

Flygtningenævnets baggrundsmateriale

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Responses to Information Requests - Immigration and Refugee Board of Canada

India: Complaint mechanisms and legal recourse available in instances of police violence in Punjab; efficiency of these mechanisms and of legal recourse; whether lawyers who refuse to take on a case against the police would communicate their decision orally or in writing (2017-October 2019)

1. Recourse for Police Complaints

Sources indicate that in the event of police misconduct, complaints can be taken to

- the police department (CHRI 2009, 8; Vice-Chancellor 9 Oct. 2019);
- courts (CHRI 2009, 8; Vice-Chancellor 9 Oct. 2019);
- the National Commission for Women (CHRI 2009, 8); or
- the National or State Human Rights Commissions (CHRI 2009, 8; Vice-Chancellor 9 Oct. 2019).

In correspondence with the Research Directorate, the Vice-Chancellor of a law school in Punjab indicated that complaints can be submitted in person, by post, or online to the relevant authorities (Vice-Chancellor 18 Oct. 2019).

According to their website, to file a complaint with the Chandigarh [1] Police, a complainant may submit a written complaint at the "Public Window" of the Chandigarh Police Headquarters; call the Chandigarh Police Control Room, the area [sector] Police Station or Police Post; or, if "dissatisfied with the response of the Police Control Room, Police Station or Police Post," then a complaint may be submitted to the IGP [Inspector General of Police], DIG [Deputy Inspector General of Police], SSP [Senior Superintendent of Police] or to the "concerned Sub-division Police Officer" (Chandigarh n.d.a).

According to the website of the Chandigarh Administration, Chandigarh has a Vigilance department, responsible for the "enforcement of anti-corruption measures of the Chandigarh Administration [with jurisdiction over Chandigarh officials or public servants] ... [and] maintenance of integrity in the public services" (Chandigarh n.d.b). The Chandigarh Administration indicates that complaints can be submitted as signed, anonymous, pseudonymous, "[s]ource information," or complaints under the PIDPI [Public Interest Disclosure and Protection of Informers] Act (Chandigarh n.d.c). The website of the Punjab Vigilance Bureau similarly indicates that they are "empowered to enquire into allegation[s] against all public servants, as defined under the Prevention of Corruption Act, 1988," and that

[t]he Vigilance Bureau ordinarily does not take cognizance of anonymous and pseudonymous complaints unless these contain specific allegations of [a] verifiable nature. Complaints requiring administrative action are referred to [the] administrative department concerned for necessary action. If during enquiries the allegations are prove[n][,] then [v]igilance [e]nquiries/[c]riminal [c]ases are registered against the suspects. (Punjab n.d.a)

According to the Punjab Vigilance Bureau, 351 criminal cases were under investigation and there were 227 vigilance enquiries as of 30 September 2019 (Punjab n.d.b). Information on the outcomes of vigilance enquiries and investigations could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the online news portal Punjab News Express, a report by the Human Rights Law Network (HRLN), a national-level NGO composed of lawyers, deems the Punjab State Human Rights Commission (PSHRC) to have "lost its credibility and more or less become a defunct body due to lack of proper infrastructure and staff to handle hundreds of complaints, [the] majority of them against the Punjab Police" (Punjab News Express 29 July 2015). The same source states that during 2014, the PSHRC "had received 55 percent (8792) of [all] complaints (15523) against the Punjab Police" (Punjab News Express 29 July 2015). Corroborating information and information on the number of complaints processed by the PSHRC could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Further information on processes to access recourse and effectiveness of recourse could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.1 Police Complaints Authority (PCA)

Sources indicate that the Supreme Court ordered the establishment of PCAs in September 2006 with the judgment on *Prakash Singh and Others vs Union of India and Others* (India n.d., 5; CHRI 2009, 6). According to a guide on using PCAs by the Commonwealth Human Rights Initiative (CHRI), an "independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth" (CHRI 2009, 2), PCAs are intended to

- be "independent of the police";
- "have their own powers of investigation";
- "make binding recommendations for action"; and
- "deal exclusively with complaints of serious misconduct and dereliction of duty by the police" (CHRI 2009, 8).

A September 2019 article by the *Times of India*, an English-language Indian daily newspaper, explains that the Supreme Court ruling of September 2006 on PCAs directed all states and union territories to establish PCAs at the state and district levels (*The Times of India* 25 Sept. 2019).

1.1.1 Chandigarh PCA

Sources indicate that a Chandigarh PCA was established in August 2010 (*The Times of India* 2 Sept. 2017; *The Tribune* 8 Dec. 2017), with "a mandate to inquire into complaints of misconducts ... or any case against police that involves serious abuse of authority" (*The Times of India* 2 Sept. 2017). A March 2015 article by *The Indian Express*, an English-language Indian daily newspaper, indicates that the Chandigarh PCA had initiated the process of "making its recommendations binding"; the source adds that the PCA had been receiving approximately 10 complaints per month, and had "recommended disciplinary action against police officials on many complaints,"

but that, "in most cases," the administration "took no action" (*The Indian Express* 18 Mar. 2015). Sources indicate, however, that the PCA was defunct between 2015 and 2017 (*The Times of India* 2 Sept. 2017; *The Tribune* 8 Dec. 2017). According to the website of the Chandigarh Administration, the PCA for Chandigarh was reconstituted on 14 February 2017; the source states that the PCA will

inquire into allegations of "serious misconduct" against police personnel, either suo moto or on a complaint received from any of the following:

- a victim or any person on his/her behalf;
- the National or the state Human Rights Commission;
- the police; or
- any other source[.]

