

IN THE SUPREME COURT OF INDIA
ORIGINAL CRIMINAL JURISDICTION

CRL. M.P. NO. OF 2013

IN

WRIT PETITION (CRL.) NO. 539 OF 1986

IN THE MATTER OF:

D.K. Basu

..... Petitioner

VERSUS

State of West Bengal & Ors.

..... Respondents

APPLICATION FOR DIRECTIONS ON BEHALF OF AMICUS CURIAE

ADVOCATE FOR AMICUS CURIAE: PRANAB KUMAR MULLICK

IN THE SUPREME COURT OF INDIA
ORIGINAL CRIMINAL JURISDICTION
CRL. M.P. NO. OF 2013
IN
WRIT PETITION (CRL.) NO. 539 OF 1986

IN THE MATTER OF:

D.K. Basu

..... Petitioner

VERSUS

State of West Bengal & Ors.

..... Respondents

APPLICATION FOR DIRECTIONS ON BEHALF OF AMICUS CURIAE

To

The Hon'ble Chief Justice of India and His Companion Justices of the
Supreme Court of India at New Delhi.

The humble petition of the
Petitioner abovenamed.

MOST RESPECTFULLY SHEWETH:

1. That the present Writ Petition was instituted on 20.08.1986 before this Hon'ble Court raising important issues relating to custodial violence and custodial death. This Hon'ble Court has passed several judgments and orders in the present Writ Petition, which are set out as under:
 - [(1997) 1 SCC 416] dated 18.12.1996
 - [(1997) 6 SCC 642] dated 01.08.1997
 - [(1998) 9 SCC 437] dated 07.11.1997
 - [(1998) 6 SCC 380] dated 01.05.1998
 - [(2002) 10 SCC 741] dated 15.02.2002
 - [(2003) 11 SCC 723] dated 19.10.2001
 - [(2003) 11 SCC 725] dated 12.10.2001
 - [(2003) 12 SCC 174] dated 07.05.2003

2. The Amicus most respectfully submits that despite the repeated judgments and directions passed by this Hon'ble Court in the present Writ Petition, laying down various guidelines for prevention of custodial violence and custodial deaths, the implementation by the various States appears to be extremely lax resulting in a steady stream of cases of gross custodial violence.
3. A chart prepared by National Human Rights Commission (NHRC) showing the Total number of cases filed involving deaths in Judicial Custody (intimation + complaints), Total number of cases filed involving deaths in Police Custody (intimation + complaints) and Total number of cases filed involving Custodial Torture (Police) for the period from 2007-08 to 2012-13 is as under:

Year	Cases filed re. Death in Judicial Custody (Intimation)	Cases filed re. Death in Judicial Custody (Complaints)	Cases filed re. Death in Police Custody (Intimation)	Cases filed re. Death in Police Custody (Complaints)	Cases filed re. Custodial Torture (Police)	Total
2007-2008	1,788	47	188	62	445	2,530
2008-2009	1,598	51	142	68	573	2,432
2009-2010	1,473	85	124	134	615	2,431
2010-2011	1,426	158	146	165	855	2,750
2011-2012	1,302	246	128	306	678	2,660
2012-2013	1,557	285	143	198	366	2,549
Total	9,144	872	871	933	3,532	15,352

4. As regards rape in police and judicial custody, on 9 March 2010, the then Minister of State in the Ministry of Home Affairs, Government of India stated in the Lok Sabha that the National Human Rights Commission registered 39 cases of rape from judicial and police custody from 2006 to 2010 up to 28 February 2010. These included 9 cases, including 2 in judicial custody and 7 in police custody, in 2006-2007; 17 cases, including 2 in judicial custody and 15 in police custody, in 2007-2008; 7 cases, including 2 in judicial custody and 5 in police custody, in 2008-2009; and 6 cases, including 1 in judicial custody and 5 in police custody in 2009-2010 up to 28 February 2010.
5. It is also pertinent to note that unlike custodial deaths, the police are not mandatorily required to report cases of torture which do not result in deaths, to the NHRC. Hence the number of cases of police torture as referred to in the Chart, are only a fraction.
6. The figures in the aforesaid chart and Minister's statement do not include the cases handled by the various State Human Rights Commissions (SHRCs). The main reason why torture continues to be practiced on such a wide scale throughout India is that the police feel themselves to be immune, they are confident enough that they will not be held accountable, even if they kill the victim & even if the truth is revealed.
7. In fact, a few recent incidents of custodial violence/deaths widely reported in the media, even compelled the Hon'ble Supreme Court to take suo motu cognizance in the matters.

The Tarn Taran case provides a case in point. On 03.03.2013, a woman harassed by taxi drivers approached police in Tarn Taran in Punjab only to be assaulted mercilessly in public, her brother picked up by Police and father beaten up. This Hon'ble Court initiated a suo motu Writ Petition (Civil) No. 139 of 2013 entitled In Re: "Punjab cops beat up woman in public" and "Police lathi-charge protesting contractual teachers in Patna" published in various

newspapers or the country dated 05.03.2013 and 06.03.2013. It is pertinent to note that this Hon'ble Court rejected the Magisterial enquiry report on the said incident.

This Hon'ble Court is also dealing with another case, viz. Indian Citizens killed by the Manipur Police and other security forces while they were in custody or in stage-managed encounters or in ways broadly termed as "extra judicial executions". This Hon'ble Court has initiated a suo motu Writ Petition (Criminal) No. 129 of 2012 entitled In Re: "Extra Judicial Execution Victim Families Association (EEVFAM) and Another Vs. Union of India & Another".

