

Excerpts from the W.P.(Crl.) No. 354/2019

Suhas Chakma, a human rights activist, filed a W.P.(Crl.) No. 354/2019 seeking implementation of Section 176(1A) of the CrPC which provides that “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 authorised 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.”

The Union of India being concerned, among others, about ‘death or disappearance of a person or rape of a woman while in the custody of the police’ introduced Code of Criminal Procedure Code (Amendment) Bill, 1994 on 9th May 1994. It was passed 10 years later in 2005 and Section 176(1A) CrPC came into force on 23 June 2006.

Though Section 176(1A) of the CrPC uses the word “SHALL” and therefore, be mandatorily implemented, the petition states that “securing judicial inquiries into death or disappearance of a person or alleged rape in custody is indeed an uphill task and an insurmountable political battle, despite the law providing for mandatory judicial inquiries into such offences.

Section 176(1A) CrPC since its enactment has been left untouched, remained only in the statute books, and not implemented on the ground with the consequence of rising custodial crimes.

The “*Crime in India*” Annual Reports published by the National Crime Records Bureau under the Ministry of Home Affairs recorded death or disappearance of 1,303 persons in police custody i.e. 827 persons not remanded to police custody by court and 476 persons remanded to police custody by courts from 2005 to 2017 as per **Table 1** given below:

Table 1: Number of death or disappearance of persons in police custody from 2005 to 2017

Year	Death or disappearance of persons in police custody without court remand	Death or disappearance of persons in police custody with court remand	Total
2005	61	67	128
2006	51	38	89
2007	61	57	118
2008	61	40	101
2009	59	25	84
2010	45	25	70
2011	75	29	104

2012	71	38	109
2013	97	21	118
2014	61	32	93
2015	67	30	97
2016	60	32	92
2017	58	42	100
Total	827	476	1303

“*Crime in India*” Annual Reports of the NCRB for 2005-2017 further state that out of the total 827 cases of “death or disappearance of persons in police custody without court remand”, judicial inquiry was ordered only in 166 cases i.e. 20% of the total cases. Despite mandatory requirement under Section 176(1A), judicial inquiry was not ordered in 661 cases or 80% of the cases as given in **Table 2** below.

Table 2: Number of death or disappearance of persons in police custody without court remand during 2005 to 2017 as per the NCRB

Year	Death or disappearance of persons in police custody without court remand	Judicial Inquiry ordered or conducted
2005	61	4
2006	51	2
2007	61	10
2008	61	9
2009	59	18
2010	45	9
2011	75	22
2012	71	21
2013	97	30
2014	61	14
2015	67	19
2016	60	0/NA**
2017	58	8
Total	827	166

Death or disappearance of persons not remanded to police custody by court is nothing but murder/killing of the defenceless citizens/persons who have appeared after being summoned by the police or already taken into custody. The death or disappearance of these defenceless citizens/persons expose the abysmal failure of the laws relating to arrest and detention, and contempt for the Guidelines issued by the Supreme Court in *D.K. Basu v. State of West Bengal*.

The “*Crime in India*” Annual Reports of the NCRB for 2005-2017 also state that out of the total of 476 cases of “death or disappearance of persons in police custody with court remand”, judicial inquiry was ordered only in 104 cases i.e. 21% of the total cases. In the remaining 372 cases i.e. 79% of the cases judicial inquiry was not ordered in clear violation of Section 176(1A) CrPC as provided in **Table 3** below.

Table 3: Number of death or disappearance of persons in police custody with court remand during 2005 to 2017 as per the NCRB

Year	Death or disappearance of persons remanded to police custody by court	Judicial Inquiry ordered or conducted
2005	67	1
2006	38	0
2007	57	2
2008	40	9
2009	25	7
2010	25	7
2011	29	10
2012	38	6
2013	21	6
2014	32	11
2015	30	12
2016	32	28
2017	42	5
Total	476	104

It is assumed that courts will ensure the rule of law to protect the lives and liberties and therefore, production of any person arrested or detained before the courts within 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate is guaranteed under Article 22 of the Constitution of India. Once a person is brought before the Court and the court orders remand, judiciary also becomes a party for protection of the right of the life of the person. The death or disappearance of persons in police custody after court grants remand and the failure to order judicial inquiry as per Section 176(1A) is a colossal and unconscionable failure of the lower judiciary.

