

Urgent / Important

Government of Rajasthan
Home (Human Right) Department

No. F 3(32) HHR 2014

Jaipur, Dated 16 Oct. 2014

To,

1. All Collectors & District Magistrates
2. All Superintendents of Police

Subject :- Reporting incidents of custodial death/rape to the
State Human Rights Commission.

Sir,

With reference to the above mentioned subject, the instructions issued by the Home Department with regard to reporting cases of alleged custodial death/rape to the National Human Rights Commission vide Order No F17(1)Home5/94 dated 21.04.1994 are enclosed for ready reference.

Related guidelines with regard to conducting a magisterial enquiry in case of death in custody, (dated 3.10.2013), as also death in police action, (dated 19.03.2014), are also enclosed for ready reference.

In this context it is reiterated that these instructions will apply mutatis mutandis for reporting such cases to the State Human Rights Commission also.

Yours faithfully



Deputy Secretary to Govt.

Copy for information to the following :-

1. The Director General & I. G Police Rajasthan, Jaipur.
2. All Divisional Commissioners
3. All Inspection General of Police (Range)



Deputy Secretary to Govt.

राजस्थान पुलिस
जयपुर

GOVERNMENT OF RAJASTHAN
Holds (Gr.-3) Department

G. F. 17(1) Home-5294

Jalpur, dated April 21, 1994

To,

1. All Collectors & District Magistrates
2. All Superintendents of Police

SUBJECT: Reporting incidents of Custodial deaths / Custodial rapes to the Secretary General, National Human Rights Commission.

Dear Sir,

With reference to the above mentioned subject I am directed to say that the National Human Rights Commission has desired that all incidents of Custodial deaths / Custodial rapes should be reported to the Secretary General of the Commission within 24 hours of the occurrence or within 24 hours from the time the officers come to know of such incidents. In the event of failure to report promptly to the National Human Rights Commission the presumption would be that there was an attempt to suppress the incident.

The Superintendents of Police shall issue instructions to all their subordinate police officers to ensure that in event of the occurrence of any such incident, detailed information is immediately communicated to the District Magistrate and the nearest Executive Magistrate.

All the District Magistrates are hereby directed to ensure that in future a detailed report about all such incidents is immediately sent to the Secretary General, National Human Rights Commission, Sardar Patel Bhawan, New Delhi - 110 001. A copy of the report should also be sent to this Department.

The District Magistrates shall also immediately appoint an Executive Magistrate to conduct an independent inquiry into each such incident.

Yours faithfully,

Shri 21/4/94
(ASHOK SAMPATHAN)
Special Secretary to Govt.

For information to the following :-

- The Director General & I.G. Police, Rajasthan, Jalpur.
- All Divisional Commissioners
- All Deputy Inspectors General of Police (Rangas)

Shri 21/4/94
Special Secretary to Govt.

ए. के. गर्ग
रजिस्ट्रार (विधि)
A. K. Garg
Registrar (Law)



No. MER/Guidelines/831/2013/FC

राष्ट्रीय मानव अधिकार आयोग
मानव अधिकार भवन, सी-ब्लॉक, जीपीओ कॉम्प्लेक्स आईएनए,
नई दिल्ली-110 023 भारत

National Human Rights Commission
Adhikar Bhawan, C-Block, GPO Complex,
INA, New Delhi-110023 India

Dated : 3rd October, 2013.

To

The Chief Secretary,
Govt. of Rajasthan,
Jaipur - 302 023.

Subject:- **Guidelines for conducting Magisterial Enquiry in cases of death in custody or in course of police action.**

Sir,

As you are aware, the National Human Rights Commission had vide its letter dated 03/01/2001 addressed to the Home Secretaries of the State Governments, emphasised upon the need for holding Magisterial Enquiry in all cases of death in custody within a period of two months from the date of incident. Separately, guidelines were issued vide letter dated 12/05/2010 addressed by the then Acting Chairperson to the Chief Secretaries/Administrators of the States for holding Magisterial Enquiry in all cases of death which occur in the course of police action.

