

**GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF LEGAL AFFAIRS

**RAJYA SABHA
STARRED QUESTION NO. 37
TO BE ANSWERED ON THURSDAY, THE 04.02.2021**

**NHRC ORDER FOR PROBE BY JUDICIAL MAGISTRATE ON
CUSTODIAL DEATHS**

37. SHRI SUSHIL KUMAR GUPTA

Will the Minister of Law and Justice be pleased to state:

- (a) Whether it is a fact that the revised NHRC order says probe will be held in all cases of custodial deaths by a judicial or metropolitan magistrate;
- (b) If so, the views of Government in this regard;
- (c) Whether Government would ensure that enquiry in all cases of custodial deaths, including natural deaths or deaths due to any illness, shall be conducted by a judicial magistrate or metropolitan magistrate; and
- (d) If so, the details thereof?

ANSWER

**MINISTER OF LAW AND JUSTICE, COMMUNICATION AND
ELECTRONICS & INFORMATION TECHNOLOGY**

(SHRI RAVI SHANKAR PRASAD)

(a) to (d) : A statement is laid on the Table of the House.

STATEMENT REFERRED TO IN RESPECT OF PART (a) TO (d)
OF THE RAJYA SABHA STARRED QUESTION NO. 37#

DATED 04th FEBRUARY, 2021

(a)&(b): Yes, Section 176(1A) was inserted by way of the Code of Criminal Procedure (Amendment) Act, 2005 w.e.f. 23.06.2006, which is as follows:

(1A) 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 authorized 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.

In 2010, the National Human Rights Commission (NHRC) in spite of the above mandate of Law had given the following directions:

“In our opinion the correct position of law is that an inquiry by judicial magistrate or Metropolitan Magistrate is mandatory in only those cases of custodial death where there is reasonable suspicion of foul play or well founded allegation of commission of an offence. All other cases of custodial death where the death is natural or caused by disease may be inquired into by an Executive Magistrate.”

Thereafter, the NHRC on as per its order dated 04.09.2020 passed in the sitting of the Full Commission has been pleased to order the same as follows:

“Therefore, the interpretation, as suggested in proceedings dated 05.04.2010 has given a restrictive meaning, where only in suspicious circumstances or in case, any foul play is found out, the inquiry to be conducted by the Judicial Magistrate or the Metropolitan Magistrate, in whose jurisdiction, the death, disappearance or alleged rape have been committed or any woman while the person is in custody and, therefore, it is not in conformity with scheme of the amendment made in section 176 Cr. P.C. Thus to read down the provisions of section 176 (1A), Cr.P.C is outside the scope of the scheme of section 176(1A) Cr.P.C.

There is apparent ambiguity in the interpretation of section 176(1A) Cr.P.C, circular dated 05.04.2010 issued by the Commission may be withdrawn since in every case falling within the section 176(1A) shall require a Judicial Magistrate or Metropolitan Magistrate to mandatorily hold inquiry.”

(c) & (d): As per Entry 2 and Entry 4 of List II, 7th Schedule of the Constitution of India, the subject matter of Police and Prisons falls under the State List and therefore, it is for the concerned State Governments to see that provisions of law are followed in letter and spirit.