The NCRB’ annual reports *Crime in India* from 2005 to 2017 further provide that in a large number of cases of death or disappearance of persons remanded to police custody and not remanded to custody by court, no inquiry was held at all. In a number of cases, executive magisterial inquiries were held. However, the Law Commission of India in its 152nd report, “Custodial Crimes” dated 24th August 1994 and the Parliamentary Standing Committee on Home Affairs (Rajya Sabha) in its Twenty-Eight Report dated 28th February 1996 examined these Executive Magisterial inquiries, found them to be highly inadequate and therefore,

recommended mandatory judicial inquiries after amending Section 176(1A) CrPC. It is pertinent to mention that executive magisterial inquiry is impermissible under Section 176(1A).

Petitioner Suhas Chakma had submitted applications under the Right to Information Act, 2005 with the States and Union Territories (UTs) on the implementation of Section 176(1A) CrPC during 2015, 2016 and 2017. A large majority of the State governments or UT Administrations have informed that the information sought by the petitioner herein was “unavailable” while some of the State governments declined to share information invoking exemptions under the RTI Act, 2005 and a majority State governments /UT administration did not even reply to the RTI applications.

A few police stations and prisons from Assam, Delhi, Maharashtra, Meghalaya, Odisha and Telangana however provided information which show utter non-compliance with Section 176(1A) CrPC as given below:

A. ASSAM

As per information received from the Superintendents of different jails in Assam, a total of 58 cases of deaths and 1 case of disappearance took place in eight jails viz. Diphu District Jail, Tinsukia District Jail, Nagaon District Jail, Hailakandi District Jail, Karimganj District Jail, Silchar Central Jail, Guwahati Central Jail and Tezpur Central Jail during 2015-17. However, inquiry by the Judicial Magistrate or the Metropolitan Magistrate as provided under Section 176(1A) CrPC was conducted in ONLY ONE out of total 58 cases of deaths in custody. No inquiry by the Judicial Magistrate or the Metropolitan Magistrate was also conducted in the lone case of disappearance.

B. DELHI

As per information shared by the Delhi Police, two cases of deaths and three cases of disappearance in police custody took place from 2015-2017 in Delhi. Out of these five cases, inquiry by the Judicial Magistrate or the Metropolitan Magistrate as provided under Section 176(1A) CrPC was conducted in only ONE CASE of death in police custody at Ambedkar Nagar Police Station.

C. MAHARASHTRA

As per reply dated 26 October 2018, the Maharashtra Police stated that 47 cases of deaths or disappearance or rape occurred in the custody of police or prison in the State during 2015-17. The information pertaining to the number of judicial inquiries conducted into these cases was stated to be “Not available”, clearly indicating the absolute lack of seriousness with respect to violations of the right to life in the custody of the State.

D. MEGHALAYA

As per replies received from Superintendent of Police of West Jaintia, East Khasi Hills and North Garo Hills districts of Meghalaya, three deaths in custody of police occurred during 2015-17 but no inquiry by the Judicial Magistrate or the Metropolitan Magistrate as provided under Section 176(1A) CrPC was conducted in any of the cases.

E. Odisha

Information received from the Under Secretary, Home Department, Government of Odisha stated that 17 deaths took place in custody of police during 2015-17. Out of the 17 deaths in police custody, inquiries by the Judicial Magistrate or the Metropolitan Magistrate as provided under Section 176(1A) CrPC were conducted only in 5 cases.

The Directorate of Prisons, Odisha stated that 140 deaths occurred in prisons/jail during the same period. However, inquiry by the Judicial Magistrate or the Metropolitan Magistrate as provided under Section 176(1A) CrPC was held only in 34 out of 140 cases of deaths in prison custody.

F. TELANGANA

As per information received from the Telangana police department, 12 deaths occurred in police custody in the State during 2015-17. However, the Government of Telangana did not provide any information as to whether inquiry by judicial magistrate under Section 176(1A) CrPC was conducted, clearly indicating the absolute lack of seriousness with respect to violations of the right to life in the custody of the State.

Poor implementation of Section 176(1A) CrPC, lack of proper investigation and seriousness into death or disappearances in police custody appears to have ended up providing impunity.

The NCRB's *Crime in India* from 2005 to 2017 further provide that with respect to 476 cases of "death or disappearance of persons remanded to police custody by court", 266 cases were registered, 54 policemen were chargesheeted **but not a single policeman was convicted as on date** as given in **Table 4** below.

