

# State Legislative Brief

## HARYANA

### The Haryana Police (Amendment) Bill, 2022

#### Key Features

- The Bill removes the power of the state and district level Police Complaint Authority (PCA) to initiate a suo motu inquiry into cases of misconduct against police personnel.
- State PCA will not inquire into complaints against police authorities where they deal with unlawful assembly, protest, or dharna through force.
- Rape or grievous hurt caused by police personnel will be considered a serious misconduct only if it happens in police custody.

#### Key Issues and Analysis

- The Bill removes the powers of the PCA to initiate suo motu inquiry into cases of serious misconduct by police. Further, the definition of serious misconduct is being narrowed to remove attempt to rape, and allow inquiries only if rape or grievous hurt was caused in police custody.
- This restricts the cases into which the PCA can conduct inquiries, and hence may affect police accountability.

**The Bill was introduced in the Haryana Legislative Assembly on August 10, 2022 and subsequently referred to a Select Committee. It amends the Haryana Police Act, 2007 which provides for regulating the state police by setting up certain authorities such as the Police Complaint Authority. The Bill amends the powers of the Complaint Authorities to conduct inquiry against police personnel.**

## PART A: HIGHLIGHTS OF THE BILL

### Context

States are empowered to enact laws regulating police as it is a state subject under the Constitution of India.<sup>1</sup> The Police Act, 1861 regulates police and some states have enacted their own Acts largely based on the Police Act.<sup>2</sup> Over the years several commissions including the Supreme Court (2006) have recommended several reforms to make the police forces more efficient, accountable, and equipped to handle newer forms of crime. Following the Supreme Court judgement in 2006, the Ministry of Home Affairs released the Model Police Act, 2006 to replace the Police Act, 1861.<sup>3</sup> Till February 2022, 17 states have implemented the Model Police Act.<sup>2</sup>

One of the aspects of ensuring police accountability is to have independent mechanisms to look into cases of misconduct or abuse of authority by police. In order to ensure police accountability and keep a check on police excesses, several mechanisms (such as police departmental inquiries) existed to file complaints against police personnel. However,

it has been noted that in such cases, inquiries and investigation by police departments were biased and conducted in an unfair manner.<sup>4</sup> The Supreme Court (2006) and other expert bodies recommended setting up Police Complaint Authorities (PCAs) which would be independent bodies to look into cases of police misconduct (such as causing grievous hurt in police custody).<sup>5</sup> Till February 2022, 31 states/UTs had set up PCAs at the state and district level.<sup>2</sup>

### Key Features

Under the Haryana Police Act, 2007, PCAs are set up at the state and district level to inquire into allegations of serious misconduct either suo motu (on their own) or on a complaint received from a victim or any person on their behalf, or the National/ State Human Rights Commission.<sup>6</sup> The Bill is removing powers to initiate suo motu inquiry and amending the list of cases of serious misconduct that may be inquired into by the PCAs.<sup>6</sup> Table 2 on page 2 highlights the key changes proposed by the Bill.

**Table 1: Cases against state police personnel in Haryana**

Year	Cases registered	Arrested	Chargesheeted	Cases withdrawn/ disposed off	Trials completed	Convicted
2017	39	0	23	3	4	0
2018	64	0	26	7	2	1
2019	61	45	37	1	0	0
2020	49	37	35	1	1	0
2021	43	15	9	2	0	0

Source: Crime in India, National Crimes Records Bureau (2017-2021); PRS.

