

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

## **EDITORIAL TEAM**

### **EDITORS**

#### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on*

*March 14th, 2019*

## Mrs.S.Kalpana

*Assistant professor of Law*

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He*

*participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **NHRC's Role in Prevention of Custodial Death or Death During the Course of Police Action**

Author:

**Rachna Mishra**

Email: rachhuu25@gmail.com

Mob.: 9407048840

Co.Author: **Utkarsh Mishra**

Email: [utkarsh6970@gmail.com](mailto:utkarsh6970@gmail.com)

Mob.: 8074618695

## **Introduction: National Human Rights Commission and Custodial Deaths in Indian Criminal Justice System**

Custodial Death can be defined as the death of a person in custody, either in Police or Judicial custody. In former, the person is in physical custody of the police and is kept in police station and in latter the person is under the concerned magistrate and is kept in prison.<sup>1</sup>

The Indian Criminal Justice System has been facing a chronic issue of custodial death or death during the course of police action. As per the data provided by NHRC, a total of 894 cases of Custodial Deaths have been reported.<sup>2</sup> With a total of 204 recorded deaths between 1 January 2017 and 2 August, 2017, UP leads the troll of death, followed by Punjab with 76 deaths and Bihar with 64 deaths.<sup>3</sup>

Though NHRC has been attempting to curb this issue starting from its first guidelines regarding the same in the year 1993, however there has not been any substantial decrease in the custodial death matters. The present project deals with the development of guidelines issued by NHRC through multiple case studies as well as a critical analysis of the effective implementation of these guidelines.

---

<sup>1</sup>Manu Sebastian, Explainer: Judicial Custody And Police Custody, LiveLaw.in (Sept. 4, 2019); <https://www.livelaw.in/know-the-law/explainer-judicial-custody-and-police-custody-147745> .

<sup>2</sup>Rishiraj Bhagawati, Almost 900 judicial custody deaths recorded in 2017, reveals RTI: Maharashtra tops chart of deaths in police lock-ups, Firstpost (Aug. 23, 2017); <http://www.firstpost.com/india/almost-900-judicial-custody-deaths-recorded-in-2017-reveals-rti-maharashtra-tops-chart-of-deaths-in-police-lock-ups-3963867.html>.

<sup>3</sup>*Id.*

## National Human Rights Commission

The National Human Rights Commission (NHRC) was established in 1993 based on the provisions of the Protection of Human Rights Act, 1993.<sup>4</sup> The National Human Rights Commission of India was set up in conformity with 'Paris Principles'. The Commission is an autonomous institution both functionally and financially with a wide mandate for better protection of Human Rights. The Commission is deeply concerned with better protection of human rights and continued its work on issues like terrorism and insurgency, torture, custodial crimes, prison reforms, rights of disabled, health, rights of mentally challenged, food security, education, rights of minorities, Scheduled Castes and Scheduled Tribes and internally displaced persons, etc.

The NHRC does not have prosecutorial powers, but it may recommend that the government initiate prosecution of officials, or approach the Supreme Court or High Court to issue directions or orders. It also has authority to review and recommend measures to effectively implement human rights safeguards and to recommend that the government provide immediate interim relief to victims in the form of monetary compensation.

The NHRC has issued guidelines requiring that police report every case of custodial death to the commission within 24 hours and that a magistrate should inquire into every case of death, preferably within three months.<sup>5</sup> To ensure fair and impartial investigation, police should register a First Information Report (FIR) whenever a culpable act of homicide is alleged, and the case must be investigated by a police station or agency other than the one implicated. Further, the NHRC asks that post-mortems in custodial deaths should be filmed and the autopsy report should be prepared as per the commission's model form.<sup>6</sup> Police are also required to submit a second report to the NHRC in all these cases that should include a post-mortem report and findings of a magisterial or departmental inquiry into the death.

---

<sup>4</sup> Protection of Human Rights Act, 1993, as amended by the Protection of Human Rights (Amendment) Act, 2006, No. 43 of 2006, [http://nhrc.nic.in/Documents/Publications/TheProtectionofHumanRightsAct1993\\_Eng.pdf](http://nhrc.nic.in/Documents/Publications/TheProtectionofHumanRightsAct1993_Eng.pdf).