Table 4: Number of cases registered, police men charge sheeted and policemen convicted in cases of death or disappearance of persons in police custody on court remand during 2005 - 2017

Year	Death or disappearance of persons remanded to police custody by court	Cases registered in connection with death	Police men Charge Sheeted	Police men convicted
2005	67	48	0	0
2006	38	24	1	0
2007	57	33	7	0
2008	40	22	3	0
2009	25	22	0	0
2010	25	15	1	0
2011	29	20	5	0
2012	38	26	1	0
2013	21	13	0	0
2014	32	5	15	0
2015	30	9	4	0
2016	32	6	14	0
2017	42	23	3	0
Total	476	266	54	0

The NHRC received complaints/reports of 35,563 custodial deaths from 1994-1995 to 2018-2019. This includes 11,520 custodial deaths/rapes during 1994-1995 to 2004-2005 i.e. prior to the enactment of Section 176(1A) CrPC and 24,043 custodial deaths/rapes during 2005-2006 to 2018-2019 i.e. after enactment of Section 176(1A) CrPC as given in **Table 5** below:

Table 5: Number of custodial deaths and custodial rapes registered by the NHRC during 1994-1995 to 2018-2019

Sl. No.	Year	Police Custodial Deaths/ Rapes	Judicial Custodial Deaths/ Rapes	Total number of custodial deaths/ rapes per year
1	1994-1995	114	51	165
2	1995-1996	136	308	444
3	1996-1997	191	700	891
4	1997-1998	191	807	998
5	1998-1999	180	1106	1286
6	1999-2000	177	916	1093
7	2000-2001	127	910	1037
8	2001-2002	165	1140	1305
9	2002-2003	185	1157	1342
10	2003-2004	162	1300	1462
11	2004-2005	140	1357	1497

12	2005-2006	144	1591	1735
13	2006-2007	129	1477	1606
14	2007-2008	206	1789	1995
15	2008-2009	127	1527	1654
16	2009-2010	126	1473	1599
17	2010-2011	146	1426	1572
18	2011-2012	130	1302	1432
19	2012-2013	146	1557	1703
20	2013-2014	140	1577	1717
21	2014-2015	133	1589	1722
22	2015-2016	152	1670	1822
23	2016-2017	146	1616	1762
24	2017-2018	146	1636	1782
25	2018-2019	145	1797	1942
	TOTAL	3,784	31,779	35,563

During the period 1994-1995 to 2005-2006 i.e. prior to Section 176(1A) CrPC coming into force on 23 June 2006, the NHRC had registered 1,768 cases of “Police Custodial Deaths/Rapes” and 9,752 cases of “Judicial Custodial Deaths/Rapes”. A total of 11,520 custodial deaths/rapes in custody at the rate of 2.87 or about 3 persons per day took place during the period as provided in **Table 6** given below.

Table 6: Number of custodial deaths and custodial rapes registered by the NHRC during 1994-1995 to 2004-2005

Sl. No.	Year	Police Custodial Deaths/Rapes	Judicial Custodial Deaths/Rapes	Total number of custodial deaths/rapes per year	Average custodial deaths/rapes per day
1	1994-1995	114	51	165	0.45
2	1995-1996	136	308	444	1.22
3	1996-1997	191	700	891	2.44
4	1997-1998	191	807	998	2.73
5	1998-1999	180	1106	1286	3.52
6	1999-2000	177	916	1093	2.99
7	2000-2001	127	910	1037	2.84
8	2001-2002	165	1140	1305	3.58
9	2002-2003	185	1157	1342	3.68
10	2003-2004	162	1300	1462	4.01
11	2004-2005	140	1357	1497	4.10
12	2005-2006	144	1591	1735	4.75
	SUB TOTAL-1	1912	11343	13255	3.03

For the period 2005-2006 to 2018-2019 i.e. after the enactment of Section 176(1A) CrPC on 23 June 2005, the NHRC registered 2,016 cases of “Police Custodial Deaths/Rapes” and 22,027 cases of “Judicial Custodial Deaths/Rapes”. A total of 24,043 custodial deaths/rapes at the rate of 4.71 or about 5 persons per day took place during the period as provided in **Table 7** below:

Table 7: Number of custodial deaths and custodial rapes registered by the NHRC during 2005-2006 to 2018-2019

