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Letter No. 797 /JAJ
Date 12.08.2026

To,

All the Principal District & Sessions Judges including Judicial Commissioner, Ranchi

Sub : Standard Operating Procedure (SOP) & a Model Format for Inquiry Reports on Custodial Deaths.

Ref. : *Mohd. Mumtaz Ansari v. State of Jharkhand*, 2026 SCC Online Jhar. 617 as well as Letter No. 316/R&S dated 11/08/2026 of the Hon'ble High Court of Jharkhand.

Sir,

With regard to the above mentioned subject and direction contained at Para No. 63 (k) of the judgment referred above of the Hon'ble High Court of Jharkhand the "*Standard Operating Procedure (SOP) & a Model Format for Inquiry Reports on Custodial Deaths*" is enclosed herewith for onward circulation with the Judicial Officers of your judgeship.

Thanking you,

Yours sincerely,
12/08/26
Director

Encl. : As above

STANDARD OPERATING PROCEDURE (SOP) & THE MODEL FORMAT FOR INQUIRY REPORTS ON CUSTODIAL DEATH

Compiled By:-

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The Standard Operating Procedure (SOP) and the model format for inquiry reports have been prepared in accordance with the directions issued by the Hon'ble Jharkhand High Court in ***Mohd. Mumtaz Ansari v. State of Jharkhand*, 2026 SCC OnLine Jhar 617**, particularly paragraph (k) of the judgment, and in conformity with the guidelines of the National Human Rights Commission (NHRC) as well as the relevant judicial precedents, so as to ensure a uniform and consistent approach in the conduct of judicial inquiries by all judicial officers in the State of Jharkhand.

PREFACE

Custodial death remains one of the gravest and most persistent challenges to the rule of law and to the constitutional guarantee of life and personal liberty under Article 21 of the Constitution of India. Despite constitutional safeguards, statutory provisions, and NHRC guidelines developed over three decades, deaths in police and judicial custody, and in the course of police action, continue to occur. The State's accountability for such deaths depends, in substantial part, on the diligence, promptness, and independence with which the mandatory magisterial enquiry is conducted.

This compilation, titled "Standard Operating Procedure (SOP) & The Model Format for Inquiry Reports on Custodial Death," has been prepared in accordance with the direction issued by the Hon'ble Jharkhand High Court's judgment in ***Mohd. Mumtaz Ansari v. State of Jharkhand,*** *2026 SCC OnLine Jhar 617*, which settled the identity of the Magistrate competent to conduct the enquiry under Section 196(2) BNSS [Section 176(1A) CrPC], and directed a uniform SOP for Judicial Officers in Jharkhand.

This reading material/compilation traces the constitutional and statutory framework governing custodial death Articles 20, 21 and 22, the BNS and BNSS, and their predecessor provisions under the IPC and CrPC across its categories: police custody, judicial custody, armed/paramilitary custody, medical custody, and police action. It brings together leading judicial pronouncements on custodial death and rape,compensatory jurisprudence, the Jharkhand High Court's discussion of Section 196 BNSS, and NHRC guidelines since 1993, culminating in a step-by-step SOP and model formats for the enquiry – an Order Sheet, an Enquiry Report, summonses for the production of evidence and documents, letters and notices, and, as annexures, the NHRC Model Autopsy Form and the NHRC Additional Inquest Procedure.

The Judicial Academy, Jharkhand extends its heartfelt gratitude to Hon'ble Mr. Justice Rongon Mukhopadhyay, Judge High Court of Jharkhand cum Judge In-charge, Judicial Academy Jharkhand, for the guidance and support extended towards this compilation, for which the Academy will be eternally grateful.

This compilation is a result of the persistent efforts put in by Sri Satyakam Priyadarshi, Additional Director-I cum Senior Faculty Member; Sri Laxmi Kant, Additional Director-II cum Senior Faculty Member; Sri Amikar Parwar, Administrative Officer and the Research Scholars Isha, Uday Narayan and Uttam Kumar Gupta. It is hoped that this reading material / compilation will be of assistance to Judicial Officers, prosecutors, members of the Bar, and all others concerned with the conduct of a fair, prompt, and independent enquiry into deaths in custody.

DIRECTOR,
Judicial Academy, Jharkhand

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CUSTODIAL DEATH

I. INTRODUCTION

Custodial death and custodial torture are often spoken of together, as both are closely connected and remain a serious concern in the modern era. Custodial deaths occur when prisoners in custody or even persons who may be innocent, but are merely suspected are subjected to brutal treatment by the Police, including severe physical assault. As a result of this brutality and inhuman treatment while in custody, the death of the prisoner or detainee may occur.

In this backdrop, the occurrence of a fatality within the coercive control of the State, legally categorised as a custodial death, represents a profound failure of the constitutional machinery. In a civilised society governed by the Rule of Law, custodial violence is an affront to the very essence of justice. The social contract between the State and its citizens is fundamentally predicated on the dual pillars of dignity and security, and any breach of this trust while a person is in the State's care strikes at the heart of democratic values.

The right to life is not a mere biological concept; it is an expansive guarantee that inherently encompasses the right to live with human dignity. These fundamental tenets of existence continue to animate the legal and constitutional landscape and remain immutable regardless of an individual's status. Consequently, even when an individual is accused of an offence or stands as a convicted prisoner, her entitlement to a dignified and peaceful life remains inviolable.

The Latin maxim *salus populi est suprema lex*, which means that the safety of the people is the supreme law, further emphasises the need for the protection of dignity during arrest and custody. Similarly, *salus republicae est suprema lex*, which translates into the safety of the State, is the supreme law, highlights the coexistence of the safety of the people and the State.

A combined reading of these doctrines underscores the principle that although an individual's welfare may at times yield to the community's, the State, by taking a citizen into custody, does not extinguish its obligations towards that individual. On the contrary, those obligations are intensified, as the State alone stands between the citizen and harm. The coercive power of the executive, which deprives the citizen of liberty, simultaneously generates a corresponding constitutional duty to safeguard the liberty that remains.

Custodial torture is a naked violation of human dignity and degradation that destroys self-esteem of the victim and does not even spare his personality. Custodial torture is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backwards. Despite recommendations for dismissing torture from the investigative system, growing incidence of torture and deaths in police custody and prisons come back to haunt.

In India, preventing any suffering or torture in custody and ensuring strict compliance with its guidelines in custodial deaths is one of the important objectives on the NHRC's list. Impulsive and unexpected death in custody is commonly associated with allegations of torture against law enforcement agencies. Delays in providing basic medical care are among the most common allegations by relatives against jail authorities.

"One of the worst crimes in a civilised society under the Rule of Law is perhaps the death in custody. The Constitution's inherent rights, outlined in Articles 21 and 22(1), must be diligently and fiercely preserved. The right to live with dignity has been interpreted to include "life or personal liberty." As a result, it would also include a prohibition on torture and other forms of physical abuse by the State or its representatives. Except for following the procedure established by law by imposing such reasonable restrictions as are permissible, the priceless right protected by Article 21 enshrined in the Constitution of India cannot be denied to convicts, under trials, detainees, and other prisoners in custody.

II. TYPES OF CUSTODIAL DEATH

- **Death in Police Custody**: It occurs while a suspect is under the direct control of the Police. This frequently happens during interrogation, pre-trial detention, or initial arrest phases. The major causes include physical torture, excessive use of force, or denial of immediate medical care.
  ***Nilabati Behera* v. *State of Orissa*, (1993) 2 SCC 746,**

- **Death in Judicial Custody**: It primarily occurs while an individual is held in a prison or jail under court orders for a specific period. Here, these numbers are statistically much higher than police custody deaths. Common factors include inmate-on-inmate violence, overcrowding, poor sanitation, inadequate medical infrastructure, or suicide.
  Md. Mumtaz Ansari v. State of Jharkhand and Ors W.P. (PIL) No. 1218 of 2022.

- **Death in the Custody of Armed / Paramilitary Forces**: Occurs when a person is confined by the military, border security forces, or paramilitary units. This type is predominantly reported in conflict-prone areas or in regions subject to technical security laws.
  Extra-Judicial Execution Victim Families Assn. v. Union of India, (2016) 14 SCC 536

- **Medical Custody Death**: The death of a person in Police or judicial custody is caused by, or materially contributed to by, the failure, denial, delay or negligence of the custodial authorities in providing adequate and timely medical treatment, including deaths occurring while the detainee is being moved for treatment or during the course of treatment.
  Vishnu Sandipan Kute v. State of Maharashtra Cri.W.P. No.1464/2015, Bombay High Court (Aurangabad Bench)

III. IMPORTANT PROVISIONS

There are several Statutory provisions for addressing custodial deaths in India that are spread across penal, constitutional laws, and procedural laws to ensure accountability, prompt investigation, and the protection of citizens' fundamental rights.

1. **Article 20:** It grants protection against arbitrary and excessive punishment to an accused person, whether a citizen or a foreigner or a legal person like a company or a corporation. It contains three provisions in that direction:
    - No ex-post-facto law: It provides that a person should be prosecuted as per those laws that were in force when he committed the offence.
    - No double jeopardy: It provides that a person shall not be prosecuted and punished for the same offence more than once.
    - No self-incrimination: It provides that a person accused of an offence shall not be compelled to be a witness against himself.
2. **Article 21:** *"No person shall be deprived of his life or personal liberty except according to procedure established by law.*" Following are certain rights available for prisoners:
    - Right to Bail
    - Right against Solitary Confinement
    - Right against Inhuman Treatment
    - Right against Illegal Detention
    - Right to a Speedy and Fair Trial
    - Right to meet Friends and Consult a Lawyer
3. **Article 22:** It provides protection for individuals against arrest and detention in certain cases. It provides that a person arrested should be presented before a magistrate within 24 hours of arrest.
4. **Sections 103, 105, 120 BNS [Sections 302, 304, 330, 331 IPC]:** Penalise murder, culpable homicide, voluntarily causing hurt or grievous hurt and torture.
5. **Section 53 BNSS [Section 54 CrPC]:** Soon after an arrest is made, the arrested person must be examined by a medical officer in the service of the Central or State Government, to detect any violence or torture. If unavailable, it can be done by any registered medical

practitioner. For female arrestees, the examination must be conducted solely by, or under the supervision of, a female medical officer or practitioner.

6. **Section 58 BNSS [Section 57 CrPC]:** Requires that an arrested person must not be detained for more than 24 hours without being presented before a Judicial Magistrate.
7. **Sections 35 and 196 BNSS [Sections 41 and 176 CrPC]:** It lays down the conditions for arrest and in cases of death or disappearance of a person while in police custody, a mandatory inquiry by a Judicial or Metropolitan Magistrate is required, in addition to any police investigation.
8. **Section 196 BNSS [section 176 of the CrPC]:** Two essential conditions trigger this mandatory inquiry:

   (a) any person dies or disappears; or

   (b) rape is alleged to have been committed on any woman,

   while such a person or woman is in the custody of the Police or in any other custody authorised by the Magistrate or the Court. On either condition being satisfied, an inquiry must be held in addition to, and not in place of, the inquiry or investigation conducted by the Police, by the Magistrate within whose local jurisdiction the offence has been committed.

IV. LAW ON COMPENSATION IN CASES OF CUSTODIAL DEATH

A. Rudul Sah v. State of Bihar – *the foundational principle of constitutional compensation*

In ***Rudul Sah v. State of Bihar*, (1983) 4 SCC 141**, the Supreme Court dealt with a person who was illegally detained in prison for more than 14 years after his acquittal. The Court found that the State of Bihar had failed to provide any satisfactory explanation for this gross violation of the petitioner's fundamental rights. Rejecting the State's plea that the petitioner was of unsound mind due to the absence of supporting medical evidence, the Court held that the prolonged detention itself may have caused his mental condition. It strongly criticised the breakdown of prison administration and emphasised that Article 32 empowers the Supreme Court not only to order the release of a person from illegal detention but also to grant appropriate relief to effectively enforce fundamental rights.

The Court held that mere release from unlawful detention would amount to only "lip service" to the guarantee of personal liberty under Article 21, and that monetary compensation is an appropriate public law remedy for its violation. Accordingly, as an interim (palliative) measure, the Court directed the State of Bihar to pay ₹30,000, in addition to the ₹5,000 already paid, while making it clear that this would not preclude the petitioner from filing a civil suit for full compensation against the State and the erring officials. The judgment laid down the landmark principle of constitutional compensation, recognising that constitutional courts can award monetary compensation in writ proceedings for violations of fundamental rights.

B. In re: Inhuman Conditions in 1382 Prisons – compensation for unnatural deaths in custody

The Hon'ble Supreme Court, ***In Inhuman Conditions in 1382 Prisons, In re,* (2017) 10 SCC 658,** held that there is a need for payment of compensation in cases of unnatural deaths in prisons and directed that the next of kin of prisoners who die an unnatural death in custody should be suitably compensated.

The court held that,

> *"……**it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes***

perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. *The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty-bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no straitjacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.*

(emphasis in original)

47.*Ajab Singh v. State of U.P. [Ajab Singh v. State of U.P., (2000) 3 SCC 521 : 2000 SCC (Cri) 718] , Murti Devi v. State (NCT of Delhi) [Murti Devi v. State (NCT of Delhi), (1998) 9 SCC 604 : 1998 SCC (Cri) 1330] and more recently Rohtash Kumar v. State of Haryana [Rohtash Kumar v. State of Haryana, (2013) 14 SCC 290 : (2014) 4 SCC (Cri) 205] illustrate that custodial death is a clear violation of the prisoner's rights under Article 21 of the Constitution and relief could be moulded by granting compensation to the next of kin of the deceased."*

The Supreme Court further observed that almost every High Court in India has, at one time or another, awarded compensation for unnatural deaths occurring in custody, whether the deceased was an undertrial prisoner or a convict.

The Court cited the following illustrative cases where compensation was awarded:

i. ***Nina Rajan Pillai v. Union of India, 2011 SCC OnLine Del 2252 : (2011) 180 DLT 104***

   The husband died in judicial custody due to inadequate medical treatment by jail authorities. A Commission of Inquiry headed by Justice Leila Seth was constituted, and the Delhi High Court awarded compensation.

ii. ***Kewalbai v. State of Maharashtra, 2013 SCC OnLine Bom 773 : (2013) 3 Bom CR (Cri) 601***

   The victim was shot dead by a police constable while in custody. The Bombay High Court awarded compensation.

iii. ***Bheduki Buragohain v. State of Assam, 2013 SCC OnLine Gau 429 : (2013) 6 Gau LR 517***

   An undertrial died in judicial custody under suspicious circumstances, with the post-mortem revealing strangulation and ante-mortem blunt injuries. The Gauhati High Court awarded compensation.

iv. ***Madhuben Adesara v. State of Gujarat, 2016 SCC OnLine Guj 1956***

   The victim was brutally tortured in police custody and succumbed to his injuries, the post-mortem revealing multiple ante-mortem injuries. The Gujarat High Court awarded compensation.

v. ***Banalata Dash v. State of Orissa, AIR 2012 Ori 97***

   The prisoner was found hanging with his hands tied behind his back. The Orissa High Court awarded compensation.

vi. ***Amandeep v. State of Punjab, 2012 SCC OnLine P&H 19844 : (2013) 169 PLR 191***

   The prisoner died after being assaulted by a co-prisoner. The Punjab & Haryana High Court awarded compensation.

vii. ***Tmt. Rohini Lingam v. State, 2008 SCC OnLine Mad 1249 : (2008) 5 MLJ 822***

   The prisoner was murdered by enemies while in prison. The Madras High Court awarded compensation.

viii. ***Sabu E.K. v. State of Kerala, 2016 SCC OnLine Ker 22210 : (2016) 4 KLJ 105***

   The victim died due to torture in a police station. The Kerala High Court granted interim compensation pending the criminal trial.

ix. ***Ravindra Nath Awasthi v. State of U.P., 2009 SCC OnLine All 337 : (2009) 2 AWC 2090***

An advocate in prison custody was beaten by prison authorities and died. The Allahabad High Court awarded compensation.

x. ***Madina v. State of Rajasthan, 2000 SCC OnLine Raj 203 : 2000 Cri LJ 4484***

The victim died in police custody due to third-degree torture. The Rajasthan High Court awarded compensation.

xi. ***Dukhuram v. State of Chhattisgarh, (2011) 3 MPHT 81***

The accused, while handcuffed and chained, was forced to dive into a pond and drowned. The Chhattisgarh High Court awarded compensation.

xii. ***Santosh Kumari v. State of H.P., 2007 SCC OnLine HP 45 : 2008 ACJ 1684***

The victim suffered multiple injuries in police custody and died due to delayed medical treatment. The Himachal Pradesh High Court awarded compensation.

xiii. ***State of J&K v. Sajad Ahmad Dar, 2015 SCC OnLine J&K 160***

The prisoner died due to negligent medical treatment while detained under the Jammu and Kashmir Public Safety Act, 1978. The Jammu & Kashmir High Court awarded compensation.

xiv. ***Meena Singh v. State of Bihar, 2001 SCC OnLine Jhar 74 : 2001 Cri LJ 3573***

The prisoner was attacked and killed by co-prisoners using weapons inside the prison. The Patna High Court awarded compensation.

xv. ***Lawyers for Justice v. State of M.P., 2015 SCC OnLine MP 7488 : AIR 2015 MP 212***

An undertrial prisoner was shot dead while undergoing treatment in a hospital. The Madhya Pradesh High Court awarded compensation.