<sup>5</sup> National Human Rights Commission, Revised Guidelines/Procedures to be followed in cases of deaths caused in police action, May 12, 2010, <http://nhrc.nic.in/documents/Death%20During%20the%20course%20of%20Police%20Action.pdf>

<sup>6</sup> Letter from National Human Rights Commission to all Home Secretaries regarding the revised instructions to be followed while sending post-mortem reports in cases of custodial deaths, January 3, 2011, <http://nhrc.nic.in/Documents/PostMortemReportInstructions.pdf>.

## Difficulties with NHRC

A 2011 report by the **All India Network of NGOs and Individuals** working with the National and State Human Rights Institutions (AiNNI) also raised concerns over the seeming lack of independence of the NHRC. It noted that the NHRC was tightly controlled financially by the government of India and reported to the Ministry of Home Affairs, the same governmental department responsible for internal security, including police and other law and order officials, therefore undermining its independence.

The NHRC instituted a high-level advisory committee and submitted a set of recommendations to the central government in 2000 to amend the Protection of Human Rights Act to strengthen the functioning of the commission. The act was amended in 2006, but significant problems remain. It cannot independently make public its findings until the government first places the report before parliament.

The amendments do not include lifting the one-year “statute of limitations” on NHRC investigations, a time limit that is unrealistic given the difficulty many victims have in obtaining counsel and their limited awareness of their rights under the act.

The NHRC is still not authorized to investigate complaints of human rights violations by the armed forces, including the paramilitary Border Security Force and the Central Reserve Police Force.<sup>7</sup> The NHRC is also only a recommendatory/advisory devoid of a mechanism for enforcing of its recommendations.

## LITERATURE REVIEW

The researcher has primarily referred the official website of NHRC of India for referring to the cases investigated by the commission and guidelines issued. The Guidelines of NHRC regarding the *Procedure to Be Followed in Cases of Death Caused in Police Station* published in the year 1993 and then revised in the year 2010 has been referred to understand the situation of custodial deaths and actions to be taken by the police.

---

<sup>7</sup> V. Venkatesan, “A Commission in Limbo,” *Frontline*, vo. 20, issue 03, February 1-14, 2003, <http://www.frontline.in/static/html/fl2003/stories/20030214005312100.htm>

The researcher has also referred the guidelines issued by NHRC on regarding conducting *Magisterial Enquiry in Cases of Death in Custody Or in The Course Of Police Action*, published in the year 1993. These reports also provided detailed procedure to be followed by the Police in making videography report of the post-mortem of the death caused in custody.

Multiple news reports have also been referred to collect information regarding recent cases of custodial death which are reported and investigated by the Commission. A news report by *The Times of India*, provided for the suo motu cognizance taken by NHRC based on media reports about the death of a man in police custody in Pilkhua in Uttar Pradesh.<sup>8</sup>

## **STATEMENT OF PROBLEM**

The guidelines issued by the Commission, to control the increasing cases of custodial deaths in India have not been implemented effectively.

## **HYPOTHESIS**

NHRC has not been able to limit the cases of custodial deaths in India.

## **RESEARCH QUESTIONS**

1. What is the current state of India regarding the cases of Custodial Deaths in India?
2. How NHRC deals with the cases of Custodial Deaths or deaths during Police Actions?
3. Whether NHRC has been able to limit the cases of deaths during custody of Police?

## **RESEARCH METHODOLOGY**

The researcher has used doctrinal mode of research method and main sources included are news reports and internet resources.

---

<sup>8</sup> The Times of India, *NHRC notice to UP govt on custodial death, torture* (Oct. 19, 2019); [http://timesofindia.indiatimes.com/articleshow/71617422.cms?utm\\_source=contentofinterest&utm\\_medium=txt&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/71617422.cms?utm_source=contentofinterest&utm_medium=txt&utm_campaign=cppst).

