brother broke the front door of his house and attacked the complainant and his wife with a knife, while he was drunk. The complainant had to make three calls to the police before they arrived at the scene. Even with visible injuries on his wife, and damage to their front door and other parts of the house, the police did not register an FIR against the brother and treated the case as non-cognizable.<sup>103</sup> The complainant maintains that his brother has filed many false cases against him since this incident, and the police always register his complaints. His brother's threats and harassment continue.

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<sup>103</sup> House trespass, attempt to murder, and causing grievous hurt using a weapon are all relevant offences here, and all are cognizable ones, yet no FIR was registered.

In incident after incident, complainants were forced to contact the SP because of an SHO's refusal to take a complaint at the *thana* level. In many cases, the refusal to register an FIR was just one of many violations which occurred.

## Case VI

The problem of non-registration of complaints is often compounded by other forms of police abuse and harassment. Another complainant before the Authority in the interview to CHRI stated that he was continuously harassed by the police who were allegedly demanding bribes in the form of cash and electronic goods. He was trying to build an ashram. To ensure that construction continued and to avoid further harassment, he paid the Circle Officer and the Sub-Inspector in cash and also bought an LCD television for them. However, the harassment did not stop. Upon his refusal to pay anything more, he was falsely arrested under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.<sup>104</sup>

According to the complainant, his arrest was based on the false complaint of a locally known petty criminal. When he proceeded to register a complaint against that individual, the police threw him out of the station premises and refused to file an FIR. Soon after, the property on which he was constructing the ashram was vandalised. When he tried to register an FIR, the police refused. According to him, he was then detained in police custody for twenty-four hours where he was slapped and beaten up. Later, he was forced to stand in one position for a long period, and was subsequently paraded around the police station. Twenty-four hours later, he was released, without having been produced before a Magistrate at any time. This prompted him to make a telephone call to the SP, who ordered his subordinates to register the complaint. Not much has moved since the complaint was registered and his complaint with the Authority also remains pending.

## Case VII

The police are also known to refuse to file an FIR in order to protect certain individuals. Often, they conveniently look in the other direction and simply refuse to register the case. The registration or non-registration of an FIR is also used as a tool to harass and frame people falsely.

One complainant we spoke to made use of the Right to Information Act to expose a fake ration card scam, which in turn led to the suspension of several state government employees. Subsequently, he began to receive threatening calls from unknown sources, but when he approached the police for assistance, they refused to respond. Meanwhile, a private citizen beat and abused him in public. The police refused to file an FIR, and a Sub-Inspector even called him several times at night and threatened to kill him if he did not withdraw his complaint. It was only after the complainant approached the District Magistrate and a Special Superintendent of police that his complaint was finally registered.

This case illustrates the well-entrenched nexus between the police and the political executive which is difficult for an ordinary citizen to break.

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<sup>104</sup> Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act lists various offences one can commit against a member of this group, and the accompanying punishments which would result.

## Police Implicating Citizens in False Cases

The experiences of complainants revealed that the police often use their power to arrest and detain even in the absence of any cogent evidence linking the accused to the crime or before any legitimate investigative steps are taken. This is done either to settle scores; as a return favour for money and muscle power; or to bow to the compulsions of statistical evaluation of police performance that requires a lower crime rate and a greater number of arrests. To satisfy this requirement police adopt improper methods of investigation and arbitrarily arrest persons in a bid to “solve” cases.

The police often file unsubstantiated or even plainly fraudulent FIRs to implicate people in false criminal cases – many of the complainants the team spoke to were victims of this crime. At times, this is done when the police is under pressure to show quick results in a case, so complaints are registered and arrests carried out without any preliminary investigation or *prima facie* evidence. In other instances, the police act on external orders to implicate someone in a false case. It goes without saying that violence and torture are often part of what individuals falsely implicated have to endure in police custody.

### Case VIII

This case illustrates just how callous the police are about checking facts and investigating before implicating persons in cases.

In his complaint to the Complaints Authority, the complainant alleges that he was arrested and taken to the police station. In his interview, he revealed that he was not informed of the charges. In addition, neither was an arrest memo drawn up nor was he allowed to consult a lawyer. On reaching the police station, the officers were uncertain as to what charges to book him under. After a brief exchange, the Police Inspector ordered his junior officers to link him to a specific FIR involving serious offences. The complainant repeatedly informed the police that he had nothing to do with the particular crime for which he was being booked and the fact that he was not even present in the state when this crime occurred.

Whether the complainant was actually out of the state or not would be determined only during the trial. At first production Magistrates are bound by law to assess the reasonableness of the arrest but they are seldom known to perform this duty. A person of means may be able to bring this to the attention of the court in a bail application. But a large number of persons lack the means to challenge arbitrary arrests and detention and continue to spend long periods in jail for crimes they never committed. This is also a major failure of the judiciary whose task is not only to assess the lawfulness of the arrest and all the circumstances surrounding it, including compliance with procedural requirements, but also the probable cause that underpinned the arrest and the legitimacy of the purpose of arrest. If the judiciary were to perform this single act alone, the problem of arbitrary arrest and detention as it exists today would be reduced to naught.

During the arrest the complainant protested and threatened to complain to higher authorities. The Inspector dared him to do so. In his interview with the CHRI team, the complainant reiterated that

both he and the police officer knew all along that even if he complained, there would be no consequences and no accountability would ever flow for wrongdoing. He lamented to us that “the police can continue implicating people in false cases because they know that escaping accountability is certain.”

## Case IX

This complainant found himself implicated in a serious case of murder. An individual had borrowed lakhs of rupees from the complainant and a few others. He then left town without paying his creditors. Within a short while, the creditors received a letter stating that the debtor had died, and so his debts were to be forgiven. The complainant told the CHRI team that he knew this letter was forged, and that the debtor was certainly alive when it was received. According to him, the death certificate was filed on a date before the alleged death had taken place. In light of this, a missing person’s report was filed with the police, which marks the beginning of the complainant’s interaction with the police. For months, no headway was made in the case. The complainant made several visits to the police station to inquire about the status of the missing persons complaint. The police, frustrated with their own inability to crack the case and tired of the complainant’s constant inquiries, framed murder charges against him, arrested him and detained him in police custody for six days. At no point was the complainant informed of any of his due process rights, and nor was he produced before a magistrate.

In his complaint to the Authority he raised each of these issues. However, as a case remains pending against him, the Authority is unlikely to be able to do much.

## Case X

Another example where the police used a false charge to settle a dispute is found in the experience of a primary school teacher of a government school. In relation to a property dispute, the teacher alleges that he was arrested illegally by the police from the school under a false charge brought under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.<sup>105</sup> To add to this, he claims to have been verbally abused in front of his young students during the arrest even though he did not resist in any way. Furthermore, since the police must have known they did not have any relevant evidence against him, they tried to coerce the school children to sign blank pieces of paper to use later as possible statements against the teacher. They did this by threatening the children with failure in school. A point to be noted here is that the children’s parents, acting as representatives, have filed a separate case with the Complaints Authority on this matter.

## Case XI

In yet another case, the complainant was a young man whose family was involved in a property dispute with a prominent builder, who, according to the complainant has links with high-level

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<sup>105</sup>This Section enumerates the types of offences that can arise out of this Act. The purpose of the Act is to address and punish atrocities committed against Scheduled Castes and Scheduled Tribes, who are amongst the most vulnerable to violent attacks in our society. It is deplorable that the police falsify cases under the Act, particularly when seen against the misuse of the Act in genuine cases.

politicians. The builder was holding on to money owed to the complainant's family. To prevent the complainant and his family from taking action against him, the complainant alleges that the police filed a false case against him, acting on the builder's behest. The police were intent on scaring the complainant while he was in their custody, and subjected him to repeated insults, threats and severe torture. In his complaint to the Police Complaints Authority, the complainant narrates that the Sub-Inspector who brought him to the police station repeatedly abused him in derogatory terms. The same Sub-Inspector with two police constables kicked and punched the complainant in his stomach, back and all over his body, and similar to a case above, the complainant was forcibly stripped down to his underwear. The same Sub-Inspector repeatedly threatened him and went as far as to tell the complainant that he would ruin his future. The complainant stated that he was "saved" only because more than 150 people gathered outside the police station in which he was held, and this public pressure prevented the police from inflicting further torture. The complainant was subsequently released on bail. Once out he needed medical help for injuries sustained whilst in custody including a damaged abdomen, a fractured hand and urological problems.

## Extortion

Extortion by the police prevails unhindered. Any citizen who has had some contact with the police can cite numerous instances about the manner in which extortion by the police takes place. Those who resist and fail to pay the bribes demanded are often threatened and unlawfully detained, and at times physically assaulted and tortured. Many of these abuses are perpetrated as a means to further extort money from ordinary citizens. The police officers make little attempt to hide the collection of money, exposing the near total lack of political will on the part of the authorities to hold police officers accountable for their actions.

## Case XII

Extortion by the traffic police is a common phenomenon and those who get trapped are most often from the most economically vulnerable sections of society. In this case, an auto-rickshaw driver was stopped by an officer for a traffic violation. Instead of the usual fine the officer demanded a bribe of Rs. 500. When he refused to pay, he was brutally beaten in full public view. The man sustained injuries on his legs, thighs, shoulders and genitals. The beating was severe enough to require surgical attention and a hospital stay of one month and fifteen days. To seek redressal, on two separate occasions, the driver wrote to the Senior Superintendent of Police (SSP) to complain about this misconduct, but no action was taken.

The complainant had heard about the Complaints Authority from the lawyer handling his case. Upon reviewing the complaint, the Authority sent a summons to the concerned officer and sets of hearings were initiated. In the meantime, the officer approached him with the hope of coming to an agreement and compromise. When he refused, the officer allegedly threatened him with physical harm if the complaint with the Authority was not withdrawn immediately. The threats and intimidation have been brought to the attention of the Chair of the Authority. The complainant refuses to withdraw his complaint. It is still pending with the Authority.

## Consequences of Complaining Against the Police: Reprisals and Further Threats by Police

The interviews with complainants clearly demonstrate that the police are confident in their ability to escape accountability or criminal liability, which often leads to further abuse of power on their part. Complainants recounted experiences of further threats, and even physical torture and illegal detention in some cases, after they complained to the Police Complaints Authority, or when they tried to file an FIR against the police officers concerned.

When one complainant threatened to lodge a complaint against the officer for naming him as an accused in false cases, the officer replied, “If you make a complaint against the police, you’ll have to approach the police; and you know nothing will come of it.”

Complainants have faced retaliation for approaching the Police Complaints Authority, and their refusal to withdraw complaints led to continuous harassment. One complainant was taken into police custody on the pretext of a minor traffic violation. He spent approximately twenty-one hours in custody where, according to him, the police verbally and physically abused him with the hope that he would feel adequately threatened to withdraw his complaint with the Complaints Authority. He was later released on bail.

When a complainant tried to file a counter-FIR, the police refused to register his complaint, and in turn slapped him and detained him for twenty-four hours without producing him before a magistrate in accordance with the legal requirement. While in custody, he was slapped and publicly paraded in the police station.

## Conclusion

The criminal justice system in India is clearly in disarray. The police being the gateway into that system and the first port of call for both victim and accused are constantly cited for abuse of power, corruption, bias, underperformance and outright criminal behaviour. Everyday practice has veered away from constitutional mandates, statutes and internal procedures. There is a definite pattern of misconduct and impunity as one can gather from the interviews with complainants to the Complaints Authorities in Goa and Uttarakhand. Despite the presence of several redress mechanisms, accountability remains out of reach for the ordinary citizen. The widespread perception that came through in the interviews is that complaints against the police are neither speedily nor transparently handled, nor do they lead to systemic changes. The reasons for this state of affairs are myriad; however, two major reasons for the diminution of rule of law is the inability of aggrieved persons to bring their tormentors to justice in distant, expensive and abstruse courts and the lack of knowledge within the officials themselves about human rights and civil liberties.

What is increasingly clear is the need of an external independent oversight mechanism to address these concerns. Such a body needs to be easily accessible to citizens, and aim to not only curb police misconduct and abuse as a watchdog, but also notice certain repeated patterns and address those by making general policy recommendations.