8. The extent of the problem is highlighted by the fact that in Ghaziabad District (U.P.) alone, six custodial deaths were reported in four months from April to July, 2013 in the following manner:
 - i. On 02.04.2013, a man died in Dasna jail under mysterious circumstances;
 - ii. On 19.04.2013, a 22 year old youth died in police custody in Modinagar;
 - iii. On 28.04.2013, a prime accused in the double murder case of a CISF constable and his wife, allegedly hanged himself at Indrapuram police station, the co-accused alleged police torture;
 - iv. On 15.06.2013, a 40 year old man died in Kavi Nagar police station, his family claims that he was tortured;
 - v. On 21.07.2013, a 55 year old man allegedly committed suicide in Dasna jail; one policeman was suspended;
 - vi. On 27.07.2013, the accused in an acid throwing case allegedly committed suicide at the Vijay Nagar Police Station. Five policemen have been suspended.

[source: Times of India, New Delhi dated 28.07.2013]

9. It is submitted that Custodial Violence is a trait against human dignity and human rights that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation. It is a senseless exhibition of superiority and physical power over the one

who is overpowered. The poor, the deprived classes, women & political activists are the worst victims of police brutality. Torture in custody flouts the basic rights of the citizens and is an affront to human dignity.

10. In the circumstances as aforesaid, it is submitted that having regard to the experience regarding implementation of the directions earlier given by this Hon'ble Court, time has come for issuance of certain further directions as set out in the succeeding paragraphs, in order to eradicate custodial violence and custodial deaths:

10A. MANDATORY DIRECTION FOR SETTING UP OF STATE HUMAN RIGHTS COMMISSIONS BY ALL STATES:

10A.1 Although the Protection of Human Rights Act was passed in 1993 and 20 years have passed till date, the following States have not constituted State Human Rights Commissions (SHRCs):

- i. Delhi
- ii. Arunachal Pradesh
- iii. Mizoram
- iv. Meghalaya
- v. Tripura; and
- vi. Nagaland.

10A.2 In respect of Delhi, it is submitted that the second highest number of human rights violation cases reported to National Human Rights Commission (NHRC) comes from Delhi. The NHRC Curtain Raiser published on its 20th Foundation Day dated October 12, 2012 states that during 1st October 2011 to 30th September, 2012 a total number of 94,985 fresh cases were registered in the Commission. Maximum (46,187) cases were registered from Uttar Pradesh followed by Delhi (7988) and Haryana (6921). Even though NHRC is located in Delhi, it is necessary that Delhi should have its own SHRC.

10A.3 Mizoram, Meghalaya, Tripura and Nagaland are all disturbed States with problems of insurgency, foreign immigration, tribal warfare and ethnic violence. Custodial violence and custodial deaths are rampant in each of these States. In such disturbed regions, it is all the more necessary to have proper authority to keep check on and redress, human rights violations and therefore the need to constitute SHRCs in these States. Nagaland has in its affidavit affirmed on 15.04.2013, filed in the present case, has stated that in the absence of SHRC, it has constituted a State Level Human Rights Committee and District Level Human Rights Committee to look into complaints of violation of human rights in respective jurisdictions.

10A.4 There are also several custodial death cases reported from Arunachal Pradesh. That apart, Arunachal Pradesh is a border State and often militants from Assam seek refuge in Arunachal Pradesh. It is necessary therefore to have a full fledged SHRC in Arunachal Pradesh.

10A.5 In the circumstances as aforesaid, it is necessary that the aforesaid States be called upon for explanation as to why SHRCs have not been constituted in their respective States and direct them to constitute the same within a specified time frame.

10B. DIRECTION REGARDING COMPLETION OF APPOINTMENT TO VACANT POSTS OF CHAIRPERSONS AND MEMBERS OF SHRCs:

10B.1 In several States, although SHRC has been constituted, the post of Chairperson is vacant. These States are:

- i. Jammu & Kashmir;
- ii. Manipur;
- iii. Karnataka;
- iv. Rajasthan;
- v. Himachal Pradesh;
- vi. Madhya Pradesh; and

10B.2 It is pertinent to mention that in Manipur and Himachal Pradesh, the SHRC is not functioning since the post of Chairperson as well as sole member is vacant.

In Manipur, the Armed Forces Special Powers Act (AFSPA), 1958 is in operation. The Army and para military forces have the power to arrest, search and seize and fire upon or otherwise use force, even to the extent of causing death. This Hon'ble Court in Writ Petition (Criminal) No. 129 of 2012 is examining the issues relating to extra judicial killings by Manipur police and security and para-military forces in Manipur. The Amicus has also come across articles relating to custodial deaths of juveniles in Manipur, with minors being described as adults in police records. In such a State if all the posts of SHRC remain vacant, there would be no check on abuse of human rights of citizens in the State.

10B.3 In Jammu & Kashmir also, the post of Chairperson and one member is vacant and only one member is functioning. It is submitted that the State of Jammu & Kashmir is beset with problems of terrorism. It is a State where the Armed Forces Special Powers Act (AFSPA), 1958 is in operation and there are regular allegations of police and army brutalities. The vacancy in the office of Chairman of SHRC and one member in such a State is inexcusable.