## **OBJECTIVE OF THE STUDY**

- To understand and analyse the reasons behind the increasing number of cases of custodial deaths in India.
- To critically analyse the role played by NHRC to curb the issue of Custodial Deaths in India.
- To evaluate the extend of implementation of guidelines issued by NHRC for limiting the cases of custodial deaths.
- To find ways to impose liability upon police officials for their acts, to resolve the issue of custodial death.

## **TENTATIVE CHAPTERISATION**

**CHAPTER 1:** Introduction: *National Human Rights Commission and Custodial Deaths in Indian Criminal Justice System*

**CHAPTER 2:** Prohibition and Causes of Custodial Deaths: National and International Obligations of India

**CHAPTER 3:** Custodial Deaths: Case Studies and Measures undertaken by NHRC

**CHAPTER 4:** Suggestions and Conclusion

IJLRA

## **CHAPTER 2: Prohibition and Causes of Custodial Deaths: National and International Perspective**

### **India's International Obligation**

India has ratified the International Covenant on Civil and Political Rights and signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, both of which prohibit torture and cruel, inhuman, and degrading treatment or punishment. They also provide for the authorities to prosecute the officials responsible. These commitments are reflected in Indian central and state laws that condemn torture, and provide some procedural safeguards against it.

### **Domestic Safeguards` for Custodial Deaths**

The Indian Penal Code has several provisions prohibiting custodial violence. For instance, under **section 330** of the code, voluntarily causing hurt for the purpose of extorting a confession or to compel restoration of property carries a punishment of up to seven years in prison and a fine.

This also applies to police officials who use torture to obtain a confession or information about stolen property. If the harm inflicted is grievous, the punishment can extend up to 10 years in prison. Public servants disobeying the law, with intent to cause injury to any person, can go to prison for one year.

In 1985, the Law Commission of India had recommended that the Indian Evidence Act, 1872, be amended to stipulate that if a person suffers any bodily injury while in police custody, the courts may presume that the injury was caused by the police officer who had the custody of that person.<sup>9</sup> the Supreme Court's judgment in *D.K. Basu* lays down certain guidelines to establish mandatory procedures for police detention, including interrogation.<sup>10</sup>

Under the Code of Criminal Procedure, in addition to police investigation, an inquiry by a

---

<sup>9</sup> Law Commission of India, 113th Report on Injuries in Police Custody, July 29, 1985, <http://lawcommissionofindia.nic.in/101-169/report113.pdf>

<sup>10</sup> D.K. Basu v. State of West Bengal, p. 14-15.

judicial magistrate is mandatory in cases of death, enforced disappearance, or alleged rape in police custody.<sup>11</sup> However, the NHRC has interpreted the law to mean that an inquiry by a judicial magistrate is not in fact mandatory in all such cases. In April 2010, the NHRC sent a notification to all states saying a judicial inquiry is mandatory only in those cases of custodial deaths “where there is reasonable suspicion of foul play or well-founded allegation of commission of an offense. All other cases of custodial death where the death is natural or caused by disease may be enquired into by an executive magistrate.”<sup>12</sup>

Though there are multiple safeguards under national as well international level, however, there are a huge number of reasons behind the increasing number of custodial deaths in India. Some of them are as follows:

1. No accountability of police:

In the wake of the government’s failure to implement recommendations from the National Police Commission, including a wide range of measures to modernize the police, guidelines for reducing police harassment of the public, and limits on the use of “third degree” interrogation methods<sup>13</sup>, the Supreme Court in a landmark decision, **Prakash Singh v. Union of India**<sup>14</sup>, issued six binding directives to the central and state governments to kick-start police reforms.

The Supreme Court directives were aimed at improving the functional autonomy of the police through security of tenure, streamlining appointment and transfer processes, insulating the police from government’s interference and influence, and enhancing police accountability.<sup>15</sup> The Supreme Court in 2008 it set up a three-member monitoring committee under former Supreme Court justice K.T. Thomas with a two-year mandate to examine compliance by states and report back periodically. The

---

<sup>11</sup> Code of Criminal Procedure (CrPC), section 176.