# The Facade of Police Accountability: Struggles and Challenges of Authorities and Complainants

Enquiry

**examination**

recommendation

Most people interviewed by the CHRI team have lost faith in the system. They viewed institutions of justice not as sources of protection, but as entities to be avoided. Their main complaint was that the systems do not deliver. The police, instead of being the upholders of the law are the biggest violators; registering a complaint against a police officer is next to impossible; courts are slow, difficult to understand, cumbersome and unresponsive to the needs of poor victims. To sum up, what most interviewees stated was that all institutional arrangements for justice delivery have failed.



# The Facade of Police Accountability: Struggles and Challenges of Authorities and Complainants

Most people interviewed by the CHRI team have lost faith in the system. They viewed institutions of justice not as sources of protection, but as entities to be avoided. Their main complaint was that the systems do not deliver. The police, instead of being the upholders of the law are the biggest violators; registering a complaint against a police officer is next to impossible; courts are slow, difficult to understand, cumbersome and unresponsive to the needs of poor victims. To sum up, what most interviewees stated was that all institutional arrangements for justice delivery have failed.

Every complainant who applied to the Complaints Authority did so with the hope of quick justice. Initial expectations from the Authority were high. Complainants saw it as a body that would be less complex, less intimidating, closer to home, and more sensitive to their needs.

This chapter analyses the challenges, problems and frustrations faced by complainants in their experiences with the Police Complaints Authorities in Goa and Uttarakhand. It also highlights the constraints and limitations faced by the Authorities. When assessed together, these challenges paint a grim picture of how oversight mechanisms function.

The concept of civilian oversight of the police is definitely a new trend the world over. It has given rise to a sharp debate between the police that believe internal review is the swifter and more effective means of accountability, and proponents of external oversight, who assert that in democracies, the police should remain accountable to the public.

Besides strong resistance from the police, governments have in no way supported the concept of external oversight. This leaves Complaints Authorities in an uncomfortable and isolated situation, where they try to bring one of the strongest arms of the justice system to account for wrongdoing.

## Weak Publicity

Most complainants we spoke to had little information about their Complaints Authority. They heard about them either through their lawyers, someone who had complained earlier, or through random reporting in the newspapers about the Authority in their state. They were not aware of any specific outreach programmes or publicity initiatives carried out by their Authority.

It is not an exaggeration to contend that little has been done in terms of outreach and awareness on Complaints Authorities. The few efforts at outreach have been made by the media, civil society and individuals. In interviews with the Authorities' Chairpersons and members, they admitted that they were unable to put much energy, resources, effort or imagination into public outreach. This trend was noticeable across the board. Little was done to publicise their existence or mandates, which is not necessarily their own fault. Lack of funding and resources was cited as a reason for this neglect. However, they did confess that they failed to realise the potential of outreach and the impact it could have on the number of complaints.

The lack of outreach and publicity on its role and mandate has had negative consequences for the Authorities. Complainants, mostly clueless about the role and powers of their Authority, file complaints

which lie outside the Authority's jurisdiction. Clearly, specific outreach programmes designed to spread awareness and inform the public about the Authority's functions and mandate, and how they may be reached would help bridge this knowledge gap.

According to Justice Da Silva, Chairman of the Goa State Police Complaints Authority, channels of redress are so few in India that sometimes the Authority is faced with petty disputes or domestic quarrels and unfortunately people are not aware of its mandate.<sup>106</sup> In addition, though he has interpreted the mandate of the Goa Authority quite broadly to include all types of misconduct (not limiting it to only "serious" misconduct), the complainants CHRI interviewed still hesitated to approach the Authority because they were unsure how to frame their complaints.

Justice Srivastava in Uttarakhand, on the other hand, has construed the mandate to include only very serious complaints against the police. For instance, a complainant was verbally threatened and intimidated by an officer, but since there was no evidence of physical torture, the Authority did not regard the complaint as a case of serious misconduct, and it was dismissed.

## Problems of Access

Both Goa and Uttarakhand have set up only state-level Complaints Authorities located in the state capitals. This is despite the Court's directive which called for district-level bodies in addition to the state-level Authority. Most interviewees, especially in Uttarakhand, expressed distress at the long distances they had to travel to reach the Complaints Authority. For them, it meant a whole day spent just trying to deliver the complaint and for the poorer complainants it meant a day's loss of wages. A few complainants were certain that they would not approach the Authority a second time because even though there may be a valid complaint against the police, the process of travelling from their homes to the capital for hearings and filings was too time consuming.

The Goa Authority recognised this problem somewhat for those complainants who are professionals or have day jobs, and makes concessions by requiring fewer appearances.

## Complicated Complaints Process

### Complaint Filing Process

The surest way to impede access to a complaint-receiving institution is to make the initial complaint filing process cumbersome. When questioned about the efficacy and ease of the filing process, many complainants responded that they found it difficult and tedious.

Most complainants preferred to deliver their complaints in person. In Goa, the general process of registering a complaint was comparatively simpler than in Uttarakhand. This is because most of the complainants interviewed in Goa were referred to the Authority by a lawyer, and they approached it

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<sup>106</sup> Interview with Justice Da Silva.

with a clear narrative and supporting documentation. In Uttarakhand, however, complainants stated that it was not so easy to file complaints.

To initiate the process, the Uttarakhand Authority requires sworn statements, multiple copies of the complaint along with a fee. Some complainants were turned away because their complaint was not on stamp paper, or because they did not provide multiple copies. A few were asked to provide three original copies of their complaint, affixed with non-judicial stamps, signed by a notary. After much protest on the part of a complainant, the Authority agreed to accept one original and one photocopy of the complaint.

It is arguable that these are not unreasonable requests per se, but given the socio-economic and educational backgrounds of many complainants, this request becomes onerous. The cost of notarising a complaint is Rs. 500, which is not a meagre amount for a complainant. This process is not only expensive but causes enormous delay in the proceedings.

Whilst the Authority confessed that the filing process was cumbersome and perhaps discouraged a considerable number of people from complaining, they were unwilling to relax the procedures, as they believed it would lead to a rise in “false and vexatious” complaints against the police.

## Approachability and Attitude of Staff

A difficult complaints filing process does not bode well for any public body. It is essential for the Authorities to improve their public image and presence. For this, the staff of the Authority must portray themselves as welcoming and open to assist the public.

The complainants who approached the Authority did so with tremendous hope and faith that their complaints would be addressed satisfactorily. While they did not report that the members of the Authority were discourteous or rude, they did communicate the fact that their initial experience was somewhat belittling and overwhelming with a great amount of paperwork and administrative procedure. One complainant in Uttarakhand expressed frustration at being made to wait for hours to even meet a member of the Authority.

Rather than welcoming complainants and determining ways to ensure that their complaint was at least heard and given some validation, the Uttarakhand Authority turned away complainants for administrative reasons such as lack of multiple copies. This made them feel that the complaint process was not simple enough to help them. Such interactions at the first contact projects a negative image of the Authority that becomes difficult to change.

## Lack of Clarity on Procedures

The absence of rules governing the complaints procedure has created significant ambiguity regarding the way a complaint is to be filed and the process to be followed thereafter. It would be incorrect to say that the Authorities function without any set of guidelines. The Chairperson and members, by virtue of their experience over the last few years have developed an intake, inquiry and disposal process. However, the fact remains that these guidelines are not adopted formally, there is no obligation to follow them; and if followed in breach there is no recourse for the affected party. Newly appointed members may also adopt different procedures, thus confusing complainants.

In both Goa and Uttarakhand, the overall complaints process was seldom explained to any complainant. Interviewees stated that they were required to file papers with the Secretary and that no further action was taken till weeks later when the Authority contacted them in writing. In other words, beyond the initial filing procedure, the average complainant was completely unaware of how the investigation would progress, the manner in which hearings would be held, how long the entire process would take or what the eventual outcome would be. Authorities need to be more sensitive to these problems and take all necessary measures to effectively communicate the process to the complainant.

To overcome this problem, Authorities can use their imagination and design simple pamphlets or brochures explaining the entire process that follows the registration of a complaint. This brochure could be handed over to every complainant who approaches the Authority. A simple step like this would greatly increase the public's confidence in the Authority as well as reduce the levels of dissatisfaction amongst complainants.

Some complainants believed that till the final hearing, they had little clue of what was going on. One complainant said: "I did not even realise that this was the final hearing. The Chairperson merely read out the final order and I was asked to leave. No one bothered to explain to me how the decision was reached, or what action was recommended."

In Goa, a complainant was unable to prepare for her next hearing because she was not given a copy of the reply filed by the respondent police officer. This was probably an oversight in this particular case, but such aberrations in procedure that affect a complainant's ability to prepare and argue their case should not occur. Without laid down procedures and processes, such problems are bound to crop up and plague the Authorities.

## Use of Advocates

A major trend that emerged through the interviews was the growing participation of lawyers in the Authority's hearings. Interviews revealed that many found the complaints process so difficult to navigate that they sought the help of a lawyer, a trusted friend or community member to assist them. The Authority in Goa encourages the use of lawyers because the Chairman prefers to run it more like a court and less like a grievance redressal body. Nevertheless, he assured CHRI that each complainant is briefed in detail about the process. Respondent officers have also begun to use lawyers (which they pay for themselves), putting more pressure on complainants to seek lawyers. This is slowly bringing a rigid formality to the hearings. Complainants expressed frustration that with the growing need for lawyers; hearings were now also subject to their availability. Lawyers' busy schedules are an additional cause of delay to Authority hearings.

Police Complaints Authorities are the first oversight mechanisms mandated to look into police misconduct. They are designed as local bodies close to and easily accessible to the public. Their goal is to provide an easier alternative remedy for redress, which eliminates the complicated and bureaucratic procedures of courts and the larger criminal justice system. To develop into an alternative remedy, the Authorities should function with minimal formality and technicality. This is a novel idea and new strategies need to be put into practice to strengthen access to redress and remedy, which is ultimately the obligation of the state.

The increasing acceptance of lawyers as part of an Authority's inquiry process will lead to an overly formalised mode of functioning, and too similar to a court. This will hinder an Authority's accessibility before it can even develop properly. It is already affecting its efficiency by causing delays in hearings owing to non-availability of lawyers. Such a practice, if allowed to continue or encouraged, will begin to be seen as a mandatory requirement and may even inhibit complainants or victims from approaching Authorities. The strength in the design and intent behind Police Complaints Authorities lies precisely in the fact that they are *not* a court, and can function without the complications and expenses which plague the formal judicial process.

Authorities will be successful when inquiries are held as expeditiously as possible. It is important that in states where the poor availability of lawyers affects timeliness and efficiency, the Authorities recognise and ensure that this issue has no bearing on the schedule of hearings. In fact, to gain the confidence of victims or complainants, Authorities could also take the bold step of discouraging the practice of parties being represented through their lawyers or counsel.

## Complainants' Perception of the Authority

### Composition and Independence

Authorities, as well as the state governments that appoint them, should understand that Authority members' profiles influence complainants' perceptions and play a major role in determining public trust. In fact, there are several weaknesses in the Authorities' compositions which already affect public trust. By and large, members are mostly male, and in the two states examined by CHRI, there is only one female member (Ms Kusum Nautiyal) in Uttarakhand. While there may not be a direct correlation, the lack of women members on the Authorities must surely make it all the more intimidating for potential women complainants to consider approaching Complaints Authorities. It must be remembered that an important part of the Authorities' mandate is to investigate rape in custody – a serious violation that is arguably hugely under-reported.<sup>107</sup> Empowering women to complain against police officers will undoubtedly require special proactive efforts by the Authorities, both in terms of how the issue is addressed and also inquired into. Having more women members on each Authority could go a long way to respond better to these special needs, and could eventually help to increase the number of female complainants.

Second, there is an overwhelming majority of members who are former government or police officers. There is little representation from civil society, which calls into question the extent to which Authorities can function truly independently. Many of the police complaints bodies set up in other jurisdictions, such as Australia and the United Kingdom, stipulate that former police officers cannot serve as members on these bodies. As evidenced in India, the presence of retired police and government officers deeply affects complainants' perceptions of the independence of the Authorities. Complainants in Uttarakhand expressed fear that the Authority in its present constitution is partial because former police officers serve as members. In their opinion, the Authority should comprise social workers and independent citizens.

