

SELECTED NHRC GUIDELINES

1. On Custodial Deaths/Rapes

a) Letter to all Chief Secretaries on the reporting of custodial deaths within 24 hours.

No. 66/SG/NHRC/93

National Human Rights Commission

Sardar Patel Bhavan

New Delhi

14 December, 1993

From:

R.V. Pillai, Secretary General

To:

Chief Secretaries of all States and Union Territories

Sir/Madam,

The National Human Rights Commission at its meeting held on the 6th instant 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 has taken a 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 presumption that there was an attempt to suppress the incident.

2. It is accordingly requested that the District Magistrates/Superintendents of Police may be given suitable instructions in this regard so as to ensure prompt communication of incidents of custodial deaths/custodial rapes to the undersigned.

Yours faithfully,

Sd/-

(R.V. Pillai)

b) Letter to all Chief Secretaries clarifying that not only deaths in police custody but also deaths in judicial custody be reported.

R. V. Pillai

Secretary General

F.No. 40/3/95-LD

National Human Rights Commission

June 21, 1995

To

Chief Secretaries of all States and Union Territories

Sir/Madam,

Vide letter No.66/SG/NHRC/93 dt. December 14, 1993, you were requested to give suitable instructions to DMs/SPs to ensure prompt communication of incidents of custodial deaths/custodial rapes.

2. A perusal of the reports received from DMs/SPs in pursuance of the above mentioned communication reveals that reports are received in the Commission from some of the States, only on deaths in police custody. The objective of the Commission is to collect information in respect of custodial deaths in police as well as judicial custody. May I, therefore, request you 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 my letter of December 14, 1993.

Yours faithfully,

Sd/-

(R. V. Pillai)

c) Letter to Chief Ministers of States on the video filming of post-mortem examinations in cases of custodial deaths.

Justice Ranganath Misra

August 10, 1995

Chairperson

My dear Chief Minister,

The National Human Rights Commission soon after its constitution in October, 1993, called upon the law and order agencies at the district level throughout the country to report matters relating to custodial death and custodial rape within 24 hours of occurrence. Since then ordinarily reports of such incidents have been coming to the Commission through the official district agencies. The Commission is deeply disturbed over the rising incidents of death in police lock-up and jails. Scrutiny of the reports in respect of all these custodial deaths by the Commission very often shows that the post-mortem in many cases has not been done properly. Usually the reports are drawn up casually and do not at all help in the forming of an opinion as to the cause of death. The Commission has formed an impression that a systematic attempt is being made to suppress the truth and the report is merely the police version of the incident.

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 is of a prima-facie view that the local doctor succumbs to police pressure which leads to distortion of the facts. The Commission would like that all post-mortem examinations done in respect of deaths in police custody and in jails should be video-filmed and cassettes be sent to the Commission along with the post-mortem report. The Commission is alive to the fact that the process of video-filming will involve extra cost but you would agree that human life is more valuable than the cost of video-filming and such occasions should be very limited.

We would be happy if you would be good enough to immediately sensitise the higher officials in your state police to introduce video-filming of post mortem examination with effect from 1st October, 1995.

We look forward for your response within three weeks.

With regards,

Yours sincerely,

Sd/-

(Ranganath Misra)

To

Chief Ministers of all States, Pondicherry & the National Capital Territory of Delhi / Governors of those States under the President's rule.

d) Letter to Chief Ministers/Administrators of all States/Union Territories with a request to adopt the Model Autopsy form and the additional procedure for inquest.

Justice M.N. Venkatachaliah

Chairperson

(Former Chief Justice of India)

No. NHRC/ID/PM/96/57

National Human Rights Commission

March 27, 1997

Dear Chief Minister,

May I invite your kind attention to a matter which NHRC considers of some moment in its steps to deal with custodial deaths? The Commission on the 14th December, 1993 had issued a general circular requiring all the District Magistrates and the Superintendents of Police to report to the Commission, incidents relating to custodial deaths and rapes within 24 hours of their occurrence. A number of instances have come to the Commission's notice where the post-mortem reports appear to be doctored due to influence/pressure to protect the interest of the police/jail officials. In some cases it was found that the post-mortem examination was not carried out properly and in others, inordinate delays in their writing or collecting. As there is hardly any outside independent evidence in cases of custodial violence, the fate of the cases would depend entirely on the observations recorded and the opinion given by the doctor in the post-mortem report. If post-mortem examination is not thoroughly done or manipulated to suit vested interests, then the offender cannot be brought to book and this would result in travesty of justice and serious violation of human rights in custody would go on with impunity.

With a view to preventing such frauds, the Commission recommended to all the States to video-film the post-mortem examination and send the cassettes to the Commission.

It was felt that the Autopsy Report forms now in use in the various States, are not comprehensive and, therefore, do not serve the purpose and also give scope for doubt and manipulation. The Commission, therefore, decided to revise the autopsy-form to plug the loopholes and to make it more incisive and purposeful.