<sup>12</sup> Guidelines/Clarification issued by the National Human Rights Commission in respect of the interpretation of section 176(1A) of CrPC, April 5, 2010, <http://police.puducherry.gov.in/Guidelines%20clarification%20section%20176%20CrPC%20by%20the%20NHRC.pdf>.

<sup>13</sup> Bureau of Research and Development, National Police Commission Reports, <http://www.bprd.gov.in/index1.asp?linkid=281>.

<sup>14</sup> Prakash Singh v. Union of India, Supreme Court of India, 8 SCC 1, 2006,

<sup>15</sup> Commonwealth Human Rights Initiative, “Seven steps to police reforms,” September 2010, [http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/seven\\_steps\\_to\\_police\\_reform.pdf](http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/seven_steps_to_police_reform.pdf).

committee submitted its report on August 2010, observing a huge ignorance to the directives of the court by the States.<sup>16</sup>

2. In some States, after a case of custodial death, the enquiry is done by the executive magistrate not a judicial magistrate (an executive body).
3. Internal departmental enquiries are done, which are of no use and try to portray the death to be an accident or a natural death.
4. Govt. doctors favour the police Autopsy and forensic reports frequently support the police version of events even where there is no apparent basis.
5. The national and state human rights commissions have largely failed in their oversight role in cases of custodial killings. The National Human Rights Commission is empowered to summon witnesses, order production of evidence, and recommend that the government initiate prosecution of officials. However, in practice its recommendations have mostly been limited to calling on the government to provide compensation or other immediate interim relief. Between April 2012 and June 2015, of the 432 cases of deaths in police custody reported to the NHRC, the commission recommended monetary relief totalling about 22,910,000 rupees but recommended disciplinary action in only three cases and prosecution in none.
6. Lack of training and resources for scientific methods of forensic investigation contribute to the use of torture during interrogations. Forensic laboratories are often understaffed and have a significant backlog of cases.

---

<sup>16</sup> Final Report of Justice K.T. Thomas Committee constituted by the Supreme Court, August 2010, <http://www.peoplepolicemovement.com/commitee.html>.

## **CHAPTER 3: Custodial Deaths: Case Studies and Measures undertaken by NHRC**

### **Efforts of NHRC to Curb Custodial Deaths**

The Commission came into effect on 28<sup>th</sup> September, 1993 and in the view of the rising number of incidents of custodial deaths and custodial rapes, it issued its first guideline regarding the reporting of custodial deaths within 24 hours by the Superintendents of Police of every district. Failure to report promptly would give rise to presumption that there was an attempt to suppress the incident.

The Commission has dealt with multiple cases and has given ample of guidelines to limit the matters of custodial deaths.

### **Alleged Custodial Death of Madan Lal in Delhi<sup>17</sup>**

In 1993-94, the Commission took *suo motu* cognizance on the death of **Madan Lal**, 22 years of age, in police custody. Upon perusing the reports received from the Government of the National Capital Territory of Delhi, the Commission decided to have an investigation undertaken in terms of Section 14(1) of the Protection of Human Rights Act, 1993. It accordingly appointed Shri R.C. Chopra, a member of the Higher Judicial Service to investigate the matter.

Shri Chopra submitted a report on 11 March 1994 concluding that Shri Madan Lal had died as a result of a physical assault on his person, while he was in custody within a police station. The Commission gave recommendations to the Govt. of NCT Delhi and the same were incorporated by it.

Later, on **Aug. 10, 1995**, the Commission, after Scrutinising the reports in respect of all custodial deaths, was of the view that the post-mortem in many cases has not been done properly. Usually the reports are drawn up casually and do not at all help in the forming of an opinion as to the cause of death. The Commission has formed an impression that a systematic attempt is being made to suppress the truth and the report is merely the police version of the incident. Therefore, **the Commission recommended** that all post-mortem examinations done

---

<sup>17</sup> National Human Rights Commission, India, Cases; retrieved on: <https://nhrc.nic.in/cdcases#no1>.

in respect of deaths in police custody and in jails should be **video-filmed** and cassettes be sent to the Commission along with the post-mortem report.

