

GUIDELINES OF SUPREME COURT AND NHRC ON HUMAN RIGHTS

BY

DR. G.KALYANI

**LEGAL ADVISOR CUM PUBLIC PROSECUTOR
O/o COMMISSIONER OF PROHIBITION &
EXCISE, A.P., HYDERABAD**

Email.Id : dr.kalyanigollapudi@gmail.com



Registration of FIR

STATE OF HARYANA V BHAJAN LAL & OTHERS

AIR 1992 SC 604:

Supreme Court Directives:

- 1. An FIR must be registered as soon as information about a cognizable offence is received.
- 2. Before starting an investigation, police officers should make a rational inference. that a cognizable offence has been committed. The inference should be made solely on the basis of facts mentioned in the FIR.

- 3. Courts will not as a rule interfere in the investigation process except in the following circumstances when the High Court⁶ can cancel the FIR and other proceedings carried out by the police:
 - i. Where the allegations in the FIR do not constitute any cognizable offence or justify an investigation by the police.
 - ii. Where the allegations made in the FIR and the evidence collected by the police in support of the allegations do not point towards the guilt of the accused.
 - iii. Where investigation has been carried out by the police in a non-cognizable offence⁷ without the order of a magistrate.

- iv. Where the CrPC or any other law expressly prohibits carrying out criminal proceedings against the accused.
- v. Where criminal proceedings have been started with dishonest intent to take revenge from the accused.
- 6 By issuing a writ to protect the fundamental rights of a person under Article 226 of the Constitution or by using its powers under Section 482 of the Code of Criminal Procedure, 1973 [CrPC] to prevent abuse of court process or secure the ends of justice.

- Non-cognizable offences are mentioned in the First Schedule of the Code of Criminal Procedure, 1973 [CrPC]. Section 2 (1) CrPC defines non-cognizable offence as an offence, in which a police officer has no authority to arrest without a warrant. In practice, non-cognizable offences are offences in which police cannot register a case without a magistrate's order or carry out an arrest without a magistrate's warrant.
- 8 Under Section 154 (3) CrPC
- 9 Under Section 156 (3) CrPC



Basis of Investigation

STATE OF WEST BENGAL V SWAPAN KUMAR

GUHA & OTHERS

1982 SCC 561

Supreme Court Directives

- 1. It is essential before starting an investigation that facts mentioned in the FIR disclose all the elements that go to make up a cognizable offence.
- 2. Powers of investigation must be exercised in strict accordance with constitutional guarantees and legal provisions.
- 3. Courts have a duty to intervene in the investigation process to prevent harassment of individuals if their rights are being violated and correct procedure is not being followed



Investigation of Offences

**T.T ANTHONY V STATE OF KERALA AIR 2001 SC
2637**

Supreme Court Directives

- 1. There can only be one FIR in respect of an incident.
- 2. If any additional information is received after the FIR is registered, the police can investigate on it and mention the result in the report to the magistrate submitted by the investigating officer.
- 3. If the investigating officer comes across any evidence after the report to the magistrate has been sent, s/he can carry out further investigation and send supplementary reports to the magistrate.
- 4. Report of a Commission of Inquiry is not binding upon the investigating agency. The investigating agency can form a different opinion on the basis of evidence collected by it.




Right Against Self-Incrimination

NANDINI SATPATHY V P.L DANI AIR 1978 SC 1025

Supreme Court Directives

- 1. An accused person cannot be coerced or influenced into giving a statement
- pointing to her/his guilt.
- 2. The accused person must be informed of her/his right to remain silent and also of the right against self incrimination.
- 3. The person being interrogated has the right to have a lawyer by her/his side if s/he so wishes.¹
- 4. An accused person must be informed of the right to consult a lawyer at the time of questioning, irrespective of the fact whether s/he is under arrest or in detention.


- 
- 5. Women should not be summoned to the police station for questioning in breach of Section 160 (1) CrPC.¹⁴



Telephone Tapping
PEOPLE.S UNION FOR CIVIL LIBERTIES [PUCL] V
UNION OF INDIA AND
ANOTHER AIR 1997 SC 568

Supreme Court Directives

- 1. Tapping of telephones is prohibited without an authorising order²² from the Home Secretary, Government of India or the Home Secretary of the concerned State Government.²³
- 2. The order, unless it is renewed shall cease to have authority at the end of two months from the date of issue. Though the order may be renewed, it cannot remain in operation beyond six months.
- 3. Telephone tapping or interception of communications must be limited to the address(es) specified in the order or to address(es) likely to be used by a person specified in the order.