The Supreme Court noted that many such documented and undocumented cases exist throughout the country, demonstrating that custodial deaths continue despite repeated judicial interventions. The Court described the persistence of custodial deaths as a tragic reflection of the State's disregard for the life and liberty of persons in custody and observed that the time for effective remedial measures is long overdue.

The Court observed that although governments have issued circulars, advisories and prison reform measures, NCRB statistics reveal that these have not adequately addressed the problem. The Court

emphasised that the criminal justice system is based on reformation and rehabilitation, whereas prison practices often continue to reflect retribution and deterrence, leading to violence and unnatural deaths. Reiterating the importance of Article 21 of the Constitution, the Court held that the right to live with dignity extends even to prisoners, and prison reforms must reflect this constitutional mandate. The Court expressed hope that greater awareness of custodial deaths would lead to meaningful prison reforms and improved conditions for prisoners.

The Supreme Court held that constitutional courts have consistently relied upon Article 21 to award compensation to the next of kin of persons who suffer unnatural custodial deaths. The Court cautioned that monetary compensation alone cannot be regarded as an adequate remedy, unless the State recognises that custodial death is itself a grave constitutional wrong and, in appropriate cases, a crime. The Court stressed the necessity of a comprehensive humanitarian review of prison administration to prevent custodial deaths. The Court further held that persons who die unnaturally in prison are also victims, whether the death results from a criminal act, negligence, apathy, or both. The Court emphasised that the legal status of a prisoner as an accused or convict does not diminish his or her human rights, since human rights are universal and independent of a person's status. Consequently, the Court held that the next of kin of victims of unnatural custodial deaths should not be denied compensation merely because the deceased was a prisoner or accused.

C. Application by the Jharkhand High Court – Court on its Own Motion v. State of Jharkhand

The Jharkhand High Court in the case of ***Court on its Own Motion v. State of Jharkhand, 2025 SCC OnLine Jhar 3800,*** relied on the judgement of *Sube Singh v. State of Haryana, (2006) 3 SCC 178, wherein*

> ***"the Hon'ble Supreme Court held that it was by now well settled that the award of compensation against the State is an appropriate and effective remedy for redressal of an established infringement of a fundamental right under Article 21 by a public servant.*** *The quantum of compensation would, however, depend upon the facts and circumstances of each case and such award by way of public law remedy will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering*

compensation under section 357 of the Code of Criminal Procedure. It was further held that the award of compensation as a public law remedy for violation of fundamental rights enshrined under Article 21 of the Constitution of India, in addition to private law remedy under the law of tort was evolved in the last two and half decades. ***It was also held that in case where there is custodial death or custodial torture or other violation of rights guaranteed under Article 21 is established, the Court may award compensation in a proceeding under Article 32 or 226 of the Constitution of India."***

And the Court awarded interim compensation to the husband of the petitioner.

V. JUDICIAL PRONOUNCEMENTS ON CUSTODIAL DEATH

A. Custodial Death – Police Custody

1. The Supreme Court, in the case of ***Nilabati Behera* v. *State of Orissa*, (1993) 2 SCC 746,** articulated the precise content of the State's constitutional obligation towards persons in its custody with an authority and clarity that has since become foundational to this entire branch of jurisprudence.

The relevant excerpt from the above-mentioned dictum is reproduced as follows:

> *"It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in its custody.* ***The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials or other prisoners in custody, except according to procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions."***

2. In the case of the ***State of M.P. v. Shyamsunder Trivedi, (1995) 4 SCC 262***, the Supreme Court dealt with the custodial death of Nathu Banjara, who was brought to Rampura Police Station for interrogation as a murder suspect and died due to extensive beating and torture while in police custody. The Court found that the Police had made a deliberate attempt to screen the offence by fabricating records, preparing a false panchnama stating that no injuries were found on the body, falsely portraying the deceased as an "unclaimed person (lavaris)", and attempting to cremate the body in haste. The Court upheld the finding that Nathu died in police custody as a result of custodial torture and rejected the defence version that he had been released before his death. It observed that in cases of custodial violence, direct ocular evidence is rarely available, as police personnel, bound by ties of brotherhood, often remain silent or pervert the truth to protect their colleagues. Therefore, courts must give due weight to circumstantial evidence and the surrounding circumstances rather than insist upon direct evidence alone. The Court criticised the unrealistic approach adopted by the High Court in acquitting some of the

accused despite overwhelming circumstantial evidence establishing their presence, participation, and subsequent attempts to conceal the crime.

The Supreme Court described death in police custody as "perhaps one of the worst kind of crimes in a civilised society governed by the rule of law", holding that custodial torture flouts the basic rights guaranteed under the Constitution and is an affront to human dignity. It cautioned that exaggerated adherence to proof beyond every reasonable doubt, ignoring the ground realities of custodial crimes, often results in miscarriage of justice and encourages police brutality. Referring to the 4th Report of the National Police Commission (1980) and the 113th Report of the Law Commission of India, the Court reiterated the recommendation that where a person sustains injuries while in police custody, the court should be empowered to presume that the injuries were caused by the police officer having custody of the person unless the officer proves otherwise. The Court urged the Government and Legislature to implement this recommendation and called upon courts to adopt a realistic and sensitive approach in custodial crime cases so that guilty officers do not escape punishment. On the facts, the Court convicted SI Shyam Sunder Trivedi under Section 304 Part II/34 IPC and Head Constable Ram Naresh Shukla, Head Constable Rajaram and Constable Ganniuddin under Sections 304 Part II/34, 201 and 342 IPC, while directing that the entire fine recovered from the convicted officers be paid to the heirs of Nathu Banjara by way of compensation. This judgment remains a landmark authority for the principle that custodial crimes must be assessed with sensitivity, realistic appreciation of circumstantial evidence, and strict accountability of police officials.

3. The Supreme Court in ***D.K. Basu v. State of West Bengal, (1997) 1 SCC 416,*** recognised custodial violence, including torture and death in police custody, as one of the worst crimes in a civilised society governed by the rule of law. Relying on Joginder Kumar v. State of U.P., the Court reiterated that no arrest can be made merely because it is lawful to do so; the existence of the power to arrest is one thing, the justification for its exercise is another, and arrest must be based on reasonable satisfaction regarding the genuineness of the complaint, the person's complicity, and the necessity of arrest. The Court emphatically held that a citizen does not shed his fundamental rights under Articles 21 and 22(1) merely because he is arrested, and that convicts, undertrials, detenus and prisoners continue to enjoy the protection of Article 21 except according to procedure established by law. Condemning the use of third-degree methods, the

Court observed that the end cannot justify the means, and that torture, cruel, inhuman or degrading treatment is impermissible. While acknowledging the difficult task performed by the Police in combating serious crimes and terrorism, the Court stressed that the cure cannot be worse than the disease itself, and that State terrorism is no answer to combat terrorism. Transparency, accountability, scientific methods of investigation, restructuring of police training and sensitisation to constitutional values were identified as essential safeguards against abuse of police power.

To ensure transparency and accountability in all cases of arrest and detention, the Court issued eleven mandatory requirements to operate until suitable legislation was enacted:

> ***"35.*** *We, therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures:*
>
> *(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.*
>
> *(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.*
>
> *(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.*
>
> *(4) 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 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all District and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

The Court declared that failure to comply with these requirements would render the concerned official liable to departmental action as well as punishment for contempt of court, and clarified that these safeguards flow from Articles 21 and 22(1), apply equally to all governmental agencies empowered to arrest or detain persons, and are in addition to existing constitutional and statutory safeguards.

The Court further reaffirmed that where the right to life and personal liberty under Article 21 is violated through custodial violence or death, constitutional courts are empowered to award monetary compensation under Articles 32 and 226 as a public law remedy. Distinguishing public law compensation from private law damages, it held that compensation for unconstitutional deprivation of life or liberty is founded on strict liability and is in addition to the remedy available in tort. The defence of sovereign immunity is unavailable where there is an established violation of fundamental rights. Referring to Rudul Sah, Sebastian M. Hongray, Bhim Singh, Saheli, and Nilabati Behera, the Court observed that mere punishment of the offender or a declaration of illegality is not an adequate remedy; the courts must grant effective compensation to redress the public wrong and preserve the rule of law. The Court also relied upon comparative constitutional jurisprudence from Ireland, Trinidad and Tobago, and New Zealand to affirm that courts must evolve effective remedies, including monetary compensation, to enforce fundamental rights and ensure that constitutional guarantees are not rendered illusory.

B. Custodial Death - Prison/Judicial custody

1. *In* ***Inhuman Conditions in 1382 Prisons, In re, (2017) 10 SCC 658,*** *the Supreme Court held that -*

> ***"2.*** *Like most societies, we are not strangers to custodial violence and unnatural deaths but our vibrant democracy permits us to debate and discuss these issues with rational arguments. However, right-sounding noises critical of custodial violence (in any form) cannot achieve any useful purpose unless persons in authority hear the voices of the victims or the silence of the dead and act on them by taking remedial steps.* ***There must be a greater degree of sensitivity among those in authority with regard to persons in custody and it has been the endeavour of the constitutional courts in our country, over several decades, to consistently flag this issue. The results have been somewhat mixed but the effort will continue as long as Article 21 remains in our Constitution. This message goes out loud and clear, as also the message that the dignity of the individual is not a plaything for those in authority."***

C. Custodial Death – Police Encounter / Extra-Judicial Action

1. In ***PUCL v. State of Maharashtra*, (2014) 10 SCC 635**, the Supreme Court of India issued a 16-point mandatory guideline to be implemented nationwide for investigating deaths that occur during police encounters. The ruling firmly established that extrajudicial killings violate the Right to Life and Personal Liberty guaranteed under Article 21 of the Constitution of India.

> ***"31.*** *In the light of the above discussion and having regard to the directions issued by the Bombay High Court, guidelines issued by NHRC, suggestions of the appellant PUCL, amicus curiae and the affidavits filed by the Union of India, the State Governments and the Union Territories, we think it appropriate to issue the following requirements to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation:*
>
> ***31.1.*** *Whenever the Police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the Commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.*
>
> ***31.2.*** *If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.*
>
> ***31.3.*** *An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:*
>
> *(a) To identify the victim; colour photographs of the victim should be taken;*
>
> *(b) To recover and preserve evidentiary material, including bloodstained earth, hair, fibres and threads, etc. related to the death;*

(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;

(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

(f) Post-mortem must be conducted by two doctors in the district hospital, one of them, as far as possible, should be incharge/head of the district hospital. Post-mortem shall be videographed and preserved;

(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

31.4. *A magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to the Judicial Magistrate having jurisdiction under Section 190 of the Code.*

31.5. *The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.*

31.6. *The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.*

31.8. *After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the charge-sheet submitted by the investigating officer, must be concluded expeditiously.*

31.7. *It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc. to the court concerned.*

31.9. *In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.*

31.10. *Six-monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six-monthly statements reach to NHRC by 15th day of January and July, respectively. The statements may be sent in the following format along with post-mortem, inquest and, wherever available, the inquiry reports:*

(i) Date and place of occurrence.

(ii) Police station, District.

(iii) Circumstances leading to deaths:

(a) Self-defence in encounter.

(b) In the course of dispersal of unlawful assembly.

(c) In the course of affecting arrest.

(iv) Brief facts of the incident.

(v) Criminal case no.

(vi) Investigating agency.

(vii) Findings of the magisterial inquiry/inquiry by senior officers:

(a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and

(b) whether use of force was justified and action taken was lawful.

31.11. *If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.*

31.12. *As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.*

31.13. *The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.*

31.14. *An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counselling, same must be offered.*

31.15. *No out-of-turn promotion or instant gallantry rewards shall be bestowed on the officers concerned soon after the occurrence. It must be ensured at all cost that such rewards are given/recommended only when the gallantry of the officers concerned is established beyond doubt.*

31.16. *If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as abovementioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the Sessions Judge concerned shall look into the merits of the complaint and address the grievances raised therein."*

2. In ***P. Pugalenthi v. State of Tamil Nadu, W.P. No. 25743 of 2010****,* decided on 09 February 2016 (Madras High Court), reported in *(2016) 2 MLJ (Crl) 220*, the Madras High Court considered the legal procedure to be followed in cases of Police encounter deaths occurring while the deceased is in police custody. The petitioner contended that, in accordance with the NHRC Guidelines dated 08.08.2007, whenever a complaint discloses a cognisable offence of culpable homicide against police personnel, an FIR must be registered and the investigation should be conducted by the State CB-CID. It was further argued that since the police officers

were claiming the benefit of the right of private defence, the burden under Section 105 of the Indian Evidence Act, 1872 lay upon them to establish that defence during trial, and that a Magistrate conducting an inquiry under Section 176(1-A) CrPC had no jurisdiction to conclude that the encounter was an act of self-defence.

The High Court rejected this contention and held that the investigating officer is competent to examine whether the act of the police officers falls within any of the general exceptions under Chapter IV of the Indian Penal Code, including the right of private defence, and to submit the final report accordingly. However, the Court emphasised that an inquiry under Section 176(1-A) CrPC is not a substitute for a police investigation under Chapter XII CrPC; both proceedings are independent and complementary. The Court further held that whenever a police encounter results in the death of a person in police custody, a judicial inquiry under Section 176(1-A) CrPC is mandatory, irrespective of the police investigation, and the final report must thereafter be dealt with by the jurisdictional Magistrate in accordance with law.

D. **Death in the Custody of Armed / Paramilitary Forces:** In the case of *Extra-Judicial Execution Victim Families Assn. v. Union of India, (2016) 14 SCC 536*, where allegedly 1528 persons had been killed in fake encounters by police personnel and personnel in uniform of the armed forces of the Union, the Hon'ble Supreme Court directed the CBI to probe into the 62 cases of extrajudicial killings by the Armed Forces in Manipur.

E. **Medical Custody Death**: In the case of *Vishnu Sandipan Kute v. State of Maharashtra (Cri.W.P. No.1464/2015),* the Bombay High Court (Aurangabad Bench) for the failure of jail authorities to provide adequate and timely medical treatment to an undertrial, resulting in his death, directed State to pay Rs.10,00,000, with liberty to recover from the negligent officers for the violation of the right to health under Article 21, entitling dependants to compensation under Article 226.

In this case the deceased, Pratap Kute, an undertrial, applied to the Magistrate on 07.02.2012 for treatment of spondylosis. Despite jail authorities opposing transfer on the ground that facilities existed in jail, no treatment was provided. He was hospitalised only on 23.02.2012 after deterioration and died on 27.02.2012.

The Court distinguished this from custodial violence, treating it as death from denial of timely medical care. The jail authorities were aware of the ailment, having opposed his transfer application, yet provided nothing beyond collecting a blood sample whose report arrived post-death. The on-duty constable's endorsement refusing transfer to Government Medical College, Aurangabad, and disclaiming grievance even if life was endangered, was held to reflect a callous and insensitive mindset. Applying *Suba Singh v. State of Haryana* (2006) 3 SCC 178, the Court affirmed that failure to provide timely medical treatment violates Article 21.

> *"11. Having gone through the records, in our considered view, there has been total negligence and lapse on the part of the jail authorities in providing adequate, effective and proper medical treatment and on the part of the police guard on duty who declined to shift the deceased Pratap Kute to Government Medical College, Aurangabad which has resulted in his death."*

F. Custodial Rape:

1. The starting point for any discussion of custodial rape is *Tuka Ram and Anr. v. State of Maharashtra, (1979) 2 SCC 143,* commonly known as the Mathura case wherein, a young tribal girl, Mathura, was taken to a police station for questioning and, while in custody there, was raped by two police constables on the premises of the station itself. The Sessions Court acquitted the accused; the Bombay High Court reversed the acquittal; but the Supreme Court restored it, holding that since Mathura had not raised an alarm and no marks of injury were found on her body, her "passive submission" could not be distinguished from consent.

2. In direct response to the *Mathura* case, Parliament enacted the *Criminal Law (Amendment) Act, 1983,* which made three principal changes relevant to custodial rape:

- **i.** It introduced sub-section (2) to Section 376 IPC [now Section 64(2) BNS], carving out an aggravated category of rape, including rape by a police officer within the precincts of a police station, by a public servant or member of the armed forces taking advantage of his official position, or by a member of the management or staff of a jail, remand home, or hospital, upon a woman in his custody or charge and prescribing an enhanced minimum sentence for such aggravated forms.
- **ii.** It introduced Section 114A of the Indian Evidence Act, 1872 [now Section 120 of the Bharatiya Sakshya Adhiniyam, 2023], raising a presumption as to absence of consent

once sexual intercourse is proved in a prosecution falling within the aggravated categories under Section 376(2) IPC [Section 64(2) BNS] including custodial rape thereby shifting the practical burden onto the accused to establish consent, rather than leaving the prosecutrix to prove its absence.

iii. It also introduced Section 376C of IPC [Section 68 BNS] as distinct offences addressing sexual exploitation by persons in a position of authority or trust.

3. In the case of *State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550,* a police sub-inspector, took a newly-married teenaged girl (aged about 19–20) and her husband to the police station at dead of night, falsely booked the husband under the Bombay Police Act to separate them, isolated the girl, lodged her in a hotel, and raped her twice. The trial court convicted him under Section 376 IPC; the High Court acquitted him on an erroneous appreciation of evidence; and the Supreme Court, on the State's appeal, reversed the acquittal and restored the conviction.