In addition to this, in the year 1995-96, the Commission recommended State Governments to recover **compensation amounts from the offending police officials**. The Commission took the view that if this were done, the exchequer would not be burdened with the liability of paying compensation resulting from the "unauthorized, unlawful and illegal acts of public servants."

### **Custodial Death of Shri Bundoo in Uttar Pradesh<sup>18</sup>**

The Senior Superintendent of Police, Moradabad on 14 October, 1995 reported the death of one Bundoo while in custody. In their report, the Government stated that on 12 October 1995 a case was registered at Police Station Chandpur, Bijnore District against four named persons. After being handcuffed, the accused were taken to the site for identification in course of investigation. Suddenly, Bundoo jumped out of the vehicle and came to fall in front of a moving bus. He received serious injuries which ultimately led to his death at Moradabad District Hospital.

The Commission recommended that an enquiry be undertaken immediately and the concerned police officers and the constables, if found guilty of negligence, be adequately punished. The State Government vide letter dated 15.9.98 submitted that enquiry is conducted in the matter. However, no police officer was found guilty and this report was accepted by Chief Judicial Magistrate, Moradabad.

### **Custodial death of Atal Bihari Mishra - Uttar Pradesh<sup>19</sup>**

A reference to the case was made in the annual report of the Commission for the year 1996-97. It was mentioned that a number of police personnel were charge-sheeted in this case, consequent to intervention by the Commission. As there was prima facie material to hold that Atal Bihari Mishra died as a result of police violence, the Commission issued notice to the Chief Secretary, Government of Uttar Pradesh, to show cause why a reasonable interim-compensation should not be awarded to the members of the family of the deceased.

---

<sup>18</sup> *Supra* note 17.

<sup>19</sup> *Supra* note 17.

By a communication dated 28 December 1997, the State Government stated that, as a case in connection with the murder of Atal Bihari Mishra was pending in the Court of Chief Judicial Magistrate, Balia against 21 police officials, compliance of the directions/recommendations of the Commission could only be possible after the police officials/accused persons were found guilty of the charges.

However, the Commission recommended that the award of "Immediate Interim Relief" envisaged in sub-section (3) of Section 18 of the Protection of Human Rights Act 1993 will lose its essence if the establishment of criminal liability is waited for. Therefore, it was recommended to the UP government to provide interim relief to the victim's family.

On **January 3, 2001, the Commission issued another guideline** to curb the delay in sending the post-mortem report along with videography and ultimately causing delay in awarding interim relief to the victim's kin. The Commission said that the post-mortem report with all the relevant documents to be submitted before it within **two months** of the incident.

### **Illegal Detention, Torture and Death of Shah Mohammed in Police Custody (M.P.)<sup>20</sup>**

The Commission initiated proceedings in this case upon receipt of a wireless message from the Superintendent of Police, Durg which indicated that the custodial death had occurred of a certain Shah Mohammed, a resident of Bhilai in district Durg of Madhya Pradesh.

In response to a notice from the Commission, the Government of Madhya Pradesh transmitted to the Commission copies of the magisterial inquiry report, the post-mortem report, the inquest panchnama and viscera examination report. However, the post mortem report did not match with the magisterial enquiry report.

After investigation the Commission concluded that Shah Mohammed was picked up by the police in the evening of 16 July 1996, kept in illegal detention in the police lock-up by the police of Bhatti, Bhilai until the afternoon of 18 July 1996 and brutally tortured during the period of his illegal detention. It was this that led to his death at the police station in the afternoon of 18 July 1996, before he was removed to the hospital.

---

<sup>20</sup> Case No. 3855/96-97/NHRC.

Therefore, the Commission recommended to Register a case of custodial death against the Officer-in-charge of the Police Station and Initiate appropriate disciplinary proceedings against the two Doctors who had not conducted the post-mortem examination thoroughly and who had failed to prepare a comprehensive post-mortem examination report.

