

**GOVERNMENT OF INDIA
HOME AFFAIRS
LOK SABHA**

UNSTARRED QUESTION NO:2683

ANSWERED ON:10.08.2010

CUSTODIAL DEATHS

Adsul Shri Anandrao Vithoba;Choudhary Shri Bhudeo;Dharmshi Shri Babar Gajanan;Mandal Dr. Tarun;Yadav Shri Dharmendra

Will the Minister of HOME AFFAIRS be pleased to state:

- (a) whether there are several reports of deaths and rapes while in custody of the Police and Central Forces in various parts of the country;
- (b) if so, the details thereof including the number of such cases reported, genderwise during each of the last three years and the current year, State-wise;
- (c) the total number of accused officials arrested and the details of action taken against them during the said period, Statewise;
- (d) whether the Union Government has taken up the matter of rising custodial deaths with the concerned State Governments to devise a new Strategy to prevent such incidents; and
- (e) if so, the details thereof, including amendments in the relevant laws to deal with such menace?

Answer

MINISTER OF THE STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI AJAY MAKEN)

(a) to (e): A statement is laid on the table of the House.

STATEMENT IN REPLY TO PARTS (a) TO (e) OF LOK SABHA UNSTARRED QUESTION NO.2683 FOR 10.08.2010

(a) to (c): A State-wise statement indicating the number of cases registered by the National Human Rights Commission during the years 2006-2007, 2007-2008, 2008-2009 and 2009-2010 (upto 28.2.2010), is at Annexure A. As per the Constitution of India, "Police" and "Public Order" are State Subject. It is for the State Government to take action in every crime. The gender-wise statement and data relating to the number of accused officials arrested and the details of action taken against them is not maintained and compiled, Centrally.

(d) to (e): In an important step aimed at curbing custodial violence all the State Governments/Union Territories were advised in 1993 to issue directions to the District Magistrates and Superintendents of Police of every district that they should report to the Secretary General of the National Human Rights Commission about the incident of custodial death and custodial rape within 24 hours of occurrence of the event and that failure to report promptly will give rise to presumption that there was an attempt to suppress the incident. The States and Union Territories were again advised in 1995 to follow the instructions.

Further, Section 176 of the Criminal Procedure Code has been amended vide Code of Criminal Procedure (Amendment) Act 2005 to provide that in cases of death or disappearance of a person or rape of a woman while in custody of the police, there shall be a mandatory judicial inquiry and in case of death, examination of the dead body shall be conducted within twenty four hours of death. The Union Government have also been issuing guidelines to the State Governments from time to time advising them to ensure that adequate steps are taken to check instances of custodial deaths/rapes.

Section 357 of Cr.P.C. empowers the Courts to grant compensation to the victim and order for payment of cost of the prosecution.

Further, to prevent custodial crimes, a Bill titled "The Prevention of Torture Bill, 2010" was introduced in Lok Sabha on 26.4.2010. The Bill, inter-alia, provides for punishment to those involved in the incident of torture and specifies the time limit for taking cognizance of the offence of torture. The Bill would act a deterrent for Public Servants from indulging in custodial violence and abuse of power by police authorities.

Further the NHRC had issued guidelines to all State Governments/Union Territories to inform the Commission about incidents of deaths during police encounter within 24 hours of occurrence.

The guidelines issued by the Commission in respect of procedures to be followed by the State Governments 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.

Subsequently on 2.12.2003, revised guidelines of the Commission have been issued and it was emphasized 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 is a member of the encounter party, whose action resulted in deaths, such cases should be handed over for investigation to some other independent investigating agency, such as State Crime Branch of Criminal Investigation Department (CBCID). Besides, whenever a specific complaint is made against the police alleging commission of a criminal act on their part which makes out a cognizable 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 of July respectively in the proforma devised for the purpose.