> *"17. We think it proper, having regard to the increase in the number of sex violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood.*
>
> *18. But when such a crime is committed by a person in authority, e.g. a police officer, should the court's approach be the same as in any other case involving a private citizen? ... Notwithstanding this concern, if a police officer misuses his authority and power while dealing with a young helpless girl aged about 19 or 20 years, her conduct and behaviour must be judged in the backdrop of the situation in which she was placed. The purpose and setting, the person and his position, the misuse or abuse of office and the despair of the victim which led to her surrender are all relevant factors which must be present in the mind of the court while evaluating the conduct evidence of the prosecutrix. A person in authority, such as a police officer, carries with him the awe of office which is bound to condition the behaviour of his victim.*

28. ... We are, therefore, of the opinion that if the prosecution evidence is appreciated in the correct perspective, which we are afraid the High Court failed to do, there can be no hesitation in concluding that the prosecution has succeeded in proving the respondent's guilt. Unfortunately the High Court stigmatised the prosecutrix on a thoroughly erroneous appreciation of her evidence thereby adding to her woes. If the two views were reasonably possible we would have refrained from interfering with the High Court's order of acquittal. In our opinion the trial court had adopted a correct approach and had properly evaluated the evidence and the High Court was not justified in interfering with the trial court's order of conviction."

4. In the case of *Ram Kumar v. State of Himachal Pradesh, AIR 1995 SC 1965 : 1995 Supp (4) SCC 67,* two police officials forcibly took the prosecutrix and her husband to a police station at midnight on the false pretext of a wireless message describing her as abducted. Confined in separate rooms, she was raped by Nain Singh, Investigating Head Constable, while Ram Kumar, a constable, guarded her husband and ignored her shrieks. The Sessions Court acquitted both; the High Court convicted them, holding Ram Kumar guilty of abetment. The Supreme Court affirmed, finding the prosecutrix a reliable witness, corroborated by her husband, brother-in-law, local eyewitnesses, and a doctor approached during the confinement. On the question of Ram Kumar's liability for abetment despite not personally committing the assault, the Court held that his conduct of forcibly taking the prosecutrix to the police station, confining her separately, and turning a deaf ear to her cries for help while continuing to guard her husband.

"His conduct and consistency were towards facilitating that crime as otherwise he would have reacted on the hearing of the shrieks of the hapless prosecutrix who was a young girl aged about 19 at that time. His turning deaf ears to her cries was the finale on his conduct and he must be assumed to have had this end in mind when he dragged the prosecutrix forcibly to the Police Station."

VI. DISCUSSION ON 196 of BNSS / 176 CRPC – JHARKHAND HIGH COURT

In the case of **Mohd. Mumtaz Ansari v. State of Jharkhand, 2026 SCC OnLine Jhar 617,** the Hon'ble Court mentions that:

- Under the original Section 176 CrPC, inquiry into deaths occurring in Police or judicial custody was to be conducted by the Executive Magistrate.
- This arrangement was considered problematic because the inquiry remained within the executive framework itself, i.e., the same machinery whose conduct was under scrutiny.
- Since the inquiring authority and the police/officials involved belonged to the same administrative hierarchy, it created a conflict of interest and undermined the neutrality and credibility of the inquiry.
- The Law Commission of India in its 152nd Report (1994) examined custodial crimes and found the existing mechanism inadequate.
- It observed that where custodial violence results in death, procedural law must ensure that the factum, cause, mode and surrounding circumstances of death are properly ascertained.
- The inquiry, according to the Commission, must be:
  - quick in timing
  - adequate in coverage
  - thorough in methodology
  - impartial in approach
- The Commission pointed out that executive inquests had not inspired public confidence, which was evident from recurring demands for Commissions of Inquiry in cases of custodial torture, rape or death.
- In the S*tate of M.P. v. Shyam Sunder Trivedi, (1995) 4 SCC 262*, the Supreme Court recognised the institutional difficulty in obtaining evidence against police personnel.
- The Court noted that police officers are often bound by "ties of brotherhood", due to which they may not come forward to depose truthfully.
- It observed that deaths in police custody are among the worst crimes in a civilised society governed by rule of law, and that men in khaki are not above the law.
- This judicial concern strengthened the demand for a neutral and independent inquiry mechanism.

- To address this structural problem, Parliament inserted Section 176(1-A) CrPC by the Code of Criminal Procedure (Amendment) Act, 2005, effective from 23-06-2006.
- This amendment marked a fundamental shift by replacing executive control with judicial oversight in specified custodial cases.
- Section 176(1-A) provides that where:
    - a person dies or disappears, or
    - rape is alleged to have been committed on a woman

    while such person/woman is in police custody or any other custody authorised by the Magistrate or Court, an inquiry shall be held by the Judicial Magistrate or Metropolitan Magistrate having local jurisdiction.
- This inquiry is to be held in addition to the police investigation/inquiry.
- The use of the word "shall" in Section 176(1-A) makes the inquiry mandatory and non-discretionary.
- Therefore, in cases of custodial death, disappearance or custodial rape, the inquiry must be conducted by a Judicial Magistrate / Metropolitan Magistrate.
- An inquiry by the Executive Magistrate cannot substitute the judicial inquiry required by law.
- The Magistrate conducting the inquiry must record evidence.
- If necessary, the Magistrate may order disinterment and examination of the dead body to ascertain cause of death.
- The Magistrate must, wherever practicable:
    - inform the relatives of the deceased, and
    - allow them to remain present during the inquiry.
- The body must be forwarded within 24 hours for medical examination to the nearest Civil Surgeon or qualified medical person, unless impossible for recorded reasons.
- The same principle has been continued under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).
- Section 196(2) BNSS also mandates a compulsory inquiry by a Judicial Magistrate / Metropolitan Magistrate in custodial death cases.
- The High Court clarified that the word "Magistrate" in Section 196 BNSS cannot be broadly interpreted to include any type of Magistrate.

- Under Section 3(1) BNSS, unless the context otherwise requires, a reference to "Magistrate" means a Judicial Magistrate of the first class or second class, as the case may be.
- Therefore, t**he inquiry contemplated under Section 196 BNSS is a strictly judicial function, not an executive one.**
- Since Parliament has specifically vested the inquiry in the judicial branch, the Executive has no authority to assign such inquiry to an Executive Magistrate.
- Doing so would violate:
    - the statutory language,
    - the legislative intent, and
    - the scheme of Section 176(1-A) CrPC / Section 196 BNSS.
- In its proceedings dated 04-09-2020, the National Human Rights Commission (NHRC) clarified that Section 176(1-A) was inserted specifically to deal with cases where a person dies, disappears, or a woman is raped in custody.
- NHRC emphasised that such inquiry must be conducted by a Judicial Magistrate / Metropolitan Magistrate.
- According to NHRC, this judicial inquiry is necessary to determine whether the custodial death/disappearance/rape constitutes an offence, and whether it resulted from:
    - torture
    - ill-treatment
    - negligence
    - or whether it was a natural death
- Thus, the judicial inquiry gives sanctity, independence and credibility to the fact-finding process.
- The statutory mandate under Section 176(1-A) CrPC and Section 196 BNSS, read with NHRC's interpretation, establishes that inquiry into custodial death belongs exclusively to the judicial branch.
- Executive inquiry may exist separately in its own sphere, but it cannot replace the judicial inquiry mandated by law.
- **Therefore, where a custodial death occurred after 23-06-2006, and the matter was inquired into only by an Executive Magistrate instead of a Judicial Magistrate, it is not a mere procedural irregularity but a serious dereliction of statutory duty.**

The Jharkhand High Court has laid down the following guidelines -

"63. *Accordingly, we dispose of this petition by issuing the following directions:*

- ***(a)*** *It is declared that an inquiry under S. 176(1-A) of the CrPC or S. 196(2) of the BNSS is required to be conducted by a Judicial Magistrate in accordance with the statutory mandate, and any inquiry conducted by an Executive Magistrate shall not operate as a substitute for such judicial inquiry.*
- ***(b)*** *The principal District Judge of the concerned District and the principal Secretary, Department of Home, Prison & Disaster Management, are directed to enquire into and submit a compliance report before this Court* ***within six months of the date of this judgment****, explaining the failure to have at least 262 cases of custodial deaths enquired into by the Judicial Magistrates, as required by the statutory mandate, and instead to have them enquired into only by the Executive Magistrates; to identify the specific officers responsible for such lapses; and to show cause why this Court should not recommend the initiation of departmental inquiries against the said officers.*
- ***(c)*** *The principal Secretary, Department of Home, Prison & Disaster Management, shall,* ***within two months from the date of this judgment****, prepare and circulate to all principal District & Sessions Judges (including the judicial Commissioner, Ranchi) a district-wise list of all custodial death cases from the year 2018 onwards in which inquiries were conducted by Executive Magistrates, including the 262 cases disclosed in the State's affidavit, along with copies of all existing records and reports.*
- ***(d)*** ***Within 15 days of the receipt of such records****, the concerned principal District & Sessions Judge (including the judicial Commissioner, Ranchi) shall nominate a Judicial Magistrate for conducting a de-novo inquiry under S. 176(1-A) of the CrPC or Section 196(2) of the BNSS, as applicable. Such inquiries shall, as far as practicable, be completed* ***within six months from the date of nomination.***
- ***(e)*** *Upon conclusion of the inquiry, the report shall be forwarded to the NHRC and the Jharkhand State Human Rights Commission. This report shall be accompanied by a covering letter from the concerned District Magistrate or Superintendent of Police, explicitly clarifying that the judicial inquiry has been conducted to fulfil the statutory*

requirement under Section 176(1-A) CrPC/Section 196(2) BNSS in place of the earlier executive inquiry.

(f) *All principal District & Sessions Judges (including the judicial Commissioner, Ranchi) shall submit a consolidated compliance report regarding these de-novo inquiries before this Court within eight (08) months from the date of this judgment.*

(g) *The Chief Secretary and the principal Secretary, Department of Home, Prison & Disaster Management,* ***shall, within thirty (30) days from the date of this judgment, issue a circular*** *to all District Magistrates and Superintendents of Police in the State, clarifying that jurisdiction under S. 176(1-A) of the CrPC or S. 196(2) of the BNSS vests solely and exclusively with Judicial Magistrates, and any future deviation shall be treated as a willful violation of statutory law and the conduct rules.*

(h) *The above-referred circular* ***must also apprise the concerned officials*** *that in every case of custodial death, disappearance, or custodial rape, the District Magistrate and/or Superintendent of Police shall intimate the NHRC, the State Human Rights Commission, and the concerned principal District Judge (P.D.J.) within twenty-four hours of the occurrence.*

(i) *Upon receipt of such intimation, the concerned P.D.J. (including the judicial Commissioner, Ranchi), must nominate a Judicial Magistrate* ***within forty-eight hours of the intimation to conduct the inquiry****. The inquiry shall ordinarily be concluded within two months. In cases of delay, the specific reasons shall be recorded by the concerned Judicial Magistrate.*

(j) *All relevant records, including post-mortem reports, treatment records, CCTV footage, prisoner history, and allied materials, shall be supplied to the nominated Judicial Magistrate by the concerned Jail Superintendent or the Officer-in-charge of the Police Station within seven days of the receipt of a requisition.*

(k) *The Director, Jharkhand judicial Academy, shall,* ***within four months from the date of this judgment, prepare and circulate a Standard Operating Procedure (SOP)*** *and a model format for inquiry reports to all judicial officers in the State of Jharkhand. The SOP shall ensure the incorporation of NHRC guidelines and relevant judicial precedents to foster a uniform approach to judicial inquiries.*

(l) *The State Government, in coordination with the Jharkhand judicial Academy, shall consider organising an interdisciplinary conference/seminar involving judicial officers, District Magistrates, Superintendents of Police, Jail Authorities, and Medical Officers to ensure institutional synchronisation and effective compliance with the statutory mandate governing custodial death inquiries.*

(m) *In cases where the inquiry report discloses unnatural death, custodial violence, or negligence, the concerned P.D.J. (including the judicial Commissioner, Ranchi), as Chairperson of the District Victim Compensation Committee, shall suo-motu place the matter before the Committee for consideration of compensation under the applicable Victim Compensation Scheme, preferably within thirty days of the submission of the inquiry report."*

VII. GUIDELINES ISSUED BY NHRC ON CUSTODIAL DEATHS

1. Reporting of Custodial Deaths and Custodial Rapes within 24 Hours

Notification No.: 66/SG/NHRC/93

Date: 14 December 1993

The National Human Rights Commission, at its meeting held on 6 December 1993, discussed the problems of custodial deaths and custodial rapes. In view of the rising number of incidents and reported attempts to suppress or present a different picture of these incidents with the lapse of time, the Commission took the view that a direction should be issued forthwith to the District Magistrates and Superintendents of Police of every District that they should report to the Secretary General of the Commission about such incidents within 24 hours of occurrence or of these officers having come to know about such incidents. Failure to report promptly would give rise to a presumption that an attempt to suppress the incident had been made.

2. Extension of the 24-Hour Reporting Obligation to Deaths in Judicial Custody

Notification No.: F.No. 40/3/95-LD

Date: 21 June 1995

A perusal of the reports received from DMs and SPs in pursuance of Guideline No. 1 revealed that reports were being received in the Commission from some of the States only on deaths in police custody. Clarifying that the objective of the Commission is to collect information in respect of custodial deaths in Police as well as judicial custody, the Commission directed Chief Secretaries to have instructions sent to all concerned to see that deaths in judicial custody are also reported to the Commission within the time frame indicated in the letter of 14 December 1993.

Note: This guideline supplements Guideline No. 1 (14 December 1993) by extending the 24-hour intimation obligation to deaths occurring in judicial custody.

3. Adoption of the Model Autopsy Form and Additional Inquest Procedure

Notification No.: NHRC/ID/PM/96/57

Date: 27 March 1997

The Commission recorded that a number of instances had come to its notice in which post-mortem reports appeared to have been doctored under pressure or influence to protect the interests of

police/jail officials. In some cases, the post-mortem examination was not carried out properly, and in others, there was an inordinate delay in writing or collecting the report. As there is hardly any outside independent evidence in cases of custodial violence, the fate of these cases would depend entirely on the observations recorded and the opinion given by the doctor in the post-mortem report. If the post-mortem examination is not thoroughly done or is manipulated to suit vested interests, then the offender cannot be brought to book, and this would result in a travesty of justice, and serious violations of human rights in custody would go on with impunity.

With a view to preventing such frauds, and building on the earlier direction on video-filming of post-mortems, the Commission found that the autopsy report forms then in use in the various States were not comprehensive and, therefore, did not serve the purpose and also gave scope for doubt and manipulation. After ascertaining the views of the States, discussing the matter with experts in the field, and taking into consideration, though not entirely adopting, the U.N. Model Autopsy Protocol, the Commission prepared:

(i) A revised Model Autopsy Form (Annexure I); and

(ii) An additional procedure for inquest (Annexure II) '***both attached herein as Enclosure X & X1'***

requiring, for proper assessment of "time since death" or "time of death", the determination of temperature changes and the development of rigor mortis at the time of first examination at the scene.

4. Timeline for Submission of Post-Mortem Report, Videograph and Magisterial Enquiry Report

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Notification No.: D.O. No. 40/1/1999-2000-CD (NRR)

Date: 3 January 2001

Recalling that the Commission had by its 1993 instructions required intimation of any custodial death within 24 hours of its occurrence, to be followed by the post-mortem report, Magisterial Inquest Report / Videography report of the post-mortem, etc., and noting that there was considerable delay in sending the post-mortem report along with the videography and the Magisterial Inquest Report, which caused delay in the Commission's processing of custodial death cases and in the awarding of interim relief wherever prima facie there was reason to conclude that

the custodial death was a result of custodial violence, the Commission, in order to streamline the procedure, issued the following instructions:

1.1 The post-mortem report along with the videograph and the Magisterial Enquiry report must be sent within two months of the incident.

1.2 The post-mortem reports have to be sent in the new proforma, which was circulated vide letter No. NHRC/ID/PM/96/57 dated 27 March 1997 ***'refers to Enclosure X & X1'***. All concerned authorities may be instructed to use the new proforma.

In every case of custodial death, a Magisterial Enquiry must also be conducted as directed by the Commission. It should be ensured that the Magisterial Enquiry is completed as soon as possible, but in such a way that, within the two-month deadline mentioned in paragraph 1.1, the Magisterial Enquiry report is also made available.

In some cases of custodial death, after post-mortem, the viscera are sent for examination, and a viscera report is called for. However, the viscera report takes some time to come; therefore, this is to clarify that the post-mortem report and other documents should be sent to the Commission without waiting for the viscera report. The viscera report should be sent subsequently as soon as it is received.

Note: This guideline operationalises the 24-hour intimation obligation under Guidelines Nos. 1 and 2 by fixing an outer limit of two months for submission of the follow-up documents, and adopts the Model Autopsy Form prescribed by Guideline No. 3 (27 March 1997) as the mandatory proforma.

5. Video-Filming of Post-Mortem Examinations (as modified in 2001)

Original notification: Letter dated 10 August 1995, issued by Justice Ranganath Misra, Chairperson, to the Chief Ministers of all States, Pondicherry and the National Capital Territory of Delhi, and to the Governors of States under President's rule

Modifying notification: D.O. No. 3/2/99-PRP&P, dated 21 December 2001, issued by Justice J.S. Verma, Chairperson

Original direction (10 August 1995) – The Commission recorded that it was deeply disturbed over the rising incidents of death in police lock-ups and jails, and that scrutiny of the reports in respect of all these custodial deaths by the Commission very often showed that the post-mortem

in many cases had not been done properly. The reports were usually drawn up casually and did not at all help in the forming of an opinion as to the cause of death, giving the Commission the impression that a systematic attempt was being made to suppress the truth and that the report was merely the police version of the incident. The post-mortem report was intended to be the most valuable record, and considerable importance was being placed on this document in drawing conclusions about the death. The Commission was of the prima facie view that the local doctor succumbed to police pressure, leading to a distortion of the facts. It accordingly directed that all post-mortem examinations done in respect of deaths in police custody and in jails should be video-filmed and cassettes should be sent to the Commission along with the post-mortem report. The Commission was alive to the fact that the process of video-filming would involve extra cost, but held that human life is more valuable than the cost of video-filming and such occasions should be very limited. States were asked to sensitise higher officials in the State police to introduce video recording of post-mortem examinations, with effect from 1 October 1995.