It has been the experience of the Commission that on account of absence of guidelines, there is no uniformity in conduct of Magisterial Enquiry and adequate emphasis is not laid on vital aspects. The Magistrate do not care to visit the place of occurrence. In many cases, the family of the victim is not invited to join the enquiry. The evidence produced at the enquiry is not analysed in an objective manner.

The Commission has, therefore, laid down broad guidelines to be followed by the Magistrate which holding enquiry. I am accordingly forwarding to you, a copy of the guidelines for conducting Magisterial Enquiry in cases of death in custody or in course of police action with the request that the same may be forwarded to the concerned District Magistrates for compliance.

Encl: As above.

Yours faithfully,


(A.K. Garg)
Registrar (Law)

Sub : Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of police action.

- I. Following guidelines should be followed while conducting the magisterial enquiry in case of custodial death or death in the course of police action.
 - i. Magisterial enquiry be conducted at the earliest without undue delay.
 - ii. The Enquiry magistrate should visit the place of occurrence to be acquaintance with the facts on ground. During the visit to the scene of crime, the Enquiry Officer should make an attempt to identify natural witnesses who are likely to have been present at the scene of crime. Enquiry Officer should take them into confidence and try to record their statements. Many a times members of the family of the deceased narrate the motive of the police officer who staged the encounter for killing the deceased. The motive so given should be thoroughly investigated for its veracity or otherwise.
 - iii. A public notice be issued through the vernacular newspapers to inform witnesses concerned with the enquiry. The enquiry magistrate should ensure that the information reaches all concerned particularly the close relatives of the victim. A free and fair opportunity should be given to the relatives of the victim while recording their statements.
 - iv. The magisterial enquiry should cover the following aspects:
 - a) The circumstances of death.
 - b) The manner and sequence of incidents leading to death
 - c) The cause of death
 - d) Any person found responsible for the death, or suspicion of foul play that emerges during the enquiry.
 - e) Act of commission/omission on the part of public servants that contributed to the death.
 - f) Adequacy of medical treatment provided to the deceased.
 - v. The enquiry magistrate should examine and verify the following records.
 - a) Inquest Report
 - b) Post Mortem Report : It is seen that the Enquiry Officer does not analyze the Post Mortem report; no attempt is made to draw any inference about the genuineness or otherwise of the encounter. PM report should be thoroughly analyzed; if necessary, help of State FSL should be taken.
 - c) Viscera Analysis Report
 - d) Histopathological Examination Report
 - e) Final cause of death

- f) MLC report/Initial Health Screening Report of the prisoner
 - g) Medical treatment records
 - h) Inquiry/Investigation report of the police.
 - i) FIR/General Diary (GD) entries/any other relevant police records.
 - j) Ballistic examination reports of weapon and cartridges, if any, alleged to be used in the incident by the deceased.
 - k) Forensic examination report of 'hand wash' of the deceased.
 - l) The finger print expert report on finger print impression available on weapon alleged to have been used by the deceased.
 - m) Any other relevant records and reports.
- vi The magistrate should examine family members and relative of the deceased, eye witnesses having information of the circumstances leading to encounter, doctors who have conducted the post mortem/provided treatment to the deceased, concerned police/prison officials, independent witnesses, co-prisoners and other such relevant persons.

I Report Writing

The Magisterial Enquiry Report should contain the gist of statements recorded, documents examined, discussion on allegations proved/not proved and grounds on which conclusion has been arrived at. MER should also contain specific/definite opinion about circumstances leading to death, whether use of force was justified and action taken lawful. The act of commission/omission on the part of public servants should be specified and names of officials responsible for death/cause of death may also be indicated. The enquiry magistrate may also suggest any systemic changes or improvement that may need to be brought about to void any such incidents in the future.

II Annexure to be attached with the report:-

- a) The statements of the family members/relatives of the deceased, concerned doctors who rendered medical treatment/conducted post mortem, concerned police/prison official, co-prisoners, independent witnesses and other such relevant persons.
- b) All other external reports which have been referred to or relied upon by the enquiry magistrate in his/her magisterial enquiry.