10B.4 In Jharkhand, only the Chairperson is functioning while the post of the sole member remains vacant. In Karnataka, two members are functioning while the post of Chairperson and one member remains vacant.

10B.5 In respect of Sikkim SHRC, the website states that "the Chairperson is functioning from his residence and the Secretary to the Commission is functioning from his office."

10B.6 Maharashtra has the highest number of custodial deaths in the country as per NHRC estimates. Yet, till recently, the posts of

Chairperson as well as both other members in Maharashtra SHRC were vacant, reducing the SHRC to a non-functional body. It is only recently that the Chairperson and one member have been appointed while the post of one member remains vacant.

10B.7 It is also pertinent to note that many of the e mail addresses of the SHRCs in the NHRC website are incorrect. It is necessary that the websites be regularly and correctly updated.

10B.8 In these circumstances, the following directions are sought for:

- i. Direction to the State Governments that the vacant posts of chairperson and members in all the SHRCs be filled up within one month from date of order passed by this Hon'ble Court;
- ii. Direction to the State Governments that Chairperson of a SHRC should be appointed one month prior to retirement of the incumbent and in any case the post of Chairperson of SHRC should not remain vacant for more than one month.
- iii. Direction to the NHRC and the SHRCs to display correct and upto date information on their websites.

10C. DIRECTION TO STATES TO CONSTITUTE HUMAN RIGHTS COURTS IN DIFFERENT DISTRICTS IN TERMS OF SECTION 30 OF PROTECTION OF HUMAN RIGHTS ACT, 1993:

10C.1 Under Section 30 of Protection of Human Rights Act, 1993, for the purpose of providing for speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences.

10C.2 However, the aforesaid provision has not been implemented. Having regard to the ground situation regarding widespread abuse of human rights, it is necessary to direct the States to constitute Human Rights Courts in different districts in terms of Section 30 of Protection of Human Rights Act, 1993 within three months from date.

10C.3 The SHRC websites do not display whether the aforesaid Human Rights Courts have been constituted or not. It is therefore prayed that direction should be issued that the SHRC websites should properly display constitution of the Human Rights Courts in the respective States.

10D. INSTALLATION OF CCTV CAMERAS IN ALL POLICE STATIONS & PRISONS AND 'MEDIA AUDIT':

10D.1 It is necessary to install CCTV Cameras in all Police Stations and prisons throughout the country. In the first phase it is suggested that CCTV Cameras be installed in all Police Stations and prisons in semi-urban, remote and rural locations and in 50% of urban locations. In the second phase, the coverage should be extended to all police stations and prisons all over the country. The phasewise implementation should be completed within one year.

10D.2 The CCTV cameras should cover every angle of the police station, including but not limited to, the entrance to the police station, all places where there is interaction between the police and public and in all lockups and detention places, by whatsoever names called and interrogation rooms. CCTV Cameras need also to be installed in the prisons, both in the cells as well as in the offices, interrogation rooms and meeting places.

10D.3 The said CCTV Cameras must be kept in working condition. The feed recordings should be directly sent to an intermediate control centre under the control of the SHRC. The SHRC should designate persons to regularly scrutinize the recordings on surprise sample basis, to ensure that no custodial violence is taking place. Further, the recordings must be preserved for at least one year.

10D.4 It is suggested that NGOs and Associations of Persons (including persons from the media) should be registered in each district, who would be entitled to conduct random and surprise inspections of all

Police Stations and Prisons in their specified area. Such bodies should be empowered to visit each and every place in the Police Station or Prison, including interrogation rooms, lock ups and cells, speak to the inmates and examine the CCTV footages to ascertain if any custodial violence is taking place. The said NGOs and Associations of Persons would be entitled to report directly to the SHRCs and also send copies to Senior Police and Prison authorities. It is submitted that such '**Media Audit**' would be crucial to make Police Stations and Prisons 'violence free' areas. However, precautions need to be taken to ensure that investigation is not hampered or interfered with, thereby.

10E. EXTENSION OF APPLICABILITY OF D.K. BASU GUIDELINES FROM THE TIME ANY PERSON WHO HAS BEEN SUMMONED BY POLICE, ATTENDS THE POLICE STATION:

10E.1 The 11 guidelines set out by this Hon'ble Court in the present case and reported in (1997) 1 SCC 416, apply only to cases of arrests made under Sections 41 (when police may arrest without warrant) and 74 (Warrant directed to police officer) of the Code of Criminal Procedure, 1973 (as amended up to date). It does not apply to those who are summoned but not formally arrested. Experience shows that persons who have been summoned by Police but not formally arrested, are regularly subjected to torture during interrogation.

10E.2 In order to fill up this loophole, it is submitted that some of the aforesaid guidelines issued by this Hon'ble Court, including right to be accompanied by Advocate, medical examination etc. should be made applicable from the time any person who has been summoned by Police, attends the Police Station.

10F. MANDATORY INITIATION OF CRIMINAL PROCEEDINGS U/S. 302/304 IPC IN EACH CASE OF CUSTODIAL DEATH:

10F.1 In most cases of custodial deaths or custodial violence, criminal proceedings are rarely initiated.

10F.2 Even where criminal proceedings are initiated, the senior officers are generally let off and only some junior officers are made the scapegoat.

In December 2009, the Bombay High Court asked the Maharashtra government to explain why it had rejected the state Criminal Investigation Department (CID)'s plea to prosecute 10 officers of Mumbai Police in the Khwaja Yunus murder case. The Maharashtra government had sanctioned the prosecution of four minor officers but let off 10 senior officials despite the CID establishing their roles in the custodial death of Yunus in January 2003.