As modified with effect from 21 December 2001 – On an analysis of the cases of custodial death reported to the Commission during the last five years by various States, the Commission recorded that the earlier instructions had a significant impact on the general level of custodial violence in the country. It also, however, recorded that while death in police custody is very often a result of custodial violence, the majority of deaths reported from jails are due to illness aggravated by negligence in giving proper treatment. Although the Commission viewed the post-mortem examination as essential even in such cases, it felt that the requirement of videography of the examination could be relaxed to some extent for deaths in jail. The Commission accordingly modified its 1995 instructions as follows:

(i) The instructions regarding videography of post-mortem examinations in respect of deaths in police custody will remain in force as before.

(ii) The requirement of videography of post-mortem examinations in respect of deaths in jail will be applicable only in the following cases:-

- **(a)** where the preliminary inquest by the Magistrate has raised suspicion of some foul play; or
- **(b)** where any complaint alleging foul play has been made to the concerned authorities, or there is any suspicion of foul play.

Note: The 10 August 1995 letter mandated video-filming of the post-mortem for both police-custody deaths and jail deaths. Considering the utility of video-filming, the character of jail deaths, and the practical difficulties reported by some jail authorities, the Commission, by D.O. No. 3/2/99-PRP&P dated 21 December 2001, relaxed the requirement for jail deaths, while retaining it in full for deaths in police custody.

6. Revised Guidelines / Procedure for Deaths in the Course of Police Action

Notification No.: D.O. No. 4/7/2008-PRP&P

Date: 12 May 2010

The Commission expressed concern about deaths during police action. The Police do not have a right to take away the life of a person. Under the criminal law prevailing in India, it would not be an offence if the death is caused in the exercise of the right of private defence. Another provision under which the police officer can justify causing the death of a person is Section 46 of the Criminal Procedure Code, which authorises the Police to use reasonable force, even extending up to the causing of death, if found necessary to arrest a person accused of an offence punishable with death or imprisonment for life. Thus, it is evident that a death caused in an encounter, if not justified, would amount to an offence of culpable homicide.

Finding that most States were not following the recommendations issued by it earlier in their true spirit, and considering the whole matter afresh, the Commission revised the procedure to be followed by States and Union Territories in all cases of deaths in the course of police action as follows.

Revised Guidelines / Procedures to be followed in cases of deaths caused in police action.

A. When the police officer in charge of a Police Station receives information about death in an encounter with the Police, he shall enter that information in the appropriate register.

B. Where the police officers belonging to the same Police Station are members of the encounter party, whose action resulted in death, it is desirable that such cases are made over for investigation to some other independent investigating agency, such as State CBCID.

C. Whenever a specific complaint is made against the Police alleging Commission of a criminal act on their part, which makes out a cognisable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall be investigated by State CBCID or any other specialised investigation agency.

D. A magisterial enquiry must be held in all cases of death which occurs in the course of police action, as expeditiously as possible, preferably, within three months. The relatives of the deceased, eye witness, witnesses having information of the circumstances leading to encounter, police station records etc. must be examined while conducting such enquiry.

E. Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry / police investigation.

F. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given / recommended only when the gallantry of the concerned officer is established beyond doubt.

G. Reporting to the Commission (case-specific format).

G(a). All cases of deaths in police action in the states shall be reported to the Commission by the Senior Superintendent of Police / Superintendent of Police of the District within 48 hours of such death in the following format:

1. Date and place of occurrence.
2. Police station, District.
3. Circumstances leading to death:
   - **(i)** self-defence in encounter;
   - **(ii)** in course of dispersal of unlawful assembly;
   - **(iii)** in the course of effecting arrest;
   - **(iv)** any other circumstances.
4. Brief facts of the incident.
5. Criminal case No.
6. Investigating agency.

G(b). A second report must be sent in all cases of death in police action in the state by the Senior Superintendent of Police / Superintendent of Police to the Commission within three months providing the following information:

1. Post-mortem report.
2. Inquest report.
3. Findings of the magisterial enquiry / enquiry by senior officers disclosing –

(i) names and designation of police official, if found responsible for the death;

(ii) whether use of force was justified and action taken was lawful;

(iii) result of the forensic examination of 'handwash' of the deceased to ascertain the presence of residue of gun powder to justify exercise of right of self defence; and

(iv) report of the Ballistic Expert on examination of the weapons alleged to have been used by the deceased and his companions.

Note: This 2010 revision supersedes two earlier sets of directions of the Commission on encounter deaths.

First, the letter dated 29 March 1997 (Justice M.N. Venkatachaliah, Chairperson), issued in Complaint No. 234 (1 to 6)/93-94, which set out a four-clause procedure: SHO to enter the encounter information in the appropriate register; the information to be treated as suspicion of a cognisable offence warranting immediate investigation; cases involving officers of the same police station to be handed over to an independent agency such as the State CID; and compensation to dependants to be considered in cases ending in conviction of the police officers.

Second, the revised guidelines dated 2 December 2003 (Justice A.S. Anand, Chairperson), which put in place Clauses A to H covering register-entry, hand-over of investigation to the State CBCID where officers of the same police station were involved, mandatory FIR on a specific complaint, a mandatory magisterial inquiry with the next of kin invariably associated, prompt prosecution and disciplinary action, fact-specific compensation to dependants, a bar on premature promotion or gallantry reward, and a six-monthly consolidated statement by the DGP to reach the Commission by 15 January and 15 July each year.

Retention in 2010 guidelines: the substance of Clauses A to F above tracks the 2003 Clauses A to E and G being the register-entry, independent investigation, mandatory FIR, mandatory magisterial enquiry, prompt prosecution and disciplinary action, and the bar on premature promotion or gallantry reward.

Revision in 2010 guidelines: it adds an outer time-limit of three months for the magisterial enquiry and a specific requirement that relatives, eyewitnesses, and police station records be examined in it (Clause D); it introduces a case-specific, two-stage reporting mechanism i.e. a 48-hour first report and a three-month second report enclosing the post-mortem, inquest, magisterial enquiry

findings, "hand wash" forensic report, and ballistic expert report (Clauses G(a) and G(b)), in place of the 2003 six-monthly consolidated statement by the DGP (2003 Clause H), which is dropped; and Clause F of the 2003 guidelines on compensation to dependants is not carried forward.

7. Guidelines for Video-Filming and Photography of Post-Mortem Examination in Deaths in Police Action

Notification: Guidelines issued as part of the Commission's protocol on deaths in police action (undated)

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 the post-mortem examination is

(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 the post-mortem examination (recorded in the post-mortem report) by videographic evidence, so as to rule out any undue influence or suppression of material information; and

(iii) to facilitate an independent review of the post-mortem examination report at a later stage if required.

Precautions to be taken before conducting the 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 firearm deaths, the dead body should be subjected to radiological examination (X-rays / CT scan) prior to autopsy.

Manner of video-filming and photography of the post-mortem examination.

(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 to 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; and

(f) internal examination findings (2 photos of soles and palms each, after making an incision to show absence / evidence of any old or deep-seated injury).

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

(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 angles 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 a minimum 10 megapixels should be used.

Note: This protocol supplements the video-filming direction contained in Guideline No. 5 (10 August 1995, as modified on 21 December 2001) by prescribing the pre-autopsy handling and photography specifications specifically for deaths in the course of police action.

8. Guidelines regarding the conduct of Magisterial Enquiry in cases of Death in Custody or in the course of Police Action

I. Conduct of the enquiry. The following guidelines should be followed when conducting a magisterial enquiry into a custodial death or a death in the course of police action.

(i) Magisterial enquiry be conducted at the earliest without undue delay.

(iii) The Enquiry Magistrate should visit the place of occurrence to the 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.

(iv) 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.

(v) 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.

(vi) 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 analyse the post-mortem report; no attempt is made to draw any inference about the genuineness or otherwise of the encounter. The PM report should be thoroughly analysed; if necessary, the help of the 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 the weapon and cartridges, if any, alleged to be used in the incident by the deceased.

(k) Forensic examination report of the 'hand wash' of the deceased.

(l) The fingerprint expert reports on the fingerprint impression available on the weapon alleged to have been used by the deceased.

(vii) The Magistrate should examine family members and relatives of the deceased, eye witnesses having information of the circumstances leading to the 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.

II. 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. The 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 avoid any such incidents in the future.

III. Annexures 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 officials, 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.

Note: This guideline gives operational content to the mandatory magisterial enquiry required by Clause D of Guideline No. 6 (12 May 2010), which separately fixes a three-month outer limit for enquiries into deaths in the course of police action and to the two-month timeline fixed by Guideline No. 4 (3 January 2001) for the conduct and reporting of the enquiry in cases of custodial death generally.

STANDARD OPERATING PROCEDURE (SOP)
TO CONDUCT ENQUIRY IN CASES OF CUSTODIAL DEATH

Applicability: This SOP applies to all authorities and persons involved, at any stage, in a death in custody or in the course of police action namely, the Officer In-Charge of the Police Station and the Investigating Officer; the Jail Superintendent and jail staff; the District Magistrate and the Superintendent of Police; doctors and medical officers conducting the post-mortem examination or otherwise treating the deceased; the Senior Superintendent of Police/Superintendent of Police and the Director General of Police, for reporting in police-action deaths; and the Enquiry Magistrate, who conducts the magisterial enquiry.

A. IMMEDIATE ACTION ON OCCURRENCE (Police / Jail Authorities)

1 – Immediate entry in station diary/jail register

The officer in charge of the police station (or Jail Superintendent) enters the fact of death in the appropriate register, forthwith on occurrence.

***Basis**: D.O. No. 4/7/2008-PRP&P dated 12.05.2010, Clause A.*

2 – Report within 24 hours – whom to report to

The District Magistrate and the Superintendent of Police of the District must intimate the Secretary General, National Human Rights Commission, within 24 hours of the occurrence, or of these officers coming to know of it.

Failure to report promptly gives rise to a presumption of an attempt to suppress the incident.

This 24-hour intimation applies equally to deaths in police custody **AND** deaths in judicial custody.

***Basis**: Notification No. F.No. 40/3/95-LD dated 21.06.1995.*

3 – Police inquest at the spot

The officer in charge holds an inquest at the place of occurrence, records the apparent cause of death and any injuries, and forwards the inquest report to the jurisdictional Magistrate.

***Basis**: Section 194 BNSS / Section 174 CrPC.*

\4 – Additional inquest procedure at the scene

At the time of first examination at the scene, determination of temperature change and development of rigor mortis must be recorded, for accurate estimation of the 'time since death'.

***Basis**: Notification No. NHRC/ID/PM/96/57 dated 27.03.1997.*

5 – Pre-autopsy precautions during body transportation

(i) Both hands of the deceased must be wrapped in white paper bags before transportation, and the body thereafter placed in a special body bag with zip pouches.

(ii) Clothing on the body must **NOT** be removed by the Police or any other person; it must be collected, examined, preserved and sealed by the doctor conducting the autopsy, sent to the concerned Forensic Science Laboratory, and a detailed note on the examination of the clothing must be incorporated in the post-mortem report.

(iii) In alleged firearm deaths, the body must be subjected to radiological examination (X-ray / CT scan) prior to autopsy.

***Basis**: NHRC Video-Photography Guidelines for post-mortem in deaths in police action, para 2.*

6 – Post-mortem examination

Body sent to the nearest civil surgeon or other qualified medical officer for post-mortem examination, wherever practicable, within 24 hours of death; if not practicable, the reasons must be recorded in writing.

The post-mortem report must be prepared in the NHRC Model Autopsy Form and the additional inquest procedure. ***'Both attached herein as Enclosure X and X1'***

***Basis**: Section 196(5) BNSS / Section 176(5) CrPC; Notification No. NHRC/ID/PM/96/57 dated 27.03.1997; D.O. No. 40/1/1999-2000-CD (NRR) dated 03.01.2001, para 1.2.*

B. VIDEO-FILMING OF THE POST-MORTEM EXAMINATION

7 – Video-filming of the post-mortem examination (branches by type of custody)

The requirement of video-filming depends on whether the death occurred in police custody/police action, or in judicial (jail) custody.

***Basis**: Letter dated 10.08.1995, as modified by D.O. No. 3/2/99-PRP&P dated 21.12.2001; NHRC Guidelines for Video-Filming and Photography of Post-Mortem Examination in Deaths in Police Action.*

7A – If the death is in POLICE CUSTODY or in the course of POLICE ACTION

Video-filming of the post-mortem examination is **MANDATORY** in every such case.

The doctor's voice must be recorded, narrating prima facie observations. A total of 20-25 colour photographs covering the whole body must be taken, incorporating the post-mortem number, date and a scale for dimensions within the frame. Camera at right angles to the object; work done by a person trained in forensic photography and videography; digital camera with 10x optical zoom and minimum 10-megapixel resolution.

The cassette/recording is to be sent to the Commission along with the post-mortem report.

***Basis**: Letter dated 10.08.1995, retained in force for police-custody deaths by D.O. No. 3/2/99-PRP&P dated 21.12.2001; NHRC Guidelines for Video-Filming and Photography of Post-Mortem Examination in Deaths in Police Action, para 3.*

7B – If the death is in JUDICIAL (JAIL) CUSTODY

Video-filming of the post-mortem examination is **NOT** mandatory in every case. The Commission has relaxed the requirement on the finding that the majority of deaths reported from jails are attributable to illness aggravated by negligence in providing treatment. Videography is required only in the situations listed below.

***Basis**: D.O. No. 3/2/99-PRP&P dated 21.12.2001, modifying the letter dated 10.08.1995 for deaths in jail.*

7B(i) – If the preliminary inquest by the Magistrate has raised suspicion of foul play

Video-filming of the post-mortem examination is **MANDATORY**.

***Basis:** D.O. No. 3/2/99-PRP&P dated 21.12.2001, clause (i).*

7B(ii) – If a complaint alleging foul play has been made, or there is otherwise a suspicion of foul play

Video-filming of the post-mortem examination is **MANDATORY**.

***Basis**: D.O. No. 3/2/99-PRP&P dated 21.12.2001, clause (ii).*

7B(iii) – If NEITHER of the above conditions is satisfied (jail death with no suspicion of foul play)

Video-filming of the post-mortem examination is **NOT REQUIRED**. Post-mortem report and other records suffice.

***Basis**: D.O. No. 3/2/99-PRP&P dated 21.12.2001, by necessary implication.*

C. FURTHER REPORTING AND INVESTIGATION IN DEATHS DURING POLICE ACTION

8 – Do not delay submission of the post-mortem report, awaiting viscera

Where viscera have been sent for chemical examination, the post-mortem report and other documents are to be sent to the Commission **WITHOUT** waiting for the viscera analysis report.

The viscera analysis report will be sent separately as soon as it is received.

***Basis**: D.O. No. 40/1/1999-2000-CD (NRR) dated 03.01.2001, para 3.*

9 – Was the death in the course of POLICE ACTION or a police encounter?

The next set of steps depends on whether the death was in the course of police action or encounter, since a case-specific reporting mechanism applies in addition to the general procedure.

9A – If YES – death in the course of police action/encounter

Additional obligations apply.

Continue at 10; entries 11 and 20 also apply, in addition to the general procedure from 12 onwards.

9B – If NO – the death is a non-police-action custodial death (e.g. jail death by illness, suicide, undetermined cause)

The 48-hour case-specific report (10), the mandatory handover to an independent agency (11), and the second case-specific report (20) do not apply. The general procedure of magisterial enquiry and prosecution continues to apply.

10 – First case-specific report within 48 HOURS to NHRC (police-action deaths only)

The Senior Superintendent of Police / Superintendent of Police of the District must send a report to the Commission within 48 hours of the death, in the prescribed format, containing:

(1) Date and place of occurrence;

(2) Police station and District;

(3) Circumstances leading to death – (i) self-defence in encounter, (ii) in the course of dispersal of an unlawful assembly, (iii) in the course of effecting arrest, or (iv) any other circumstances;

(4) Brief facts of the incident;

(5) Criminal case number;

(6) Investigating agency.

Basis*: D.O. No. 4/7/2008-PRP&P dated 12.05.2010, Clause G(a).*

11 – Investigation branch – are officers of the SAME police station in the encounter/action party? (police-action deaths only)

The identity of the investigating agency depends on whether the police officers involved in the action belong to the same police station.

11A – If YES – officers of the same police station are members of the encounter/action party

The case is desirable to be made over for investigation to some other independent investigating agency, such as the State CBCID.

Wherever a specific complaint is made against the Police alleging the Commission of a criminal act by them which makes out a cognisable case of culpable homicide, an FIR must be registered under the appropriate provisions, and the case shall **INVARIABLY** be investigated by the State CBCID or another specialised investigation agency.

Basis*: D.O. No. 4/7/2008-PRP&P dated 12.05.2010, Clauses B and C.*

11B – If NO – officers of the same police station are NOT in the encounter/action party (or the death is not police-action related)

The investigation continues by the jurisdictional Police in the usual course, under the scheme of the BNSS / CrPC, subject to the safeguards contained in Section 196 of the BNSS / Section 176 of the CrPC.