The Commission, after ascertaining the views of the States and discussing with the experts in the field and taking into consideration, though not entirely adopting, the U.N. Model Autopsy protocol, has prepared a Model Autopsy form enclosed as Annexure-I.¹

In this connection, it was felt that some incidental improvements are also called for in regard to the conduct of inquests. For proper assessment of ~~the~~ time since death+ or ~~the~~ time of death, determination of temperature changes and development of Rigor Mortis at the time of first examination at the scene is essential. This can conveniently be done by following some easily understandable and implementable procedure. The procedure to be followed by those in charge of

¹ Available at <http://www.nhrc.nic.in> (Pathway for the search: Homepage ó Important Instructions ó Custodial deaths/Rape).

inquest, is indicated in Annexure-II² to this letter. This is a small but important addition to the inquest procedure.

The Commission recommends your Government to prescribe the Model Autopsy Form (Annexure-I) and the additional procedure for inquest as indicated in Annexure-II, to be followed in your State with immediate effect.

I shall look forward to your kind and favourable response.

Yours sincerely,

Sd/-

(M.N. Venkatachaliah)

To

Chief Ministers of all States/Union Territories.

2. Revised Guidelines/Procedures to be followed in dealing with deaths occurring in encounter deaths

The guidelines issued by the Commission in respect of procedures to be followed by the State Govts. in dealing with deaths occurring in encounters with the police were circulated to all Chief Secretaries of States and Administrators of Union Territories on 29.3.1997.

² Available at <http://www.nhrc.nic.in> (Pathway for the search: Homepage ó Important Instructions ó Custodial deaths/Rape).

Subsequently on 2.12.2003, revised guidelines of the Commission have been issued and it was emphasised that the States must send intimation to the Commission of all cases of deaths arising out of police encounters. The Commission also recommended the modified procedure to be followed by State Govts. in all cases of deaths, in the course of police action, and it was made clear that where the police officer belonging to the same police station are members of the encounter party, whose action resulted in deaths, such cases be handed over for investigation to some other independent investigating agency, such as State CBCID, and 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 invariably be investigated by the State CBCID. A Magisterial Inquiry must invariably be held in all cases of deaths which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry.

All the Chief Ministers and Administrators have been directed to send a six monthly statement of all cases of deaths in police action in the States/ UTs through the Director General of Police to the Commission by the 15th Day of January and July respectively in the proforma devised for the purpose.

Justice A.S. Anand

Chairperson

(Former Chief Justice of India)

2 nd December, 2003

Dear Chief Minister,

Death during the course of a police action is always a cause of concern to a civil society. It attracts criticism from all quarters like Media, the general public and the NGO sector.

The police does not have a right to take away the life of a person. If, by his act, the policeman kills a person, he commits an offence of culpable homicide or not amounting to murder, unless it is established that such killing was not an offence under the law. Under the scheme of criminal law prevailing in India, it would not be an offence if the death is caused in exercise of 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. This provision authorizes the police to use reasonable force, even extending up to the causing of death, if found necessary to arrest the person accused of an offence punishable with death or imprisonment for life. Thus, it is evident that death caused in an encounter if not justified would amount to an offence of culpable homicide.

The Commission while dealing with complaint 234 (1 to 6)/ 93-94 and taking note of grave human rights issue involved in alleged encounter deaths, decided to recommend procedure to be followed in the cases of encounter death to all the states. Accordingly, Honble Justice Shri M.N. Venkatachaliah, the then Chairperson NHRC, wrote a letter dated 29/3/1997 to all the Chief Ministers recommending the procedure to be followed by the states in cases of encounter deaths+ (copy enclosed for ready reference).

Experience of the Commission in the past six years in the matters of encounter deaths has not been encouraging. The Commission finds that most of the states are not following the guidelines

issued by it in the true spirit. It is of the opinion that in order to bring in transparency and accountability of public servants, the existing guidelines require some modifications.

Though under the existing guidelines, it is implicit that the States must send intimation to the Commission of all cases of deaths arising out of police encounters, yet some States do not send intimation on the pretext that there is no such specific direction. As a result, authentic statistics of deaths occurring in various states as a result of police action are not readily available in the Commission. The Commission is of the view that these statistics are necessary for effective protection of human rights in exercise of the discharge of its duties.

On a careful consideration of the whole matter, the Commission recommends following modified procedure to be followed by the State Governments in all cases of deaths in the course of police action :-

- A. When the police officer in charge of a Police Station receives information about the deaths in an encounter between the Police party and others, 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 deaths, 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 invariably be investigated by State CBCID.
- D. A Magisterial Inquiry must invariably be held in all cases of death which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry.
- E. Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry/ police investigation.
- F. Question of granting of compensation to the dependents of the deceased would depend upon the facts and circumstances of each case.
- G. 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.
- H. A six monthly statement of all cases of deaths in police action in the State shall be sent by the Director General of Police to the Commission, so as to reach its office by the 15th day of January and July respectively. The statement may be sent in the following format along with post-mortem reports and inquest reports, wherever available and also the inquiry reports:-
 1. Date and place of occurrence
 2. Police Station, District.
 3. Circumstances leading to deaths:
 - i. Self defence in encounter

- ii. In the course of dispersal of unlawful assembly
- iii. In the course of effecting arrest.
- 4. Brief facts of the incident
- 5. Criminal Case No.
- 6. Investigating Agency
- 7. Findings of the magisterial Inquiry/enquiry 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.