**Table 2: Key changes proposed by the Haryana Police (Amendment) Bill, 2022**

The Haryana Police Act, 2007	The Haryana Police (Amendment) Bill, 2022
<b><i>Inquiry against police personnel by PCAs</i></b>	
State and district PCA will inquire into allegations of serious misconduct against police personnel either suo moto or on a complaint received received from a victim or any person on their behalf, or the National/State Human Rights Commission.	Removes powers to initiate suo motu inquiry.
<b><i>Serious misconduct</i></b>	
Serious misconduct includes: (i) death in police custody, (ii) rape or attempt to commit rape, (iii) grievous hurt, and (iv) inaction by a police official in any offence defined in the Indian Penal Code (IPC), 1860 with a minimum punishment of 10 years.	Removes: (i) inaction by a police official in any offence defined in the IPC with a minimum punishment of 10 years, and (ii) attempt to commit rape. Grievous hurt and rape committed only in police custody will be considered a serious misconduct.
<b><i>Cases exempted from inquiry of PCAs</i></b>	
<ul style="list-style-type: none"> <li>▪ No matter exempted from inquiry of state PCA.</li> <li>▪ For district PCA, the matters exempted are:               <ul style="list-style-type: none"> <li>(i) where a report under section 173 of the Code of Criminal Procedure, 1973 has been filed in an appropriate court;</li> <li>(ii) pending or dealt by National Human Rights Commission/State Human Rights Commission/ State Commission for Scheduled Castes;</li> <li>(iii) falling within its jurisdiction after more than one year of its alleged occurrence; and</li> <li>(iv) arising out of use of force by the police authorities in dealing with any unlawful assembly, protest, dharna, blockage of any public passage or disruption of essential services.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ State PCA will have the same set of exemptions as the district PCA.</li> <li>▪ District PCA will not inquire into cases pending or being dealt with certain authorities. These authorities are National Commission for Scheduled Castes, National/State Commission for Women, and National/State Commission for Minorities or State Lokayukta.</li> </ul>
<b><i>Time limitation on inquiring cases</i></b>	
<ul style="list-style-type: none"> <li>▪ District PCA: Cases will not be inquired into one year from their alleged occurrence.</li> <li>▪ State PCA: Not provided.</li> </ul>	<ul style="list-style-type: none"> <li>▪ District PCA: Increases the time limitation to three years.</li> <li>▪ State PCA: Cases will not be inquired into three years from their alleged occurrence.</li> </ul>
<b><i>Timeline for deciding complaints</i></b>	
<ul style="list-style-type: none"> <li>▪ District PCA: Six months from the date of its receipt.</li> <li>▪ State PCA: Not provided.</li> </ul>	State PCA will also have a six-month timeline.

## PART B: KEY ISSUES AND ANALYSIS

### Bill may be restricting inquiries into allegations of police misconduct

*Act:* The Haryana Police Act, 2007 provides for PCAs at the state and district level to inquire into allegations of serious misconduct against police personnel either suo motu (on their own) or on a complaint received from a victim or any person on his behalf, or the National or State Human Rights Commissions.<sup>6</sup> The Bill restricts powers of PCA to conduct an inquiry in certain cases by removing suo moto powers, and excluding certain matters from the purview of inquiry such as attempt to rape, and use of force by police in dealing with unlawful assembly.<sup>6</sup> Since the purpose of PCAs is to ensure police accountability, it is not clear why certain powers are being restricted or narrowed down.

*Bill:* Sections 59, 65, 68  
Clauses 2, 3

For the cases being removed from the purview of the PCA, aggrieved persons will have other channels to report such incidents such as with the District Magistrate, Superintendent of Police (or higher officers), and National/State Human Rights Commission. The Indian Penal Code (IPC), 1860, also penalises rape in a police officer's custody with imprisonment for minimum 10 years which may extend to imprisonment for life and a fine.<sup>7</sup> However, there are issues with some of these channels for complaints. The National Police Commission (1979) observed that police departmental inquiries tend to be biased in favour of police personnel, and there are deficiencies in departmental inquiries such as casual examination of witnesses and not recording their statements.<sup>4</sup> Further, aggrieved persons may not have the confidence to lodge complaints to Superintendent of Police. PCAs were proposed to be set up as independent bodies to address these types of issues. The Police Act Drafting Committee, 2004 (Chairperson: Mr. Soli Sorabjee) recommended that in addition to the existing mechanisms, police accountability be further ensured through independent Police Accountability Commissions to look into cases of police misconduct.<sup>8</sup>

#### ***Removing the power to conduct suo motu inquiries***

The Bill removes the power of the PCAs to initiate suo motu inquiry into misconduct by police personnel. The National Police Commission (1979) had noted that given the powers police has (arrest, search, seizure), there is scope for misconduct by personnel.<sup>4</sup> A considerable number of persons aggrieved by misconduct of police belong to weaker sections of society who do not have resources to pursue their complaints.<sup>4</sup> The Commission also noted that given the

large number of personnel interacting with the public, the number of complaints received is comparatively small. This may be because some instances of misconduct may not be registered due to ignorance or lack of facilities to complain.<sup>4</sup> Removing suo motu powers will restrict the PCA from initiating an inquiry into such cases of misconduct if a complaint has not been filed. The Second Administrative Reforms Commission (2007) had recommended that such state PCA should have powers to ask any agency to conduct an inquiry or inquire itself into cases of misconduct.<sup>8</sup> The Model Police Act and states such as Assam and Maharashtra empower the PCA to initiate suo motu inquiries.<sup>9</sup>