Basis: *Section 196 BNSS / Section 176 CrPC.*

D. MAGISTERIAL ENQUIRY (TO BE CONDUCTED BY THE ENQUIRY MAGISTRATE)

From this point on, every entry is to be conducted, directed, or supervised by the Judicial Magistrate to whom the enquiry has been entrusted.

12 – Magisterial enquiry – MANDATORY in every custodial death

A magisterial enquiry by the Judicial Magistrate must invariably be held in every case of death in custody or in the course of police action, in **ADDITION** to the inquiry or investigation held by the Police.

The next of kin of the deceased must **INVARIABLY** be associated in the enquiry.

The enquiry is conducted by the Magistrate within whose local jurisdiction the offence has been committed.

Note: As and when the notice/intimation is received by the concerned Magistrate, a Miscellaneous Case proceeding shall be initiated, and the same shall be entered in the order sheet.

Basis*: Section 196(2) BNSS / Section 176(1A) CrPC; letter dated 02.12.2003, Clause D; D.O. No. 4/7/2008-PRP&P dated 12.05.2010, Clause D.*

13 – Letter to Jail Superintendent – call for documents and list of persons (Only if death in Judicial Custody)

The Enquiry Magistrate shall write to the Jail Superintendent for furnishing all details and documents related to and regarding the death of the prisoner.

A. Documents to be furnished:

(a) Correspondence done with DC, SSP, NHRC, SHRC and others;

(b) Post-mortem report along with CD of videography, inquest report, inquiry report of inquiry conducted by the Executive Magistrate, and UD Case (if registered) related documents;

(c) Admission of an undertrial prisoner in jail and related documents;

(d) Previous medical history related documents of the deceased;

(e) Admission, Bed Head Ticket, and referral-related documents at the Jail Hospital;

(f) Jail entry register, and proforma for Health Screening of Prisoners on Admission to Jail;

(g) Undertrial prisoner register;

(h) Copy of the jail register mentioning the entry of referral of the inmate to a Higher Medical Centre;

(i) Admission of the deceased and other related documents of the Higher Medical Centre;

(j) Names, along with addresses, of doctors who attended and treated the prisoner while admitted in the Higher Medical Centre;

(k) Names, along with addresses, of doctors who attended and treated the prisoner while admitted in any other hospital in the city;

(l) Any other documents relevant to the death of the prisoner.

B. List and details of persons to be furnished:

i. List of family members with present address, and separately of those family members who used to visit the jail;

ii. Inmates with whom the deceased used to meet;

iii. Neighbouring inmates of the cell;

iv. Guard on duty in the cell;

v. Wardens on duty;

vi. Hospital staff, including the in-charge of the Ward, doctors who treated the deceased at the Jail Hospital, and the doctor who referred him to the Higher Medical Centre;

vii. Inmates who were on duty in the cell on the fateful day when the incident took place, and also when the deceased was referred out;

viii. PLVs, Jailor, Superintendent, and others on duty;

ix. Names of doctors who conducted the post-mortem and who declared the deceased dead;

x. Any other expected witnesses.

Basis*: NHRC Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of Police Action, Part I(v) and (vi).*

14 – Conduct of enquiry – site visit and public notice

(i) The magisterial enquiry must be conducted at the earliest, without undue delay.

(ii) The Enquiry Magistrate must visit the place of occurrence to acquaint himself/herself with the facts on the ground; identify natural witnesses likely to have been present at the scene; take them into confidence; record their statements. Where family members narrate a motive attributed to the Police, that motive must be thoroughly investigated for its veracity.

(iii) A public notice must be issued through vernacular newspapers to inform the concerned witnesses. The Enquiry Magistrate must ensure that the information reaches all concerned, particularly the close relatives of the victim. Relatives must be given a free and fair opportunity while their statements are recorded.

Basis*: NHRC Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of Police Action, Part I(i)-(iii).*

15 – Scope of the enquiry

The magisterial enquiry must 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 or omission on the part of public servants that contributed to the death;

(f) Adequacy of medical treatment provided to the deceased.

Basis*: NHRC Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of Police Action, Part I(iv)(a)-(f).*

16 – Records to be examined and verified

The Enquiry Magistrate must examine and verify:

(a) Inquest report;

(b) Post-mortem report – to be **THOROUGHLY** analysed; the Enquiry Officer must draw inferences on the genuineness or otherwise of the encounter; assistance of the State Forensic Science Laboratory to be taken if necessary;

(c) Viscera analysis report;

(d) Histopathological examination report;

(e) Final cause of death;

(f) MLC report / initial health-screening report of the prisoner (on admission to jail);

(g) Medical treatment records;

(h) Inquiry / investigation report of the Police;

(i) FIR / General Diary entries / other relevant police records;

(j) Ballistic examination reports of any weapon and cartridges alleged to have been used;

(k) Forensic examination report of the 'hand wash' of the deceased;

(l) Finger-print expert report on impressions on the weapon alleged to have been used.

Basis*: NHRC Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of Police Action, Part I(v)(a)-(l).*

17 – Persons to be examined

The Enquiry Magistrate must examine: family members and relatives of the deceased; eye-witnesses having information of the circumstances leading to death or encounter; doctors who conducted the post-mortem or provided treatment; concerned police / prison officials; independent witnesses; co-prisoners; and other relevant persons.

Basis*: NHRC Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of Police Action, Part I(vi).*

18 – Preparation of the Magisterial Enquiry Report (MER)

The MER must contain: the gist of statements recorded; documents examined; discussion on allegations proved or not proved; and the grounds on which the conclusion has been arrived at.

The MER must also contain a specific and definite opinion on:

(i) the circumstances leading to death;

(ii) whether the use of force was justified and the action taken lawful;

(iii) the act of Commission or omission on the part of public servants, with the names and designations of officials responsible for the death or its cause specifically indicated;

(iv) suggested systemic changes or improvements to avoid recurrence.

Annexures: (a) statements of family members, doctors, police / prison officials, co-prisoners, independent witnesses, and other relevant persons; (b) all external reports relied upon.

***Basis**: NHRC Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of Police Action, Parts II and III.*

E. REPORTING TIMELINES AND ACCOUNTABILITY

19 – Submission of PM report, videograph and MER to NHRC – timeline

The post-mortem report, the videograph of the post-mortem examination, and the Magisterial Enquiry Report must be sent to the Commission within **2 MONTHS** of the incident.

***Basis**: D.O. No. 40/1/1999-2000-CD (NRR) dated 03.01.2001, para 1.1.*

20 – Second case-specific report within 3 MONTHS to NHRC (police-action deaths only)

The Senior Superintendent of Police / Superintendent of Police must send a second report to the Commission within three months of the death, enclosing:

1. Post-mortem report;
2. Inquest report;
3. Findings of the magisterial enquiry or enquiry by senior officers, disclosing –
   - **(i)** names and designation of any police official found responsible for the death;
   - **(ii)** whether use of force was justified and the action taken lawful;
   - **(iii)** result of the forensic examination of the 'hand wash' of the deceased, to ascertain the presence of gunpowder residue justifying exercise of the right of self-defence;
   - **(iv)** Report of the ballistic expert on examination of the weapons alleged to have been used by the deceased and his companions.

***Basis**: D.O. No. 4/7/2008-PRP&P dated 12.05.2010, Clauses D and G(b).*

21 – Prompt prosecution and disciplinary action

Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry or the police investigation.

***Basis**: D.O. No. 4/7/2008-PRP&P dated 12.05.2010, Clause E.*

22 – No premature promotion or gallantry reward

No out-of-turn promotion or instant gallantry reward shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given or recommended only when the gallantry of the officer is established beyond doubt.

Basis*: D.O. No. 4/7/2008-PRP&P dated 12.05.2010, Clause E.*

MODEL ORDER SHEET FORMAT

Schedule XLII

No. (J) 9(a) [Old Form (M) No. 164]

Before the Enquiry Officer,

[Designation of Magistrate], [Jurisdiction / Location]

Judicial Enquiry

Miscellaneous Case No. _____

Death of [Name of Deceased], [S/o / D/o / W/o] [Name of Parent / Spouse]

Sr. No.	Date of order of proceeding	Order with the signature of the Court	Office action taken with date
1	2	3	4
1	[Date]	Received Order No. [___/____] dated [DD-MM-YYYY] from the office of the [Ld. Principal District Judge], [Jurisdiction/Location], issued in light of Letter No. [___] dated [DD-MM-YYYY] from the office of the [District Magistrate/Superintendent of Police], by which the undersigned has been deputed to conduct the enquiry into the death of [Name of Deceased], [S/o/D/o/W/o] [Name of Parent/Spouse], [Convict/Undertrial Prisoner/Accused/Person in Police Custody], in [case reference, e.g. ST No. ___/____ corresponding to GR No. ___/____, [Police Station] P.S. Case No. ___/____] [OR, for deaths in police custody or in the course of police action: who died on [date], in the custody of/in the course of action by [Police Station], District [___]]. Seen.	

		Accordingly, this Miscellaneous Case No. [___] of [Year], and the proceedings be initiated accordingly. Put up on for further proceedings on []. Written/Dictated. *([Signature of Enquiry Magistrate])*	
2	[Date]	Record put up today. From perusal of the records including the inquest report, the FIR/UD Case No. [___/____] registered at [Police Station], and the [death intimation/first information], it is found that the deceased was a resident of Village – [___], P.S. – [___], District – [___]. As the permanent residence of the deceased is in [___], let a communication be issued to the Officer In-Charge, [Police Station] of the said jurisdiction, requesting that the members of the family of the deceased be informed of the pendency of this enquiry, without the use of any forceful words or gestures, and be requested to appear before this Court to make their submissions, if any. Further, let notices be issued to **i.** the Jail Superintendent/Officer In-Charge, [Police Station], for production of the records enumerated in the accompanying notice [and for personal attendance, if considered necessary] or to disclose the names of the witnesses (e.g. inmates, jail officials, constables, etc.); and **ii.** the Medical Officer/Jail Doctor concerned, for personal attendance and production of the records enumerated in the accompanying notice, or for their evidence	

		on [next date]. Put up on [next date] for [the place of occurrence/the barrack/cell in which the deceased was last seen alive/the Jail Hospital] visit and for compliance with the notices. Written/Dictated. *([Signature of Enquiry Magistrate])*	
3	[Date]	Today is the date fixed for [the place of occurrence/the barrack/cell in which the deceased was last seen alive/the Jail Hospital] visit. Visited the [the place of occurrence/the barrack/cell in which the deceased was last seen alive/the Jail Hospital]. *[**Note**: The Enquiry Magistrate shall record his/her own observations of the visit including the physical condition of the barrack/cell, the location of the point where the incident is said to have occurred, the state of the CCTV coverage, if any, the arrangement of the Jail Hospital, and any other feature noticed on the spot that has a bearing on the enquiry.]* Put up on [next date]. Written/Dictated. *([Signature of Enquiry Magistrate])*	
4	[Date]	Record put up today. The [Jail Superintendent / Officer-in-Charge, [Police Station] / Jail Doctor / Medical Officer] has furnished the records called for, including [the jail entry register/undertrial prisoner register/health-screening proforma on admission/Bed Head Ticket/medical	

		treatment records/inquest report/videograph of the post-mortem examination, where applicable], together with the list of persons whose particulars were called for. The records so furnished have been placed on the enquiry file. No witness in attendance. Let a letter be issued to the Officer In-Charge, [Police Station] to communicate the pendency of these proceedings to the family along with a public notice through the vernacular newspapers to inform the concerned witnesses of the pendency of the enquiry, particularly the close relatives of the deceased. Let notices be issued to [co-prisoners/independent witnesses] for personal attendance and production of the records enumerated in the accompanying notices, on [next date] and for recording of statements. Written/Dictated. *([Signature of Enquiry Magistrate])*	
5	[Date]	Record put up today. The witnesses in response to the notices issued are in attendance. The statements of [jail officials/police officials/co-prisoners/independent witnesses] namely [Name 1], [Name 2], [Name 3], and [Name 4] have been duly recorded, [in camera, wherever required], read over to them, and signed/thumb-impressed by each of them. Their statements are placed on record. Put up on [next date] for examination of other witness.	

		Written/Dictated. *([Signature of Enquiry Magistrate])*	
6	[Date]	The record is fixed for the evidence of the witnesses, namely: **i.** _____ (Family members) **ii.** _____ (Inmates, etc) The statements of the above-mentioned witness are duly recorded, read over to them, and signed by them. Put up on [next date] for examination of other witness. Written/Dictated. *([Signature of Enquiry Magistrate])*	
7	[Date]	The doctor(s) who conducted the post-mortem examination of the deceased [Name] are in attendance. The statements of **i.** Dr. [Name 1], [Designation, Department, Institution]; **ii.** Dr. [Name 2], [Designation, Department, Institution]; and **iii.** Dr. [Name 3], [Designation, Department, Institution], are duly recorded, read over to them, and signed by them. On perusal of the record, it appears that a total of [___] witnesses has been examined in the course of this enquiry, particulars whereof are as follows: (A) Family members – [__] in number; (B) [Jail inmates/co-prisoners/independent witnesses] – [__] in number;	

		(C) Doctors – [__] in number; (D) [Other reports obtained – e.g. one detailed report from the Jail Doctor/Medical Officer has been obtained]. The enquiry appears to have been completed on every relevant aspect, let this matter be put up on [next date] for final report. Written/Dictated. *([Signature of Enquiry Magistrate])*	
8	[Date]	Today, this enquiry is fixed for the final report. The Magisterial Enquiry Report, running into [___] pages, has been prepared and is signed today. Accordingly, the enquiry stands disposed of. Let the order sheet, all documents on record, and the final report be transmitted to the Ld. Principal District Judge, [Jurisdiction/Location], for such further orders/action as may be deemed fit. Written/Dictated. *([Signature of Enquiry Magistrate])*	

***Note**: Where the death is in police custody or in the course of police action, serial no 2 of the order sheet (letter to Jail Superintendent) does not apply; instead, the Enquiry Magistrate should call for records from the Officer In-Charge of the concerned police station and, where officers of the same police station were involved, verify that investigation has been handed over to an independent agency such as the State CID/CBCID before proceeding further with the enquiry.*

MODEL ENQUIRY REPORT FORMAT

BEFORE THE ENQUIRY OFFICER,

[Name of Magistrate], [Designation of Magistrate], [Jurisdiction / Location]

Miscellaneous Case No. _____

Enquiry Report

Deceased [Convict / Undertrial / Accused] [Name] [S/o/D/o/W/o] [Parent's/Spouse's Name] [Convict/Undertrial/Accused] in [ST/GR No. ___/____] –
[Police Station] P.S. Case No. [___/____]

1. **Introduction**

In the present case, [Convict / Undertrial Prisoner / Accused / Person in Police Custody] namely [Name of Deceased] [@ alias, if any] [S/o / D/o / W/o] [Name of Parent / Spouse], resident of Village – [___], P.S. – [___], District – [___], was lodged in [Jail / Custody] at [___] in connection with [ST/GR/Complaint No. ___/____], corresponding to [Police Station] P.S. Case No. [___/____]. That the [convict / undertrial / accused] was [convicted for / facing trial for / accused of] the offence(s) under Section(s) [___] of the [Indian Penal Code / Bharatiya Nyaya Sanhita] [and Section(s) ___ of any other applicable enactment].

That on [date], the [convict / undertrial / accused / person in custody] [reportedly died due to medical complications while under treatment at [___] / developed medical complications and was found unconscious in [barrack/cell/place] and was declared brought dead at [___] / died in the course of police action at [place]]. That vide Order No. [___] dated [DD-MM-YYYY] of the office of [Ld. Principal District Judge / Judicial Commissioner], [Jurisdiction], the undersigned was entrusted to conduct enquiry into the death of the [convict / undertrial / accused]. The detailed enquiry report is as under.

2. **Methodology**

   A. **Visit to the [Jail / Barrack / place of occurrence]:** In order to conduct the enquiry, a visit was undertaken to [name of jail / place] and to [Jail Hospital / barrack number ___ / place of occurrence] where the deceased was lodged [for some time / at the time of the incident].

B. **Examination of CCTV footage [if available]:** The CCTV footage of the [relevant period, e.g. night of ___ to ___] was examined thoroughly. [Video footage enclosed separately in a pen drive / NIL, no CCTV footage was available.]

C. **Examination of inmates:** In a separate room provided by the jail authority, the fellow inmates of the deceased were examined in camera. [Where the number of inmates was high, state:] After a general enquiry, inmates who were seen to be acquainted with, or in the company of, the deceased were examined specifically, and their examination was noted down, read over to them, whereon they signed / put their thumb impression. *Their statements are enclosed separately.*

D. **Examination of jail officials:** The jail officials, including the [Jailor / dafa-in-charge / compounder / guard on duty, etc.], were examined in camera, and their examination was noted down, read over to them, whereon they signed. *Their statements are enclosed separately.*

E. **Examination of family member(s) of the deceased:** [Name and relationship, e.g. the son/wife/next of kin] of the deceased was examined *in camera*, and the examination was noted down, read over to them, whereon they put their signature. *Their statement is enclosed separately.*

F. **Examination of the team of doctors who conducted the post-mortem**: All the doctors who were members of the post-mortem team were examined. Their statements are enclosed separately.

G. **Obtaining the status of UD Case No. [/] / FIR No. [/]:** The present status, as communicated by the Officer In-Charge of [Police Station], is enclosed separately.