It is requested that the concerned authorities of the State are given appropriate instructions in this regard so that these guidelines are adhered to both in letter and in spirit.

With regards,

Yours sincerely,

Sd/-

(A.S. Anand)

To

All Chief Ministers of States/UTs

3. On Visits to Police Lock-ups / Guidelines on Polygraph Tests and Arrests
Letter to Chief Secretaries/Administrators of all States/Union Territories on the Visit of
NHRC's Officers to Police Lock-ups.

R.V. Pillai
Secretary General

National Human Rights Commission
Sardar Patel Bhavan, Sansad Marg,
New Delhi-110001.

DO No.15(13)/97-Coord

1 August, 1997

Dear Shri

Officers of the National Human Rights Commission visit various States in pursuance of the directions issued by the Commission on a variety of items of work which come within its statutory responsibilities.

2. In the context of reports received by the Commission on the condition of police lock-ups in various States, the Commission has decided that the State Governments may be requested to permit officers of the NHRC to visit the police lock-ups also during their visits to States.
3. Accordingly, I am to request you to issue necessary instructions to enable officers of the NHRC visiting your State to undertake visits to police lock-ups as well.
4. A line in confirmation of the instructions issued will be greatly appreciated.

With regards,

Yours sincerely,
Sd/
(R.V. Pillai)

To

All Chief Secretaries/Administrators of States & UTs.

4. NHRC Guidelines Regarding Arrest

D.R. Karthikeyan

Director General

No. 7/11/99-PRP&P

National Human Rights Commission

22nd November, 1999

To

The Chief Secretaries of all States/Union Territories

Sir,

After due consideration of all the aspects involved, the National Human Rights Commission has adopted certain guidelines regarding ~~arrests~~ arrests.

A note containing these guidelines approved by the Commission is enclosed herewith. The Commission requests all the State Governments to translate these guidelines into their respective regional language and make them available to all Police Officers and in all Police Stations.

Senior officers visiting Police Stations may ensure the availability of such guidelines with respective police officers and the Police Stations and ensure their compliance.

Yours faithfully,

Sd/-

(D. R. Karthikeyan)

Copy to:

1. Home Secretaries of all States/Union Territories
2. Directors General of Police of all States

Encl: As stated

NHRC Guidelines Regarding Arrest

Need for Guidelines

Arrest involves restriction of liberty of a person arrested and therefore, infringes the basic human rights of liberty. Nevertheless the Constitution of India as well as International human rights law recognise the power of the State to arrest any person as a part of its primary role of maintaining law and order. The Constitution requires a just, fair and reasonable procedure established by law under which alone such deprivation of liberty is permissible.

Although Article 22(1) of the Constitution provides that every person placed under arrest shall be informed as soon as may be the ground of arrest and shall not be denied the right to consult and be defended by a lawyer of his choice and S.50 of the Code of Criminal Procedure, 1973 (Cr. PC) requires a police officer arresting any person to forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest; in actual practice these requirements are observed more in the breach.

Likewise, the requirement of production of the arrested person before the court promptly which is mandated both under the Constitution [Article 22(2)] and the Cr. PC (Section 57) is also not adhered to strictly.

A large number of complaints pertaining to Human Rights violations are in the area of abuse of police powers, particularly those of arrest and detention. It has, therefore, become necessary, with a view to narrowing the gap between law and practice, to prescribe guidelines regarding arrest even while at the same time not unduly curtailing the power of the police to effectively maintain and enforce law and order and proper investigation.

PRE-ARREST

- The power to arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest. [Joginder Kumar's case-(1994) 4 SCC 260].
- Arrest cannot be justified merely on the existence of power, as a matter of law, to arrest without a warrant in a cognizable case.
- After Joginder Kumar's pronouncement of the Supreme Court the question whether the power of arrest has been exercised reasonably or not is clearly a justiciable one.
- Arrest in cognizable cases may be considered justified in one or other of the following circumstances:
 - i. The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent him from escaping or evading the process of law.
 - ii. The suspect is given to violent behaviour and is likely to commit further offences.
 - iii. The suspect requires to be prevented from destroying evidence or interfering with witnesses or warning other suspects who have not yet been arrested.

iv. The suspect is a habitual offender who, unless arrested, is likely to commit similar or further offences. [3rd Report of National Police Commission]

- Except in heinous offences, as mentioned above, an arrest must be avoided if a police officer issues notice to the person to attend the police station and not leave the station without permission. (see Joginder Kumar case (1994) SCC 260).
- The power to arrest must be avoided where the offences are bailable unless there is a strong apprehension of the suspect absconding .
- Police officers carrying out an arrest or interrogation should bear clear identification and name tags with designations. The particulars of police personnel carrying out the arrest or interrogation should be recorded contemporaneously, in a register kept at the police station.