10F.3 Even at the time of framing of charges in cases of custodial deaths, no charge is framed under Sections 302/304 IPC. In the case of **Mehboob Batcha & Ors. Vs. State [(2011) 7 SCC 45]** before this Hon'ble Court, in a case of custodial murder of husband and gangrape of wife, this Hon'ble Court felt it was a fit case deserving death penalty but could not increase the sentence since no charge had been framed U/s. 302/304 IPC.

10F.2 In view of the aforesaid situation, direction should be given to all States that:

- i. In every case of custodial death, the Officer in charge of the police station or the Jail Superintendent, as the case may be, should be immediately and automatically suspended and criminal proceedings should be commenced against him;
- ii. In each case of custodial death, there must be mandatory initiation of criminal proceedings U/s. 302/304.

10G. RAISING REBUTTABLE PRESUMPTION OF MURDER IN EACH CASE OF CUSTODIAL DEATH:

10G.1 It is trite that custodial violence and custodial death occurs within the four walls of Police Station or prison. In most cases there are no independent eye witnesses. In such a situation, when death occurs,

a rebuttable presumption must be raised that the victim has been murdered by the Police/prison personnel present at the time. The onus and burden must be placed on the Police/prison personnel to prove their innocence.

10G.2 The 185th Law Commission has in fact recommended insertion of Section 114-B to the Indian Evidence Act, 1872 in the following terms:

"Presumption as to bodily injury while in police custody

- 114 B.** (1) In a prosecution of a police officer for an offence committed by an act alleged to have caused bodily injury to a person, if there is evidence that the injury was caused during a period when that person was in the custody of the police, the Court may presume that the injury was caused by the police officer having custody of that person during that period.
- (2) The Court, in deciding whether or not it should draw a presumption under sub-section (1), shall have regard to all the relevant circumstances including, in particular,
- (a) the period of custody;
 - (b) any statement made by the victim as to how the injuries were received, being a statement admissible in evidence;
 - (c) the evidence of any medical practitioner who might have examined the victim; and
 - (d) evidence of any magistrate who might have recorded or attempted to record the victim's statement.
- (3) For the purpose of this section, the expression 'police officer' includes officers of the para-military forces and other officers of the revenue, who conduct investigation in connection with economic offences."

10G.3 The Union of India should be directed to submit its position regarding effecting such an amendment to the Indian Evidence Act, 1872.

10H. DIRECTIONS REGARDING AUTOMATIC SUSPENSION AND NATURE OF DEPARTMENTAL PROCEEDINGS TO BE INITIATED IN EACH CASE OF CUSTODIAL DEATH:

10H.1A perusal of affidavits filed by the various States shows that in most cases, the charge in the disciplinary proceedings initiated against the erring Police personnel, is only dereliction of duty or gross negligence. In the few cases where the Policemen are held guilty, the punishment imposed is minimal.

In the affidavit filed by State of West Bengal, in a case of custodial death of one Jhantu Kar in 2007, the punishment imposed is a "major punishment of withholding annual increment for one year." Similar punishment was imposed on two others in respect of the death of one Biswanath Das (later identified as Krishna Mondal) in 2008.

In the affidavit of Madhya Pradesh dated 30.12.2010, in reply to the question as to how many cases resulted in final disposal and/or final result, the answer given is "In one case stoppage of one increment for one year and fine Rs. 500/-." In the supplementary affidavit dated 27.06.2011, except in one case of compulsory retirement of ASI and reversion of Head Constable to Constable, in all other cases, the punishment imposed was of withholding of one annual increment of one year.

In the supplementary affidavit of Assam, in District Golaghat, two criminal actions involving S. 302 IPC were initiated against suspected police officials in respect of custodial deaths, but no departmental proceedings were initiated, nor any of the police personnel suspended. In Karbi Anglong District also there was one criminal case registered in 2007 but no departmental proceedings.

10H.2 Further, in most cases it is generally found that only a single constable is made a scapegoat and is charged and punished even though several other police officers would certainly have been present at the police station at the time of the assault.

In the affidavit of State of West Bengal, it is found that in respect of custodial death of one Jhantu Kar, only one constable of District Armed Police was held liable. It is inconceivable that at the time the said Jhantu Kar was beaten, there were no other police personnel present. It is apparent that either there were other policemen who took part in the assault or in any case, did not take any steps to save the deceased, thereby committing dereliction of duty.

10H.3 It is pertinent to note that Sections 7 and 29 of the Indian Police Act 1861 provide for dismissal, penalty or suspension of police officers who are negligent in the discharge of their duties or unfit to perform the same. However, even where the departmental proceedings establish guilt, dismissal is seldom imposed and the personnel are let off with fine, warning, stoppage of increment etc.

10H.4 In view of the aforesaid, it is necessary that the following directions be given by this Hon'ble Court:

- i) In every case of custodial death, the Officer in charge of the police station or the Jail Superintendent, as the case may be, should be immediately suspended;
- ii) Mandatory departmental proceedings must be initiated against the Officer in charge of the police station or the Jail Superintendent, as the case may be, as well as other erring personnel in every case of custodial death;
- iii) Since custodial violence/custodial death is not merely an omission as could be called "gross dereliction of duty", but an overt act, most often with malicious intent, the charge framed in departmental proceedings must be for intentionally causing death / grievous hurt;
- iv) Where departmental proceedings establish guilt of any Police/ prison/ security personnel regarding causing custodial death, departmental proceedings must impose deterrent punishment of atleast dismissal from service.