The list of all persons acquainted with this case / enquiry is set out below and annexed separately.

3. Witnesses Examined

A. Family member of deceased	
(i)	[Name] – [Relationship] of deceased [Name]
B. Jail inmates	
(i)	[Name] – Jail inmate [of barrack number ___ / cousin of the deceased, etc.]

(ii)	[Name] – Jail inmate
C. *Jail officials*	
(i)	[Name] – [Jail Doctor / Jailor / Compounder / Constable, name of Jail
D. Doctors / Members of Medical Board	
(i)	Dr. [Name] – [Designation / Department / Institution]
E. Officer In-Charge / Investigating Officer at [Name of Police Station] overseeing the UD Case / FIR [No.]	
(i)	[Name, Rank], [Police Station] – written submission enclosed

4. Summary of depositions of witnesses:

EW1: _____,

EW2: _____,

EW3: _____,

and so on.

5. Medical Reports Perused

Sr. No.	Document
(i)	Death Certificate [vide registration number ___, if applicable]
(ii)	Inquest Report
(iii)	Post-Mortem Report
(iv)	Viscera Report [if applicable]
(v)	Histopathological Report [if applicable]
(vi)	Final Opinion as to Cause of Death
(vii)	Medical history of the deceased / MLC / Health-screening report on admission

6. Electronic Evidence

(i) [CCTV / video footage of ___, enclosed in a pen drive / NIL]

7. Finding

After completion of the examination of, and interaction with, all persons acquainted with the present case, the entire material was thoroughly perused. [State the overall development of the enquiry in a short introductory sentence before proceeding to the detailed finding below.]

Alternative A – where the evidence is consistent and points to a natural death

The development of the enquiry showed that the deceased had been ill and suffering from [disease/condition] from around the time of admission to [Jail]. That on the day of admission, i.e. on [date], upon initial medical screening, the deceased was diagnosed with [symptoms/condition] and was admitted to the jail hospital the same day. That the deceased was frequently referred to [Hospital 1] and also to [Hospital 2] [and to Hospital 3]. However, despite continued medical treatment, the medical condition of the deceased did not improve, and the deceased died at [Hospital] while under treatment, due to [disease(s)/organ(s) affected].

(I) During the enquiry, the family member(s) of the deceased were examined. [Name], [relationship] of the deceased, stated that prior to admission in jail, the deceased had [pre-existing medical ailments / no known ailments], [and had been operated upon for ___, if applicable]. When enquired about any difficulty faced in jail – whether related to medical treatment, food, or any ill-treatment by jail officials or fellow prisoners – the witness stated that the deceased never complained of any such problem. [State similarly for any other family members or fellow convicts examined, if applicable.]

(II) The jail doctor and [other jail officials] were examined. Dr. [Name] stated the sequence of the deceased's admission, diagnosis, and treatment history in detail, including the dates of referral to outside hospitals and the diagnoses recorded on each occasion, culminating in the circumstances and cause of death as recorded in the medical records. The medical history of the deceased, as submitted by the jail doctor, is enclosed separately with this report.

(III) Later, the team of doctors who conducted the post-mortem was examined. Dr. [Name] stated that there was no external injury or evidence of pressure over the neck or mouth [or

as the case may be], and that in [his/her] considered view the death was due to [disease(s)/organ(s) affected]; the remaining doctors concurred with the opinion expressed in the post-mortem report. The histopathological report and the final opinion as to cause of death were also obtained during the enquiry and are consistent with the post-mortem findings.

(IV) Lastly, the Officer In-Charge of [Police Station], where UD Case No. [___/____] pertaining to the death of the deceased was registered, has stated in the written submission that [status of the UD case], and has not reported anything suspicious in relation to the death.

Alternative B – where the medical opinion contradicts the oral / electronic evidence

The development of the enquiry showed a contradiction between the medical opinion/post-mortem report on the one hand, and the statements of [family member(s)], fellow jail inmates, jail officials, and [the video footage of the relevant period] on the other. The extent of the contradiction raised the necessity of examining the present position of law on the point, while bearing in mind that this enquiry is not in the nature of a trial as conducted in a court of law.

(I) On a careful examination of the context and events leading to the death, it is found that the post-mortem report and the opinion of the doctors who conducted the post-mortem contradict the oral testimony of [family member], the fellow prisoners / inmates, and [the video footage of events in the barrack on the night in question].

(II) The witnesses at paragraphs 3(B) to 3(E) above – jail officials, jail inmates, the family member of the deceased, and the Investigating Officer – have not stated or indicated anything to suggest that the deceased had been subjected to any injury, assault, or criminal force, and have not stated anything suspicious with regard to the death. [Summarise, if applicable, the consistent account of the fellow inmates as to the deceased's condition through the relevant period, and the point at which the deceased's condition is said to have deteriorated.]

[Where CCTV footage is available, summarise the timeline shown in the footage in detail – e.g. the deceased's condition and conduct hour by hour, the point of first visible discomfort, any medication administered, and the point of collapse and removal for medical

attention – noting whether the footage shows the deceased being subjected to any injury or criminal force by any person.]

(III) However, the doctors who conducted the post-mortem have opined that the cause of death is [e.g. asphyxia as a result of pressure over the neck], that the injury is ante-mortem in nature and could not be self-inflicted [or caused in the manner suggested by the oral evidence], and [state any further findings, e.g. congestion of the brain, spotting of blood over the larynx and tracheal mucosa, etc., with the doctors' explanation of the medical implication of such findings].

(IV) As is evident from paragraphs (II) and (III) above, the medical report and the opinion of the doctors who conducted the post-mortem contradict the oral testimony of the witnesses and the electronic evidence, if any.

In this context, upon a review of the leading case law, commentaries, and guidelines on the point, it is found that where ocular evidence is inconsistent with the medical/post-mortem report, the medical evidence, being expert evidence, ordinarily carries greater weight; however, there is no irrebuttable presumption that a medical officer is always a witness of truth, and the medical testimony must be evaluated and appreciated in the same manner as the testimony of any other witness.

[Reference may be made, subject to verification of continuing validity and applicability to the facts at hand, to Chimanbhai Ukabhai v. State of Gujarat, AIR 1983 SC 484, where it was held that medical evidence is ordinarily corroborative in nature, and that unless it completely rules out all possibility of the injuries occurring in the manner alleged by eyewitnesses, the eyewitness testimony cannot be discarded merely on the ground of inconsistency with the medical evidence.]

8. Discussion on Allegations (Proved / Not Proved)

[List each specific allegation made by the family, any witness, or otherwise appearing on the record – e.g. allegation of assault, denial of treatment, delay in referral, ill-treatment by a named official and state, allegation by allegation, whether it is found proved, not proved, or not established, with brief reasons. Where no specific allegation was made by anyone during the enquiry, state so expressly.]

Note: If the enquiry discloses no finding of foul play, custodia..

l torture, or negligence, it is not necessary to summarise the depositions of the witnesses in this section. Where, however, the enquiry discloses a finding of foul play, custodial torture, or negligence, the relevant portions of the depositions of the witnesses shall be discussed here, in brief, so as to indicate the basis on which the allegation has been held proved or not proved.

Alternative A – where no specific allegation is made

No specific allegation of assault, ill-treatment, or negligence was made by the family of the deceased, the fellow inmates, or any other witness examined during the enquiry. Accordingly, no allegation falls for determination as proved or not proved.

Alternative B – where a specific allegation is made and examined

It was alleged by [name/relationship] that [state the allegation, e.g. the deceased was denied timely medical attention on [date]]. On examination of [the relevant witnesses/records – e.g. the medical treatment records at Section 4, the statement of the jail doctor], the undersigned finds this allegation to be [proved / not proved / not established for want of sufficient material], for the reason that [state reasons].

9. Opinion as to Use of Force and Lawfulness of Action

Alternative A – where the death is not attributable to any use of force

On the material before the undersigned, no force of any kind was used upon the deceased by any police official, jail official, or other person in authority. The question of justification for use of force, and of the lawfulness of any action taken, therefore, does not arise on the facts of this enquiry.

Alternative B – where the death is, or may be, attributable to the use of force

On the material before the undersigned, [describe the force/action in question, e.g. the use of force during the encounter / the restraint applied to the deceased]. It is the opinion of the undersigned that such use of force was [justified, being in the exercise of the right of private defence / covered by Section [___] BNSS / NOT justified, for the reason that [state reasons]], and that the action taken was [lawful / not lawful], for the reasons recorded in the Finding above.

10. Officials Responsible

Alternative A – where no official is found responsible

On the material before the undersigned, no police official, jail official, medical officer, or other public servant is found responsible for the death of the deceased or its cause.

Alternative B – where an official is found responsible

On the material before the undersigned, [Name, designation, and posting of the official] is found responsible for [the death of the deceased / the act or omission contributing to the death of the deceased], for the reasons recorded in the Finding above.

11. Conclusion

Before concluding, it is important to note that since the present enquiry is not in the nature of a trial as conducted in a court of law, the material collected during the enquiry cannot be tested on the same touchstone as evidence in a trial.

Alternative A – natural death

On the basis of the statements of the witnesses, including the family member(s), the fellow inmates, the medical reports including the post-mortem report, and the opinion of the doctors who conducted the post-mortem and the final opinion as to cause of death, the undersigned is of the opinion that in the present case, the deceased [Name] died in the natural course due to [disease(s)/condition(s)].

Alternative B – contradiction / cause not conclusively natural

On the basis of the statements of the witnesses, the electronic evidence [if any], the medical reports including the post-mortem report, the opinion of the doctors who conducted the post-mortem, and the position of law touching upon the contradiction noted above, the undersigned is of the opinion that the alternative possibilities as to the cause of death indicated by the medical evidence cannot be ruled out, but the same cannot be accepted as conclusive either. As the death of the deceased does not appear to be a natural one on the totality of the material before the undersigned, a proper investigation into the case would be necessary.

12. Suggested Systemic Improvements (if any)

[***This section is discretionary.*** Where the enquiry discloses a systemic gap that may have contributed to, or failed to prevent, the death, the Enquiry Magistrate may suggest changes or improvements to avoid recurrence – for example, improved medical screening on admission, additional CCTV coverage of barracks/cells, staffing of jail hospitals, protocols for referral to higher medical centres, or sensitisation of custodial staff. Where no such suggestion is considered necessary, state so expressly.]

Alternative A – no suggestion considered necessary

On the material before the undersigned, no systemic gap contributing to the death is identified, and no suggestion for systemic change is considered necessary in this case.

Alternative B – suggestion made

The undersigned suggests that [state the specific systemic change or improvement, e.g. periodic medical screening of prisoners with chronic ailments be intensified, or CCTV coverage of the barrack be upgraded and monitored centrally], with a view to preventing recurrence of similar incidents.

13. Compliance with Timeline for Submission of Report

The death occurred on [date]. This Report, together with the post-mortem report and the videograph of the post-mortem examination [where applicable], is submitted on [date], which is within/beyond the two-month period prescribed by the National Human Rights Commission [three months, in the case of a death in the course of police action]. [Where the Report is submitted beyond the prescribed period, state the reasons for the delay.]

14. Annexures

The following are annexed to this Report:

(a) Statements of the family member(s)/relatives of the deceased recorded during the enquiry;

(b) Statements of the doctors who rendered medical treatment to, or conducted the post-mortem examination of, the deceased;

(c) Statements of the concerned police/prison officials examined during the enquiry;

(d) Statements of co-prisoners and independent witnesses, if any, examined during the enquiry;

(e) The post-mortem report, together with the videograph/CD of the post-mortem examination [where video-filming was mandatory or was in fact undertaken];

(f) The inquest report, viscera analysis report, histopathological report, and the final opinion as to cause of death;

(g) The medical history, MLC, and health-screening report of the deceased on admission to custody;

(h) The electronic evidence, if any (e.g. CCTV footage), in the medium in which it is preserved;

(i) All other external reports referred to or relied upon in this Report, including the written submission of the Officer In-Charge / Investigating Officer.

Dictated and Corrected

([Signature of Enquiry Magistrate])

Date: _____

MODEL LETTERS FOR EVIDENCE

A. For Personal Attendance and/or Production of Documents/Material Objects

Applicable to: Doctor/Medical Officer, Jail Superintendent, Station House Officer, Police Official, Prison Guard, or any other officer whose evidence or custody of records is required

Letter Number [Insert Number]/[Year]

From: [Name of Judicial Magistrate]
[Designation of Magistrate]
[Jurisdiction/Location]

To,
[Name of Addressee]
[Designation/Capacity – *see Note A(1) below*]
[Institution/Facility/Address]

Subject: Regarding enquiry into death of [Convict/Undertrial Prisoner/Accused/Person in Police Custody] [Name of Deceased], [S/o/D/o/W/o] [Name of Parent/Spouse]

Reference: Office Order Number [Insert Order Number] dated [Insert Date] of the Office of [Ld. Principal District Judge/District Magistrate], [Insert District Name]

Dated: [Insert Date of Summons]

Sir/Madam,

In reference to the captioned subject, a judicial enquiry is underway before the Undersigned vide Order Number [Insert Order Number] dated [Insert Date] of the Office of [Ld. Principal District Judge/District Magistrate], [Insert District Name].

In connection with the above, it has been found that you [insert capacity clause – ***see Note A(1) below***] in relation to the deceased [Name of Deceased]. For the purpose of the said enquiry, your presence is required before the Und0ersigned at [Location of Court], on [Date of Appearance] at [Time], to truthfully state all facts known to you regarding the sequence of events or to produce [insert documents/material objects to be produced – ***see Note A(2) below***].

Kindly treat this as urgent. In case of need of any clarification, please contact the office of the undersigned at [Insert Contact Number].

Yours sincerely,

[Name of Magistrate]

[Designation of Magistrate]

Enclosure: *As above*

Note A (1) — Capacity clause, by addressee

Addressee	**Insert in place of "[insert capacity clause]"**
Doctor/Medical Officer	were one of the members who conducted the post-mortem examination of / provided medical treatment to the deceased
Jail Superintendent	were the officer in charge of the facility where the deceased was lodged
Station House Officer	were the officer in charge of the police station in whose jurisdiction, or custody, the deceased was held
Police Official/Prison Guard	were on duty, or otherwise associated with the custody of the deceased, on the fateful day
Any other officer	[state the specific capacity in which the officer is connected with the custody, treatment, or death of the deceased]

Note A (2) — Documents/material objects to be produced, by addressee

Addressee	**Insert in place of "[insert documents/material objects to be produced]"**
Doctor/Medical Officer	the original post-mortem report and the medical treatment records of the deceased.
Jail Superintendent	the jail entry register, the undertrial prisoner register, the health-screening proforma, the medical history and treatment records, the Bed Head Ticket, and the correspondence exchanged with the DC/SSP/NHRC/SHRC relating to the deceased.
Station House Officer	the FIR, the General Diary entries, the arrest memo, and other police records relating to the custody and death of the deceased, together with the original CD/recording of the videography of

	the post-mortem examination, where the death occurred in police custody or in the course of police action.
Police Official/Prison Guard	the duty logs, the General Diary entries, and any other official record in their possession relating to the deceased
Any other officer	[list the specific documents or material objects relevant to that officer's connection with the case]

Note: The documents and enclosures listed in each of these model letters are illustrative, not exhaustive.

B. For Personal Attendance to Depose

Applicable to: Family member/relative of the deceased, independent eyewitness, or co-prisoner

Letter Number [Insert Number]/[Year]

From: [Name of Judicial Magistrate]
[Designation of Magistrate]
[Jurisdiction/Location]

To,
[Name of Addressee]
[Relationship to deceased / Cell-Ward Number or address — *see Note B (1) below*]
[Address/Location/Jail]

Subject: Regarding enquiry into death of [Convict/Undertrial Prisoner/Accused/Person in Police Custody] [Name of Deceased], [S/o/D/o/W/o] [Name of Parent/Spouse]

Reference: Office Order Number [Insert Order Number] dated [Insert Date] of the Office of [Ld. Principal District Judge/District Magistrate], [Insert District Name]

Dated: [Insert Date of Summons]

Sir/Madam,

In reference to the captioned subject, a judicial enquiry is underway before the Undersigned vide Order Number [Insert Order Number] dated [Insert Date] of the Office of [Ld. Principal District Judge/District Magistrate], [Insert District Name].

In connection with the above, it has been found that you [insert capacity clause – ***see Note B (1) below***] in relation to the deceased [Name of Deceased]. For the purpose of the said enquiry, your presence is required before the Undersigned at [Location of Court], on [Date of Appearance] at [Time], to record your statement and truthfully state all facts known to you regarding the circumstances of the death.

Kindly treat this as urgent. In case of need of any clarification, please contact the office of the undersigned at [Insert Contact Number].

Yours sincerely,
[Name of Magistrate]
[Designation of Magistrate]

Enclosure*: As above*

Note B (1) — Capacity clause, by addressee

Addressee	Insert in place of "[insert capacity clause]"
Family member/relative	are the next of kin/family member of the deceased
Independent eyewitness	were present at the scene of occurrence and witnessed the circumstances of the death, or events immediately connected with it
Co-prisoner	were lodged in the same cell/ward as, or were otherwise in the company of, the deceased during the relevant period of custody

Note on production of co-prisoners: Since a co-prisoner remains in custody, this summons should ordinarily be routed through, and enclosed with, a forwarding letter addressed to the Jail Superintendent, requesting that the named co-prisoner(s) be produced, securely and at the Court's convenience, on the date and time specified above.