ARREST

- As a rule use of force should be avoided while effecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise, is avoided.
- The dignity of the person being arrested should be protected. Public display or parading of the person arrested should not be permitted at any cost.
- Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person's right to privacy. Searches of women should only be made by other women with strict regard to decency. (S.51(2) Cr.PC.)
- The use of handcuffs or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law repeatedly explained and mandated in judgement of the Supreme Court in Prem Shanker Shukla v. Delhi Administration [(1980) 3 SCC 526] and Citizen for Democracy v. State of Assam [(1995) 3 SCC 743].
- As far as is practicable women police officers should be associated where the person or persons being arrested are women. The arrest of women between sunset and sunrise should be avoided.
- Where children or juveniles are sought to be arrested, no force or beatings should be administered under any circumstances. Police Officers, may for this purpose, associate respectable citizens so that the children or juveniles are not terrorised and minimal coercion is used.
- Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language which he or she understands. Again, for this purpose, the police, if necessary may take the help of respectable citizens. These grounds must have already been recorded in writing in police records. The person arrested should be shown the written reasons as well and also given a copy on demand. (S.50(1) Cr.PC.)
- The arrested person can, on a request made by him or her, demand that a friend, relative or other person known to him be informed of the fact of his arrest and the place of his detention.

The police should record in a register the name of the person so informed. [Joginder Kumar case (supra)].

- If a person is arrested for a bailable offence, the police officer should inform him of his entitlement to be released on bail so that he may arrange for sureties. (S.50(2) Cr.PC.)
- Apart from informing the person arrested of the above rights, the police should also inform him of his right to consult and be defended by a lawyer of his choice. He should also be informed that he is entitled to free legal aid at state expense [D.K. Basu case (1997) 1 SCC].
- When the person arrested is brought to the police station, he should, if he makes a request in this regard, be given prompt medical assistance. He must be informed of this right. Where the police officer finds that the arrested person is in a condition where he is unable to make such request but is in need of medical help, he should promptly arrange for the same. This must also be recorded contemporaneously in a register. The female requesting for medical help should be examined only by a female registered medical practitioner. (S.53 Cr.PC.)
- Information regarding the arrest and the place of detention should be communicated by the police officer effecting the arrest without any delay to the police Control Room and District / State Headquarters. There must be a monitoring mechanism working round the clock.
- As soon as the person is arrested, police officer effecting the arrest shall make a mention of the existence or non-existence of any injury(s) on the person of the arrestee in the register of arrest. If any injuries are found on the person of the arrestee, full description and other particulars as to the manner in which the injuries were caused should be mentioned in the register, which entry shall also be signed by the police officer and the arrestee. At the time of release of the arrestee, a certificate to the above effect under the signature of the police officer shall be issued to the arrestee.
- If the arrestee has been remanded to police custody under the orders of the court, the arrestee should be subjected to medical examination by a trained Medical Officer every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. At the time of his release from the police custody, the arrestee shall be got medically examined and a certificate shall be issued to him stating therein the factual position of the existence or nonexistence of any injuries on his person.

POST ARREST

2. The person under arrest must be produced before the appropriate court within 24 hours of the arrest (Ss 56 and 57 Cr.PC).
3. The person arrested should be permitted to meet his lawyer at any time during the interrogation.
4. The interrogation should be conducted in a clearly identifiable place, which has been notified for this purpose by the Government. The place must be accessible and the relatives or friend of the person arrested must be informed of the place of interrogation taking place.

5. The methods of interrogation must be consistent with the recognised rights to life, dignity and liberty and right against torture and degrading treatment.

ENFORCEMENT OF GUIDELINES

1. The guidelines must be translated in as many languages as possible and distributed to every police station. It must also be incorporated in a handbook which should be given to every policeman.
2. Guidelines must receive maximum publicity in the print or other electronic media. It should also be prominently displayed on notice board, in more than one language, in every police station.
3. The police must set up a complaint redressal mechanism, which will promptly investigate complaints of violation of guidelines and take corrective action.
4. The notice board which displays guidelines must also indicate the location of the complaints redressal mechanism and how that body can be approached.
5. NGOs and public institutions including courts, hospitals, universities etc., must be involved in the dissemination of these guidelines to ensure the widest possible reach.
6. The functioning of the complaint redressal mechanism must be transparent and its reports accessible.
7. Prompt action must be taken against errant police officers for violation of the guidelines. This should not be limited to departmental enquiries but also set in motion the criminal justice mechanism.
8. Sensitisation and training of police officers is essential for effective implementation of the guidelines.

5. Guidelines Relating to Administration of Polygraph Test

[Lie Detector Test]

No. 117/8/97-98

National Human Rights Commission

(Law Division-III)

S. K. Srivastava

Assistant Registrar (Law)

Sardar Patel Bhavan,

Sansad Marg,

New Delhi -110 001.

11, January, 2000

To

Chief Secretaries of States /Union Territories.

Sub: Guidelines Relating to Administration of Polygraph Test (Lie Detector Test).

Sir,

I am directed to state that the Commission in its proceeding on 12.11.1999 has considered the Guidelines relating to Administration of Polygraph Test (Lie Detector Test) on an accused and directed that:

The Commission adopted the Guidelines and decided that it should be circulated to all concerned authorities for being followed scrupulously.+

Accordingly, a copy of the above Guidelines is forwarded herewith.

You are, therefore, requested to follow the said guidelines and acknowledge the same.

Yours faithfully,

Sd/-Assistant

Registrar (Law)

Encl: As above.