### **Death of Dhirender Singh in Jail: Uttar Pradesh<sup>21</sup>**

The Commission, on receiving information of the custodial death of a prisoner named Dhirender Singh in the District Jail, Jaunpur, called for a detailed report from the Government of Uttar Pradesh. The report that was received stated that certain anti-social elements' had gone to the main gate of the District Jail on that date and had asked for an under-trial prisoner, Jaya Prakash Singh, on the pretext that they had to hand-over a letter to him. Jaya Prakash Singh went to the main gate, where the deceased was also present at that time. The 'anti-social elements' fired at Jaya Prakash Singh, but he escaped. However, a stray bullet hit the deceased in his stomach.

He was rushed to the hospital where he was declared dead. A detailed magisterial inquiry that was instituted to look into the matter arrived at the conclusion that there was negligence on the part of the jail authorities and that this had resulted in the death of Dhirender Singh.

The Commission by its order awarded a sum of Rs. 75,000/- as immediate interim relief to the next of kin of the deceased. As the State Government complied with the direction of the Commission, the case was closed.

### **Death of Devu Sattababu in Puducherry Police Custody<sup>22</sup>**

The Commission received a complaint from Devu Chandra Kala alleging that her husband Devu Sattababu was taken away by the police on 10 November 2011 and he died on 11 November 2011 while in police custody. Moreover, the police did not file any FIR as to the death of her husband. She thus prayed for action against the police officer on duty as well as compensation for violation of her rights.

---

<sup>21</sup> See Case No. 21808/24/99-2000/CD), National Human Rights Commission, Annual Report 2002-03.

<sup>22</sup> (Case No.56/32/4/2011-PCD, National Human Rights Commission, Annual Report 2015-16.

On consideration of the report, from the Deputy Inspector General of Police, Puducherry, the Commission on 28 April 2015 observed that the report itself admits that the death had occurred while in police custody and due to negligence of their officers, hence the next of kin of the deceased must be compensated.

### **Hyderabad Encounters and HNRC's Cognisance<sup>23</sup>**

In the light of media reports that the four people accused of the rape and murder of the veterinarian doctor in Hyderabad have been killed in a police encounter, the NHRC has decided to take *suo motu* cognisance of the same. The Commission has taken notes of the facts that have emerged and passed orders for a spot inquiry by its investigation team, headed by the Director General of the Investigating Division.

The Commission has also sought report from all the State governments, police heads as well as from the Union Ministry of Women and Child Development, after having taken cognisance of the increasing number of cases of rape and sexual assault on women across the country.

Though multiple steps have been taken by the Commission to curb the increasing number of cases of custodial deaths, it has not been able to limit the cases. Recently, Minister of state for home **G Kishan Reddy**<sup>24</sup> informed the Lok Sabha that NHRC has registered 427 cases relating to alleged deaths of accused in police custody and 5,049 cases pertaining to deaths in judicial custody.

The cases of deaths in police custody registered by NH HRC in 2018-19 were 136 and of those in judicial custody, 1,797. The corresponding number of cases involving alleged deaths in police custody and judicial custody in 2017-18 were 146 and 1,636 respectively and in 2016-17, 145 and 1,616 respectively.<sup>25</sup> Therefore, there has been a considerable increase in the number of cases of custodial death in India.

---

<sup>23</sup> Hyderabad Encounter : National Human Rights Commission Takes Suo Moto Cognisance; Orders Spot Inquiry  
<https://www.livelaw.in/top-stories/hyderabad-encounter-national-human-rights-commission-takes-suo-moto-cognisance-150524>.

<sup>24</sup>[http://timesofindia.indiatimes.com/articleshow/70250201.cms?utm\\_source=contentofinterest&utm\\_medium=ext&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/70250201.cms?utm_source=contentofinterest&utm_medium=ext&utm_campaign=cppst).