10I. EXHORTING COURTS TO FOLLOW ZERO TOLERANCE POLICY IN RESPECT OF CASES OF CUSTODIAL VIOLENCE AND CUSTODIAL DEATHS:

10I.1 It has been found that in several gruesome cases of custodial violence and custodial deaths, the punishment imposed is not proportionate to the offence committed.

In the case of **CBI Vs. Kishore Singh [(2011) 6 SCC 369]**, where the police constable had maliciously arrested a person on account of personal enmity and cut off his private part, the trial court sentenced the constable to 10 years rigorous imprisonment but the High Court reduced it to sentence already undergone. This Hon'ble Court thereafter enhanced the sentence to 5 years.

Similarly in the case of **Mehboob Batcha (supra)**, the accused in a case of custodial murder of husband and gangrape of wife, got away with 10 years rigorous imprisonment since in the Courts below they had not been charged under Section 302 IPC.

10I.2 In the circumstances, it is necessary that this Hon'ble Court exhort the Courts below to follow a policy of zero tolerance to cases of custodial violence and custodial deaths in the following manner:

- i) The punishments imposed should be proportionate to the gravity of the crime.
- ii) In gruesome cases, the penalty imposed should not be less than three-fourth of the maximum penalty prescribed under law, especially since the police are custodians of law.
- iii) In case, any lesser penalty is awarded, there must be very strong reasons for awarding such lesser penalty and the same must be duly recorded in the judgment.
- iv) There should be no leniency by Courts in cases of custodial violence and custodial deaths unless there are extenuating circumstances as recorded in the judgment.
- v) In appropriate cases, the higher Courts should issue notices for enhancement of punishment.
- vi) Compensation/fine must mandatorily be imposed in each case of custodial death and also in cases of custodial violence. The

compensation/fine may be paid by the State at the first instance but subsequently must be recovered from the offending Police Officers.

10J. SENSITIZATION OF THE POLICE PERSONNEL TO HUMAN RIGHTS ISSUES:

10J.1 It is submitted that the principal problem pertains to use of illegal force by Police without any regard to the human rights of citizens. The directions given by this Hon'ble Court in the present case [reported in (1997) 1 SCC 416] are recorded on the board in the Police Stations but implementation of the said directions leave much to be desired.

The long term solution can only be sensitization of the Police personnel. The States should therefore be directed to conduct regular and continuing courses to sensitize the Police forces to human rights of citizens and to the limitations of exercise of power.

10J.2 The NHRC should be requested to prepare a course for sensitization of the Police personnel to the human rights issues alongwith guidelines regarding qualification and experience of teaching staff etc. Thereafter, the State should take measures for disseminating the said course to the Police Personnel from constables to Station House Officers. Every three months, the State Home Department should sent a report to the SHRC giving information as to the number of Police Stations in which the said course has been conducted and the number of police personnel who have undergone the course. Revision courses should be conducted after specified period for all personnel who have undertaken the main course.

10K. IMPLEMENTATION OF THE RECOMMENDATIONS FOR POLICE REFORMS MADE BY THIS HON'BLE COURT IN THE CASE OF PRAKASH SINGH VS. UNION OF INDIA [(2006) 8 SCC 1] AND

RECOMMENDATIONS FOR POLICE REFORMS MADE BY THE JUSTICE J.S. VERMA COMMITTEE:

10K.1 It should be ensured that the Police reforms directed by this Hon'ble Court in the case of **Prakash Singh Vs. Union of India [(2006) 8 SCC 1]** and the police reforms recommended by the Justice J.S. Verma Committee are mandatorily implemented. In particular, the law and order maintaining department in the Police force, should be separated from the investigating department. The States should be directed to file affidavits showing the status of implementation of the Police reforms suggested in Prakash Singh's case.

10K.2 Since torture during interrogation is mostly conducted in the absence of proper forensic and scientific skills, it is necessary that scientific methods of investigation be devised so that reliance on torture to secure confession, which is otherwise illegal, is made redundant. The Police Personnel from constables to Station House Officers should be given training in scientific and forensic crime detection methods.

10L. MANDATORY DEPLOYMENT OF AT LEAST ONE WOMAN CONSTABLE IN EACH POLICE STATION:

10L.1 It must be made mandatory for every Police Station in the Country to have atleast one woman constable having regard to women detenues. For this, it is necessary for employment of more woman Police constables. The Police Stations must also have necessary infrastructure and facilities in respect of the said woman Police constables and for temporary interrogation or detention of women, if so required.

10M. DIRECTION TO SHRCS TO FILE COMPLIANCE REPORT REGARDING CONSTITUTION OF SUB-COMMITTEES IN TERMS OF ORDER DATED 19.11.2001:

10M.1 This Hon'ble Court in its order dated 19.11.2001 [reported in (2003) 11 SCC 723] had directed the State Human Rights Committees of different States/ union territories to constitute a sub-committee with a

view to monitor and ensure compliance of the said requirements. It needs to be ascertained whether the said SHRCs have actually constituted the said sub-committees and whether such monitoring is actually being carried out.