Guidelines Relating To Administration of Polygraph Test (Lie Detector Test) on an Accused

The Commission has received complaints pertaining to the conduct of Polygraph Test (Lie Detector Test) said to be administered under coercion and without informed consent. The tests were conducted after the accused was allegedly administered a certain drug. As the existing police practice in invoking Lie Detector Test is not regulated by any law or subjected to any guidelines, it could tend to become an instrument to compel the accused to be a witness against himself violating the constitutional immunity from testimonial compulsion.

These matters concerning invasion of privacy have received anxious consideration from the Courts (see *Gomathi Vs. Vijayaraghavan* (1995) Cr. L.J. 81 (Mad); *Tushaar Roy Vs. Sukla Roy* (1993) Cr. L.J. 1959 (Cal); *Sadashiv Vs. Nandini* (1995) Cr. L.J. 4090). A suggestion for legislative intervention was also made, in so far as matrimonial disputes were concerned. American Courts have taken the view that such tests are routinely a part of everyday life and upheld their consistence with due process (See *Breithaupt Vs. Abram* (1957) 352 US 432). To hold that because the privilege against testimonial compulsion protects only against extracting from the person's own lips (See *Blackford Vs. US* (1958) 247 F (2d) 745), the life and liberty provisions are not attracted may not be wholly satisfactory. In India's context the immunity from invasiveness (as aspect of Art. 21) and from self-incrimination (Art. 20 (3)) must be read together. The general executive power cannot intrude on either constitutional rights and liberty or, for that matter any rights of a person (See *Ram Jawayya Kapur* (1955) 2 SCR 225). In the absence of a specific law any intrusion into fundamental rights must be struck down as constitutionally invidious (See *Ram Jawayya Kapur* (1955) 2 SCR 225; *Kharak Singh* (1964) 1 SCR 332 at pp. 350; *Bennett Coleman* (1972) 2 SCR 288 at pr. 26-7; *Thakur Bharat Singh* (1967) 2 SCR 454 at pp. 459-62; *Bishamber Dayal* (1982) 1 SCC 39 at pr. 20-27; *Naraindass* (1974) 3 SCR at pp. 636-8; *Satwant* (1967) 3 SCR 525). The lie detector test is much too invasive to admit of the argument that the authority for Lie Detector Tests comes from the General power to interrogate and answer questions or make statements (Ss 160-167 Cr. P.C.). However, in India we must proceed on the assumption of constitutional invasiveness and evidentiary impermissiveness to take the view that such holding of tests is a prerogative of the individual not an empowerment of the police. In as much as this invasive test is not authorised by law, it must perforce be regarded as illegal and unconstitutional unless it is voluntarily undertaken under non-coercive circumstances. If the police action of conducting a lie detector test is not authorised by law and impermissible, the only basis on which it could be justified is, it is volunteered. There is a distinction between: (a) volunteering, and (b) being asked to volunteer. This distinction is of some significance in the light of the statutory and constitutional protections available to any person. There is a vast difference between a person saying, "I wish to take a lie detector test because I wish to clear my name", and a person is told by the police, "If you want to clear your name, take a lie detector test". A still worse situation would be where the police say, "Take a lie detector test, and we will let you go". In the first example, the person voluntarily wants to take the test. It would still have to be examined whether such volunteering was under coercive circumstances or not. In the second and third examples, the police implicitly (in the second example) and explicitly (in the third example) link up the taking of the lie detector test to allowing the accused to go free.

The extent and nature of the self-incrimination is wide enough to cover the kinds of statements that were sought to be induced. In *M.P. Sharma* AIR 1954 SC 300, the Supreme Court included

within the protection of the self-incrimination rule all positive volitional acts which furnish evidence. This by itself would have made all or any interrogation impossible. The test - as stated in *Kathi Kalu Oghad* (AIR 1961 SC 1808)-retains the requirement of personal volition and states that self-incrimination must mean conveying information based upon the personal knowledge of the person giving information. By either test, the information sought to be elicited in a Lie Detector Test is information in the personal knowledge of the accused.

The Commission, after bestowing its careful consideration on this matter of great importance, lays down the following guidelines relating to the administration of Lie Detector Tests:

- i. No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.
- ii. If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.
- iii. The consent should be recorded before a Judicial Magistrate.
- iv. During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
- v. At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a confessional statement to the Magistrate but will have the status of a statement made to the police.
- vi. The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.
- vii. The actual recording of the Lie Detector Test shall be done in an independent agency (such as a hospital) and conducted in the presence of a lawyer.
- viii. A full medical and factual narration of manner of the information received must be taken on record.

6. Human Rights in Prisons

a) Letter to Chief Ministers/Administrators of all States/Union Territories on mentally ill persons languishing in prisons.

Justice Ranganath Misra

National Human Rights Commission

Chairperson

11, September, 1996

My Dear Chief Minister,

It has come to the notice of the Commission that several mentally ill persons, as defined in Section 2(1) of the Mental Health Act, 1987, have been languishing in normal jails and are being treated at par with prisoners. The Commission has also come across cases where such detention is not for any definite period.

The Lunacy Act, 1912 and the Lunacy Act, 1977 have been repealed by the Mental Health Act which has come into force with effect from 1.4.1987.

The Mental Health Act does not permit the mentally ill persons to be put into prison. The Patna High Court has last week directed the State of Bihar to transfer mentally ill persons languishing in the jails to the mental asylum at Ranchi.