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<sup>107</sup> As mentioned in the first chapter of this report, official crime statistics reported only 2 cases of rape in custody in 2009 for the entire country. With the secrecy of violations that take place in police stations, and the intimidation and threats that are meted out to victims along with the trauma of rape, there is hardly an enabling environment for women to complain and seek justice against a police officer for rape.

In Goa, there was a relatively high degree of respect for the Authority and its membership, particularly the Chairperson. Several complainants praised the independent nature of the oversight body, though there are also some who feel that the Authority is compelled by political influence in some cases to shield police officers. All in all, this is good progress for the Goa Authority – because gaining public trust and an independent image is one of the key factors for a successful oversight mechanism.

Unfortunately, the perception was different in Uttarakhand. While complainants commended the Chairperson’s ability to hear both sides in a fair manner, they did not express a similar confidence in the Authority as a whole. They were concerned that most other members were either former police officers or government servants. They thought that ex-police officers or bureaucrats would in all probability be biased in favour of the errant officer. They were unsure whether their grievances would be impartially investigated and believed that the likelihood of the Authority punishing police officers was low. CHRI admits that this is a perception and may not have any truth or bearing. However, it is nevertheless a perception that the Authorities as well as governments must keep in mind, since it is likely to affect the number of complaints that the Authority will receive and the faith and confidence of the people in it.

A complainant who was allegedly implicated in a false case by the police was convinced that the members of the Authority operate under immense political pressure. His case had unforeseen delays and he lamented that this was only because the retired bureaucrats and police officers do not really want to name and shame their colleagues.

Since Police Complaints Authorities first started working, CHRI advocated the need for diverse skill sets and wider representation of independent citizens on the Authorities. At present, because of the overwhelming influence of former police and government officers, Authorities are mired in overly bureaucratic procedures and perform poorly. There is a need to recruit members who can come up with fresh ideas and an openness to think of ways to simplify procedures, reach out to the public and maintain a high degree of independence from both the police and the government. Also, state governments and the Authorities themselves must recognise that a good complaints body does not steep itself in legal jargon or technical procedure. It is one which endeavours to conduct independent and comprehensive inquiries that are easily understood and navigated by complainants. There is no question that there is a need for both police and judicial expertise to aid the Authorities, but equally, the Authorities must be reflective of the requirements and demands of ordinary citizens who are ultimately the victims of police misconduct.

## The Hearings Process

Most complainants did not question the fairness of the hearings, but expressed dissatisfaction with the seriousness with which the Authority treated the overall complaint.

A complainant in Uttarakhand was disappointed after his first hearing because he thought that the Authority was merely placating complainants by holding hearings and examining cases, and would not actually punish officers for wrongdoing. This demonstrates that by the time the case progressed to the stage where hearings were conducted, complainants had already lost faith in the complaints process. Further, complainants found it difficult to schedule hearings. They were given a hearing

date but the police officers were absent. New dates were not scheduled and complainants were made to wait long hours. In one instance, a complainant wrote to the Authority, requesting some expediency in the hearings in his case, but there was no response. On many occasions, complainants indicated that there was a disappointing lack of timeliness with which the Authority operated their hearings.

In both states, a major cause of delay in hearings is lack of cooperation from the police. Hearings are often rescheduled because officers do not attend. Complainants shared that they spent an entire day waiting at the Authority for the concerned officer to attend the scheduled hearing; he neither appeared nor informed the Authority that he was unable to attend. Complainants added that the Authority often does not take strong action against officers who do not appear for scheduled hearings. The Uttarakhand Authority assured us that the only circumstances in which hearings are rescheduled for police officers are when they genuinely cannot attend because of their other duties. But as a matter of fairness, it is important that Authorities require advance notice and sufficient reasons for non-attendance from police officers, and ensure that complainants are also duly informed.

Though none of the interviewees we spoke with had decided to abandon their cases, they did mention to the CHRI team that several complainants, exhausted by the long delays and ineffective hearings dropped their cases. In response to this, the Chairperson of the Goa Authority has ensured that he no longer permits withdrawal of complaints. He did admit this to be a common phenomenon in the early days of the Authority, but when he realised that complainants were dropping cases because of delayed hearings, the Chair has begun to proceed *ex parte* if parties do not attend hearings or are unresponsive.

According to complainants, another cause for delay in hearings is that respondent officers do not file replies on time. All complainants across the board thought that the police took unduly long to file replies. As a result, there would be large gaps between hearings, making the process unwieldy and tiresome for most complainants.

Fortunately in Goa, since last year, the police have become more responsive to the Authority. The Chair of the Goa Authority approaches the complaints process in a non-punitive way – his goal is to facilitate an understanding between the concerned officer and the complainant. Perhaps this approach does encourage positive police participation.

When the Goa Authority was set up, the Director General of Police (DGP) at the time was very cooperative. The tide turned in July 2008 when he sent a complaint letter 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 damaging the morale of his police force. After this, police officers stopped attending the Authority’s hearings and said they would conduct their own inquiries on the complaints. The Chair believed that their intention was to reduce the Authority to powerlessness. He in turn wrote to the High Court discussing this state of affairs.

The Bombay High Court, in October 2008, took *suo moto* action and issued one civil and two criminal contempt proceedings against the DGP. As a result, the police issued an apology and policemen have since begun appearing before the Authority.

A few complainants commented that waiting in the same room as the respondent officer before their hearings made them nervous and apprehensive. For example, while waiting for their hearing to commence, an officer told a complainant that the Authority was essentially a toothless body and complaints registered with it would not result in any action. This not only indicates the arrogance

and feeling of impunity of this particular officer, but is also reflective of the general attitude of the police department towards the Complaints Authorities. It leaves the complainant unsure of what to expect at the hearing and forces him to doubt that the Authority really takes him seriously.

## Threats and Intimidation

Police reprisal and threats to complainants must be addressed without delay by the Authorities. Several complainants told the team that they were harassed and threatened by the police after filing their complaints with the Authority. One officer in Uttarakhand approached the complainant several times to come to a compromise to withdraw the complaint. The complainant was subsequently threatened with death and false cases. In our research and work with the Authorities so far, it is clear that they do not act on police reprisal, and many are not even aware that this occurs. The onus is on the Authorities to recognise the dangers that can be faced after complaining against a police officer, and to ensure that complainants are free from threats and reprisals during the course of an inquiry. This will require proactive efforts and dialogue with the complainant, open and frank communication with the police department, and some consideration by both Authorities and police of measures that can be taken to act on threats and reprisal. In the absence of a response, people will hesitate to seek help from an Authority once they discover that complainants are threatened and the Authorities do not act on this.

## Investigation of Complaints

Most interviewees we spoke to were not entirely certain about the investigative process their complaint underwent. However, they were aware that after an initial assessment of their complaint the Authority forwarded it to the police department with the expectation that a probe would be conducted and a report sent to the Authority. Complainants stated that this was the most absurd process. One of them remarked, “If my complaint had to go to the police itself for an inquiry, why would have I bothered to approach the Authority. This not only makes a mockery of my complaint but also puts me at additional risk with the police.”

This is indeed a major problem but arises more out of a lacuna in the law. The Uttarakhand Police Act or the Goa Notification setting up the Authority does not specify the inclusion of independent investigators. Without an express provision in the law, Authorities are prevented from demanding these from the government. Owing to resource and financial constraints, Authorities are also unable to hire the services of independent investigators. As a result, the present investigative scenario within the Authorities relies heavily on the police to conduct its probes. With police departments showing a clear unwillingness to cooperate with the Authorities, as stated by the Authorities themselves, it is disturbing to imagine how the inquiries are conducted by the police.

Justice Da Silva in his interview with the CHRI team aptly stated: “We should have the power not only to identify misconduct, but also the power to investigate independently. In Goa, independent investigators have been too expensive to add as full time staff – there are presently no funds. If the funds were made available I would ensure that all investigations are handled by these independent persons.”

Unfortunately, the Authority in Uttarakhand did not feel the need for independent investigators. According to them the police were cooperative enough in the complaint process and external investigation was superfluous.

Successful functioning of external oversight bodies is heavily dependent on its independence from both the police and political executive. At present, there is a mere façade of independence. Without the power to investigate and adequate resources to do so, it is quite apparent that external oversight is highly vulnerable to police influence.

## The Outcomes

### Lack of Effective Communication with Complainants

Many complainants we interviewed said they felt short-changed by the Authority as they failed to communicate the results of their investigations or to explain why the complaint was not proved. Many thought that the Authority did not take their complaint seriously, did not pursue the investigation aggressively or gave the police the benefit of the doubt.

It is not always possible to substantiate a complaint and due to lack of evidence or corroboration Authorities may have to exonerate officers. However, for the complainant, the perception of having being wronged is at stake. If the inquiry vindicates the officer, it contradicts the complainant's perception of what took place. Whilst some complainants can accept such a finding, others cannot and will in turn doubt the competence or impartiality of the Authority. This problem may be substantially mitigated if the Authority had clear written processes, communicated more effectively and frequently with complainants, and ensured that grounds that belie every decision of the Authority are adequately explained to the complainant. We do understand this to be time consuming, but the effect on complainant satisfaction will be tremendous.

### Authority is Slow to Reach a Final Decision

The Uttarakhand Police Act or the Goa Notification setting up the Authority places no time limit within which inquiries are to be conducted and cases disposed. Most complainants we spoke to indicated that their case took too long to be decided. Certain interviewees spent months waiting for a decision and expressed sheer frustration at the amount of time they had to invest in it.

The Authorities claimed that delays cannot be attributed solely to them. They reported that they received minimal cooperation from the police, their staff and resources were limited and that it was impossible for them to ensure timely disposal of cases working under these constraints.

Police officers are vested with enormous powers and broad discretion in the use of those powers. External oversight in the form of Complaints Authorities represents a challenge to that discretion. This is threatening and a major reason why external oversight has been strongly resisted by police organisations.

### Final Orders are not Punitive Enough

The interviews revealed that complainants were not satisfied with the final outcome of the complaints process. Many expected the Authority to issue final orders that were more punitive. CHRI urged the Chairs and members to recommend that an officer be suspended or an FIR filed against him where there are *prima facie* grounds of gross misconduct or abuse of authority. However, members claimed

that it was difficult for them to suspend a police officer. Though they did not elaborate on why this was such a challenge, it is important that the Authorities start taking more stringent action, especially in the face of obvious misconduct.

In addition to their anger and frustration, complainants expressed a mix of fears for the very act of complaining against a police officer. A complainant expressed his worry that all complainants are “exposed” when complaining against the police, and when the Authority delivers weak orders in the face of strong police misconduct, then one questions why the risk was taken in the first place. It is important to note that many complainants will perceive a level of risk when they pursue complaints against police officers; and this makes it doubly important that Authorities respond quickly and fairly. Some were also anxious that a dismissal by the Authority would negatively prejudice their chances of redressal in other mechanisms they can approach, such as the courts. It was felt that other state institutions will be unduly influenced by the findings of retired judges who chair the Authorities, regardless of the inadequacy of its inquiry process as perceived by the complainant. Again, this is an important factor of public perception, and is a reminder to the Authorities of the importance of conducting truly fair and comprehensive inquiries. Any lingering doubts of complainants can be addressed if the Authorities take proactive efforts to fully explain their final orders to complainants, including how the evidence was weighed in their reasoning.

Chairman Da Silva believed that his mandate was to ensure that the “police remain professional”.<sup>108</sup> He wishes to educate them, not punish them. According to him, this approach is preferable because he is well aware that even if he does recommend punitive action, the state government is unlikely to enforce it. He said, “I am here as a judge, not as a disciplinarian. I choose to work with a lot of common sense and humanity.” In other words, he perceives his role to be one of a moderator and nothing more. Nevertheless, he has recommended that FIRs be filed against errant officers in four cases.

If these oversight bodies do not exercise their power to recommend punitive action, they render themselves toothless and increasingly irrelevant. In Goa, a complainant was continuously harassed by a police inspector. She claims that the officer did so because he was unafraid of the Authority, knowing full well that the likelihood of any action taken against him would be low. Such a lack of public trust in the strength of the Authority does not bode well.

