

OFFICE OF THE SENIOR SUPERINTENDENT OF POLICE (L&O)  
PUDUCHERRY

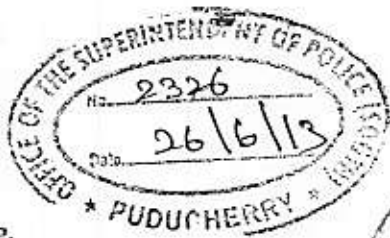
No. 1420  
1419/SSP(L&O)-RR/2013

Dated: 25.06.13.

NOTE

Please find enclosed the copy of proceedings, dt. 05<sup>th</sup> April 2010 of the National Human Rights Commission, New Delhi regarding guidelines/clarifications issued by the NHRC in respect of the interpretation of Sec. 176(1-A) of Cr.P.C.

2. The guidelines/clarifications may be gone through carefully and strictly adhered to.



SSP(L&O) 25/6/13

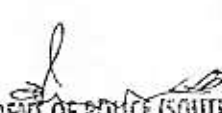
Encl.: As above.

To

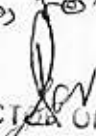
All SDPOs, CIs & SHOs in Puducherry District.

copy communicated to all CIs

for yg

  
SUPERINTENDENT OF POLICE (SOUTH)  
PUDUCHERRY

copy communicated to  
all SDPOs, total 19

  
INSPECTOR OF POLICE  
VILLIANUR CIRCLE  
PUDUCHERRY

wele

OFFICE OF THE INSPECTOR GENERAL OF POLICE  
PUDUCHERRY

No.4/IGP/SECY/2013-73.

Dated:21.06.2013

MEMORANDUM

Enclosed is the copy of proceedings dated 5<sup>th</sup> April 2010 of National Human Rights Commission, New Delhi, regarding amendment in section 176 Cr.PC for guidance and necessary action.

SSPs (L&O) / (C&I) / (KKL) should ensure strict adherence of the instructions issued.

*R. S. Krishnia*

(R. S. KRISHNIA, IPS)  
INSPECTOR GENERAL OF POLICE

Encl: As above.

To

- ✓ The Senior Supdt. Of Police (L&O), Puducherry.
- The Senior Supdt. Of Police (C&I), Puducherry.
- The Senior Supdt. Of Police, Karaikal.

Copy to:

The DIGP(Admn), Puducherry.

6420  
22.6.13

OFFICE OF THE IGP  
PUDUCHERRY  
No. D.8.70/CR  
Date 20/6/2013

No.I/11011/4/2013/P3/H  
Government of Puducherry  
Home Department  
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Puducherry, dt.20.06.2013

**OFFICE MEMORANDUM**

Sub: Home (Police) - Amendment in section 173 Cr.P.C. - Proceedings on 5.4.2010 of National Human Rights Commission, New Delhi - Reg.  
Ref: Letter dated 06.05.2013 from Deputy Registrar, NHRC, New Delhi forwarded by Under Secretary(Law), Puducherry.  
\*\*\*

A copy of the reference cited on the above subject is forwarded herewith for information and necessary action.

20/6/2013  
(PANKAJ KUMAR JHA)  
ADDL. SECRETARY TO GOVERNMENT

To  
The Inspector General of Police,  
Puducherry.

D.9(A) /  
CSP(Li)(S+1)(KRI) / sey

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GOVERNMENT OF PUDUCHERRY  
LAW DEPARTMENT

No.1304/2013-LD

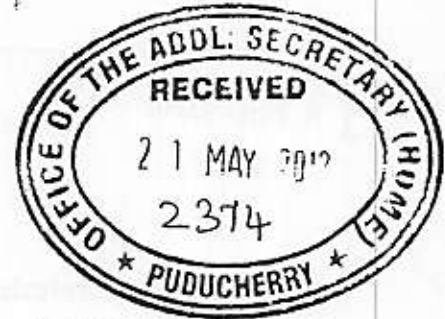
Pondicherry, the

To

21 MAY 2013

(i) The Special Secretary,  
Department of Revenue and Disaster Management,  
Pondicherry.