While drawing your attention to the legal position and order of the Patna High Court, we would like to advise that no mentally ill person should be permitted to be continued in any jail after 31 October, 1988, and would therefore, request you to issue necessary instructions to the Inspector General of Prisons to enforce it.

After 1st November, 1988, the Commission would start inspecting as many jails as possible to find out if any mentally ill person is detained in such jails and invariably in every such case, it would award compensation to the mentally ill persons or members of the family and would require the State Government to recover the amount of such fine from the delinquent public officer. A copy of this letter may be widely circulated to the Inspector General of Prisons, Superintendents of every jail and members of the jail staff and other district level officers.

With regards,

Yours sincerely,

Sd/

Ranganath Misra)

To : All the Chief Ministers/Administrators of States/UTs.

Justice Ranganath Misra

National Human Rights Commission

Chairperson

September 25, 1996

My Dear

One of the important functions of the National Human Rights Commission, as provided under Section 12(C) of the Protection of Human Rights Act, 1993, is to visit under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon. The Commission has visited a number of prisons all over the country and also inquired into a large number of complaints alleging violation of human rights received from the prisoners in several jails. The Commission feels that there is a crying need for revamping the prison administration of the country and bring about systemic reforms. In this connection, I would like to draw your attention towards my letter No.NHRC/ Prisons/ 96/2 dated 29.8.96 sent to you wherein I enclosed a copy of the Prison Bill prepared by us and sought your co-operation for the enactment of a new Prison Act to replace the century old Prison Act of 1894.

I would also like to draw your attention to another matter of importance concerning prison administration. We find that in most of the States, the post of Inspector General of Prisons is filled up by officers either from the Indian Administrative Service or Indian Police Service. The usual tenure of the officer is very brief, and most of them look upon their posting as Inspector General of Prisons as an inconvenient one and look ahead for an early transfer to other posts in the main line of administration. The result is frequent transfer of officers appointed as Inspectors General of Prisons. Sometimes the post is also left vacant for a long time. For qualitative improvement of prison administration in the country, we feel that the selection of officers to head the prison administration deserves to be done carefully. An officer of proven integrity and merit-simultaneously disciplined and yet humane - may be selected for the post and should be continued in the post for a certain period time -say about three years - with a view to imparting continuity and dynamism to the prison administration. This will provide efficient and capable leadership for the prison service and help in improving prison administration in the country.

We look forward for your favourable response.

With regards,

Yours sincerely,

Sd/-Ranganath

Misra

To : Chief Ministers of all States/UTs

b) Letter to all IG (Prisons)/Chief Secretaries of States/Administrators of Union Territories regarding Prisoners Health Care-periodical medical examination of undertrials/convicted prisoners in the Jail.

Lakshmi Singh

Joint Secretary

National Human Rights Commission

D.O.No.4/3/99-PRP & P

11 February, 1999

Dear

Subject: - Prisoners health care-periodical medical examination of undertrials/ convicted prisoners in various jails in the country.

The Commission has taken note of the disturbing trends in the spread of contagious diseases in the prisons. One of the sample-studies conducted by the Commission indicated that nearly seventy-nine percent of deaths in judicial custody (other than those attributable to custodial violence) were as a result of infection of Tuberculosis. These statistics may not be of universal validity, yet what was poignant and pathetic was that in many cases, even at the very first medical attention afforded to the prisoners the tubercular infection had gone beyond the point of return for the prisoners. The over-crowding in the jails has been an aggravating factor in the spread of contagion.

One of the remedial measures is to ensure that all the prison inmates have periodic medical check-up particularly for their susceptibilities to infectious diseases and the first step in that direction would necessarily be the initial medical examination of all the prison inmates either by the prison and Government doctors and in the case of paucity or inadequacy of such services, by enlisting the services of voluntary organizations and professional guilds such as the Indian Medical Association. Whatever be the sources from which such medical help is drawn, it is imperative that the State Governments and the authorities incharge of prison administration in the States should immediately take-up and ensure the medical examination of all the prison inmates; and where health problems are detected to afford timely and effective medical treatment.

Kindly find enclosed proceedings of the meeting of the Commission held on 22.1.99 which also include a proforma for health screening of prisoners on admission to jail. The Commission accordingly requires that all State Governments and prison administrators should ensure medical examination of all the prison inmates in accordance with the attached proforma. The Commission further requires that such medical examination shall be taken-up forthwith and monthly reports of the progress be communicated to the Commission.

With regards,

Yours sincerely,

Sd/-

Lakshmi Singh)

To : Chief Secretaries of all States/UTs.

PROFORMA FOR HEALTH SCREENING OF PRISONERS ON ADMISSION TO JAIL

Case No.....

Name Age Sex..... Thumb impression

Father's/Husband's Name.....Occupation

Date & Time of admission in the prison.....

Identification marks.....

Previous History of illness

Are you suffering from any disease? Yes/No

If so, the name of the disease :

Are you now taking medicines for the same?