## Pursuing Other Remedies

A few complainants interviewed pursued other channels for redress in addition to the Complaints Authority. In some cases of egregious violations such as torture, they filed criminal cases with the local Magistrate even while their complaint was being heard by the Authority. Also, there seems to be a growing number of complainants approaching their state’s High Court, either because they are dissatisfied with the grounds of the Authority’s final dismissal, or due to excessive delay in the inquiry. Complainants are frustrated when their complaints are dismissed on technical grounds without adequate explanation<sup>109</sup> or if they feel orders are biased and stacked against them. While they are determined to pursue a fair opportunity to redress their complaints, it must be remembered that going to the High Court means additional time and expense over and above those already incurred on the Authority’s inquiry. This brings another burden on an already frustrated complainant, and makes accountability even more difficult to pursue.

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<sup>108</sup> Interview with Justice Da Silva.

## External Oversight or Toothless Tigers

The lack of enforcement powers renders Complaints Authorities into oversight bodies which are unable to exercise accountability in practice. Without enforcement powers, they are powerless when police departments and governments delay or ignore acting on their final orders. In a few states (Uttarakhand is one example), the Complaints Authority has some powers to prompt follow-up of their orders by the police, and the Authority in Goa has initiated an innovative practice on its own to compel follow-up, but as yet, these have been unable to defeat entrenched resistance from the police. Without sustained support from the state government, it will be immensely difficult for Authorities to tackle police resistance.

Unfortunately, it is a discernable trend across all *functioning* Authorities that police departments and governments are slow to act on their orders. Members of the Authorities across states repeatedly express their common frustration that their final orders to police departments are not treated with the promptness that they deserve. In fact, to date, no police official has been placed under suspension even when Authorities in different states have recommended it. For example, in a recent instance, the Chandigarh Police rejected an order passed by the Complaints Authority in which the latter had recommended the suspension of a Sub-Inspector (SI) who had adopted delaying tactics while arresting an accused. The police, while nullifying the order following a departmental inquiry, gave a clean chit to the SI and observed that “he is not guilty of any charge”. The police order marks a complete reversal of that passed by the Authority, without stating any reasons. This strongly backs the concerns of the Authorities that call for a change in policy direction in this regard. It becomes clear why members have said that this kind of subversion of their findings makes them almost ineffective.

The powers granted to Complaints Authorities are twofold: i) recommend a disciplinary inquiry in cases of misconduct and ii) recommend the registration of an FIR in the case of criminal behaviour. Most Authorities complain that such powers are inadequate, particularly in the absence of powers to compel compliance. In fact, on a policy level, the recommendation of a belated departmental enquiry should be particularly reconsidered,<sup>109</sup> as it has no immediate effect. The police internal inquiry officer can take a stand completely contrary to the Authorities’ findings. Such duplication of inquiries – one by the Authority and the other by the police internally–defeats the objective with which the Authority has been constituted.

Members also expressed concern that they lacked the means to monitor the status of their recommendations and the action taken on them by the police department. They thought that without sufficient follow up, their recommendations remain hollow. As mentioned above, some Authorities do have monitoring powers and others have innovated to enforce monitoring,

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<sup>109</sup> There have been instances when the Authority has perceived the delay to file the complaint and thereby dismissed the complaint.

<sup>110</sup> In terms of recommending the registration of an FIR, this is a necessary power for Complaints Authorities but it is virtually meaningless till they are given strong enforcement powers, to ensure that FIRs are actually registered, the police investigation begins and is not delayed. This requires a change in orientation in the Authorities themselves, who so far have been unwilling to recommend the registration of criminal cases against police officers even in the face of obvious misconduct; the Goa Authority is one exception.

albeit in a limited manner. Unfortunately, Complaints Authorities across different states do not share knowledge or practice with each other; in fact, there is no communication between Authorities. There is a serious need for cross-sharing knowledge and innovation, as Authorities can learn much from one another. For instance, it would be beneficial for other Authorities to learn of the legislative provisions in the Uttarakhand Police Act, 2007 that allow the Complaints Authority to monitor the status of the police departmental inquiry into misconduct cases (following their recommendation) through periodic reports from the DGP; in case of delay or a dissatisfied complainant, the Authority can call for a report from the DGP; it can even issue advice for further action; or a fresh police internal inquiry.<sup>111</sup> Other Authorities may be encouraged and seek to replicate the positive initiative taken by the Authority in Goa, which demands that the police department file a compliance report within three months of the Authority's final written order. The Goa Authority continues to function on the basis of a Government Order, and yet, has mustered the will to put in place an innovative practice. Cross-sharing of legislative provisions, procedures and practices could contribute towards capacity-building of the Authorities, and perhaps even facilitate their empowerment.

## A Troubling Development

The Government Notification setting up the Chandigarh Police Complaints Authority contains a troubling clause, and one which seriously impedes the Authority. Worryingly, though the notification states that the Authority's recommendations are binding on the government, it comes with a rider. The Authority's orders shall ordinarily be binding, *unless* for reasons to be recorded in writing, the Chandigarh Administration disagrees with the Authority's findings. In effect, the political administration can control the validity and enforcement of the Complaints Authority's findings, entirely undermining its independence and credibility. This increases the existing resistance from the police, and will invariably lead to excessive political interference in matters of police discipline and conduct. Such clauses are counterproductive and should be expunged from the books.

## Conclusion

There is no doubt that the Police Complaints Authorities manage to operate in a context which is far from welcoming. In the face of several difficulties, they have overcome initial challenges and sought to be the independent oversight mechanism the public so desperately needs.

The interview results provided important insights into the experiences of complainants and the odds against which the Authorities work. The task ahead is by no means a simple one. The interviews helped not only to recognise the progress made but also provided us with an opportunity to identify ongoing concerns and weaknesses and to work with the Complaints Authorities to address them.

The dearth of publicity and the absence of laid down processes need to be addressed immediately by the Authorities. Relatively lenient approaches to misconduct and an apparent reluctance to take action are important issues that require urgent attention.

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<sup>111</sup> Section 71(4) and 71(5), Uttarakhand Police Act, 2007.





## Conclusion and Recommendations



Police accountability has failed to receive the attention it deserves. Five years on, no state government or the Centre has taken seriously the Supreme Court directive ordering the setting up of complaints bodies. It is only due to external pressures and constant monitoring that some state governments have grudgingly set up Complaints Authorities. There is clearly no consensus between governments, police organisations and reform advocates about the value and need for these bodies.



# The Way Forward: Conclusions and Recommendations

Police accountability has failed to receive the attention it deserves. Five years on, no state government or the Centre has taken seriously the Supreme Court directive ordering the setting up of complaints bodies. It is only due to external pressures and constant monitoring that some state governments have grudgingly set up Complaints Authorities. There is clearly no consensus between governments, police organisations and reform advocates about the value and need for these bodies. Till date, only eight states have set up *functional* Authorities at the ground level, and these have either underperformed or failed to effectively deliver on their mandates. The same obstacles that beset them a year ago continue to plague their working. They suffer from serious infirmities in terms of their independence, composition, powers and resources. In addition, they face hostility and a complete lack of cooperation from the police. A large majority of the public continues to remain unaware of the existence of these oversight bodies, chiefly due to lack of effort by the state governments and Complaints Authorities to reach out to them. Those people who accessed the complaints bodies are disappointed at best, and convinced of its impotency at worst.

The nature of police abuse (as described in Chapter 3) which is of course only a small sampler of the larger issue of police brutality is worrying. The response complainants receive from the Authorities is equally worrying. Their ineffectiveness is to a large extent caused by weaknesses in the legislations setting them up, the complete lack of political will to ensure their smooth and efficient functioning and acute resistance and hostility from police departments. However, blame can be equally apportioned to the bodies themselves for their hesitation to assert themselves and their tardiness and lenience towards the police when deciding outcomes. They have also failed to reach out to the public. As a result, they have failed to win the public's confidence. In such a scenario not only does the future of these bodies appear bleak, more importantly police accountability in the country looks extremely grim.

Police misconduct - whether minor offences or gross violations - should never go unpunished. Establishing effective accountability mechanisms is crucial. But such mechanisms can only ever be effective if there is clear political will, government commitment and support from the police leadership.

The weaknesses identified in this report should guide policymakers in designing an accessible, effective and efficient system of police accountability for the country. Such a system must go beyond reviewing complaints and must also set standards of performance and conduct.

The next section provides concrete recommendations for governments, police departments, police leadership and Complaints Authorities to turn around three years of failed operations, by equipping these bodies sufficiently, and paying heed to the Supreme Court's directive that they be truly independent. We urge that serious attention be paid to the recommendations. We would like to say that the time has come for police reform but the bitter truth may be that the time has long gone for police reform.

# Recommendations

## For Governments

Half-hearted attempts will not achieve the reforms that are so urgently required. Any dilution of the Court's directive in terms of composition, functions and powers will only create bodies that are weak and designed to fail. We thus urge that the Court's directive be followed to the letter.

### Composition

Amend legislations that place serving police officers on the Complaints Authorities.

Ensure that no serving police officers are appointed as members to the Complaints Authorities.

Examine and address the current imbalance in the police-civilian composition in the Authorities and the resultant perceptions of bias amongst complainants. Governments need to consider new innovations and shape truly independent accountability bodies by trusting and relying on increased civil society membership.

Ensure greater representation of women on the Complaints Authorities in an attempt to increase women's access to these bodies.

### Selection Process

Ensure that the selection process of members assures the appearance of impartiality and independence.

### Investigations

Authorities should be provided with full investigatory powers. For this, state governments must make the services of independent investigators available to their Complaints Authorities. In addition, Authorities must be given the power to compel police cooperation with its investigations.

### Witness Protection

Make provisions within the legislation to enable the Authorities to provide for or make available witness protection for complainants and witnesses.

### Funding

Immediately prioritise the release of funding for the Authorities. Such funding must be independent and not part of the police budget. The budget should be approved by the state legislature and administered by the Authorities, with an obligation to report on their spending to the state legislature. Funds should also be made available to the Authorities to set up and maintain a website with easily accessible material for the public, detailing its work and functions.

## Rule Making

Without any further delay, frame and notify rules governing the functioning of the Authorities. Where they are given the powers to frame their own rules, this should be done at the earliest to ensure their smooth functioning.

## Powers

The Authorities should be given the power to directly refer cases for criminal prosecution and suggest disciplinary measures to the police department. Such powers should be binding on the government and police.

## For Complaints Authorities

### Outreach

Complaints Authorities need to continually strive to build bridges to the communities they serve through systematic public outreach and transparency about their procedures. Oversight agencies should explain their procedures, including their powers and limitations under the law, through brochures (published in local languages), print and electronic media and websites. Their findings should be as accessible as possible to complainants and the public.

### Complaints Procedure

#### Initial Handling

Initial handling of complaints need to be more complainant-friendly. Authorities must develop a mechanism whereby every complainant understands the complaints process and the approximate time it would take for the complaint to be decided. This could be done by the person receiving the complaint or with the help of brochures or pamphlets that explain the process. This will help reduce the trust deficit that presently exists between Authorities and complainants.

#### Clarity on Procedures

Till formal rules are notified by state governments Authorities need to immediately issue guidelines providing the basic information needed to substantiate a complaint, with a clear explanation of the types of complaints that fit their jurisdictions.

#### Timeliness of Disposal of Complaints

Set timelines within which cases will be decided and address perceptions and concerns related to promptness and efficiency.

## Discourage Overly Formal Hearing Processes

An Authority's success will be achieved when inquiries are held as expeditiously as possible with the unavailability of lawyers having no bearing on the scheduling of hearings. In fact, to gain the confidence of victims or complainants the Authority could take the bold step of discouraging parties being represented through their lawyers or counsels.

## Victim/Witness Protection

Complaints Authorities should at all times be cognizant to the risk a complainant is likely to face for complaining against the police. If victims or witnesses rescind their statements, the Authority needs to investigate if this is done under coercion.

A full-fledged witness protection programme may not be feasible but Authorities need to assess on a case by case basis, the seriousness of each complaint brought before them and the nature of the risk to the security of the witness which may emanate from the accused or his associates.