"Serious misconduct" shall mean any act or omission of a police officer that leads to or amounts to:

- death in police custody;
- grievous hurt, as defined in Section 320 of the Indian Penal Code, 1860;
- rape or attempt to commit rape;
- arrest or detention without due process of law;
- extortion;
- land/house grabbing; or
- any incident involving serious abuse of authority. (Chandigarh n.d.d)

The same source also indicates that an inquiry will only occur if the PCA is "satisfied prima facie about the veracity of the complaint," and that it "may require any person or authority" to provide information relevant to the investigation, and subsequently

may ... communicate its findings to the police officer heading the Police force in the Union Territory, Chandigarh with direction to:-

- register a First Information Report [FIR]; and/or
- [i]nitiate departmental action against the delinquent police official based on such findings[;] [and]
- duly forwarding the evidence collected by it to the police.

The recommendation of the Police Complaints Authority shall ordinarily be binding unless for the reasons to be recorded in writing, the Administration decides to disagree with findings of the Authority. (Chandigarh n.d.d)

The same source indicates that complaints may be submitted in person, by post, or by email, to the office of the PCA in Chandigarh, by submitting "3 copies along with enclosures, if any, supported with affidavit by the complainant" (Chandigarh n.d.d).

A July 2017 article by *The Tribune*, an English-language daily newspaper published in Chandigarh, reports that the Chandigarh PCA had "85 old cases and 59 fresh complaints" as of July 2017, with 52 disposed of; no police officer was found to be at fault, as a PCA member said that "[t]here was no seriousness in the complaints filed against police officials. Most of them were of [a] petty nature" (*The Tribune* 17 July 2017).

Sources indicate that the PCA in Chandigarh was rendered non-functional after its reconstitution in 2017 due to the resignation of the PCA chairman in September 2017

(*The Times of India* 2 Sept. 2017; *The Tribune* 8 Dec. 2017). Information on operations of the Chandigarh PCA since 2017 could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.1.2 Punjab PCA

The *Times of India* reports that Punjab established a PCA in 2019 (*The Times of India* 25 Sept. 2019). Sources indicate that PCA appointments can now be made under the *Punjab Police Act, 2007* (ANI 24 Oct. 2019; Punjab 24 Oct. 2019). According to the website of the Government of Punjab, India, appointments for State and Divisional PCAs will be allowed following the approval of the *Punjab Police (Appointment of Chairperson and Members of Complaints Authorities), Rules, 2019* by the Punjab state Cabinet (Punjab 24 Oct. 2019).

Further information on PCAs in Punjab could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Whether Lawyers Who Refuse to Take on a Case Against the Police Would Communicate Their Decision Orally or in Writing

The Vice-Chancellor indicated that victims of police misconduct can approach any lawyer directly to inquire about their case (Vice-Chancellor 9 Oct. 2019), and, in a follow-up correspondence, explained that the

general practice is that there is a meeting of the client and the lawyer, in which the client explains to the lawyer [their] grievance orally and/or supported by relevant evidence. Generally, lawyers communicate their decision to accept or reject the case orally and not in writing. If the case is accepted, then the client is asked to sign the "Power of Attorney" in favour of the lawyer. However, in [the] case of rejection of the case, no documents [are] signed by the lawyer. (Vice-Chancellor 18 Oct. 2019)

Further and corroborating information on the manner by which lawyers would communicate their decision to refuse to take on a case of police misconduct could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Note

[1] Chandigarh is a Union Territory (that is, "under the direct control of the Central Government"), and is also the capital city of both Punjab and Haryana States (Chandigarh n.d.e).

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Vice-Chancellor, law school in Punjab. 18 October 2019. Correspondence with the Research Directorate.

Vice-Chancellor, law school in Punjab. 9 October 2019. Correspondence with the Research Directorate.

Additional Sources Consulted

Oral sources: Bar Council of India; Bar Council of Punjab and Haryana; Chandigarh – High Court of Punjab and Haryana, State Legal Services Authority; Commonwealth Human Rights Initiative; Human Rights Law Network – Punjab; Punjab – Punjab Police, Punjab State Human Rights Commission, Punjab State Legal Services Authority.

Internet sites, including: Bar Council of India; Bar Council of Punjab and Haryana; Chandigarh – High Court of Punjab and Haryana, State Legal Services Authority; ecoi.net; *Hindustan Times*; Human Rights Law Network – Punjab; Human Rights Watch; India – Central Vigilance Commission, National Human Rights Commission; Punjab – Punjab Police, Punjab State Legal Services Authority; UN – Refworld.