- 
- 4. All copies of the intercepted material must be destroyed as soon as their retention is not necessary under the terms of Section 5 (2) of the Indian Telegraph Act, 1882.



Rape Victims


DELHI DOMESTIC WORKINGWOMEN.S FORUM V

UNION OF INDIA &

OTHERS 1995 SCC 14

Supreme Court Directives

- 1. As soon a rape victim reports the crime at the police station, she must be informed about her right to get a lawyer before any questions are asked of her. The fact that she was informed of this right must be mentioned in the police report.
- 2. The police should make arrangements to provide the victim with a lawyer if she does not have access to one.
- 3. Every police station must maintain a list of lawyers capable enough to explain the nature of proceedings to the victim; prepare her for the case; assist her in court and in the police station; and provide guidance on agencies and organizations that help in counselling and rehabilitation of rape victims.

- 
- 4. The lawyer so chosen by the police to assist the victim must be approved by the court. However, in order to ensure victims are questioned without undue delay, the lawyer may be authorised to act at the police station before permission of the court is taken.
 - 5. In all rape trials, anonymity of the victim must be maintained.



Basis of Arrest

JOGINDER KUMAR V STATE OF U.P AND OTHERS

1994 SCC 260

Supreme Court Directives

- 1. Arrests are not to be made in a routine manner. The officer making the arrest must be able to justify its necessity on the basis of some preliminary investigation.
- 2. An arrested person should be allowed to inform a friend or relative about the arrest and where s/he is being held.²⁹ The arresting officer must inform the arrested person when s/he is brought to the police station of this right and is required to make an entry in the diary as to who was informed.
- 3. It is the duty of the magistrate before whom the arrested person is produced to satisfy her/himself that the above requirements have been complied with.



Arrest Procedure, Custodial Violence and Compensation

**D.K BASU V STATE OF WEST BENGAL AIR 1997 SC
610**

Supreme Court Directives

- 1. Use of third degree methods or any form of torture to extract information is not permitted.
- 2. Police personnel carrying out arrest and interrogation must bear accurate, visible and clear identification / name tags with their designations.
- 3. Particulars of all personnel handling interrogation of an arrested person must be recorded in a register.

- 4. A memo of arrest stating the time and place of arrest must be prepared by the police officer carrying out an arrest. It should be attested by at least one witness who is either a family member of the arrested person or a respectable person from the locality where the arrest is made. The memo should also be counter-signed by the arrested person.
- 5. The arrested or detained person is entitled to inform a friend, relative or any other person interested in her/his welfare about the arrest and place of detention as soon as practicable. The arrested person must be made aware of this right as soon as s/he is arrested or detained.

- 6. The arrested person may be allowed to meet her/his lawyer during interrogation but not throughout the interrogation.
- 7. The time, place of arrest and venue of custody of the arrested person must be notified by telegraph to next friend or relative of the arrested person within 8-12 hours of arrest in case such person lives outside the district or town. The information should be given through the District Legal Aid Organisation and police station of the area concerned.
- 8. An entry must be made in the diary at the place of detention in regard to the arrest. The name of the friend/relative of the arrested person who has been informed and the names of the police personnel in whose custody, the arrested person is being kept should be entered in the register.

- 9. The arrested person should be examined by a medical doctor at the time of arrest if s/he so requests. All bodily injuries on the arrested person should be recorded in the inspection memo. which should be signed by both the arrested person and the police officer making the arrest. A copy of the memo should be provided to the arrested person.
- 10. The arrested person should be subject to a medical examination every 48 hours by a trained doctor who has been approved by the State Health Department.
- 11. Copies of all documents relating to the arrest including the memo of arrest should be sent to the Area Magistrate for her/his record.

- 12. A police control room should be provided at all district and state headquarters where information regarding arrests should be prominently displayed. The police officer making the arrest must inform the police control room within 12 hours of the arrest.
- 13. Departmental action and contempt of court proceedings should be initiated against those who fail to follow above-mentioned directives.