Sl. No.	Year	Police Custodial Deaths/Rapes	Judicial Custodial Deaths/Rapes	Total number of custodial deaths/rapes per year	Average custodial deaths/rapes per day
1	2006-2007	129	1477	1606	4.40
2	2007-2008	206	1789	1995	5.47
3	2008-2009	127	1527	1654	4.53
4	2009-2010	126	1473	1599	4.38
5	2010-2011	146	1426	1572	4.31
6	2011-2012	130	1302	1432	3.92
7	2012-2013	146	1557	1703	4.67
8	2013-2014	140	1577	1717	4.70
9	2014-2015	133	1589	1722	4.72
10	2015-2016	152	1670	1822	4.99
11	2016-2017	146	1616	1762	4.83
12	2017-2018	146	1636	1782	4.88
13	2018-2019	145	1797	1942	5.32
	TOTAL	1872	20436	22308	4.70

An analysis of **Table 6** and **Table 7** providing number of custodial deaths/ rapes registered by the NHRC during 1994-1995 to 2018-2019 show massive/alarming increase in the number of custodial deaths/rapes as described below:

First, during 1994-1995 to 2005-2006 i.e. prior to enactment of Section 176(1A) CrPC, average cases of custodial deaths/ rapes per day registered by the NHRC was 3.03% or about 3 persons. Since the enactment of Section 176(1A) CrPC i.e. during 2006-2007 to 2018-2019, average cases of custodial deaths/ rapes per day registered by the NHRC was 4.70% or about 5 persons. **The number of custodial deaths/ rapes per day in India increased by 66% i.e. from 3 cases per day prior to the enactment of Section 176(1A) CrPC to 5 cases per day after the enactment of Section 176(1A) CrPC. (Emphasis of the petitioner)**

Second, in absolute number deaths/rapes in police custody had increased from about 114 cases per year during 1994-1995 to 145 cases per year 2018-2019 and from 2010-2011 onwards, the number of deaths/rapes in police custody per year has been consistently been above 140 cases.

Third, in absolute number deaths/rapes in judicial custody had increased from about 51 cases during 1994-1995 to 1,797cases 2018-2019 and from 1998-1998 onwards, the number of deaths/rapes in judicial custody has been consistently been above 1,000 cases per years.

While deaths in judicial custody can take place for a number of reasons ranging from natural death to torture to death, death in police custody takes place mainly as a result of torture.

Non-implementation of Section 176(1A) CrPC since its came into force on 23 June 2006 has effectively defeated the legislative intent to build a country governed by the rule of law. It has failed to establish transparency and act as a deterrent. The non-implementation of the Section 176(1A) has ended up shielding the law breakers i.e. delinquent police or prison officials under whose custody the heinous offence of death or disappearance of a person or rape of woman took place.

Unless Section 176(1A) CrPC is implemented in letter and spirit, heinous offences such as death or disappearance of a person or rape of women in custody shall continue unabated in the custody of the police or in any other custody authorised by the Magistrate or the Court; and the need to enforce this provision of the CrPC for India's own conscience as a nation governed by the rule of law cannot be stressed enough. In a civilized society, it is the fear of law that prevents crimes but in India, there is

effectively no fear of the law among the delinquent police or prison officials who commit custodial crimes with impunity.

Therefore, the petition submitted before the Supreme Court with the following prayers to issue a writ, order or direction in the nature of mandamus or any other writ, order or direction that this Hon'ble Court deems just and proper in the facts and circumstances of the present case:

- a) directing the immediate registration and initiation of proceedings under Section 176 (1A) of the Code of Criminal Procedure, in all such cases where such inquiries have not been commenced / initiated by the competent Judicial Magistrate / or the Metropolitan Magistrate enjoying territorial / requisite jurisdiction;
- b) directing the District / Sessions Judge of every District in the Indian Union to file Quarterly Report(s) before the Chief Justice of their respective High Court, informing / intimating the death, disappearance or rape of any person in Police or custody of the State and whether and if, proceedings under Section 176 (1A) have been initiated in accordance with law;
- c) directing the District / Sessions Judge of every District in the Indian Union to file Quarterly Report(s) before the National Human Rights Commission / NHRC informing / intimating the death, disappearance or rape of any person in Police or custody of the State and whether and if, proceedings under Section 176 (1A) have been initiated in accordance with law;
- d) directing and empowering the National Human Rights Commission / NHRC to file and initiate appropriate proceedings for invocation / enforcement of Section 176 (1A) of the Code of Criminal Procedure, in all those cases where such proceedings were not initiated / commenced in accordance with law.