(ii) The Additional Secretary,  
Home Department,  
Chief Secretariat,  
Pondicherry.



Sub:

Copy of the Proceedings dated 5<sup>th</sup> April, 2010 of the National Human Rights Commission, New Delhi - Forwarded - Regarding.

Ref: Letter dated 6.5.2013 alongwith the enclosures received from the Deputy Registrar, National Human Rights Commission, New Delhi.

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With reference to the letter cited on the above mentioned subject, I am directed to forward herewith a copy of the Letter dated 6.5.2013 enclosing therewith the proceedings dated 5<sup>th</sup> April, 2010 in the Case No.41663/24/26/0809-JCD on the file of the National Human Rights Commission, New Delhi, received from the Deputy Registrar of the said Commission, for favour of information and necessary action.

Yours faithfully,

  
21 5/13  
(R. ELAI GOVAN)  
UNDER SECRETARY (LAW)

Encl:As above.



Case No. 597/3751 2012-JC

राष्ट्रीय मानव अधिकार आयोग

National Human Rights Commission

फरीदकोट हाउस, कॉपरनिकस मार्ग, नई दिल्ली-110 001-भारत

Faridkot House, Copernicus Marg, New Delhi-110 001 INDIA

Fax : 91-011-23384863, 23386521, 23382734

Telegraphic Address : HUMANRIGHT

E-mail : covdnhrc@nic.in

Website : www.nhrc.nic.in

31711 W/No 3  
131510223



4 May 2013

OFFICE SECRETARY

999/2013/2013/PA/13

4 MAY 2013

Dated : 6<sup>th</sup> May, 2013.

15/4/13

The Chief Secretaries of all the States/UTs

Subject :- Amendment in section 176 Cr. P.C.-Proceeding dated 5/4/2010 of the Commission- forwarding of - regarding

Sir,

I am directed to refer to the letter dated 19/05/2010, addressed to you by Shri J.P. Meena, Joint Secretary on the above subject enclosing a copy of the proceeding dated 05/04/2010 of the Commission for information and necessary action and to say that many District Magistrates are still not aware of the Guidelines/Clarifications issued by the Commission in respect of the interpretation of Section 176 (1-A) of Cr.P.C.

A copy of the proceeding of the Commission is therefore again enclosed for information, guidance and necessary action.

Yours faithfully,

(Sunil Arora)  
Deputy Registrar  
Tel: 23382535

The Chief Secretary,  
Govt. of Puduchery  
Puduchery - 605 001.

3/11/13

13/5/13

13/5/13

**BY SPEED POST**

जं. श्री. शीणा अर्ध ए एन  
सदस्य सचिव  
J. P. Meena IAS  
Joint Secretary



राष्ट्रीय मानव अधिकार आयोग  
फरीदकोट हाउस, कॉपरनिकस मार्ग,  
नई दिल्ली-110 001 भारत  
**National Human Rights Commission**  
Faridkot House, Copernicus Marg,  
New Delhi-110 001 INDIA

D.O.No.31(2)/2010-Coord.

May, 2010

Dear Shri Gupta,


After the amendment of Section 176 Cr.P.C. in the year 2005, some State Governments have started entrusting the inquiry of all custodial death cases to metropolitan Magistrate or Judicial Magistrate.

2 The provisions of Section 176 (1-A) of Cr. P.C. were considered in depth by the Commission in its proceedings dated 5<sup>th</sup> April, 2010 and some directions were made by the Commission in this regard.

3 A copy of the proceedings of the Commission is enclosed herewith for information and necessary action.

With regards,

Yours sincerely,

  
(J.P. Meena)

Encl: Copy of proceedings.

Shri. Atul Kumar Gupta  
Chief Secretary  
Government of Uttar Pradesh  
Lucknow.

**ISSUED**  
19 MAY 2010

**NATIONAL HUMAN RIGHTS COMMISSION  
FARIDKOT HOUSE  
NEW DELHI**

Complaint referred by : Sr.Suptd., District Jail,  
Fatehgarh, U.P.