Treatment of Women and Legal Aid
SHEELA BARSE V STATE OF MAHARASHTRA 1983
SCC 96

Supreme Court Directives

- 1. Female suspects must be kept in separate lock-ups under the supervision of female constables.
- 2. Interrogation of females must be carried out in the presence of female policepersons.
- 3. A person arrested without a warrant must be immediately informed about the grounds of arrest and the right to obtain bail.
- 4. As soon as an arrest is made, the police should obtain from the arrested person, the name of a relative or friend whom s/he would like to be informed about the arrest. The relative or friend must then be informed by the police.

- 5. The police must inform the nearest Legal Aid Committee as soon as an arrest is made and the person is taken to the lock-up. 21
- 6. The Legal Aid Committee should take immediate steps to provide legal assistance to the arrested person at State cost, provided such person is willing to accept legal assistance.
- 7. The magistrate before whom an arrested person is produced shall inquire from the arrested person whether s/he has any complaints against torture and maltreatment in police custody. The magistrate shall also inform such person of her/his right to be medically examined




Preventive Detention

ICCHU DEVI CHORARIA V UNION OF INDIA 1980

SCC 531

Supreme Court Directives

- 1. The detained person must be supplied copies of documents, statements and other materials on the basis of which s/he is being detained, without delay.
- 2. The authorities who have preventively detained a person must consider the representation of the detained person against the detention as soon as possible.

- 
- 3. The burden of proving that the detention is in accordance with the procedure established by law lies on the detaining authority.



Preventive Arrest and Bonds for Good Behaviour
GOPALANACHARI V STATE OF KERALA 1980 SCC
649

Supreme Court Directives

- 1. The person being charged under Section 110 and other preventive sections of the CrPC must constitute a clear and present danger to society.
- 2. The police must lay out specific facts before the magistrate showing why the person is a threat to the community and should be made to sign a bond for good behaviour.
- 3. The person undergoing proceedings under Section 110 CrPC must be provided with legal aid.
- 4. The magistrate is under a duty to make sure that Section 110 CrPC is not misused by the police.



Handcuffing

**PREM SHANKAR SHUKLA V DELHI
ADMINISTRATION 1980 SCC 526**

Supreme Court Directives

- 1. Handcuffs are to be used only if a person is:
 - a) involved in serious non-bailable offences,⁴² has been previously convicted of a crime; and/or
 - b) is of desperate character- violent, disorderly or obstructive; and/or
 - c) is likely to commit suicide; and/or
 - d) is likely to attempt escape.
- 2. The reasons why handcuffs have been used must be clearly mentioned in the Daily Diary Report. They must also be shown to the court.

- 3. Once an arrested person is produced before the court, the escorting officer must take the court's permission before handcuffing her/him to and fro from the court to the place of custody.
- 4. The magistrate before whom an arrested person is produced must inquire whether handcuffs or fetters have been used. If the answer is yes, the officer concerned must give an explanation.




Handcuffing

CITIZENS FOR DEMOCRACY V STATE OF ASSAM

1995 SCC 743

Supreme Court Directives

- 1. It is necessary to take the magistrate's permission before handcuffing a person who has been remanded to judicial or police custody.
- 2. A person arrested in the execution of an arrest warrant [issued by a magistrate] must not be handcuffed unless prior permission has been taken from the magistrate.
- 3. In an arrest without warrant, the police is only allowed to handcuff on the basis of concrete proof that the person is prone to violence; has a tendency to escape; or is so dangerous and desperate that there is no other practical way to restrain her/his movement. Even then the officer may use handcuffs only till the time the person is taken to the police station and thereafter to the magistrate's court.

- 
- 4. Violation of the Court's directives by a police officer of whatever rank or any member of the jail establishment is punishable summarily under Contempt of Courts Act, 1971 in addition to other provisions of the law.