#### *Narrowing the scope of cases coming under the purview of inquiry*

Under the Act, the PCA can inquire allegations of serious misconduct which includes grievous hurt, and rape or attempt to rape by police personnel. The Bill amends this to provide that the PCA will inquire into allegations of grievous hurt and rape *only in police custody*. The Supreme Court (2021) defined police custody as the exclusive custody of the police officers. Such custody is primarily for custodial interrogation to investigate into a case.<sup>10</sup> If the purpose of the PCA is to look into police excesses, it is unclear why inquiries into these cases should happen only when they take place in police custody.

The Supreme Court (2006) had recommended that the state PCA should look into allegations of serious misconduct, which would include death, grievous hurt or rape in police custody.<sup>5</sup> The district PCA may also look into other cases involving serious abuse of authority. Following the recommendations of the Court, the Model Police Act was released which defines serious misconduct to include cases which lead to death in police custody, grievous hurt, and rape or attempt to rape. In other states such as Uttarakhand and Karnataka, cases of grievous hurt are not limited to police custody while Chhattisgarh and Tamil Nadu restrict such cases to police custody.<sup>9</sup> Cases of rape in other states such as Assam and Maharashtra are not limited to police custody.<sup>9</sup>

#### *Excluding cases from the definition of serious misconduct*

Under the Act, state, and district level PCA may inquire into allegations of ‘serious misconduct’ against police personnel. Serious misconduct includes: (i) rape or attempt to commit rape, (ii) grievous hurt, and (iii) inaction by police officials in any offence with a minimum punishment of 10 years defined in the IPC. The Bill removes attempt to commit rape and inaction by police officials in any offence with a minimum punishment of 10 years defined in the IPC from the category of serious misconduct. It is unclear why these cases are being removed from the purview of the PCA. Attempt to rape is a punishable offence under IPC.<sup>11</sup> The Supreme Court (2004) observed that an attempt is punishable as it creates alarm which is itself an injury and the moral guilt of the offender is same as if he had succeeded.<sup>12</sup> Further, under the Model Police Act and Police Acts of other states such as Uttarakhand and Assam, attempt to rape is classified as serious misconduct by police personnel.<sup>3,9</sup>

#### *Rationale behind excluding matters of use of force by police in certain instances is not clear*

The Act provides that the district PCA will not inquire into matters arising out of use of force by police authorities in dealing with unlawful assembly, protest, dharna, blockage of public passage or disruption of essential services. The Bill extends these exemptions to inquiries by the state PCA also. The Bill does not define what constitutes as a protest or dharna. Further, it is not clear why such cases have been exempted from the purview of inquiry of the state PCA. The National Police Commission (1979) noted that during departmental inquiries on police misconduct, there is a tendency to suppress the alleged misconduct when it has occurred during discharge of duties such as allegations of excessive use of force when police deals with riotous mobs.<sup>4</sup> The Model Police Act and other states such as Tamil Nadu, Gujarat, and Maharashtra do not exclude such matters of use of force by police personnel.<sup>3,9</sup>

**PCAs in other states:** A comparison of the powers of PCAs across some states is given in Table 3 on the next page.

1. List II- State List, Entry No. 2, Seventh Schedule, [The Constitution of India](#).
2. Report No. 237: ‘[Police - Training, Modernisation and Reforms](#)’, Standing Committee on Home Affairs, February 10, 2022.
3. [The Model Police Act, 2006](#), Ministry of Home Affairs, October 30, 2006.
4. [First Report](#), National Police Commission, February 1979.
5. Prakash Singh & Ors vs Union of India & Ors, [Supreme Court of India](#), September 22, 2006.
6. The Haryana Police Act, 2007; The Haryana Police (Amendment) Bill, 2022.
7. Section 376 (2), [Indian Penal Code, 1860](#).
8. [Fifth Report](#), Second Administrative Reforms Commission, June 2007.
9. Assam Police Act, 2007; Chhattisgarh Police Act 2007; Maharashtra Police Act, 1951; Gujarat Police Act, 1951; Kerala Police Act, 2011; Karnataka Police Act, 1963; Uttarakhand Police Act, 2007; Tamil Nadu Police (Reform) Act, 2013.
10. Gautam Navlakha vs National Investigation Agency, [Supreme Court of India](#), May 12, 2021.
11. Section 376 and 511, [Indian Penal Code, 1860](#).
12. Koppula Venkat Rao vs State of Andhra Pradesh, Supreme Court of India, March 10, 2004.