MODEL LETTERS / NOTICES

Letter 1 – Initial Intimation of Custodial Death within 24 Hours

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Applicability: Every custodial death – police custody AND judicial custody

To be sent within: 24 hours of occurrence, or of the authority concerned coming to know of it

Basis: *Notification No. 66/SG/NHRC/93 dated 14.12.1993 (24-hour intimation); F.No. 40/3/95-LD dated 21.06.1995 (extension to judicial custody deaths).*

Reference No.: [___/____] **Date: [DD-MM-YYYY]**

From,

[District Magistrate / Superintendent of Police],
[District]

To,

The Secretary General,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex,
INA, New Delhi – 110023

Copy to: The Chairperson, [State] Human Rights Commission [where constituted]

Subject: Intimation of death of [Name] in [police / judicial] custody within 24 hours of occurrence

Sir/Madam,

It is respectfully submitted for the information of the Commission that

1. [Name], [S/o/D/o/W/o] [Parent's/Spouse's Name], aged about [__] years, [convict/undertrial prisoner/accused/person in police custody], lodged at [Police Station lock-up / Jail], [District], died on [date] at about [time] hours, at [place of death].
2. The apparent cause of death, as per the police inquest / preliminary information available at this stage, is [___].

3. FIR / UD Case No. [___/____] has been registered at [Police Station], and post-mortem examination has been arranged to be conducted at [name of hospital/institution] on [date].
4. A Magisterial Enquiry under Section 196(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 [corresponding to Section 176(1A) of the erstwhile Code of Criminal Procedure, 1973] [has been / is being] entrusted to [Name and Designation of Enquiry Magistrate].
5. Further reports, including the post-mortem report, the videograph of the post-mortem examination [where applicable], and the Magisterial Enquiry Report, shall follow within the timeline prescribed by the Commission.

This intimation is submitted within 24 hours of the occurrence / of the undersigned coming to know of the same, in compliance with the Commission's directions.

Yours sincerely,

([Signature])

[Name and Designation]

Letter 2 – First Case-Specific Report within 48 Hours

Applicability: Deaths in the course of POLICE ACTION or police encounter ONLY

To be sent within: 48 hours of the death

Basis: *D.O. No. 4/7/2008-PRP&P dated 12.05.2010, Clause G(a).*

Reference No.: [___/____] **Date: [DD-MM-YYYY]**

From,

[District Magistrate / Superintendent of Police],
[District]

To,

The Secretary General,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex,
INA, New Delhi – 110023

Copy to: The Chairperson, [State] Human Rights Commission [where constituted]

Subject: First report regarding death of [Name] in the course of police action / encounter, within 48 hours

Sir/Madam,

In compliance with the directions of the Commission contained in D.O. No. 4/7/2008-PRP&P dated 12.05.2010, the following report is submitted regarding the death of [Name] in the course of police action / a police encounter on [date]:

(1) Date and place of occurrence: [___]

(2) Police Station and District: [___]

(3) Circumstances leading to death: [self-defence in encounter / in the course of dispersal of an unlawful assembly / in the course of effecting arrest / any other circumstances – specify]

(4) Brief facts of the incident: [___]

(5) Criminal Case No.: [___/____]

(6) Investigating agency: [___]

This report is submitted within 48 hours of the death. A further report, along with the post-mortem report, inquest report, and findings of the magisterial enquiry, shall be submitted within three months, as required.

Yours sincerely,

([Signature])

[Name and Designation]

Letter 3 – Enquiry Magistrate to the Office of the Principal District and Sessions Judge (on completion of enquiry)

Applicability: Every custodial death enquiry: police custody, judicial custody, and deaths in the course of police action, where the enquiry was entrusted by the office of the Principal District Judge / Judicial Commissioner.

To be sent: Upon completion of the magisterial enquiry, along with the Magisterial Enquiry Report and its annexures, within the applicable NHRC timeline (2 months generally; 3 months for police-action deaths).

Reference No.: [___/____] **Date: [DD-MM-YYYY]**

From: [Name of Judicial Magistrate]
[Designation of Magistrate]
[Jurisdiction/Location]

To,
The Ld. Principal District Judge / Judicial Commissioner,
[District Name]

Subject: Submission of the Magisterial Enquiry Report on completion of enquiry into the death of [Convict/Undertrial Prisoner/Accused/Person in Police Custody] [Name of Deceased], [S/o/D/o/W/o] [Name of Parent/Spouse]

Reference: Office Order Number [Insert Order Number] dated [Insert Date], by which the undersigned was deputed/nominated to conduct the enquiry into the above death

Sir/Madam,

With reference to the Office Order cited above, by which the undersigned was entrusted with the enquiry into the death of [Name of Deceased], [Convict/Undertrial Prisoner/Accused/Person in Police Custody] in [ST/GR No. */] — [Police Station] P.S. Case No. [/__]* [OR, for police custody/police action deaths: who died on [date] in the custody of/in the course of action by [Police Station], District [_]], it is respectfully submitted that the enquiry stands

concluded, and the Magisterial Enquiry Report is submitted herewith for kind perusal and further necessary orders.

1. In the course of the enquiry, the undersigned visited the place of occurrence, caused a public notice to be issued through the vernacular newspapers, and examined [state number] family members/relatives, [state number] jail inmates/co-prisoners, [state number] jail/police officials, and [state number] doctors, besides perusing the inquest report, the post-mortem report, [the videograph/CD of the post-mortem examination, where applicable,] and the other records enumerated in the enclosed Report.
2. The findings of the enquiry, the discussion on the allegations raised (if any), the opinion as to the use of force and its lawfulness, and the conclusion as to the cause of death are set out in the enclosed Magisterial Enquiry Report.
3. The enquiry has been completed and this Report is submitted within [two months/three months] of the date of occurrence, in compliance with the timeline prescribed by the National Human Rights Commission.
4. It is requested that the enclosed Report, together with its annexures, may kindly be forwarded to [the National Human Rights Commission/the State Human Rights Commission/the District Magistrate/the Director General of Police/such other authority as may be considered appropriate], and such further orders as may be deemed fit may kindly be passed.
5. Enclosures:
   - **i.** Magisterial Enquiry Report, along with Annexures;
   - **ii.** Post-mortem report [and videograph/CD, where applicable];
   - **iii.** Statements recorded during the enquiry;
   - **iv.** [Any other document/report relied upon].

Yours sincerely,

([Signature])

[Name and Designation]

Letter 4 – Forwarding of Post-Mortem Report, Videograph and Magisterial Enquiry Report

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Applicability: Every custodial death – police custody AND judicial custody

To be sent within: 2 months of the incident (outer limit fixed by the Commission)

Basis: *D.O. No. 40/1/1999-2000-CD (NRR) dated 03.01.2001, paras 1.1–1.2 and 3; Model Autopsy Form under letter No. NHRC/ID/PM/96/57 dated 27.03.1997.*

Reference No.: [___/____] **Date: [DD-MM-YYYY]**

From,

[District Magistrate / Superintendent of Police],
[District]

To,

The Secretary General,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex,
INA, New Delhi – 110023

Copy to: The Chairperson, [State] Human Rights Commission [where constituted]

Subject: Forwarding of Post-Mortem Report, Videograph of Post-Mortem Examination, and Magisterial Enquiry Report – death of [Name] – within two months of occurrence

Sir/Madam,

With reference to this office's intimation dated [___] regarding the death of [Name] in [police / judicial] custody on [date], the following documents are forwarded herewith, in compliance with the Commission's directions contained in D.O. No. 40/1/1999-2000-CD (NRR) dated 03.01.2001:

(i) Post-mortem report, prepared in the Model Autopsy Form prescribed vide letter No. NHRC/ID/PM/96/57 dated 27.03.1997 – Enclosure I;

(ii) Videograph / CD of the post-mortem examination [enclosed, video-filming having been mandatory / undertaken in this case] – Enclosure II;

(iii) Magisterial Enquiry Report submitted by [Name and Designation of Enquiry Magistrate] – Enclosure III.

[Where applicable:] The viscera of the deceased have been sent for chemical examination; the report thereof shall be forwarded separately as soon as it is received, in terms of paragraph 3 of the Commission's letter dated 03.01.2001, and is not being awaited for the purpose of this submission.

This is submitted within two months of the date of occurrence, in compliance with the Commission's directions.

Yours sincerely,

([Signature])

[Name and Designation]

Letter 5 – Second Case-Specific Report within 3 Months

Applicability: Deaths in the course of **POLICE ACTION** or police encounter **ONLY**

To be sent within: 3 months of the death

Basis: *D.O. No. 4/7/2008-PRP&P dated 12.05.2010, Clause G(b).*

Reference No.: [___/____] **Date: [DD-MM-YYYY]**

From,

[District Magistrate / Superintendent of Police],
[District]

To,

The Secretary General,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex,
INA, New Delhi – 110023

Copy to: The Chairperson, [State] Human Rights Commission [where constituted]

Subject: Second report regarding death of [Name] in the course of police action / encounter, within three months

Sir/Madam,

In continuation of this office's report dated [___], submitted within 48 hours of the death of [Name] in the course of police action / a police encounter, the following further report is submitted in compliance with D.O. No. 4/7/2008-PRP&P dated 12.05.2010:

(1) Post-mortem report – Enclosure I;

(2) Inquest report – Enclosure II;

(3) Findings of the magisterial enquiry / enquiry by senior officers, disclosing:

- **(i)** names and designation of police official(s), if found responsible for the death: [___];
- **(ii)** whether the use of force was justified and the action taken lawful: [___];

(iii) result of the forensic examination of the 'hand wash' of the deceased, to ascertain the presence of gunpowder residue: [___];

(iv) report of the ballistic expert on the weapons alleged to have been used by the deceased and his companions: [___] – Enclosure III.

This report is submitted within three months of the death, in compliance with the Commission's directions.

Yours sincerely,

([Signature])

[Name and Designation]

Letter 6 – Forwarding of Viscera Analysis Report (Supplementary)

Applicability: Every custodial death where viscera were sent for chemical examination

To be sent: Separately, as soon as the viscera report is received (not to be awaited for Letter 4)

Basis: *D.O. No. 40/1/1999-2000-CD (NRR) dated 03.01.2001, para 3.*

Reference No.: [___/____] **Date: [DD-MM-YYYY]**

From,

[District Magistrate / Superintendent of Police],
[District]

To,

The Secretary General,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex,
INA, New Delhi – 110023

Copy to: The Chairperson, [State] Human Rights Commission [where constituted]

Subject: Forwarding of Viscera Analysis Report – death of [Name]

Sir/Madam,

With reference to this office's letter dated [___], forwarding the post-mortem report and other documents regarding the death of [Name] without awaiting the viscera analysis report, in terms of paragraph 3 of the Commission's letter dated 03.01.2001, the viscera analysis report, now received from [name of Forensic Science Laboratory], is forwarded herewith for the information and record of the Commission – Enclosure I.

Yours sincerely,
([Signature])
[Name and Designation]

ANNEXURES DOWNLOADED FROM THE NHRC WEBSITE

ANNEXURE-I

MODEL POST-MORTEM REPORT FORM

(Read carefully the instructions at Appendix 'A')

NAME OF INSTITUTION _____

Post Mortem Report No. _____ Date _____

Conducted by Dr. _____

Date & Time of receipt of the body and Inquest papers for Autopsy _____

Date & Time of commencement of Autopsy _____

Time of completion of Autopsy_____

Date & Time of examination of the dead body at Inquest (as per Inquest Report) _____

Name & Address of the person video recording the Autopsy _____

Note: The tape should be duly sealed, signed and dated and sent to the National Human Rights Commission, Sardar Patel Bhawan, Sansad Marg, New Delhi.

_____

CASE PARTICULARS

1. (a) Name of deceased and as entered in the Jail or Police record_____
   (b) S/O, D/O, W/O _____
   (c) Address: _____

2. Age (Approx): _____ yrs; Sex: Male/Female

3. Body brought by (Name and rank of Police officials)

   (i) _____

   (ii) _____

   of Police Station _____

4. Identified by (Names & addresses of relatives/persons acquainted)

(i) _____

(ii) _____

IF HOSPITAL DEAD BODIES - (particulars as per hospital records)

Date & Time of Admission in Hospital _____

Date & Time of Death in Hospital _____

Central Registration No. of Hospital _____

SCHEDULE OF OBSERVATIONS

(A) GENERAL

(1) Height _____ cms. (2) Weight _____ Kgs.

(3) Physique - (a) lean/ medium / obese

(b) Well built/average built/poor built/emaciated

(4) Identification features (if body is unidentified)

(i) _____

(ii) _____

(iii) Finger prints be taken on separate sheet and attached by the doctor.

(5) Description of clothes worn - important features:

(6) Post-mortem Changes :

(a) As seen during inquest

- Whether rigor mortis present _____

- Temperature (Rectal) _____

- Others _____

(b) As seen at Autopsy -

(7) (a) External general appearance -

(b) State of eyes

(c) Natural orifices

(B) EXTERNAL INJURIES:

(Mention Type, Shape, Length x Breadth & Depth of each injury and its relation to important body landmark. Indicate which injuries are fresh and which are old and their duration.)

Instructions: -

(i) Injuries be given serial number and mark similarly on the diagrams attached. (ii) In stab injuries, mention angles, margins and direction inside body. (iii) In fire arm injuries, mention about effects of fire also.

C) INTERNAL EXAMINATION

1. HEAD

(a) Scalp findings

(b) Skull (Describe fractures here & show them on body diagram enclosed)

(c) Meninges, meningeal spaces & Cerebral vessels

(Hemorrhage & its locations, abnormal smell etc. be noted)

(d) Brain findings & Wt. (Wt. _____ gms.)

(e) Orbital, nasal & aural cavities - findings.

2. NECK

- Mouth, Tongue & Pharynx
- Larynx & Vocal cords
- Condition of neck tissues
- Thyroid & other cartilage conditions
- Trachea

3. CHEST

- Ribs and Chest wall
- Oesophagus
- Trachea & Bronchial Tree
- Pleural Cavities - R -

  L -

Lung's findings & Wt. - Rt. _____ gms. & Lt. _____ gms.

- Pericardial Sac
- Heart findings & Wt. _____ .

- Large blood vessels

4. Abdomen

- Condition of abdominal wall
- Peritoneum & Peritoneal cavity
- Stomach (wall condition, contents & smell) (Weight _____ gms.)
- Small intestines including appendix
- Large intestines & Mesentric vessels
- Liver including gall bladder (wt. _____ gms)
- Spleen (wt. _____ gms.)
- Pancreas
- Kidneys finding & Wt. - Rt. _____ gms. & Lt. _____ gms.
- Bladder & urethra
- Pelvic cavity tissues
- Pelvic Bones
- Genital organs

  (Note the condition of vagina, scrotum, presence of foreign body, presence of foetus, semen or any other fluid, and contusion, abrasion in and around genital organs).

5. **SPINAL COLUMN & SPINAL CORD** (To be opened where indicated)
OPINION

i) Probable time since death (keep all factors including observations at inquest)

ii) Cause & manner of death- The cause of death to the best of my knowledge and belief is: -

(a) Immediate cause -

(b) Due to -

(c) Which of the injuries are ante-mortem/post-mortem and duration if antemortem?

(d) Manner of causation of injuries

(e) Whether injuries (individually or collectively) are sufficient to cause death in ordinary course of nature or not?

iii) Any other

SPECIMENS COLLECTED & HANDED OVER (Please tick)

a) Viscera (Stomach with contents, small intestine with contents, sample of liver, kidney (one half of each), spleen, sample of blood on gauze piece (dried), any other viscera, preservative used)

b) Clothes

c) Photographs (Video cassettes in case of custody deaths), finger prints etc)

d) Foreign body (like bullet, ligature etc.)

e) Sample of preservative in cases of poisoning.

f) Sample of seal

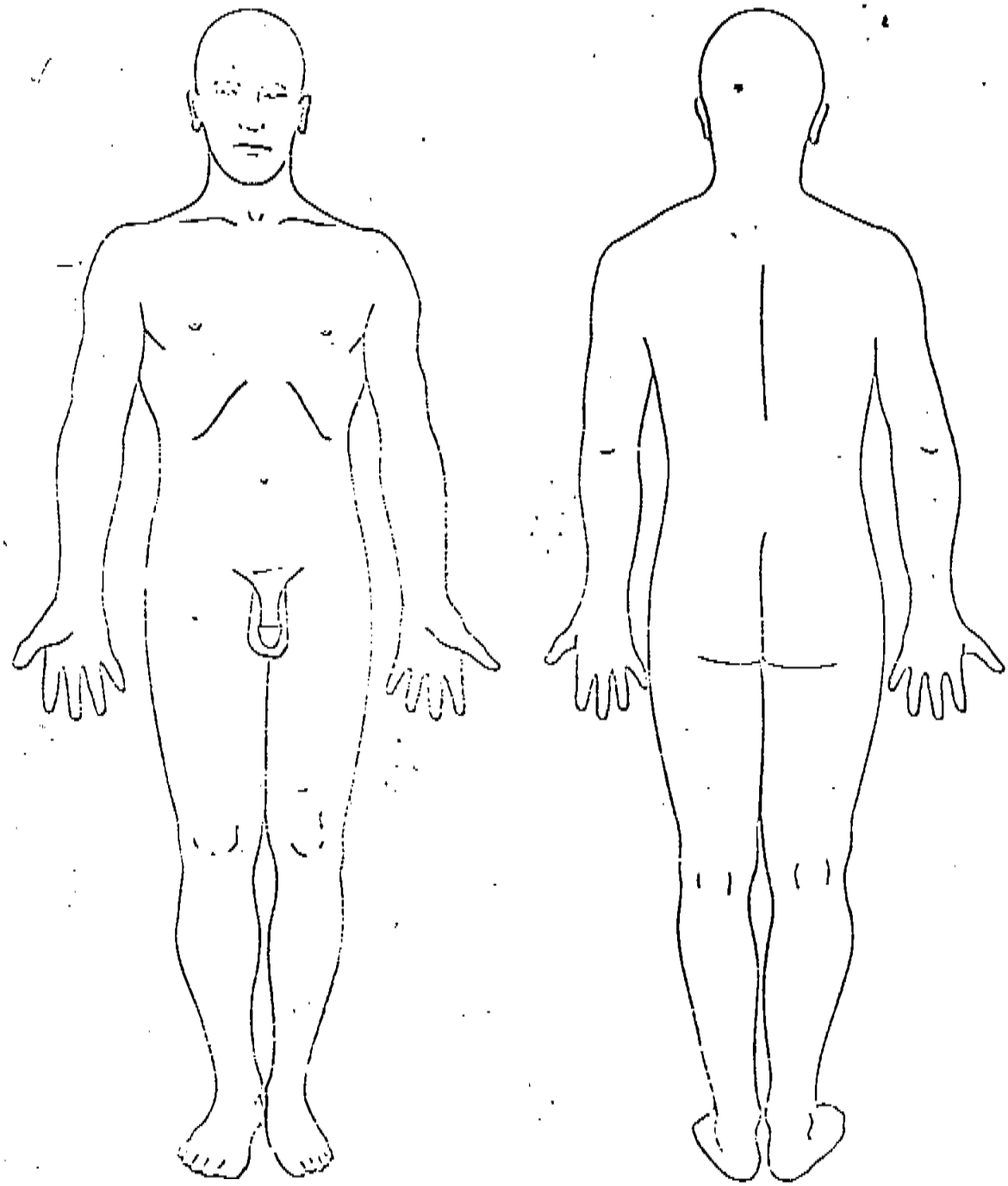
g) lnquest papers (mention total number & initial them)

h) Slides from vagina, semen or any other material

PM report in original, ____inquest papers, dead body, clothings and other articles (mention there) duly sealed (Nos. ___) handed over to police official _____ No. _____ of PS _____ whose signatures are herewith.