10N. NOTICE TO UNION OF INDIA REGARDING INDIA'S SIGNING OF 1975 UN CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT (UNCAT) AND PASSING THE PREVENTION OF TORTURE BILL:

10N.1 UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (UNCAT), 1975 came into force in 1997. However, India is not a party to the said Convention. It is pertinent to note that the provisions in the said Convention are mostly already being implemented by the Indian Judicial System. In such circumstances, it is necessary to call for reply from the Union of India as to whether the same not be ratified and made part of Indian law.

10N.2 The Prevention of Torture Bill was passed in the Lok Sabha in 2010. Having regard to certain deficiencies in the Bill, the Rajya Sabha referred it to a select committee. It appears that the Bill has been redrafted by the Select committee but its report has not yet been tabled for discussion. It is submitted that the Union of India should be called upon to file a reply and inform about the enactment of appropriate law on Prevention of Torture.

10.O NEED FOR UNIFORM DEFINITION OF CUSTODIAL DEATH AND INCLUSION OF UNNATURAL DEATHS WITHIN 24 – 48 HOURS OF ALLEGED RELEASE FROM CUSTODY:

10O.1 It is submitted that a consistent and uniform definition of custodial death is required for uniform reporting by all the States. In the absence of a specific definition, some States may exclude deaths in custody due to natural causes while some States may include the

same. Some States may erroneously consider deaths by suicide in police or judicial custody to be outside the purview of custodial deaths.

100.2 Encounter killings of persons in custody often take place with the person being shown in the books as having been released from custody and thereafter being taken to forest or secluded place or railway line and killed. Since the death takes place outside the four walls of police station, and after alleged release from custody, it is not reported as custodial death. In order to plug this loophole, it is necessary to include in the term 'custodial death', all persons who were in custody and who have died an unnatural death within 24 or 48 hours of being released from custody.

100.3 There should be an uniform format for reporting of custodial deaths. The reporting should commence from the point of entry of the deceased to the police station or prison, till the time of demise. The Central Government should be directed to devise such uniform exhaustive format for reporting of custodial deaths, as would help in collation, aggregation and proper analysis of data.

11. COMMENTS ON THE AFFIDAVITS FILED ON BEHALF OF DIFFERENT STATES:

11A. ASSAM:

11A.1 In its original Affidavit dated 28.12.2010, Assam stated that there were no deaths in police custody and therefore the question of departmental or criminal proceedings against officers did not arise. This was patently contradictory to the Central Govt. list which stated that there were 8 police custody deaths in Assam in 2006-07, 12 in 2007-08 and 7 in 2008-09.

11A.2 Subsequently, Assam filed additional affidavit dated 09.02.2011 where it admitted to 19 police custodial deaths and 6 custodial

injuries during 2007 to 2010. The State has tried to explain the earlier affidavit stating that the figures therein pertained only to under-18 detainees.

11A.3 The Chart shows that in **District Golaghat**, two criminal actions involving S. 302 IPC were initiated against suspected police officials in respect of custodial deaths, but no departmental proceedings were initiated, nor any of the police personnel suspended. In **Karbi Anglong District** also there was one criminal case registered in 2007 but no departmental proceedings. In District Sivasagar, there is no stated case of death or injury, yet departmental action (suspension) is shown to be taken against two officers for gross negligence of duty. In **Cachar district**, one criminal action was initiated in 2007 for custodial death. While the criminal case is still under investigation, departmental proceedings have been completed. One SI was punished with stoppage of increment with cumulative effect and severe reprimand for indisciplined conduct, while two other police officials were merely reprimanded for indisciplined conduct. Another set of departmental proceedings drawn against the three officers in 2008 is still pending with findings submitted but order yet to be passed.

11A.4 It is not apparent what happened in the two criminal actions in **District Golaghat**, since it is merely stated that the same "was returned in F.R. to the Hon'ble Court." In Karbi Anglong it is merely stated that the "presently the case is the stage of submission of F.R." In a case of custodial hurt in 2007 in **Bongaigaon district**, the criminal cases have merely resulted in fine of Rs. 500/- and Rs. 1000/-.

11B. WEST BENGAL

11B.1 West Bengal has reported only one custodial death in 2007 and one in 2008. However the figures obtained from Central Government state the custodial death figures as 7 in 2007, 8 in 2008 and 4 in 2009.

11B.2 Even in respect of the two custodial deaths admitted by the State Government, no criminal proceedings were launched against any of the offenders.

11B.3 Departmental proceedings resulted only in imposition of "major penalty" of withholding of increment for one year without any cumulative effect, in respect of the first case and withholding of increment for six months without any cumulative effect in the second case. Departmental proceeding against one person in the second case is still pending. The police personnel were merely held liable for lapse of duty.

11C. MADHYA PRADESH:

11C.1 Madhya Pradesh first filed an affidavit dated 30.12.2010 admitting to only one custodial death in 2007, that of a woman, who is alleged to have committed suicide. No criminal action was initiated in respect thereof. Departmental action resulted in the Inspector being fined Rs. 500/- and in respect of the head constable, one increment was stopped for one year.

11C.2 The figures given in the affidavit were contradicted by the Central Government figures in Parliament which show 10 custodial deaths in 2007, 10 in 2008 and 5 in 2009.