## Investigations and Outcomes

Go beyond merely identifying a single act of misconduct. Inquiry outcomes need to examine the cause of inappropriate behaviour with a focus on preventing its recurrence.

## Annual Reporting

Transparency and reporting are vital to the success of Complaints Authorities. They must publish annual reports on their work detailing instances of police misconduct, patterns of misconduct and recommendations passed. These reports must be tabled in state legislatures for debate and be easily accessible to the public.

## For Police Departments

Put in place a zero tolerance policy on criminality and misconduct.

Ensure that all officers are familiar with the mandate and inquiry procedure of the Police Complaints Authority in the state.

Fully cooperate and assist in the inquiries conducted by Complaints Authorities, particularly by providing all information and documents requested in the course of inquiries.

Keep track of the officers implicated and the nature of complaints against them before the Police Complaints Authority in your state.

Ensure that respondent officers implicated in a Complaints Authority inquiry attends all scheduled hearings on the date and time stipulated by the Authority. In case the respondent officer has to reschedule, ensure that he informs the Authority well in advance and provides sufficient reason.

Emphasise that only necessary police work is an acceptable excuse for respondent officers to reschedule their appearance at Police Complaints Authority hearings.

Make it clear that respondent officers must file their replies during the inquiry process in a timely manner, and emphasise that deliberate and excessive delay will not be tolerated.

Issue clear orders that respondent officers cannot threaten or harass complainants in any manner, and indicate that strict action will be taken against any reprisal or threats made by respondent officers.

Put in place robust measures to act against respondent officers who threaten complainants.

## For Police Leadership

Trust the Complaints Authorities and commit the police department to the accountability exercised by the Authority.

Be discerning and prevent duplication of inquiries – if the Authority has compiled strong *prima facie* evidence of misconduct against an officer, suspend the officer and move on to consider the proper punishment rather than conducting an internal inquiry.

Use the findings and recommendations of Complaints Authorities to remediate and discipline officers who violate the law and identify patterns of misconduct to evaluate supervision and training as well as to revise practices and policies in order to prevent similar misconduct from re-occurring.

Implement Authorities' recommendations immediately and avoid any unnecessary, excessive delays.

Routinely provide action taken reports on implementation of Authority orders to the Authorities both proactively as well as when requested and without delay.

## For Civil Society

Civil society organisations and activists working on human rights and civil liberties can play a very important and crucial role in the development of external oversight of the police.

Actively use the Police Complaints Authority in your state whenever necessary, in particular, with a view to increasing the usage of the Authority and strengthening the inquiry process.

Widely publicise the mandate, stages of the inquiry process, and full contact details of the Complaints Authority in your state, particularly in rural areas.

Insist that the Complaints Authority in your state prioritises an extensive public awareness campaign of its mandate and functions, and assist in producing public education materials.

Advocate with the state government to broaden and strengthen the selection criteria for appointment of members to the Complaints Authority.

Advocate with the state government to increase the space for independent citizens as members of the Complaints Authority.

Actively engage with the Police Complaints Authority in your state to improve inquiry procedures, particularly to strengthen response, transparency and efficiency of Authority inquiries.

# Annexure I

## State & District Police Complaints Authorities: Legal Provisions Concerning Constitution

State	Constitution and Composition
<p>ARUNACHAL PRADESH</p> <p>Government Order No. HMB (A) – 23/06 (Pt -V) dated 27 Ferbruary 2007</p>	<p>STATE POLICE COMPLAINTS AUTHORITY</p> <p><i>Composition:</i> Chairperson: Retired High Court/Supreme Court Judge. Other Members: A panel of members selected by the state government from a panel prepared by the State Public Service Commission. The panel shall include members from amongst the retired civil servants, police officers and civil society.</p> <p><i>Term of Chairperson and Members:</i> Four years.</p> <p>The order does not establish District Police Complaints Authorities.</p>
<p>ASSAM</p> <p>Assam Police Act, 2007</p>	<p>STATE POLICE ACCOUNTABILITY COMMISSION</p> <p><i>Composition:</i> Chairperson: Retired High Court Judge. Other Members: (i) A retired police officer – DGP or Add. DGP; (ii) A person with at least ten 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>At least one member of the Commission should be a woman and not more than one member can be a retired police officer.</p> <p><i>Term of Chairperson and Members:</i> Three years. Members are eligible for reappointment for a second term.</p> <p>DISTRICT POLICE ACCOUNTABILITY COMMISSIONS</p> <p><i>Composition:</i> Chairperson: Other Members:</p> <p><i>Term of Chairperson and Members :</i></p> <p>The District Accountability Authority shall have one Chairperson and three members with a credible record of integrity and commitment to human rights and shall be selected in accordance with the Assam Police Act, 2007 from amongst retired persons with judicial experience in the rank of District Judge or persons with the experience and qualification to be appointed as District Judge; a retired senior police officer; a retired senior civil servant; and an eminent</p>

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	<p>person from civil society. The Chairperson and other members of the District Accountability Authority will be appointed by the government. Condition of ineligibility, terms of office, terms and conditions of service, and conditions for removal from office for the Chairperson and members of the District Accountability Authority will be the same as provided in respect of the Police Accountability Commission under Chapter VIII.</p> <p>The Act does not establish a State Police Complaints Authority in Bihar.</p>
<p>BIHAR</p> <p>Bihar Police Act, 2007</p>	<p>DISTRICT ACCOUNTABILITY AUTHORITIES</p> <p><i>Composition:</i>  Chairperson: District Magistrate.  Member: Superintendent of Police.  Member Secretary: Senior Additional District Magistrate and Additional District Collector.</p> <p>The Act does not provide the term of office for the Chairperson or the members.</p>
<p>CHANDIGARH</p> <p>Chandigarh Home Department issued Notification No. 1/1/114-H111(1)-2010/11667, dated 23 June 2010, setting up a Police Complaints Authority</p>	<p>POLICE COMPLAINTS AUTHORITY</p> <p><i>Composition:</i>  Chairperson: A retired High Court Judge or retired Civil Service Officer of the rank of Secretary.  Any two members from the categories mentioned: (i) A person having ten years experience in law either as a Judicial Officer, Public Prosecutor, Lawyer or Professor of Law; (ii) A person of repute and stature from civil society; (iii) A retired officer with experience from the Public Administration; and (iv) A retired Police Officer of appropriate rank.</p> <p>At least one member of the Authority should be a woman.</p> <p><i>Term of Chairperson and Members:</i> Three years.</p>
<p>CHATTISGARH</p> <p>Chhattisgarh Police Act, 2007</p>	<p>STATE POLICE ACCOUNTABILITY AUTHORITY</p> <p><i>Composition:</i>  Chairperson: A retired High Court Judge or retired Judge of the Higher Judicial Service qualified to be Judge of the High Court.  Other Members (i) A Retired Police Officer – Add. DGP or above;  (ii) A retired civil servant – rank of Secretary to the state government or above  (iii) A person of repute and standing from civil society ordinarily residing in Chhattisgarh.</p> <p>At least one member of the Authority should be a woman.</p> <p><i>Term of Chairperson and Members:</i> Two years. The Chairperson and Members are eligible for reappointment for a second term.</p> <p>The Act does not establish District Police Accountability Authorities.</p>

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<p>DELHI</p> <p>The Ministry of Home Affairs issued a memo setting up a Complaints Authority in all the Union Territories No. 14040/45/2009 – UTP, March 2010</p>	<p>POLICE COMPLAINTS AUTHORITY</p> <p><i>Composition:</i> Chairperson: A retired High Court Judge or retired Civil Service Officer of the rank of Secretary. Members: Any two person from the categories mentioned: (i) A person having ten years experience in law, either as a Judicial Officer, Public Prosecutor, Lawyer or Professor of Law; (ii) A person of repute and stature from civil society; (iii) A retired officer with experience from the Public Administration; and (iv) A retired Police Officer of appropriate rank.</p> <p>At least one member should be a woman.</p> <p><i>Term of Chairperson and Members:</i> Three years.</p>
<p>GOA</p> <p>Goa Government Order No. 2/51/2006-HD(G)</p>	<p>STATE POLICE COMPLAINTS AUTHORITY</p> <p><i>Composition:</i> The Authority is to consist of 4 members. The order enumerates the members of the Authority, without prescribing any qualifications or mode of constituting the Authority.</p> <p>The Order does not establish District Police Complaints Authorities.</p>
<p>GUJARAT</p> <p>Bombay Police (Gujarat Amendment) Bill, 2007</p>	<p>STATE POLICE COMPLAINTS AUTHORITY</p> <p><i>Composition:</i> Chairperson: A retired High Court Judge or a retired Officer of the 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 Add. DGP.</p> <p><i>Term:</i> Not prescribed by the Act.</p> <p>DISTRICT POLICE COMPLAINTS AUTHORITIES</p> <p><i>Composition:</i> Chairperson: The Superintendent of Police of the District (ex-officio member) Other Members: (i) The Additional District Magistrate of the District (ex-officio); and (ii) Two members of the Gujarat Legislative Assembly. Member Secretary: The Deputy Superintendent of Police, (ex officio).</p> <p><i>Term:</i> Not prescribed by the Act.</p>
<p>HARYANA</p> <p>Haryana Police Act, 2007</p>	<p>STATE POLICE COMPLAINTS AUTHORITY</p> <p>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: (i) A retired judge; or (ii) A retired civil servant – rank of Secretary to the state or above; or (iii) A lawyer well versed with criminal law with a minimum of twenty years experience in the relevant field.</p>

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	<p><i>Term of Member:</i> Three years</p> <p>The Act provides for the constitution of a District Police Complaints Authority for each District as and when required.</p>
<p>HIMACHAL PRADESH</p> <p>Himachal Pradesh Police Act, 2007</p>	<p>STATE POLICE COMPLAINTS AUTHORITY</p> <p><i>Composition:</i> The Lokayukta acts as the State Police Complaints Authority.</p> <p><i>Term of Member:</i> Three years. Member is eligible for re-nomination</p> <p>DISTRICT POLICE COMPLAINTS AUTHORITIES</p> <p><i>Composition:</i> The District Police Complaints Authority is to be headed by the Divisional Commissioner of the Division.</p> <p>Other Members: Three non-official members who may be: (i) A retired senior Police Officer of the rank of Superintendent of Police and above; (ii) A retired prosecutor of the rank of District Attorney or above; and (iii) A retired Judicial Officer of the rank of Additional District Judge or above.</p> <p>Non-Official Members to be nominated by the state government in consultation with the Lokayukta</p> <p><i>Term of Member:</i> Three years. Member is eligible for re-nomination.</p>
<p>KERALA</p> <p>Kerala Police Act, 2011</p>	<p>STATE POLICE COMPLAINTS AUTHORITY</p> <p><i>Composition:</i>  Chairperson: A retired High Court Judge.  Members: (i) A serving officer of the rank of Principal Secretary to the government; (ii) A serving officer of or above the rank of Additional Director General of Police (Add. DGP); (iii) A person selected by the government in consultation with the Opposition Leader from a three-member panel of retired suitable officers not below the rank of Inspector General of Police (IGP) furnished by the Chairperson of the SHRC; and (iv) A person selected by the government in consultation with the Opposition Leader from a three-member panel of retired suitable District Judges given by the State Lokayukta.</p> <p><i>The Kerala State Authority differs from most other PCAs by including a serving police officer and government servants as members.</i></p> <p><i>Terms:</i> The Act requires the conditions of service to be prescribed by the state government. Till date no Rules have been notified defining either the terms or conditions of service.</p> <p>DISTRICT COMPLAINTS AUTHORITIES</p> <p><i>Composition:</i>  Chairperson: A retired District Judge.  Members: (i) The District Collector;  (ii) The District Superintendent of Police.</p>

