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National Human Rights Commission
Providing information to -
and reporting to it about
incidents of deaths in custody
within 24 hours.

GOVERNMENT OF MAHARASHTRA

Home Department(Special),
No. HRC-1194/GI-273/CR-3/SPL-1-B,
Mantralaya, Pombay-400 032.

Dated the 15th March 1995.

C I R C U L A R

As we all know, human rights matters are assuming increasing importance and engaging the attention of the international community in general and the human rights activists / civil liberties groups (both international and national) in particular. Both Central and State Government attach great importance to the human rights issues with a view to ensure that the human rights of the citizens are adequately safeguarded as envisaged in the Constitution. The setting up of the Human Rights Commission is considered to be a step towards fulfilment of this objective. A National Human Rights Commission has been constituted under the Protection of Human Rights Ordinance, 1993 (subsequently replaced by the Protection^{of} Human Rights Act, 1993 on 8-1-1994) in October, 1993. The Commission has been entrusted with some statutory functions, which include inquiring, suo-motu or on a petition presented to it by victim or any person on his behalf, into complaint of (i) violation of human rights or abetment thereof; or (ii) negligence of the prevention of such violation, by a public servant.

2. To enable the Commission to perform its statutory function, the protection of Human Rights Act, 1993, vests in the Commission all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908. This includes, inter-alia, the powers to require any person to furnish information on such points or matters as, in the opinion of the Commission, may be useful for or relevant to the subject matter of the inquiry and any person so required is legally bound to furnish such information.

The Commission also has powers to enter any building or premises and seize any document or take extracts or copies therefrom, subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable. To facilitate inquiry by the Commission the Act empowers the Commission in particular to :-

- (i) Call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it ;

Provided that -

- (a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own ;
- (b) if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;
- (ii) Without prejudice to anything contained in clause (i) if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

3. It may be seen that the procedure prescribed for obtaining a Report from the Central Government or any State Government or any other authority or organization subordinate thereto is a very useful option, both from the point of view of the Commission and the concerned Government/authority. It is observed that the Commission has been taking recourse to the powers given to it in the majority of the complaints received by it by asking the Central & Government / State Government to give a report in the first instance. This Section gives the Commission option to even close the case if it is satisfied that either no further inquiry is required or the required action has been initiated or taken by the concerned Government or authority. It would, therefore, be in the interest of the Government to give

prompt reports to the Commission covering, inter-alia, the factual detailed report regarding the complaint as also the action initiated/proposed to be taken by the concerned Government. This would not only help the Commission to facilitate its inquiry but also the State Government which is given a reasonable opportunity of vindicating its position. On the other hand, if a delayed reply or no reply is given to the Commission, it may compel the Commission to initiate its own inquiry, the report of which it is empowered to publish together with the comments of the concerned Government or authority, after giving one month's time to such concerned Government, under Sub-section (5) and (6) of section 18 of the Act. In this, there is a possibility that the Commission may publish the fact that concerned Government/authority has not sent the report called by the Commission, which will obviously have adverse implications, on the image of the Government and cause avoidable criticism and adverse publicity.

4. Effectiveness of the National Human Rights Commission would depend, to a large extent, on the cooperation extended to it by the State Government or any other subordinate authority or organisation. It is, therefore, requested to extend maximum cooperation to the National Human Rights Commission whenever any information or a report in regard to a complaint of violation of human rights is received from the Commission.

5. As regards custodial deaths, the District Magistrates/Superintendents of Police/Commissioners of Police are requested to report incidents of deaths in custody within 24 hours of its occurrence or within 24 hours of having come to know the incident.

6. All departments of Mantralaya are requested to

bring these instructions to the notice of all concerned.

Sd/- 15.3.95.

(R. D. Tyagi)

Principal Secretary to the Government of Maharashtra,
Home Department (Special).

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Copies to :-

- All Secretaries of the Departments in Mantralaya,
- The Director General of Police, Maharashtra State, Bombay.
- All Commissioners of Police.
- All Superintendents of Police.
- All District Magistrates.
- All Range Deputy Inspector General of Police.
- The Additional Director General of Police, CID (Crime), Pune.
- All Commandants of S.R.P.F. Groups.
- All Desks in Home Department.
- All Supervisory Officers in Home Department .