

No.D6/85497/2009

Police Headquarters,
Thiruvananthapuram,
Dated: .09.2010.

Circular No. 40/2010

Sub:- Guidelines / Procedures to be followed in the cases of deaths caused in Police action
– Reg.

Ref:- Guidelines issued by NHRC in DO Letter No.4/7/2008-PRP&P dated 12.05.2010.

The National Human Rights Commission has expressed great concern about deaths during the course of Police actions and about the failure to follow the guidelines and procedures issued by the NHRC in this regard.

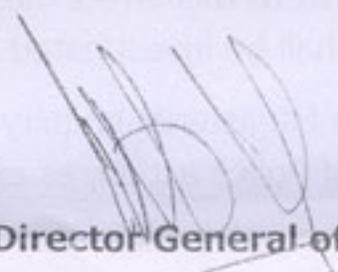
Commission in the above referred letter to Chief Ministers of States/Union Territories stated that "the police does not have a right to take away the life of a person. Under the scheme of criminal law prevailing in India, it would not be an offence if the death is caused in exercise of right of a private defence. Another provision under which police officer can justify causing the death of a person, is Sec 46 of CrPC. This provision authorises the police to use reasonable force, even extending up to the causing of death, if found necessary to arrest the person accused of an offence punishable with death or imprisonment for life". Commission also pointed that **death caused in an encounter, if not justified, would amount to an offence of Culpable Homicide.**

Considering the issues raised by the NHRC and the sensitive nature of the matter, we should ensure that effective action is taken at all levels, in all cases of death caused in police action. Hence the following guidelines / procedure recommended by NHRC are issued for strict compliance.

1. When police officers in charge of Police Station receive information about death in an encounter with the police, he shall enter that information in the appropriate register.
2. Where the police officers belonging to the same Police Station are members of the encounter party, whose action resulted in death, it is desirable that such cases will be handed over for investigation to State CBCID.
3. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which make out a cognizable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the IPC. Such case shall be investigated by State CBCID.
4. A Magisterial enquiry must be got held in all cases of death which occurs in the course of Police action, as expeditiously as possible, preferably, **within three months.**
5. Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the Magisterial enquiry / Police investigation.
6. No out-of-turn promotion or instant gallantry rewards shall be recommended for the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given only when the gallantry of the concerned officers is established beyond doubt.

7. All cases of deaths in police action in the states shall be reported to the National Human Rights Commission by the Commissioners of Police / Superintendents of Police of the District **within 48 hours** of such death in the following format.
- a. Death and place of occurrence.
 - b. Police Station, District
 - c. Circumstances leading to death:
 - I. Self defence in encounter
 - II. In course of dispersal of unlawful assembly
 - III. In the course of effecting arrest
 - IV. Any other circumstances
 - d. Brief facts of the incident
 - e. Criminal Case No.
 - f. Investigating agency
8. A second report must be sent to the National Human Rights Commission in all cases of death in police action in the state by the Commissioners of Police / Superintendents of Police **within three months** providing following information.
1. Post mortem report
 2. Inquest report
 3. Findings of the Magisterial enquiry / enquiry by Sr. Officers disclosing:-
 - a. Names and designation of Police official, if found responsible for the death.
 - b. Whether use of force was justified and action taken was lawful.
 - c. Result of the forensic examination of 'handwash' of the deceased to ascertain the presence of residue of gun powder to justify exercise of right of self defence; and
 - d. Report of the Ballistic Expert on examination of the weapons alleged to have been used by the deceased and his companions.
9. ADsGP Zones / IsGP Ranges are instructed to ensure that CsP/SsP adhere to these instructions while addressing NHRC on death in the course of Police action.
10. The instruction contained in this Circular should be strictly adhered to, in its true spirit.
11. All the instructions relevant to the issue given previously, shall also be followed strictly.

Please acknowledge the receipt of this Circular.


Director General of Police

To

All Officers in List B

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AIG I / AIG II / AIG (PG) / SP (Spl. Cell) / SP (HQ)

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