Case No. : 41663/24/26/0809-JCD

Date : 5<sup>th</sup> April, 2010

CORAM

Justice Shri G.P.Mathur, Acting Chairperson  
Justice Shri B.C.Patel, Member  
Shri Satyabrata Pal, Member  
Shri P.C.Sharma, Member

PROCEEDINGS

In all cases of custodial death the Commission conducts an enquiry to find out if the human right of the person in custody was violated in any manner. In such enquiry the report of the Magistrate who is deputed to look into the circumstance of death is invariably taken into consideration. Prior to amendment of Section 176 Cr.P.C., the magisterial enquiry in all cases of custodial death was being made by an Executive Magistrate. After the amendment came into force, some States have communicated that the enquiry has to be made by a Judicial Magistrate or a Metropolitan Magistrate irrespective of the fact whether the death occurs in the natural course or otherwise. In our opinion, such interpretation of the amending

provision is not proper and the legal position needs to be clarified.

Section 176 of Cr.P.C. was amended by Act 25 of 2005. The amendment came into force w.e.f. 23<sup>rd</sup> June, 2006. The relevant provisions which need clarification are reproduced below:-

*"Section - 176.*

*(1-A) Where, -*

- (a) any person dies or disappears, or*
- (b) rape is alleged to have been committed on any woman,*

*while such person or woman is in the custody of the police or in any other custody authorized by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.*

- (2) .....*
- (3) .....*
- (4) .....*



(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1-A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing."

According to Section 176 (1-A), enquiry into the circumstances of custodial death or custodial disappearance or custodial rape is to be conducted by a Judicial Magistrate or a Metropolitan Magistrate within whose jurisdiction the offence has been committed. The use of word "offence" in Section 176 (1-A) affords some clue to the intention of the legislature. The amended law envisages a situation where the death is caused by commission of an offence. (When there is no suspicion or no evidence or allegation of an offence, an enquiry by a Judicial Magistrate is not mandatory.)

The position is further made clear by the language of sub-section (5) of Section 176. Section 176 (1-A) does not at all refer to an Executive Magistrate but sub-section (5) of Section 176, while referring to an enquiry or investigation under sub-

section (1-A) mentions the word "Executive Magistrate" as well. Thus, the position which emerges on a conjoint reading of sub-section (1-A) and sub-section (5) is that in those cases where the death occurs in custody and there is some material to show that an offence has been committed, the enquiry is to be conducted by a Judicial Magistrate or a Metropolitan Magistrate but in other cases where the death appears to be natural or caused by some disease and there is no allegation of any offence having been committed, the enquiry can be made even by an Executive Magistrate.

The word "offence" has been used in sub-section (1-A) in the context of death of the person in custody and not in the context of origin of custody. Interpretation of the word "offence" as relating to the origin of custody may create practical difficulty in enquiry. To illustrate, a person is arrested in a case of theft at Delhi and after being remanded to judicial custody he is transferred to a jail at some other place and he dies there, it would be impractical to expect a Judicial Magistrate at Delhi to look into the circumstances of death. The reasonable course would be to hold the enquiry at the place <sup>where</sup> the death has occurred. In other words the enquiry shall have to be held by the Magistrate within whose jurisdiction the death has taken place.

The interpretation of law has to be reasonable. A Judicial Magistrate should be called upon to hold an enquiry into the

cases where serious questions of law are likely to arise. It looks incongruous if serious cases like those mentioned in clauses (i) or (ii) of sub-section (3) of Section 174 are to be enquired into by an Executive Magistrate but simple cases of natural death in custody are to be enquired into by a Judicial Magistrate or a Metropolitan Magistrate.

In our opinion the correct position of law is that an enquiry by Judicial Magistrate or Metropolitan Magistrate is mandatory in only those cases, of custodial death, where there is reasonable suspicion of foul play or well founded allegation of commission of an offence. All other cases of custodial death where the death is natural or caused by disease may be enquired into by an Executive Magistrate.

This clarification be circulated to all the States and Union Territories.

*C.P. Mathur*  
(Justice G.P. Mathur)  
Acting Chairperson

*B.C. Patel*  
(Justice B.C. Patel)  
Member

*Satyabrata Pal*  
(Satyabrata Pal)  
Member

*P.C. Sharma*  
(P.C. Sharma)  
Member