Bail and Bonds

**HUSSAINARA KHATOON AND OTHERS V HOME
SECRETARY STATE OF
BIHAR AIR 1979 SC 1360**

Supreme Court Directives

- 1. If the accused have roots in the community that would deter them from fleeing, they may be released on bail by furnishing a personal bond without sureties. The following facts may be taken into account in this regard:
 - i. the length of residence of the accused in the community
 - ii. the employment status and history of the accused
 - iii. family ties and relationships of the accused
 - iv. the reputation, character and monetary condition of the accused
 - v. any prior criminal record including record of prior release on bail

- vi. the existence of responsible persons in the community who can vouch for the reliability of the accused
- vii. the nature of the offence that the accused is charged with; probability of conviction; and likely sentence insofar as these are relevant to risk of nonappearance of the accused
- 2. The bond amount should not be based merely on the nature of the charge but should be fixed keeping in mind the individual financial circumstances of the accused.



Bail and Bonds

MOTIRAM AND OTHERS V STATE OF M.P AIR

1978 SC 1594

Supreme Court Directives

- 1. Bail should be given liberally to poor people simply on a personal bond, if reasonable conditions are satisfied.
- 2. The bail amount should be fixed keeping in mind the financial condition of the accused.
- 3. The accused person should not be required to produce a surety from the same district especially when s/he is a native of some other place.



Compensation

**NILABATI BEHERA V STATE OF ORISSA 1993 SCC
746**

Supreme Court Directives

- 1. The State has an obligation to give compensation to a victim or to the heirs of a victim whose fundamental rights have been violated by its agents.⁵⁷
- 2. The State has a right to recover the compensation amount from the guilty officials after appropriate proceedings or inquiry.
- 3. An order of compensation by the State in a criminal case⁵⁸ does not prevent the victims or their heirs from claiming further compensation in a civil case [for loss of earning capacity].



Encounter Deaths
NATIONAL HUMAN RIGHTS COMMISSION
[NHRC] GUIDELINES ON
ENCOUNTER DEATHS March 29, 1997 and
REVISED GUIDELINES

NHRC Guidelines

- 1. As soon as information about death being caused in a police encounter is received, the officer in-charge of a police station must record it in the appropriate register.
- 2. It is desirable that the investigation should be handed over to an independent investigation agency such as the Criminal Investigation Department [CID], if members of the encounter party belong to the same police station.
- 3. Whenever a specific complaint is made against the police for committing a criminal act that amounts to culpable homicide, an FIR should be registered under appropriate sections of the Indian Penal Code and investigation should invariably be handed over to the CID.

- 4. A magisterial inquiry must invariably be held in all cases where death has occurred in the course of police action. The next of kin of the dead person must invariably be associated with the inquiry.
- 5. Prompt prosecution and disciplinary action must be initiated against the officers found guilty in the magisterial inquiry/ police investigation.
- 6. The question of compensation being given to the dependents of the dead person will depend on the facts and circumstances of each case.
- 7. No out of turn promotion or instant gallantry rewards will be given to the concerned officers soon after the occurrence. It must be ensured .[at all costs]. that they are given only after the gallantry of the officer concerned is proven beyond doubt.

- 8. A six monthly statement of all cases of deaths in police action in the state shall be sent by the Director General of Police to the NHRC by January 15 and July 15 every year. The statement may be sent in the following format along-with postmortem reports and inquest reports .[wherever available].and also the inquiry reports:
 - (i) Date and place of occurrence
 - (ii) Police station and district
 - (iii) Circumstances leading to death:
 - (a) self defence in encounter
 - (b) in the course of dispersal of unlawful assembly
 - (c) in the course of effecting arrest

- (iv) Brief facts of the incident
- (v) Criminal case number
- (vi) Investigating agency
- (vii) Finding of the magisterial inquiry/ inquiry by senior officers:
 - (a) disclosing in particular names and designations of police officials,
 - if found responsible for the deaths; and
 - (b) whether use of force was justified and action taken was lawful.



Lie Detector Tests

NATIONAL HUMAN RIGHTS COMMISSION


[NHRC] GUIDELINES ON

**POLYGRAPH [LIE DETECTOR] TESTS January 11,
2000**

NHRC Guidelines

- 1. Lie detector tests must not be carried out without the consent of the accused.
- 2. If the accused volunteers to take a lie detector test, s/he must be given access to a lawyer to explain the physical, emotional and legal implications of the test. The implications must also be explained by the police.
- 3. Consent to take a lie detector test must be recorded before a Judicial Magistrate.