11C.3 Faced with these figures, the State came up with a subsequent affidavit dated 27.06.2011, where the number of custodial deaths has been admitted to be 08 (during 01.04.2007 to 31.03.2008), 05 (during 01.04.2008 to 31.03.2009) and 08 (during 01.04.2009 to 31.03.2010). Even in respect of the admitted deaths, most have been explained away as deaths by illness and suicide and only 1, 2 and 3 deaths respectively have been acknowledged as death due to other causes (apart from illness and suicide). The figures in the earlier affidavit have been explained by stating that they only pertained to women and minors and the remaining information was now being submitted.

11C.4 In custodial death matters, only in respect of 2 cases in 2007-08, criminal proceedings were initiated, in others, admittedly no criminal proceedings were initiated. There is no explanation as to why no criminal action were initiated in respect of custodial deaths occurring in 2008-09 and 2009-10. In the two criminal actions initiated, one is pending while the other has resulted in acquittal. The State has not stated whether it has challenged the verdict of acquittal.

11C.5 The punishments imposed in departmental proceedings are also grossly inadequate. In the supplementary affidavit dated 27.06.2011, except in one case of compulsory retirement of ASI and reversion of Head Constable to Constable, in all other cases, the punishment imposed was of withholding of one annual increment of one year.

11D. PUNJAB:

11D.1 The Affidavit dated 25.11.2010 filed by State of Punjab pertains only to persons under 18 years of age. The State has not given any figures for persons above 18 years of age. Hence the information provided is incomplete and not in compliance with orders of this Hon'ble Court.

11D.2 As per the figures of Central govt./ NHRC, the number of deaths in police custody in Punjab were 1 in 2007, 7 in 2008 and 4 in 2009.

11D.3 It is pertinent to note that the Tarn Taran case set out at para 7 of the present submissions, give a reality check on the custodial conditions in Punjab. The NHRC is also examining the case of recovery of buried dead bodies during the time of Punjab militancy. It is necessary that the State file full and true information before this Hon'ble Court and take appropriate action to check custodial violence and custodial deaths.

11E. TAMIL NADU:

11E.1 The Affidavit dated January 2011 filed by the State of Tamil Nadu admits to 3 custodial deaths in 2007, 2 in 2008 and 4 in 2009 (all

periods from 1st April to 31st March). This is contrary to the Central Govt./ NHRC figures, which report 16 custodial deaths in 2007, 6 in 2008 and 6 in 2009.

11E.2 In custodial death matters, no criminal action was initiated. Explanation should be called for from the State as to why no criminal action was initiated.

11E.3 Even departmental action has not been initiated in all custodial cases. As per the affidavit, only 2 departmental proceedings were initiated in 2007-08 and 4 in 2009-10 in respect of custodial deaths. There is 100% pendency in departmental proceedings. It is submitted that such absence of criminal or departmental action embolden police and prison personnel to blatantly violate the human rights of individuals.

11F. UTTAR PRADESH:

11F.1 The Affidavit dated 14.01.2011 filed by State of U.P. admits to 12 custodial deaths in 2007-08, 4 in 2008-09 and 9 in 2009-10. This is contrary to the figures given by Central Govt.-NHRC which report 11 deaths in 2007, 32 in 2008 and 24 in 2009.

11F.2 In the deaths admitted by the State, one of the deceased was under 18 years of age in 2007. The State has explained that the said deceased was accused of offence u/s 376 IPC and was beaten by public and succumbed to injuries. It is stated that three persons alleged to have beaten the minor were chargesheeted u/s 304 IPC and sent to jail while the guilty police personnel were suspended and punished for dereliction of duty for having failed to take sufficient precaution to secure the accused from the people's wrath.

11F.3 Criminal action is stated to have been taken in 11 cases in 2007, 4 cases in 2008 and 8 cases in 2009. Hence criminal action has not been initiated in all cases. In fact, if the Central Govt.-NHRC figures

are considered, the number of cases in which criminal action has been initiated, is very low. Only in one case punishment was imposed by trial court of life imprisonment and fine of Rs. 1 lac while in one case there has been acquittal.

11F.4 Even departmental action has not been initiated in all cases of admitted deaths. The number of departmental actions initiated in 2007 is only 8, in 2008 only 3 and in 2009 only 5. No departmental actions have been initiated in any case of hurt or grievous hurt.

11F.5 It is pertinent to note that The Times of India dated 28.07.2013 has reported in the front page under the caption "Acid thrower found dead in lock up" that it was the sixth 'custodial death' in Ghaziabad in less than four months. It is submitted that this is an extremely alarming situation.

11G. MAHARASHTRA

11G.1 Maharashtra has the highest number of custodial deaths in the country. According to Central Govt./NHRC figures, the number of custodial deaths in Maharashtra in 2007, 2008 and 2009 is 21, 25 and 23. State of Maharashtra in its reply has put the figures for the three years as 20, 29 and 23. It is possible that the difference in figures has arisen since Maharashtra has computed the years-on 1st April to 31st March basis.

11G.2 It is noteworthy that many of the custodial deaths admitted by Maharashtra are women.

11G.3 Criminal action in custodial death matters has been initiated in only 1 case in 2007, 2 cases in 2008 and 1 case in 2009. The result of the criminal action is not stated.

11G.4 The number of departmental proceedings initiated are not stated, merely the number of personnel against whom departmental action

was initiated, are set out in the affidavit. No departmental action has been initiated in respect of hurt and grievous hurt cases. The outcome of the departmental proceedings is also not stated. The Affidavit of Maharashtra is thus incomplete.