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	<p>The Chairperson of one District Authority may be appointed as Chairperson for more than one District Complaints Authority.</p> <p><i>Term:</i> The Act requires the conditions of service to be prescribed by the state government. Till date no Rules have been notified defining either the terms or conditions of service.</p>
<p>MAHARASHTRA</p> <p>Maharashtra Government Resolution No. NPC 1008/2/CR-6/POL-3</p>	<p>STATE 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 or Principal Secretary in the state government. Other Members: (i) An officer of the rank of Secretary to the state government; and (ii) an eminent person Member Secretary: Additional Director General of Police or higher ranking officer.</p> <p><i>Terms:</i> (i) For eminent person: Three years. (ii) All other members: As may be prescribed by the state government.</p> <p>DISTRICT POLICE COMPLAINTS AUTHORITIES</p> <p><i>Composition:</i> Chairperson: A retired District Judge or a retired Judge of equivalent rank Other Members: (i) An officer of the rank of Collector or Deputy Collector; (ii) A person of eminence appointed by the state government. Member Secretary: An officer of the rank of Superintendent of Police or Deputy Commissioner of Police.</p> <p><i>Terms:</i> (i) For eminent person: Three years. (ii) All other members: As may be prescribed by the state government.</p>
<p>MEGHALAYA</p> <p>Notification-OM No. HPL.122/96/515 dated 19 December 2006</p>	<p>STATE POLICE COMPLAINTS AUTHORITY</p> <p><i>Composition:</i> Chairperson: A retired District Judge. Other Members: (i) A retired IPS officer; (ii) and (iii) Retired government officers.</p> <p><i>Term:</i> Not prescribed by the Notification.</p> <p>The Notification does not establish District Police Complaints Authorities.</p>
<p>NAGALAND</p> <p>Notification No. POL-9/SF/20/2000 dated 30 March 2007</p>	<p>STATE POLICE COMPLAINTS AUTHORITY</p> <p><i>Composition:</i> Chairperson: A retired High Court or Supreme Court Judge. Other Members: Five Members to be selected by the state government from a panel prepared by the Public Service Commission.</p> <p><i>Term:</i> Not prescribed by the Notification.</p>

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	<p>DISTRICT POLICE COMPLAINTS AUTHORITIES</p> <p><i>Composition:</i> Chairperson: District Judge. Other Members: Three Members drawn from a panel prepared by the State Human Rights Commission and State Public Service Commission.</p> <p><i>Term:</i> Not prescribed by the Notification.</p>
<p>ORISSA</p> <p>Orissa Notification No. 22123/D.\$A., dated 1 May 2008 PDA-II-95/2007</p>	<p>The Lokpal is mandated to act as the Police Complaints Authority.</p>
<p>PUNJAB</p> <p>Punjab Police Act, 2007</p>	<p>The provision on police accountability only enables the state government to constitute a Police Complaints Authority at State and District levels through notifications.</p>
<p>PUDUCHERRY</p> <p>Puducherry Home Department issued Notification No. TN/PMG(CCR)/42/09-11, dated 19 January 2011 setting up a Police Complaints Authority.</p>	<p>POLICE COMPLAINTS AUTHORITY</p> <p><i>Composition:</i> Chairperson: A retired High Court Judge. Other Members: Three other Members consisting of a retired IAS officer, a member of civil society, and the Joint Secretary (Home) to be the Convenor-cum-Secretary of the Authority.</p> <p><i>Term:</i> Three years.</p>
<p>RAJASTHAN</p> <p>Rajasthan Police Act, 2007</p>	<p>STATE POLICE ACCOUNTABILITY COMMITTEE</p> <p><i>Composition:</i> Chairperson: An independent member is to be appointed as Chairperson. Members: Eminent persons with experience in public dealings and a credible record of integrity and commitment to human rights. Member-Secretary: Additional Director General of Police.</p> <p><i>One of the independent members is to be from the weaker sections and another is to be a woman.</i></p> <p><i>Term of independent member:</i> Two years and the member cannot be nominated twice for the same committee.</p> <p>DISTRICT ACCOUNTABILITY COMMITTEES</p> <p><i>Composition:</i> Chairperson: An independent member is to be appointed as Chairperson. Four Members: Eminent persons, with experience in public dealings, and a credible record of integrity and commitment to human rights. Member-Secretary: Additional Superintendent of Police.</p> <p><i>One of the independent members is to be from the weaker sections and another is to be a woman.</i></p>

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	<p><i>Term of independent member:</i> Two years, and the member cannot be nominated twice for the same committee.</p>
<p>SIKKIM</p> <p>The Sikkim Police Act, 2008</p>	<p>POLICE ACCOUNTABILITY COMMISSION</p> <p><i>Composition:</i>  Chairperson: A retired High Court Judge.  Member: (i) Retired officer – Secretary to the state government or higher ranking officer; or a retired Police Officer – rank of Inspector General of Police or higher.  Member: (ii) Retired Judicial Officer of the 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> <p>The Act does not establish District Police Accountability Commissions.</p>
<p>TRIPURA</p> <p>Tripura Police Act, 2007</p>	<p>STATE POLICE ACCOUNTABILITY COMMISSION</p> <p>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.  Other Members: (i) A retired Police Officer – rank of Inspector General of Police or higher; (ii) Two persons of repute and standing from civil society; and (iii) A retired Officer – rank of Secretary/Commissioner to the state government or higher with experience in public administration.</p> <p><i>At least one member of the Commission should be a woman and no more than one a police officer.</i></p> <p><i>Term of Chairperson and Members:</i> Three years.</p> <p>The Act does not establish District Police Accountability Commissions.</p>
<p>UTTARAKHAND</p> <p>Uttarakhand Police Act, 2007</p>	<p>STATE POLICE COMPLAINTS AUTHORITY</p> <p>The Authority is to be established within six months of this Act coming into force.</p> <p><i>Composition:</i>  Chairperson: An independent member is appointed Chairperson.  Members: (i) Four eminent members with experience in public dealings and a 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 should be a woman, and no more than one a police officer. One member must be knowledgeable in law.</i></p> <p><i>Term of Chairperson and Members:</i> Three years.</p>

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<p>WEST BENGAL</p> <p>Government Order No. 2162 - PL/PE - 16S - 36/05 dated 2 June 2010</p>	<p>STATE POLICE COMPLAINTS AUTHORITY</p> <p><i>Composition:</i> Chairperson: Chairperson, WBHRC. Members: (i) Home Secretary of the state government; and (ii) Commissioner of Police, Kolkata, or a retired Civil Servant. Member Convenor: Director General and Inspector General of Police, West Bengal.</p> <p><i>Term of Chairperson and Members:</i> One year.</p> <p>The Order does not establish District Police Complaints Authorities.</p>

## Police Complaints Authorities: Complaints,

State Acts/ Notifications / Government Orders	Nature of Complaints	Complaints Received from	Rights of Complainants or Witnesses
<p><b>ARUNACHAL PRADESH</b></p> <p>Government Order No. HMB (A) – 23/06 (Pt -V) dated 27 February 2007</p>	<p><i>Complaints against:</i> Any/all police personnel of all ranks.</p> <p><i>Nature of Complainants:</i> Serious misconduct including:</p> <ul style="list-style-type: none"> <li>i) death in custody;</li> <li>ii) grievous hurt;</li> <li>iii) rape in custody;</li> <li>iv) extortion;</li> <li>v) land/house grabbing;</li> <li>vi) any incident involving serious abuse of authority.</li> </ul>		
<p><b>ASSAM</b></p> <p>Assam Police Act, 2007</p>	<p><i>Complaints against:</i> Any/all police personnel.</p> <p><i>Nature of Complaints:</i></p> <ul style="list-style-type: none"> <li>i) Death in custody;</li> <li>ii) grievous hurt;</li> <li>iii) molestation, rape or attempt;</li> <li>iv) illegal arrest or detention;</li> <li>v) forceful deprivation of ownership rights;</li> <li>vi) blackmail or extortion;</li> <li>vii) non-registration of FIR;</li> <li>viii) dissatisfactory result of departmental proceedings;</li> <li>(ix) other cases referred by SG or DGP.</li> </ul> <p><i>Complaint supported by a sworn statement.</i></p>	<p><i>Complaints received from:</i></p> <ul style="list-style-type: none"> <li>i) Victim or any person on his behalf;</li> <li>(ii) NHRC/SHRC;</li> <li>(iii) police;</li> <li>(iv) any source.</li> </ul>	<p><i>Rights of Complainant:</i></p> <ul style="list-style-type: none"> <li>i) To be informed of progress, completion of inquiry, final action taken;</li> <li>ii) informed of date &amp; place of hearings;</li> <li>iii) services of translator.</li> </ul>
<p><b>BIHAR</b></p> <p>Bihar Police Act, 2007</p>	<p><i>Nature of Complaints:</i> Misbehaviour.</p>		<p><i>Rights of Complainant:</i></p> <p>To be informed of progress &amp; completion of inquiry &amp; final action taken.</p>

## Recommendations and Reports

Mandate & Power	Functions & Recommendation	Reporting Obligations
	<p><i>Recommendation:</i> Departmental/criminal action, which is binding on the concerned Authority.</p>	
<p><i>Enquiry:</i> i) Suo moto; ii) upon complaints received; iii) upon reference by government/DGP.</p> <p><i>Monitoring the status of departmental inquiry or action:</i> Monitor cases of undue delay by receiving quarterly reports from DGP on complaints of misconduct against DSP/ASP/ranks above &amp; advise expeditious completion of inquiry.</p> <p><i>May call for reports:</i> upon receiving complaints of dissatisfactory DP &amp; advise fresh inquiry.</p> <p><i>May impose a fine for:</i> making false complaints.</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 &amp; advise expeditious completion of inquiry.</p>	<p><i>Annual Report to contain:</i> i) Number &amp; nature of complaints inquired into; ii) number &amp; nature of complaints of dissatisfactory departmental proceedings made to it; iii) advice &amp; directions of further action issued; iv) number of complaints received by District Authority &amp; manner of disposal; v) identifiable patterns of misconduct; vi) recommendations on measures to enhance police accountability.</p> <p>Report to be laid before the State Legislature and be a public document.</p> <p><i>Specific cases</i> inquired into also to be reported &amp; made available to the public.</p>
<p><i>Enquiry:</i> If another commission or court is looking into the content of the complaint, the complaint shall not be considered by the Authority.</p> <p><i>Monitoring the status of departmental inquiry or action:</i> Monitor dept inquiry/actions related to complaints received against officers below the rank of Asst/Dy SP through quarterly reports received periodically from the District SP.</p> <p><i>May call for reports:</i> Monitor cases of undue delay and give proper advice to District SP to speed up process.</p>		<p><i>Annual Report to contain:</i> i) Number and nature of cases forwarded to government and District SP; ii) number and nature of cases monitored; iii) number and nature of cases filed by complainants who were dissatisfied by the department enquiry on their cases; iv) number and nature of cases mentioned in iii), where advice/instructions for further action have been issued by the police; v) Broad recommendations for improved policing.</p>

State Acts/ Notifications / Government Orders	Nature of Complaints	Complaints Received from	Rights of Complainants or Witnesses
<p><b>CHANDIGARH</b></p> <p>Notification No. 1/1/114-HIII(1)-2010/11667, dated 23 June 2010</p>	<p><i>Complaints against:</i> Any police personnel.</p> <p><i>Nature of Complaints:</i> Serious misconduct such as:  i) custodial death;  ii) grievous hurt; iii) custodial rape / attempted rape; iv) illegal arrest and detention;  v) extortion;  vi) land/house grabbing;  vii) any incident involving serious abuse of authority.</p>	<p><i>Complaints received suo moto or from:</i>  i) Victim or victim's representative;  ii) NHRC / SHRC;  iii) the police;  iv) any other source;  vi) state/ central government.</p>	
<p><b>CHATTISGARH</b></p> <p>Chattisgarh Police Act, 2007</p>	<p><i>Complaints against:</i> Any/all police personnel.</p> <p><i>Nature of Complaints:</i>  i) death;  ii) rape or attempt;  iii) grievous hurt in custody;  iv) other acts specified by state government.</p>	<p><i>Complaints received from:</i>  i) A victim or close relative supported by affidavit;  ii) state government.</p> <p><i>Six month limitation:</i>  Authority cannot look into complaints received six months after the date of occurrence.</p>	
<p><b>DELHI</b></p> <p>The Ministry of Home Affairs issued a memo setting up a Complaints Authority in all the Union Territories No. 14040/45/2009 – UTP, March 2010</p>	<p><i>Complaints against:</i> Any police personnel.</p> <p><i>Nature of Complaints:</i> Serious misconduct such as:  i) custodial death;  ii) grievous hurt;  iii) custodial rape / attempted rape;  iv) illegal arrest and detention;  v) extortion;  vi) land/house grabbing;  vii) any incident involving serious abuse of authority.</p>	<p><i>Complaints received suo moto or from:</i>  i) Victim or victim's representative;  ii) NHRC / SHRC;  iii) the police;  iv) any other source;  vi) state/ central government.</p>	
<p><b>GOA</b></p> <p>Goa Order No. 2/51/2006-HD(G)</p>	<p><i>Complaints against:</i> Any/all police personnel.</p> <p><i>Nature of Complaints:</i>  i) Death;  ii) grievous hurt;  iii) rape in police custody.</p>		
<p><b>GUJARAT</b></p> <p>Gujarat- Bombay Police (Gujarat Amendment) Act, 2007</p>	<p><i>Complaints against:</i> Police personnel of &amp; above rank of DySP.</p> <p><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.</p>	<p><i>Complaint received from:</i>  Any person.</p>	