Justice K. G. Balakrishnan

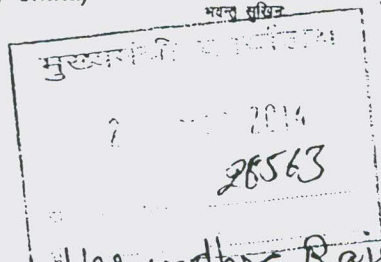
Chairperson
(Former Chief Justice of India)



National Human Rights Commission

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D.O. No.1/743/2014/FC



19 MAR 2014

My Dear Chief Minister *Smt. Vasundhara Raje*,

The Commission has been receiving reports of custodial deaths and deaths in police action. Whenever such report is received, the Commission holds an enquiry to find out if there was any violation of human rights. Post mortem report is a vital piece of evidence in such enquiry.

A communication dated 10.8.1995 was addressed to Chief Ministers of all States emphasizing that all post mortem examinations done in cases of custodial deaths or in encounter deaths should be video-filmed and cassette should be sent to the Commission along with post mortem report.

To ensure better quality of post mortem and video filming, the Commission invited suggestions from experts. On the basis of suggestions received from them, the Commission has formulated fresh guidelines for video filming and post mortem examination in cases of custodial deaths and encounter deaths so as to help in better analysis of cases. The guidelines are enclosed herewith as **Annexure-A**.

It is requested that the concerned authorities of the State /Union Territories may be given necessary instructions to follow the guidelines for video filming and photography of postmortem examination in cases of death in police action in their true spirit.

With regards,

Yours sincerely,

(K.G. Balakrishnan)

To

Smt. Vasundhara Raje,
Chief Minister,
Govt. of Rajasthan, Secretariat,
JAIPUR - 302 006

Sub: Guidelines for video-filming and photography of post-mortem examination in case of death in police action

In case of deaths in police action while conducting post-mortem examination of the deceased photographs of the deceased should be taken and the post-mortem examination of the deceased should be video filmed. The video film and photographs should be sent to the Commission. The aim of video-filming and photography of post-mortem examination should be:-

- i) to record the detailed findings of the post-mortem examination, especially pertaining to marks of injury and violence which may suggest custodial torture.
- ii) to supplement the findings of post-mortem examination (recorded in the post-mortem report) by video graphic evidence so as to rule out any undue influence or suppression of material information.
- iii) to facilitate an independent review of the post-mortem examination report at a later stage if required.

2. The following precautions should be taken before conducting post-mortem examination:

- i) Both hands of the deceased need to be wrapped in white paper bags before transportation. The dead body afterwards should be covered in special Body Bags having zip pouches for proper transportation.
- ii) Clothing on the body of the deceased should not be removed by the police or any other person. It should be collected, examined as well as preserved and sealed by the doctor conducting the autopsy, and should be sent for further examination at the concerned forensic science laboratory. A detailed note regarding examination of the clothing should be incorporated in the post-mortem examination report by the doctor conducting the autopsy.
- iii) In case of alleged firearms deaths, the dead body should be subjected to radiological examination (X-rays/ CT Scan) prior to autopsy.

Contd... 2/-

3. Video-filming and photography of post-mortem examination should be done in the following manner:

- i) At the time of video-filming of the post-mortem examination the voice of the doctor conducting the post-mortem should be recorded. The doctor should narrate his prima-facie observations while conducting the post-mortem examination.
- ii) A total of 20-25 coloured photographs covering the whole body should be taken. Some photographs of the body should be taken without removing the clothes. The photographs should include the following:
 - a) Profile photo-face (front, right lateral and left lateral views), back of head.
 - b) Front of body (up to torso-chest and abdomen) - and back
 - c) Upper extremity - front and back
 - d) Lower extremity - front and back
 - e) Focusing on each injury/ lesion-zoomed in after properly numbering the injuries*
 - f) Internal examination findings (2 photos of soles and palms each, after making incision to show absence/ evidence of any old/ deep seated injury).
- iii) Photographs should be taken after incorporating post-mortem number, date of examination and a scale for dimensions in the frame of photographs itself.
- iv) While taking photographs the camera should be held at right - angle to the object being photographed.
- v) Video-filming and photography of the post-mortem examination should be done by a person trained in forensic photography and videography. A good quality digital camera with 10X optical zoom and minimum 10 mega pixels should be used.

* In firearm injuries while describing, the distance from heel as well as midline must be taken in respect of each injury which will help later in reconstruction of events.