11H. KARNATAKA:

11H.1 The information provided by State of Karnataka in respect of custodial death, pertains only to persons under the age of 18 years. Hence the affidavit is insufficient. As per Central Govt./ NHRC figures, the number of custodial deaths in Karnataka during 2007, 2008 and 2009 are 8, 5 and 2 respectively. Karnataka affidavit shows death of one male under 18 years of age, without explaining how the death of the minor occurred.

11H.2 No criminal action has been initiated in custodial death matters. 3 departmental proceedings are reported to have been initiated in custodial death matter but the outcome of that proceeding is not clear from the affidavit.

11H.3 Certain departmental proceedings are reported to have been initiated in hurt/grievous hurt cases, in which there are 2 dismissals, 1 removal, 4 censures and 10 increments postponed.

11H.4 It is further stated that out of 9 criminal actions, 5 cases have been compounded, 3 resulted in acquittals and in 1 case there was mistake of fact/law. 6 criminal actions are stated to be pending Trial. The affidavit is incomplete and further information is required.

11-I. HARYANA:

11-I.1 The affidavit of State of Haryana gives figures only for custodial death under the age of 18 years. One death is reported in 2007 and none in 2008 & 2009. However, in para 3 of the affidavit, it is stated that there are 4 suicides-two at Kaithal and one each at Palwal and Panipat. Again, at para 6 of the annexure to the affidavit, one FIR is lodged in 2007 and another in 2008 in respect of matters resulting in

death. Hence, the information provided in the affidavit of Haryana, is contradictory, insufficient and incomplete. It is pertinent to note that as per Central Government/ NHRC, the number of custodial deaths is 2 in 2007, 9 in 2008 and 6 in 2009.

11-I.2 In respect of death cases, in the FIR filed in 2007, all the accused were acquitted by Court. The FIR of 2008 seems to be still pending. In one of the suicide cases from Panipat, one person is reported to have been awarded stoppage of two annual increments with temporary effect.

11-I.3 No hurt or grievous hurt are reported to have occurred in custody during 2007 to 2009 and therefore no criminal action or departmental proceedings are reported.

11-I.4 In the case of alleged suicides at Kaithal, compensation of Rs. 5 lacs each was awarded by Punjab & Haryana High Court to the next of kin of two victims. In the other two alleged suicide cases, NHRC awarded compensation of Rs. 1 lac each.

11J. ORISSA:

11J.1 Orissa has filed an affidavit dated 02.04.2013 in which it has merely stated that it had filed affidavits dated 24.09.1997 and 20.09.1997 and again on 17.02.1998 about alleged custodial deaths. It has not given any information in terms of order dated 24.09.2010 passed by this Hon'ble Court in Crl. M.P. No. 19694 of 2010. It is submitted that State of Orissa is in deliberate non-compliance with order passed by this Hon'ble Court.

11J.2 It is pertinent to note that as per Central Government/ NHRC figures, the number of custodial deaths in Orissa is 2 in 2007, 6 in 2008 and 2 in 2009.

11K RAJASTHAN:

11K.1 The information given by State of Rajasthan is not in terms of order dated 24.09.2010 passed by this Hon'ble Court in Crl. M.P. No.

19694 of 2010. The State in its affidavit dated 31.01.2012 has merely set out the status of custodial death from year 2010 onwards.

11K.2 The information given by State of Rajasthan shows 1 custodial death in 2010 and 2 custodial deaths in 2011. All the cases are pending.

11L. NAGALAND:

11L.1 The information given by State of Nagaland is not in terms of order dated 24.09.2010 passed by this Hon'ble Court in Crl. M.P. No. 19694 of 2010. The State in its affidavit dated 15.04.2013 has merely set out the number of custodial deaths each year from 2006 to 2012, without giving details about the cases lodged, action taken and status of proceedings.

11K.2 The information given by State of Nagaland shows 4 custodial deaths in 2006, 2 in 2007, 2008, 1 in 2009 and 3 custodial deaths each in 2010, 2011 and 2012.

11L. HIMACHAL PRADESH:

11L.1 Affidavit dated 11.07.2013 submitted by Himachal Pradesh merely sets out the number of deaths from 2007 to 31.05.2013, without indicating the action taken. The affidavit admits to a total of 24 custodial deaths from 2007 to 31.05.2013 and one case of custodial torture. Yet, the SHRC is non-functional since the post of Chairperson and sole member remain vacant.

11M. CHANDIGARH:

11M.1 Affidavit dated 08.04.2013 filed on behalf of the U.T. of Chandigarh, states that CCTV cameras have been installed in each and every police station, which are monitored by the supervisory officers of the units and senior officers at Police headquarters. The affidavit admits one case of custodial death in 2007 and two cases in 2008.

11N. UTTARAKHAND:

28

11N.1 Affidavit dated 25.03.2013 filed on behalf of Uttarakhand again gives only the number of custodial deaths, without specifying the action taken pursuant to the said custodial deaths. The affidavit admits to 3 custodial deaths in 2006, 3 in 2007, 1 in 2008, nil in 2009, 2 in 2010, 4 in 2011 and nil in 2012.

PRAYER

In the circumstances, it is prayed that this Hon'ble Court be pleased to:

- a) Pass directions as prayed for at para 10A to 10-O in the present affidavit ;
- b) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Settled By:

Dr. A.M. Singhvi ;

Sr. Advocate

AMICUS Curiae

Drawn by:

(Pranab Kumar Mullick)

Advocate for AMICUS Curiae

NEW DELHI

DATE: 22.11.2013