Signature: _____
Name of Medical Officer _____
(in block letters) _____
Designation _____
SEAL

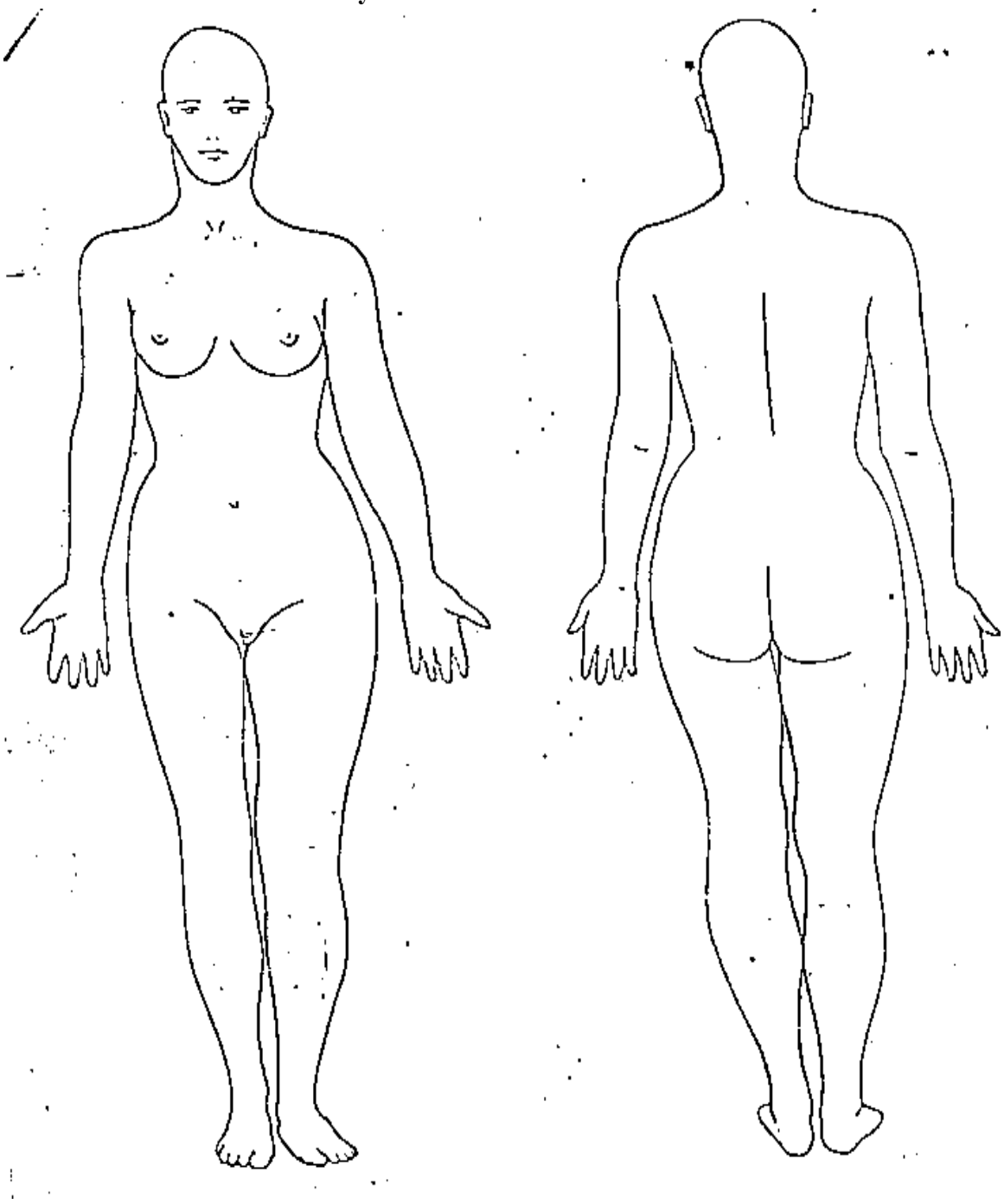
Full Body: Male-Anterior and Posterior Views (Ventral and Dorsal)



Name _____ Case No._____

Date _____

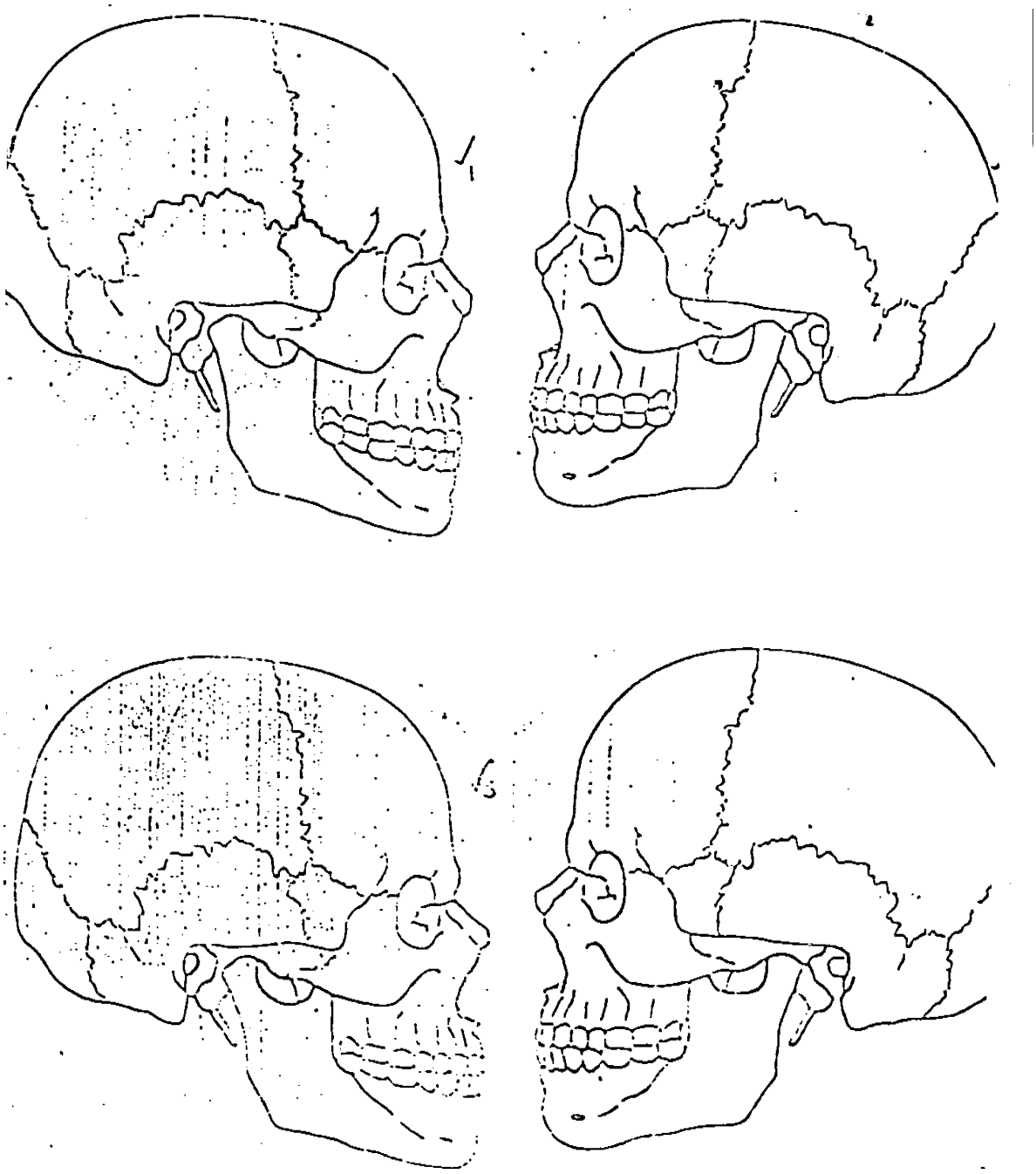
Full Body: Female-Anterior and Posterior Views

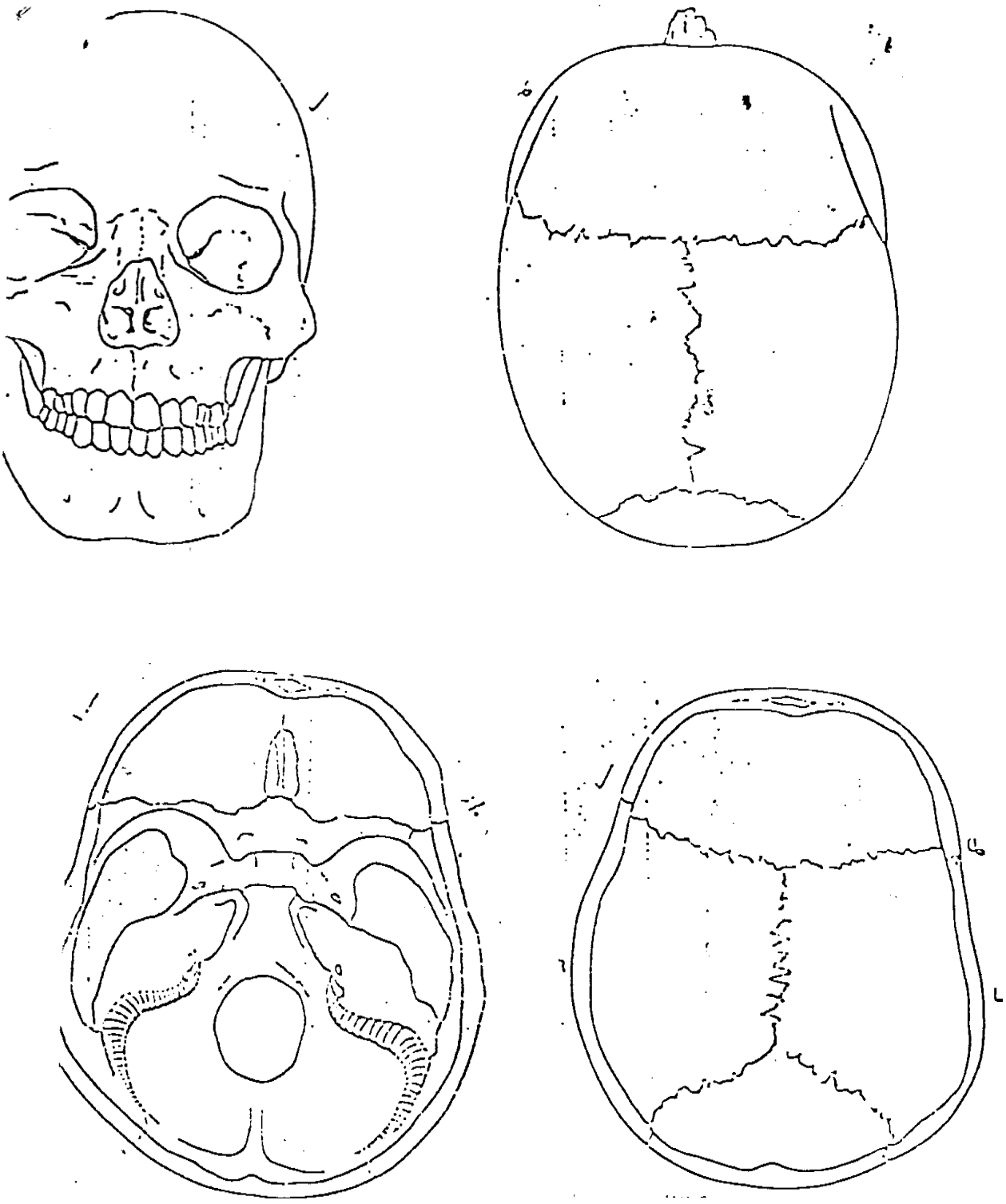


Name _____ Case No._____

Date _____

Head - Surface and Skeletal Anatomy : Lateral view





Inner View of Skull

APPENDIX - 'A'

Instructions to be Followed Carefully for Detention or Torture.

Torture technique		**Physical findings**
Beating		
1.	General	Scars, Bruises, Lacerations. Multiple fractures at different stages of healing, especially in unusual locations, which have not been medically treated.
2.	To the soles of the feet, or fractures of the bones of the feet.	Haemorrhage in the soft tissues of the soles of the feet and ankles. Aseptic necrosis.
3.	With the palms on both ears simultaneously.	Ruptured or scarred tympanic membranes. Injuries to external ear.
4	On the abdomen, while lying on a table with the upper half of the body unsupported ("operating table").	Bruises on the abdomen. Back injuries. Ruptured abdominal viscera.
5	To the head.	Cerebral cortical atrophy, Scars, Skull fractures, Bruises.
Haematomas.		
Suspension		
6.	By the wrists.	Bruises or scars about the wrists. Joint injuries.
7.	By the arms or neck.	Bruises or scars at the site of binding. Prominent lividity in the lower extremities.
8.	By the ankles.	Bruises or scars about the ankles. Joint injuries.
9.	Head down, from a horizontal pole placed under the knees with the wrists bound to the "Jack".	Bruises or scars on the anterior forearms and backs of the knees. Marks on wrists and ankles.

Torture technique	Physical findings
Near Suffocation.	
10. Forced immersion of head in often contaminated "wet submarine".	Faecal material or other debris in the mouth, pharynx, trachea, esophagus or lungs, Intrathoracic petechiae, Intra-thoracic petechiae.
11. Tying of a plastic bag over the head ("dry submarine").	Intro-thoracic petechiae.
Sexual abuse.	
12. Sexual abuses	Sexually transmitted diseases, pregnancy, injuries to breasts, external genitalia, vagina, anus or rectum.
Forced posture	
13 Prolonged standing.	Dependent edema, Petechiae in extremities.
14. Forced straddling of a bar ("saw horse").	Perineal or scrotal haematomas.
Electric shock	
15 Cattle prod. 16 Wires connected to a source of electricity.	Burns: appearance depends on the age of the injury. Immediately: red spots, vesicles, and/or black exudate. Within a few weeks: circular, reddish, macular scars. At several months: small, white, reddish or brown spots resembling telangiectasias.
17. Heated metal skewer inserted into the anus.	Peri-anal or rectal burns.
Miscellaneous	
18. Dehydration	Vitreous humor electrolyte abnormalities.
19 Animal bites (spiders, insects, rats, mice, dogs)	Bite marks.

Annexure II

Additional Inquest Procedure

In order to help in proper assessment of 'Time Since Death', determination of temperature changes and development of Rigor Mortis at the time of first examination at the scene is essential. This can be attained in the present system of inquest by examining the dead body at the scene scientifically for these two parameters either by a medical officer or a trained Police officer.

Essential requirement for determining Temperature Changes & Rigor Mortis:

The procedure is simple and can be learnt by any police officer if he is trained properly at the Police Training institution by a medical officer. This procedure includes:

(i) Taking of 'Rectal Temperature' at the first examination of the body at the scene itself while conducting the inquest. A simple Rectal Thermometre can be inserted in the anus of the dead body. After waiting for 3 to 5 minutes temperature should be read. The temperature so read should be mentioned in the inquest report as also the time of its recording.

(ii) Similarly, for determining 'Rigor Mortis', i.e., stiffening of the muscles, the Police officer should bend the limbs and see whether there is any stiffness in them. The observations about stiffness be mentioned as also the time in the inquest report. These observations would be helpful to the doctors conducting post-mortem examination.