Are you suffering from cough that has lasted for 3 weeks or more Yes/No

History of drug abuse, if any:

Any information the prisoner may volunteer:

Physical examination:

Height.... cms. weight..... kg Last menstruation period

1. Pallor : YES/NO	2. Lymph Node enlargement: YES/NO
3. Clubbing: YES/NO	4. Cyanosis: YES/NO
5. Icterus: YES/NO	6. Injury, if any.....

4. Blood test for Hepatitis/STD including HIV, (with the informed consent of the prisoner whenever required by law)

5. Any other

Systemic Examination

1. Nervous System
2. Cardio Vascular System
3. Respiratory System
4. Eye, ENT
5. Gastro Intestinal system abdomen
6. Teeth & Gum
7. Urinal System

The medical examination and investigations were conducted with the consent of the prisoner after explaining to him/her that it was necessary for diagnosis and treatment of the disease from which he/she may be suffering.

Date of commencement of medical investigation

Date of completion of medical investigation

Medical officer

c) Letter to Chief Justices of High Courts on undertrial prisoners.

Dr. Justice K. Ramaswamy

National Human Rights Commission

Member

December 22, 1999

Dear Brother Chief Justice,

Right to speedy trial is a facet of fair procedure guaranteed in Article 21 of the Constitution. In Kartar Singh's case (Constitutionality of TADA Act case), J.T. 1992(2) SC 423, the Supreme Court held that speedy trial is a component of personal liberty. The procedural law - if the trial is not conducted expeditiously, becomes void, violating Article 21 as was held in Hussain Ara's four cases in 1979. In Antulay's case, 1992(1) SCC 215, a constitution bench directed completion of the trial within two years in cases relating to offences punishable upto 7 years, and for beyond seven years, within a period of three years. If the prosecution fails to produce evidence before the expiry of the outer limit, the prosecution case stands closed and the court shall proceed to the next stage of the trial and dispose it of in accordance with law. That view was reiterated per majority even in the recent judgement of the Supreme Court in Raj Dev Sharma II versus Bihar, 1999 (7) SCC 604 by a three-Judge bench.

In Common Cause case, 1996 (2) SCC 775 - in D.O. Sharma's case - it was held that the time taken by the courts on account of their inability to carry on the day-to-day trial due to pressure of work, will be excluded from the dead-line of two years and three years, respectively, imposed in the aforesaid cases. In the latest Raj Dev Sharma's case 1999 (7) SCC 604 majority reiterated the above view.

In Common Cause II case, 1996 (4) SCC 33, the Supreme Court directed release of the undertrial prisoners, subject to certain conditions mentioned therein. The principle laid down in Common Cause case is not self-executory. It needs monitoring, guidance and direction to the learned Magistrates in charge of dispensation of criminal justice system at the lower level, before whom the undertrial prisoners are produced for extension of the period of remand. It is common knowledge that it is the poor, the disadvantaged and the neglected segments of the society who are unable to either furnish the bonds for release or are not aware of the provisions to avail of judicial remedy of seeking a bail and its grant by the court. Needless or prolonged detention not only violates the right to liberty guaranteed to every citizen, but also amounts to blatant denial of human right of freedom of movement to these vulnerable segments of the society who need the protection, care and consideration of law and criminal justice dispensation system.

In this background, may I seek your indulgence to consider the above perspectives and to set in motion appropriate directions to the Magistracy to follow up and implement the law laid down by the Supreme Court in the Common Cause II case? For your ready reference, the principles laid therein are deduced as set guidelines are enclosed herewith. I had a discussion with the Hon'ble Chief Justice of Andhra Pradesh High Court, who was gracious enough to have them examined in consultation with brother Judges and necessary directions issued to all the Magistrates and Sessions Judges to follow up the directions and ensure prevention of unnecessary restriction of

liberty of the under-privileged and poor undertrial prisoners. I would request you to kindly consider for adoption and necessary directions issued to the Magistrates and Sessions Judges within your jurisdiction to follow up and ensure enjoyment of liberty and freedom of movement by poor undertrial prisoners.

With regards,

Yours sincerely,

Sd/-

(Dr. Justice K. Ramaswamy)

To

Chief Justices of all High Courts

d) Letter of the Special Rapporteur to IG of Prisons

Sankar Sen

D.O.No. 11/1/99-PRP & P

Special Rapporteur

National Human Rights Commission

29.04. 1999

Dear

The problems of undertrial prisoners has now assumed an alarming dimension. Almost 80% of prisoners in Indian jails are undertrials. The majority of undertrial prisoners are people coming from poorer and underprivileged sections of the society with rural and agricultural background. The Supreme Court in a memorable judgement-Common Cause (a registered society) Vs. Union of India 1996 has given the following directions regarding the release of undertrials on bail.