<sup>25</sup> *Id.*

## **CHAPTER 4: Suggestions and Conclusion**

### **Suggestions**

- As per the provisions, the appointment of the Chairman and other members of the Commission is under the hands of the Prime Minister Speaker, Home Secretary, Deputy Chairman, leader of opposition in Lok Sabha and Rajya Sabha. Therefore, the appointing committee is not free from political compulsion. The Protection of Human Rights Act, 1993 should be amended to provide provision for appointment like the collegiums of the Judges of the Supreme Court and the Chief Justice of the High Courts.
- One member from the two members appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights, should be a person from any leading NGO who is primarily working on protection of Human Rights.
- The Act should be amended so as to make the recommendations made by the Commission binding and punishable in case of derogation.
- It lacks transparency and, in its observation, it is considered to be another governmental agency or controlled organisation. This should be removed by limiting the political involvement as well as allocation of funds by the Parliament should be changed to extracting funds from Budget directly.
- Provisions should be made, regarding the accountability of Police Officials and their illegal acts, prescribing adequate punishments.
- Adequate resources and infrastructure should be provided to police officials to decrease the work load and discourage them to resort to forceful means to extract information from persons put in custody.

### **Conclusion**

The NHRC has attempted to limit the cases of custodial deaths, however due to multiple constraints, it has not been able to do the same in an effective manner. Implementing the suggestions provided above can help the Commission in decreasing the increasing number of cases of custodial deaths in India.

## **Bibliography**

### **Article**

- Hyderabad Encounter : National Human Rights Commission Takes Suo Moto Cognizance; Orders Spot Inquiry <https://www.livelaw.in/top-stories/hyderabad-encounter-national-human-rights-commission-takes-suo-moto-cognizance-150524>.
- Manu Sebastian, Explainer: Judicial Custody And Police Custody, LiveLaw.in (Sept. 4, 2019).
- The Times of India, NHRC notice to UP govt on custodial death, torture (Oct. 19, 2019)
- V. Venkatesan, "A Commission in Limbo," Frontline, vo. 20, issue 03, February (1-14, 2003).

### **Reports**

- Bureau of Research and Development, National Police Commission Reports, <http://www.bprd.gov.in/index1.asp?linkid=281>.
- Commonwealth Human Rights Initiative, "Seven steps to police reforms," September 2010.
- Final Report of Justice K.T. Thomas Committee constituted by the Supreme Court, August 2010.
- Guidelines/Clarification issued by the National Human Rights Commission in respect of the interpretation of section 176(1A) of CrPC, April 5, 2010.
- Law Commission of India, 113th Report on Injuries in Police Custody, July 29, 1985.
- Letter from National Human Rights Commission to all Home Secretaries regarding the revised instructions to be followed while sending post-mortem reports in cases of custodial deaths, January 3, 2011.
- National Human Rights Commission, Annual Report 2002-03.
- National Human Rights Commission, Revised Guidelines/Procedures to be followed in cases of deaths caused in police action, May 12, 2010.
- Rishiraj Bhagawati, Almost 900 judicial custody deaths recorded in 2017, reveals RTI: Maharashtra tops chart of deaths in police lock-ups, Firstpost (Aug. 23, 2017).

## Internet Sources

- <http://lawcommissionofindia.nic.in/101-169/report113.pdf>
- <http://nhrc.nic.in/documents/Death%20During%20the%20course%20of%20Police%20Action.pdf>
- <http://nhrc.nic.in/Documents/PostMortemReportInstructions.pdf>.
- [http://timesofindia.indiatimes.com/articleshow/70250201.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/70250201.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).
- [http://timesofindia.indiatimes.com/articleshow/71617422.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/71617422.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).
- <http://www.firstpost.com/india/almost-900-judicial-custody-deaths-recorded-in-2017-reveals-rti-maharashtra-tops-chart-of-deaths-in-police-lock-ups-3963867.html>.
- <http://www.frontline.in/static/html/fl2003/stories/20030214005312100.htm>
- [http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/seven\\_steps\\_to\\_police\\_reform.pdf](http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/seven_steps_to_police_reform.pdf).
- <http://www.peoplepolicemovement.com/commitee.html>.
- <https://nhrc.nic.in/cdcases#no1> .
- <https://www.livelaw.in/know-the-law/explainer-judicial-custody-and-police-custody-147745> .

IJLRA