- 4. The magistrate must take into account, the time the accused has been in detention and the nature of her/his interrogation. This should be done to find out whether the accused is being coerced into giving consent.
- 5. At the time of recording consent, the accused must be represented by a lawyer. The lawyer will explain that the statement [given during the test] does not have the status of a confessional statement given to a magistrate.⁶⁸ It will have the status of a statement made to the police.⁶


- 
- 6. The actual recording of the lie detector test should be done by/in an independent agency .[such as a hospital].and in the presence of a lawyer.
 - 7. A full medical and factual narration of the manner in which information is received must be taken on record.



**Police-Public Relations
NATIONAL HUMAN RIGHTS COMMISSION
[NHRC] GUIDELINES ON
POLICE . PUBLIC RELATIONS December 22,1999**

Registration of offences and information about progress in investigation

- Transparency in the investigation process must be maintained. The Commission has stressed that complainants must have access to information about their cases. They have said that:
- A First Information Report [FIR] should be registered promptly on receiving a complaint about a cognizable offence.⁷⁰
- A copy of the FIR should be given to the complainant and an entry about this should be made in the First Case Diary.

- 
- If the complaint does not make out a cognizable offence, the police should explain to the complainant, the reasons why the complaint cannot be registered.
 - If investigation is not completed within three months of the FIR being registered, the complainant should be informed in writing giving specific reasons for the delay.
 - Proof of having informed the complainant [postal acknowledgement or written acknowledgement] about reasons for the delay in investigation should be kept on the Case Diary file.

- If investigation is not completed within six months of registering the FIR, the complainant should be informed again in writing about the reasons for noncompletion of investigation, and the acknowledgement should be kept on the Case Diary file.
- If the investigation is not completed within one year, a more detailed .intimation. [memo] should be prepared by the investigating officer giving reasons for the delay to the complainant. The .intimation.should be endorsed by a gazetted officer who directly supervises the work of the investigating officer. The gazetted officer should personally verify the reasons for delay given by the investigating officer. A record of the .intimation.and its acknowledgement by the complainant should be kept on the Case Diary file.

- The complainant should be informed once the investigation is completed and a charge-sheet is filed before the court. A copy of the charge-sheet should be given to the complainant by the police. In case the complainant is not available for some reason, her/his family should be informed.



Arrest

**NATIONAL HUMAN RIGHTS COMMISSION
[NHRC] GUIDELINES ON
ARREST November 22,1999**


Procedure to be followed prior to arrest

- i. Where the case involves a grave offence such as murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent her/him from escaping or evading the process of law; and/or
- ii. Where the suspect is given to violent behaviour and likely to commit more offences; and/or
- iii. Where the suspect needs to be prevented from destroying evidence; interfering with witnesses; or warning other suspects who have not yet been arrested; and/or
- iv. The suspect is a habitual offender, who unless arrested is likely to commit similar or further offences. [3rd Report of the National Police Commission]73

Procedure to be followed at the time of arrest


- As a rule, use of force should be avoided while making an arrest.
- In case the person being arrested offers resistance, minimum force should be used and care should be taken to see that injuries are avoided.
- Dignity of the arrested person should be protected. Public display or parading of the arrested person is not permitted.⁷⁴
- Search of the arrested person should be carried out with due respect for her/his dignity and privacy. Searches of women should only be done by women, with strict regard to decency.⁷⁵

- Women should not be arrested between sunset and sunrise. As far as practicable, women police officers should be associated when the person being arrested is a woman.
- Force should never be used while arresting children or juveniles. Police officers should take the help of respectable citizens to ensure children and juveniles are not terrorised, and the need to use coercive force does not arise.⁷⁶
- The arrested person should be immediately informed about the grounds of arrest in a language s/he understands.⁷⁷

- 
- In case a person is arrested for a bailable offence, s/he must be informed about her/his right to be released on bail.⁷⁸
 - Information regarding arrest and detention should be communicated without delay to the police control room and to the district and state headquarters. A round-the-clock monitoring mechanism should be put in place in this regard.⁷⁹

Procedure to be followed after arrest

- *Constitutional and legal provisions requiring an arrested person to be informed about the grounds of arrest, her/his right to be represented by a lawyer and to be promptly produced before a court must be strictly followed.*
- Article 22 (1) of the Constitution lays down that an arrested person must be informed as soon as possible about the grounds of arrest; s/he must not be denied the right to consult and be defended by legal counsel of her/his choice. Section 50 (1) of the CrPC requires a police officer to communicate to the arrested person, grounds of the arrest and full particulars of the offence under which s/he is being arrested.