- a. Undertrials accused of an offence punishable with imprisonment upto three years and who have been in jail for a period of 6 months or more and where the trial has been pending for atleast a year, shall be released on bail.
- b. Undertrials accused of an offence punishable with imprisonment upto 5 years and who have been in jail for a period of 6 months or more, and where the trial has been pending for atleast two years, shall be released on bail.
- c. Undertrials accused of offences punishable with imprisonment for 7 years or less and who have been in jail for a period of one year and where the trial has been pending for two years shall be released on bail.
- d. The accused shall be discharged where the criminal proceedings relating to traffic offence have been pending against them for more than 2 years.
- e. Where an offence compoundable with the permission of the court has been pending for more than 2 years, the court shall after hearing public prosecutor discharge or acquit the accused.
- f. Where non-cognizable and bailable offence has been pending for more than 2 years, without trial being commenced the court shall discharge the accused.
- g. Where the accused is discharged of an offence punishable with the fine only and not of recurring nature and the trial has not commenced within a year, the accused shall be discharged.
- h. Where the offence is punishable with imprisonment upto one year and the trial has not commenced within a year, the accused shall be discharged.
- i. Where an offence punishable with an imprisonment upto 3 years and has been pending for more than 2 years the criminal courts shall discharge or acquit the accused as the case may be and close the case.

However, the directions of the court shall not apply to cases of offences involving

(a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act, 1947 or any other statute, (b) smuggling, foreign exchange violation

and offences under the Narcotics Drugs and Psychotropic Substances Act, 1985, (c) Essential Commodities Act, 1955, Food Adulteration Act, Acts dealing with environment or any other economic offences, (d) offences under the Arms Act, 1959, Explosive Substances Act, 1908, Terrorists and Disruptive Activities Act, 1987, (e) offences relating to the Army, Navy and Air Force, (f) offences against Public tranquility and (g) offences relating to public servants, (h) offences relating to elections, (j) offences relating to giving false evidence and offences against public justice, (k) any other type of offences against the State, (l) offences under the taxing enactments and (m) offences of defamation as defined in Section 499 IPC.

The Supreme Court has given further directions that the criminal courts shall try the offences mentioned in para above on a priority basis. The High Courts are requested to issue necessary directions in this behalf to all the criminal courts under their control and supervision.

These directions of the Supreme Court aim at streamlining the process of grant of bail to the undertrials and make it time- efficient. The judgement, however, does not provide for suo-moto grant of bail to the petitioners by the trial court. This implies that an application would have to be made to move the court for grant of bail. There is also no mechanism in the courts to automatically dispose off suitable cases. They are dependent upon filing of bail petitions and more important on the production of prisoners in time. You are requested to meet the Registrar of the High Court, State Legal Aid Authorities and take measures for release of undertrial prisoners in consonance with the Judgement of the apex court. Release of undertrial prisoners will lessen the congestion in jail and help more efficient prison management. The process thus needs the high degree of coordination between the judiciary, the police and the prison administration which unfortunately is now lacking.

The majority of undertrial prisoners are people coming from poorer and underprivileged sections of the society with rural and agricultural background.

Yours sincerely,

Sd/-

(Sankar Sen)

To

All Inspectors General of Prisons.

e) Letter to the Chief Justices of all High Courts with regard to Human Rights in Prisons

Justice J.S. Verma

Chairperson, (Former Chief Justice of India)

National Human Rights Commission

Sardar Patel Bhawan, Sansad Marg, New
Delhi-110001 INDIA

January 1, 2000

Dear Chief Justice,

As you are aware, one of the important functions entrusted to the National Human Rights Commission under the Protection of Human Rights Act, 1993, is to visit the prisons, study the conditions of the prison inmates and suggest remedial measures. During the last five years the Members of the Commission and its senior officers have visited prisons in various parts of the country and have been appalled by the spectacle of overcrowding, insanitary conditions and mismanagement of prison administration. The problem is further compounded by lack of sensitivity on the part of the prison staff to the basic human rights of the prisoners.

The State Prison Manuals contain provisions for District and Sessions Judges to function as ex-officio visitors to jails within their jurisdiction so as to ensure that prison inmates are not denied certain basic minimum standards of health, hygiene and institutional treatment. The prisoners are in judicial custody and hence it is incumbent upon the Sessions Judges to monitor their living conditions and ensure that humane conditions prevail within the prison walls also. Justice Krishna Iyer has aptly remarked that the prison gates are not an iron curtain between the prisoner and human rights. In addition, the Supreme Court specifically directed that the District and sessions Judges must visit prisons for this purpose and consider this part of duty as an essential function attached to their office. They should make expeditious enquiries into the grievances of the prisoners and take suitable corrective measures.

During visits to various district prisons, the Commission has been informed that the Sessions Judges are not regular in visiting prisons and the District Committee headed by Sessions Judge / District Magistrate and comprised of senior Superintendent of Police is not meeting at regular intervals to review the conditions of the prisoners.

Indeed in most of the jails, there is a predominance of under trials. Many of them who have committed petty offences are languishing in jails, because their cases are not being decided early for reasons which it is not necessary to reiterate. The District Judges during their visits can look into the problem and ensure their speedy trial. The Supreme Court in its several judgements has drawn attention to this fact and to the attendant problems in prison administration arising therefrom. The Supreme Court has also emphasised the need for urgent steps to reduce their numbers by expeditious trial and thereby making speedy justice a facet of Article 21 of the Constitution a reality. You may consider giving appropriate instructions to the District & Sessions Judges to take necessary steps to resolve the acute problem which has the impact of violating a human right which is given the status of constitutional guarantee. I would be grateful for your response in this matter.

With regards,

Yours sincerely,

Sd/-

(J.S. Verma)

To

Chief Justices of all High Courts

SOURCE: <http://www.nhrc.nic.in/>