

**GOVERNMENT OF INDIA
HOME AFFAIRS
LOK SABHA**

UNSTARRED QUESTION NO:686
ANSWERED ON:15.07.2014
CUSTODIAL DEATHS
Shrirang Shri Chandu Barne

Will the Minister of HOME AFFAIRS be pleased to state:

- (a) whether it is a fact that enumerating lapses in the investigation of custodial deaths have taken place in the country;
- (b) if so, the details thereof;
- (c) whether the Supreme Court had suggested to amend the relevant laws dealing with custodial deaths;
- (d) if so, the details thereof and the reaction of the Government in this regard; and
- (e) the time by which the laws dealing with the custodial deaths is likely to be amended?

Answer

MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI KIREN RIJU)

(a) & (b) : As per the Seventh Schedule of the Constitution of India, "Police" and "Public Order" are State subjects. It is for the State Government to take action in every crime including custodial deaths. However, the Central Government issues advisories and the NHRC issues guidelines and recommendations.

In an important step aimed at curbing custodial violence, all the State Governments/Union Territories were advised by the NHRC 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 incidents of custodial death and custodial rape within 24 hours of occurrence of the event and that failure to report promptly will give rise to the presumption that there was an attempt to suppress the incident.

In order to streamline the procedure for processing the cases of custodial deaths, the following further instructions were issued on 3rd January, 2001 by the Commission :-

- (i) The post-mortem report, in new proforma circulated by NHRC in March 1997, along with the videograph and the Magisterial Enquiry report must be sent within 2 months of the incident.
- (ii) 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.

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

(c) to (e) : The Hon'ble Supreme Court in the case of Dr. D.K. Basu Vs. State of West Bengal 1997 (1) SCC 416 had laid down certain basic requirements to be followed in all cases of arrest or detention, as a measure to prevent custodial violence. The details are enclosed at Annexure. Further to this, police and public order are State subjects under the Seventh Schedule of the Constitution of India and it is primarily responsibility of the State/UT Government, to appropriately prevent and ensure non-occurrence of police atrocities and to protect the human rights of the citizens.