Mandate & Power	Functions & Recommendation	Reporting Obligations
	<p><i>Functions:</i> Authority must submit findings in sixty days from the date of the complaint. If not, it must submit a report to the Administrator explaining why.</p> <p><i>Recommendation:</i> They are “ordinarily” binding, unless for reasons which are to be recorded in writing in the event of a disagreement.</p>	
<p><i>Mandate:</i> Carry out such other functions as the state government may occasionally specify by Order.</p> <p><i>Power:</i> Authority has the power of a civil court trying a suit.</p>	<p><i>Function:</i> Authority cannot look into complaints already being inquired into by NHRC/SHRC or is a subject matter under the Commission of Enquires Act or is sub-judice.</p> <p><i>Recommendation:</i> Binding, unless for reasons recorded in writing in the event of a disagreement.</p>	<p><i>Annual Report:</i> Reports made to the state government whenever necessary.</p>
	<p><i>Functions:</i> Authority must submit findings in sixty days from the date of the complaint. If not, it must submit a report to the Administrator explaining why.</p> <p><i>Recommendation:</i> They are “ordinarily” binding, unless for reasons which are to be recorded in writing in the event of a disagreement.</p>	
	<p><i>Recommendations:</i> Recommendations of the Authority are binding on the concerned Authority.</p>	<p>No reporting obligations.</p>
	<p><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.</p>	<p><i>Meeting and Reporting:</i> Assess record of at least a quarter of all police stations in the district with respect to the following matters &amp; prepare a rating on them.</p>

State Acts/ Notifications / Government Orders	Nature of Complaints	Complaints Received from	Rights of Complainants or Witnesses
<p><b>HARYANA</b></p> <p>Haryana Police Act, 2007</p>	<p><i>Complaints against:</i> Any/all police personnel.</p> <p><i>Nature of Complaints:</i></p> <p>i) Death in police custody;  ii) rape or attempt;  iii) grievous hurt in custody;  iv) other cases referred to it by DGP/state government.</p>	<p><i>Complaints received from:</i></p> <p>i) Victim or any person on his behalf on sworn affidavit;  ii) NHRC/SHRC;  (c) DGP/state government.</p> <p>Complainant cannot be anonymous, synonymous, or pseudonymous.</p>	
<p><b>HIMACHAL PRADESH</b></p> <p>Himachal Pradesh Police Act, 2007</p>	<p><i>Nature of Complaints:</i></p> <p>i) Criminal misconduct.</p>	<p><i>Complaints received from:</i></p> <p>i) A victim or any person on his/her behalf;  ii) public servant;  iii) statutory authority.</p>	<p><i>Rights of Complainant:</i></p> <p>i) Informed of progress, completion of inquiry, &amp; final action taken;  ii) informed of date &amp; place of hearings;  iii) receive written transcripts in Hindi/English.</p>
<p><b>KERALA</b></p> <p>Kerala Police Act, 2011</p>	<p><b>State Police Complaints Authority</b></p> <p><i>Complaints Against:</i> Officers of and above the rank of Superintendent of Police (SP).</p> <p><i>Nature of Complaints:</i>  Misconduct such as:</p> <p>i) sexual harassment of women in custody;  ii) death of any person</p>	<p><i>Complaint received from:</i></p> <p>Any person, including elected representatives.</p>	

Mandate & Power	Functions & Recommendation	Reporting Obligations
	<p>Report the same to concerned disciplinary authority for action:</p> <ul style="list-style-type: none"> <li>i) prompt registration of FIR;</li> <li>ii) custodial violence;</li> <li>iii) extortion of money from complainants &amp; victims;</li> <li>iv) drunken behaviour;</li> <li>v) misbehaviour.</li> </ul> <p><i>Recommendations:</i> Made to the concerned Disciplinary Authority.</p> <p>The Act does not state nature and scope of recommendations, except registration of FIR in case of non-registration.</p>	
<p><i>Enquiry:</i></p> <ul style="list-style-type: none"> <li>i) Suo moto;</li> <li>ii) upon complaint received;</li> <li>iii) upon reference by government/DGP.</li> </ul> <p><i>Powers:</i> Authority has the power of a civil court trying a suit.</p>	<p><i>Recommendations:</i></p> <p>The Act does not specify that recommendations of the Authority are binding.</p>	
<p><i>Enquiry:</i></p> <ul style="list-style-type: none"> <li>i) Suo moto;</li> <li>ii) upon complaint received.</li> </ul> <p><i>Powers:</i> To use &amp; modify procedures of the Lokayukta to conduct inquiry.</p> <p><i>May impose a fine for:</i> Making false complaint.</p>	<p><i>May Monitor Departmental Inquiries:</i> When ordered by the State Authority. Advise expeditious completion of case.</p> <p><i>Call for report:</i> From disciplinary authority. Issue advice for further action including fresh inquiry by another officer.</p> <p><i>Functions:</i></p> <ul style="list-style-type: none"> <li>i) Forward complaints of criminal misconduct to State Authority;</li> <li>ii) forward complaints against non-gazetted officers to DSP or other concerned authority;</li> <li>iii) forward complaints of misconduct to state government under intimation to the State Authority.</li> </ul> <p><i>Fine:</i> May impose a fine of less than Rs. 25,000 for baseless complaints.</p>	<p><i>Report to State PCA:</i></p> <p>Undue delay in departmental enquiry, despite advice of the District PCA.</p> <p><i>Annual Report:</i> to the State Authority to contain:</p> <ul style="list-style-type: none"> <li>i) cases forwarded by it to the State Authority and Disciplinary Authority;</li> <li>ii) number &amp; type of cases monitored;</li> <li>iii) number &amp; nature of complaints of dissatisfactory departmental proceedings along with advice issued;</li> <li>iv) identifiable patterns of police misconduct;</li> <li>v) measures to enhance police accountability.</li> </ul>
<p>The PCA may call for a report from the police or the government with regard to important matters relating to a complaint it is reviewing.</p>	<p><i>Recommendations:</i> PCA can recommend either a departmental inquiry be carried out, or that a criminal case be registered against a police officer. These recommendations are binding.</p>	

State Acts/ Notifications / Government Orders	Nature of Complaints	Complaints Received from	Rights of Complainants or Witnesses
	iii) inflicting grievous hurt on any person iv) rape, etc.  <b>District Police Complaints Authority</b>  <i>Complaints against:</i> Officers of and up to the rank of Deputy Superintendent of Police (DySP).		
<b>MAHARASHTRA</b>  <b>Maharashtra Government Resolution</b> No. NPC 1008/2/CR-6/POL-3, dated 25 July 2008.	<i>Complaints against:</i> Police Officers of & 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.		
<b>MEGHALAYA</b>  <b>Notification- OM No. HPL.122/96/515 dated 19 December 2006</b>	<i>Complaints against:</i> Police personnel of and above the rank of Add. SP.  <i>Nature of Complaints:</i> Serious misconduct including: i) Custodial death; ii) custodial rape; iii) grievous hurt.	<i>Complaints received from:</i> Any person.	
<b>NAGALAND</b>  <b>Notification</b> No. POL-9/SF/20/2000 dated 30 March 2007	<i>Complaints against:</i>  <i>Nature of Complaints:</i> <b>State Police Complaints Authority</b> Serious misconduct including: i) custodial death; ii) custodial rape; iii) grievous hurt.  <b>District Police Complaints Authority</b> i) Extortion; ii) land/house grabbing; iii) any serious abuse of authority.		
<b>ORISSA</b>  <b>Orissa Notification No. 22123/D.\$A., dated 1 May 2008 PDA-II-95/2007</b>	<i>Complaints against:</i> Any/all police personnel.  <i>Complaint Format:</i> Form 'A'  <i>Affidavit:</i> Form 'B'	<i>12 month limitation:</i> Authority cannot look into complaints received twelve months after the date of occurrence.	

Mandate & Power	Functions & Recommendation	Reporting Obligations
	<p><i>Functions and Powers:</i></p> <p>i) Forward complaints against higher ranked officers to State Authority;</p> <p>ii) monitor progress of departmental inquiries against officer up to the rank of Inspector.</p> <p><i>Recommendations:</i></p> <p>Not defined.</p>	
<p><i>Fees:</i></p> <p>Rs. 50 for complaint against officers of &amp; above rank of ASP &amp; of Rs. 25 for complaint against all other police personnel.</p> <p>Persons exempt from paying fees:</p> <p>i) women;</p> <p>ii) physically challenged persons;</p> <p>iii) SC/ST;</p>		

State Acts/ Notifications / Government Orders	Nature of Complaints	Complaints Received from	Rights of Complainants or Witnesses
PUNJAB Punjab Police Act, 2008	State may set up PCAs at State & District levels through notifications.		
RAJASTHAN Rajasthan Police Act, 2007	<p><i>Complaint against:</i> Police officers in supervisory ranks.</p> <p><i>Nature of Complaints:</i></p> <ul style="list-style-type: none"> <li>i) Grievous hurt;</li> <li>ii) illegal detention;</li> <li>iii) any offence for which maximum punishment exceeds ten years;</li> <li>iv) extortion.</li> </ul>	<p><i>Complaints received from:</i></p> <ul style="list-style-type: none"> <li>i) A victim or any person on behalf;</li> <li>iii) District Police Accountability Committee.</li> </ul>	
SIKKIM Sikkim Police Act, 2008	<p><i>Complaints against:</i> Any/all police personnel.</p> <p><i>Nature of Complaints:</i></p> <ul style="list-style-type: none"> <li>i) Death in custody;</li> <li>ii) grievous hurt;</li> <li>iii) rape or attempt;</li> <li>iv) illegal arrest/detention;</li> <li>v) other cases referred by DGP.</li> </ul>	<p><i>Complaints received from:</i></p> <ul style="list-style-type: none"> <li>i) A victim;</li> <li>ii) NHRC/SHRC;</li> <li>iii) police;</li> <li>iii) any source;</li> <li>iv) DGP.</li> </ul>	<p><i>Rights of Complainant:</i></p> <ul style="list-style-type: none"> <li>i) Informed of progress, completion of inquiry, &amp; final action taken;</li> <li>ii) informed of date &amp; place of hearings for attending the same;</li> <li>iii) services of a translator.</li> </ul>
TRIPURA Tripura 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"> <li>i) Death in police custody;</li> <li>ii) grievous hurt;</li> <li>iii) rape or attempt;</li> </ul>	<p><i>Complaints received from:</i></p> <ul style="list-style-type: none"> <li>i) A victim or any person on his behalf;</li> <li>ii) NHRC/SHRC;</li> <li>iv) police;</li> <li>v) any source.</li> </ul>	<p><i>Rights of Complainant:</i></p> <ul style="list-style-type: none"> <li>i) Informed of progress, completion of inquiry &amp; final action taken;</li> <li>(ii) informed of date &amp; place of hearings;</li> <li>iii) services of a translator.</li> </ul>