- 
- Article 22 (2) requires an arrested person to be produced before the nearest magistrate within 24 hours. Section 57 of the CrPC says that an arrested person cannot be kept in custody for more than 24 hours without the order of a magistrate.

Procedure in respect of interrogation

- *Methods of interrogation must be consistent with individual rights relating to life, liberty and dignity.*
- Torture and degrading treatment of suspects is prohibited.⁸⁰
- Interrogation of an arrested person should be conducted in a clearly identifiable place, which has been notified for the purpose by the government.

The place of interrogation must be accessible. Relatives or a friend of the arrested person must be informed where s/he is being interrogated.

- An arrested person should be permitted to meet a lawyer at any time during the Interrogation.




[PEOPLE'S UNION FOR CIVIL LIBERTIES VS STATE
OF MAHARASHTRA] (2014) 10 SCC 635

GUIDELINES OF SUPREME COURT IN THE CASE OF
POLICE AND ENCOUNTERS:

- GUIDELINES OF SUPREME COURT IN THE CASE OF POLICE AND ENCOUNTERS:
- (1) Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

- (2) If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court Under Section 157 of the Code without any delay. While forwarding the report Under Section 157 of the Code, the procedure prescribed Under Section 158 of the Code shall be followed.
- (3) An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

- 
- (a) To identify the victim; colour photographs of the victim should be taken;
 - (b) To recover and preserve evidentiary material, including blood-stained earth, hair, fibers and threads, etc., related to the death;
 - (c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

- (d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;
- (e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;
- (f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be In-charge/Head of the District Hospital. Post-mortem shall be video-graphed and preserved;

- (g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.
- (h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.
- (4) A Magisterial inquiry Under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction Under Section 190 of the Code.

- (5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.
- (6) The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.
- (7) It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned Court.

- (8) After full investigation into the incident, the report should be sent to the competent court Under Section 173 of the Code. The trial, pursuant to the chargesheet submitted by the Investigating Officer, must be concluded expeditiously.
- (9) In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.
- (10) Six monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six monthly statements reach to NHRC by 15th day of January and July, respectively. The statements may be sent in the following format along with post mortem, inquest and, wherever available, the inquiry reports:


- (i) Date and place of occurrence.
- (ii) Police Station, District.
- (iii) Circumstances leading to deaths:
 - (a) Self defence in encounter.
 - (b) In the course of dispersal of unlawful assembly.
 - (c) In the course of affecting arrest.
- (iv) Brief facts of the incident.
- (v) Criminal Case No.
- (vi) Investigating Agency.

- (vii) Findings of the Magisterial Inquiry/Inquiry by Senior Officers:
- (a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and
- (b) whether use of force was justified and action taken was lawful.
- (11) If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the Indian Penal Code, disciplinary action against such officer must be promptly initiated and he be placed under suspension.

- (12) As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided Under Section 357A of the Code must be applied.
- (13) The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights Under Article 20 of the Constitution.
- (14) An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counselling, same must be offered.

- (15) No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt.
- (16) If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein.

- 
- The above guidelines will also be applicable to grievous injury cases in police encounter, as far as possible.



NARCO ANALYSIS, POLYGRAPH
AND BEAP TESTS
[Smt. SELVI AND ORS. VS STATE
OF KARNATAKA]
(2010) 7 SCC 263

NARCO ANALYSIS, POLYGRAPH AND BEAP TESTS:

- (i) No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.
- (ii) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.
- (iii) The consent should be recorded before a Judicial Magistrate.
- (iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

- (v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a 'confessional' statement to the Magistrate but will have the status of a statement made to the police.
- (vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.
- (vii) The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.
- (viii) A full medical and factual narration of the manner of the information received must be taken on record.



THANK YOU