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[Annexure](#)**Table 3: Powers of Police Complaint Authorities in certain states**

	Model Police Act, 2006	Haryana	Assam	Kerala	Uttarakhand	Chhattisgarh	Tamil Nadu	Maharashtra	Gujarat	Karnataka
<b>Power to initiate suo motu inquiry</b>	Yes	State: No District: No	State: Yes District: No	State: No District: No	State: No District: No	State: No *	State: No District: No	State: Yes District: Yes	State: No District: No	State: Yes District: No
<b>Matters that can be inquired by PCAs include</b>	Death in police custody; grievous hurt; rape or attempt to commit rape; arrest or detention without due process of law	Death in police custody; rape; grievous hurt; custody or detention without due process of law; inaction by police in offences in IPC with a minimum punishment of 10 years (see Notes at the bottom of Table)	Death in police custody; grievous hurt; molestation, rape or attempt to rape; arrest or detention without due process of law; blackmail or extortion; non-registration of FIR	All types of misconduct against police officers of and above the rank of Superintendent of Police, and grave complaints of sexual harassment of women in custody or causing death, rape etc. against other officers	Death in police custody; grievous hurt; rape or attempt to rape; arrest or detention without due process of law; corruption	Death; rape or attempt to rape; grievous hurt in police custody	Death in police custody; rape; grievous hurt in police custody	Death in police custody; grievous hurt; rape or attempt to commit rape; arrest or detention without following due process; corruption extortion; land or house grabbing	Not defined	Death in police custody; grievous hurt; rape or attempt to rape; arrest or detention without due process of law
<b>Exempting matters of police action on unlawful assembly from purview of inquiry</b>	No	Yes (after the Bill)	No	No	No	No	No	No	No	No
<b>Time limitation on reporting incidents to the Authority</b>	State: No District: No	District: 1 year State: NA Bill makes 3 years for both	No	No	No	Six months from the date of occurrence	No	No	No	No
<b>Former judge as Chairperson</b>	State: Yes District: Yes	State: No District: No	State: Yes District: No	State: Yes District: Yes	State: Yes District: Yes	State: Yes** *	State: No District: No	State: Yes District: Yes#	State: Yes## District: No:	State: Yes District: No
<b>Minimum one-woman member</b>	State: Yes District: No	State: Yes District: No	State: Yes District: No	No	State: No District: No	Yes *	State: No District: No	State: No District: No	State: No District: No	State: Yes District: No
<b>General guidelines for police to prevent misconduct</b>	State: Yes District: No	State: No District: No	State: Yes District: No	State: No District: No	State: Yes District: No	No *	State: No District: No	State: No District: No	State: No District: No	State: No District: No
<b>Annual reporting of its functioning</b>	State: Yes District: Yes	State: No District: No	State: Yes District: Yes	State: No District: No	State: Yes District: No	State: No *	State: No District: No	State: No District: No	State: No District: No	State: Yes District: Yes
<b>Power to monitor departmental inquiries/ action on complaints</b>	State: Yes District: Yes	State: No District: No	State: Yes District: Report delays in inquiries to state authority	District PCA can recommend initiation of departmental inquiry against officers	State: Yes District: No	No *	State: No District: No	State: No District: No	State: No District: Yes	State: No District: No

Note: Bill proposes to add police custody to grievous hurt and rape, and delete inaction by police in offences in IPC with a minimum punishment of 10 years; \*Act does not provide for a district level Police Complaint Authority; \*\* or a retired judge of Higher Judicial Service; # Retired Principal District Judge; ## or a retired police officer not below the rank of Principal Secretary to the government of Gujarat.

Sources: Refer to endnote 3, 6, and 9; PRS.