Mandate & Power	Functions & Recommendation	Reporting Obligations
iv) BPL persons; v) persons in police/judicial custody.		
<i>Enquiry:</i> i) Suo moto; ii) upon complaint received.	<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.  <i>Recommendations:</i> Not defined.  <i>Effect of Recommendation:</i> Disciplinary authority receiving such recommendation is bound to take decision upon such recommendation & send a copy of the same to the Committee within three months.	
<i>Enquiry:</i> i) Suo moto; ii) upon complaint received.  Power to visit lock-ups & places of detention.  May monitor status of departmental inquiries through quarterly reports from DGP and advise expeditious completion of inquiry.  <i>Call for Reports</i> upon complaints of undue delay in or dissatisfactory outcome of departmental proceedings & advise further action or fresh enquiry if necessary.  May impose a fine for making false complaints.		<i>Annual Report to contain:</i> i) Number & nature of complaints inquired into; ii) number & nature of complaints of dissatisfactory departmental proceedings made to it; iii) advice & directions of further action issued; iv) number of complaints received by District Authority & manner of disposal; v) identifiable patterns of misconduct; vi) recommendations on measures to enhance police accountability;  Report to be laid before the State Legislature and be a public document.  <i>Specific cases</i> inquired into also to be reported & made available to the public.
<i>Enquiry:</i>  <i>Monitoring the status of departmental inquiry or action:</i>  May call for reports Power to visit lock-up and places of detention.		<i>Annual Report to contain:</i> i) Number & nature of complaints inquired into; ii) number & nature of complaints of dissatisfactory departmental proceedings made to it;

State Acts/ Notifications / Government Orders	Nature of Complaints	Complaints Received from	Rights of Complainants or Witnesses
	iv) illegal arrest/detention; iv) violation of human rights; v) allegations of corruption; vi) any other case referred by DGP.		
<b>UTTARAKHAND</b>  <b>Uttarakhand Police Act, 2007</b>	<i>Complaints against:</i> Any/all police personnel.  <i>Nature of Complaints:</i> 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) any other case referred by DGP.	<i>Complaints received from:</i> Any person not being anonymous.	<i>Rights of Complainant:</i> (i) to be informed of progress, completion of inquiry & final action taken.
<b>WEST BENGAL</b>  <b>Government Order No. 2162 - PL/PE - 16S - 36/05 dated 2 June 2010</b>	<i>Complaints against:</i> All police personnel.  <i>Nature of Complaints:</i> Serious misconduct which includes: i) custodial death; ii) custodial rape; iii) grievous hurt.	<i>Complaints received from:</i> Any person.	

Mandate & Power	Functions & Recommendation	Reporting Obligations
		iii) advice & directions of further action issued; iv) number of complaints received by District Authority & manner of disposal; v) identifiable patterns of misconduct.
<p><i>Monitor the status of departmental inquiry or action:</i>            Review reports received from DGP &amp; advise expeditious completion of inquiry</p> <p><i>Call for Reports</i> on complaints of undue delay in or dissatisfactory outcome of departmental proceedings &amp; advise further action or fresh enquiry if necessary.</p>		<p><i>Annual Report to contain:</i>            i) Number &amp; nature of complaints inquired into;            ii) number &amp; nature of complaints of dissatisfactory departmental proceedings made to it;            iii) advice &amp; directions of further action issued;            iv) number of complaints received by District Authority &amp; manner of disposal;            v) identifiable patterns of misconduct;            vi) recommendations on measures to enhance police accountability.</p> <p>Report to be laid before the State Legislature and be a public document.</p> <p><i>Specific cases</i> inquired into also to be reported &amp; made available to the public.</p>
	<p><i>Recommendation:</i>            They are “ordinarily” binding, unless for reasons which are to be recorded in writing in the event the government is unable to implement.</p>	<p><i>Annual Report:</i>            Authority to submit annual report to state government.</p> <p>Report to be placed before the State Legislature.</p>

# Annexure III

## Questionnaire for Chairpersons/Independent Members

### Questionnaire for Chairpersons / Independent Members

Name:

Full address:

How often does the PCA meet with all members present?

Does the PCA hold regular meetings and is attendance mandatory for all members?

Do all members deliberate on admitting complaints at the first stage or is the decision taken solely by the PCA Secretary/Chair?

If the PCA does not have an office, where does the PCA meet?

### Public Awareness

Does the PCA take any steps to help the public take notice or be aware of its existence and opportunity to help?

Is the publicity ongoing or a one-time effort?

Are people sufficiently aware of your mandate and existence?

Have any publicity initiatives been undertaken by the police?

### Complaints and Complaints Process

Number of complaints received in the period between April 2009 and December 2010:

What is the general pattern/profile of complaints?

Have rules been formulated? If not what is the procedure followed?

Do you expect complainants to bring supporting documents to be filed along with their complaint?

### Dismissal of Complaints

How many complaints were dismissed at the initial stage?

How does the PCA decide to dismiss at the first stage? Are any investigative steps taken?

Are you more or less inclined to dismiss a complaint at the initial stage?

How long does it take the PCA to reach the decision to dismiss a complaint?

What are the main reasons you cite for dismissing a complaint before investigation?  
Do you inform the complainant of the dismissal?

### **Investigation of Complaints**

Did you *suo moto* investigate any complaints?

What was the source of information regarding these complaints?

If a complaint is to be investigated, do you inform the complainant?

Do the police investigate for the PCA? What rank of officer is deputed for PCA inquiries? Does the PCA take steps to ensure that the implicated officer cannot influence the inquiry process?

For complainants who cite serious bodily injury (to themselves or another party as a victim), do you ask for medical records stating so?

If there are no witnesses do you try to find some?

Some people may hesitate or find it difficult to testify because they are afraid for their own security and the consequences of testifying. Does the PCA take any steps to protect these individuals? What are they?

Do the police cooperate with you in the investigation process?

### **Hearings**

Does the PCA hold hearings?

How would you describe the hearings process?

Who is present at the hearing?

Are there police officers present at the hearing?

On average, how many hearings are held in each case?

Are all the PCA members present at every hearing? Does each one have a role? If yes, what?

If attending hearings, then how do you manage time devoted to PCA hearings, and your normal job workload?

Do you brief the complainant before a hearing?

Do lawyers play a role in this process?

Are police officers frequently represented by lawyers or do they represent themselves?

Would you encourage the use of lawyers in proceedings before the PCA by either party? Explain your reasons.

Have you considered that there may be threats or coercion from the implicated police officers?

Do you take any steps to investigate if there is any coercion or threat?

### **Recommendations**

Do you pass reasoned orders?

When you issue a final order on a specific complaint, do you do so orally? Is a copy given to the complainant? What about the other parties?

In how many cases did you recommend that an FIR be filed against the errant police officer?

What steps does the PCA take to ensure that an FIR is actually filed?

How long does it take for an FIR to be filed? Why?

Whether the FIR was filed / not filed, was this information communicated to the complainant? Why / why not?

In how many cases did you recommend that a departmental inquiry be initiated against the errant police officer?

What steps did the PCA take to ensure that the inquiry took place?

The PCA can monitor the status of departmental inquiries, and the DG is to send periodic reports. Have you monitored these? What were the outcomes?

The PCA is supposed to publish an annual report. Has this happened?

### **General Questions**

What are your ideas on police misconduct in general?

What is your opinion on the need for an independent body like the PCA?

Do you think police officers should serve on such a body?

Does the PCA get sufficient cooperation from the police?

Have you received any feedback from complainants about the PCA or the way in which their complaints were handled?

Are you satisfied with the way the PCA operates? If so, why? If not, what kind of changes would you suggest?

During the complaints process, did anything impede your ability to make a decision?

## Questionnaire for Complainants

### Complainant Profile

Name:

Are you a victim, complainant or both?

Age:

Full address:

### Information on Complaint/Police Abuse

What happened with the police? What is the purpose of your complaint?

Did the police pick up any of your relatives, family members or friends?

Do you have any injuries?

Did you have to visit a hospital?

Did you have to stay in a hospital?

How many working days did you miss because of your injuries?

Who is the police officer concerned? What is his name and rank?

Did the police intimidate you in any way?

Did they threaten you?

Did they tell you that you are not allowed to complain against them?

### PCA's Handling of the Complaint

How did you hear about the PCA?

Had you heard about it before you came here?

What do you think the PCA is meant to do?

How did you contact the PCA?

Did you write to the Chairperson?

Did you make a personal visit?

How did you file your complaint? Written / orally?

Who took your complaint?

Did you fill in some kind of complaint form?

What administrative procedure was followed?

Did you have to submit any supporting documents with the complaint?

Did anyone show you a set of rules and explain the complaint process to you?

If the PCA took up the case, were you informed that was taking it up? How long after the complaint was submitted?

### **Dismissals**

Were you informed if your complaint was dismissed before any further inquiry?

How long did the PCA take to dismiss your case at this first stage?

Were you given reasons for the dismissal?

### **PCA Hearings**

Was a hearing held by the PCA in your case?

Were you given a chance to speak before the PCA?

Were you scared when you had to depose?

Was the police officer present when you had to depose?

If you sustained injuries following police abuse, did the PCA ask for your medical records, etc.?

Were you asked to submit additional documents?

Do you know if any witnesses were called to support your allegations?

Were you given a copy of any documents that were given to the Authority in the course of the hearing?

Did the Authority orally deliver the final order? Were you given a copy of the final order?

## **PCAs Recommendation**

What was the outcome of your complaint?

Did the PCA recommend that an FIR be filed against the officer?

Do you know if the FIR was filed?

How long did it take for the FIR to be filed?

If it was not filed, do you know why?

Did the PCA recommend that a departmental inquiry take place?

If the PCA recommended that a departmental inquiry take place, were you informed of this?

Are you happy about the way your complaint was dealt with by the PCA? Why or why not?

What would you like to see change about the way the PCA operates, if any?

Did you receive any threats during the PCA inquiry process? Did you report these to the PCA?

If yes was any action taken?

Do you think it is possible for the police to investigate a complaint against a fellow officer fairly? Give reasons for your answer.

## **Other Bodies**

Have you approached the State/National Human Rights Commission?

What happened there?

Have you approached a court?

What happened there?

Did you try going to the police to file a complaint?

If yes, what was the treatment you received?

Was your complaint recorded?

If not, why did you not consider going to the police?

## Address of Functional Police Complaints Authorities

ASSAM	<i>Justice D. N. Chowdhury</i> Police Accountability Commission Dr B. K. Kakati Road Ulubari, Guwahati - 781007 Assam Mobile: 09435010643
CHANDIGARH	<i>Justice N. K. Aggarwal</i> 174, Sector 19-A Chandigarh - 160019
GOA	<i>Justice Eurico De Silva</i> Serra Building, Near All India Radio Altinho, Panaji - 403001
HARYANA	<i>H. S. Rana</i> Haryana State Police Complaints Authority Old PWD BNR Building Sector 19B Chandigarh - 160019
KERALA	<i>Justice Sivarajan</i> Police Complaints Authority Padam Road Elamakkara P.O. Ernakulam District Kerala - 682 011
PUDUCHERRY	Police Complaints Authority 3rd Floor, Chief Secretariat B Block, Puducherry
TRIPURA	<i>Justice A. B. Pal</i> Government Quarters No. VI/14 Shyamali Bazaar, P.O. Kunjaban Agartala 799 006
UTTARAKHAND	<i>Justice Shambhu Nath Srivastav (Reappointment incumbent)</i> State Police Complaint Authority G-3, Race Course, Dehradun 248 001 Uttarakhand
WEST BENGAL	<i>Justice N. C. Sil</i> West Bengal Human Rights Commission Bhabani Bhavan, Alipore Kolkata 700 027

# Abbreviations

CrPC	Criminal Procedure Code
DGP	Director General of Police
Dy	Deputy
FIR	First Information Report
IPC	Indian Penal Code
IPS	Indian Police Service
NCRB	National Crime Records Bureau
NHRC	National Human Rights Commission
PCA	Police Complaints Authority
SP	Superintendent of Police
SPCA	State Police Complaints Authority
SSP	Senior Superintendent of Police

# 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. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

## Strategic Initiatives:

CHRI monitors member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN and the African Commission for Human and Peoples' Rights. Ongoing strategic initiatives include: Advocating for and monitoring the Commonwealth's reform; Reviewing Commonwealth countries' human rights promises at the UN Human Rights Council and engaging with its Universal Periodic Review; Advocating for the protection of human rights defenders and civil society space; and Monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.

## 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. It 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.