



# **Handbook on Spot Enquiries**



**National Human Rights Commission  
India**

# **Handbook on Spot Enquiries**



**National Human Rights Commission**

Manav Adhikar Bhawan, C-Block, GPO Complex  
INA, New Delhi - 110 023

Fax : 91-011-24663311, 24663312

Email: [nhrcga@nic.in](mailto:nhrcga@nic.in), Website : [www.nhrc.nic.in](http://www.nhrc.nic.in)

## Handbook on Spot Enquiries

© 2014 National Human Rights Commission  
First Edition: 10 December 2014

National Human Rights Commission  
Manav Adhikar Bhawan, C - Block  
GPO Complex, INA, New Delhi - 110 023

Printed at: St. Joseph Press  
C-43, Okhla Phase-I, New Delhi-20  
Tel. 26813296, 9999891207  
Email: stjpress@gmail.com

## **Acknowledgements**

### **RESEARCH & COMPILATION**

Viplav Kumar Choudhry, DIG, NHRC

Dushyant Singh, Inspector, NHRC

### **GUIDANCE AND SUPERVISION**

Mrs. Kanwaljit Deol, IPS

Director General, NHRC



## **Spot Enquiries**

The Investigation Division of the Commission has been set up in accordance with the provisions of section 11(1) (b) of the Protection of Human Rights Act, 1993. One of the important functions of the division is to conduct spot enquiries into complaints of Human Rights violations on the directions of the Commission and to submit its analysis and recommendations to the Commission.

On receipt of directions of the Commission for conducting spot investigation, the Director General (Investigation) issues instructions to appoint a Team of Investigation Officers (IO) for conducting the investigation. The IOs are thereafter required to analyse the complaint and submit their 'Action Plan' and 'Tour Programme' for the spot investigation for approval.

### **1. Action Plan & Tour Programme:**

The IO should carefully examine the complaint submitted to the Commission and other related documents such as the reports received in the Commission from the concerned authorities, media reports, etc. Based on analysis of the above and of the directions of the Commission, the 'Issues Involved' in the proposed investigation should be framed.

The 'Action Plan' should be then prepared laying out the course of action the IOs propose to undertake during the investigation and submitted for approval of the Director General (Investigations). The format for the 'Action Plan' is provided at Appendix -2.

A proposed 'Tour Programme' should thereafter, be prepared based on the 'Action Plan', keeping in mind the witnesses to be examined, documents to be collected and mode of conveyance to be availed.

After approval of the 'Action Plan' and 'Tour Programme' the complainant, relevant witnesses and concerned authorities should be informed well in advance about the visit of the investigation team. A specific mention should be made about any document that the team will require to peruse during the visit.

## **2. Preparation for enquiry:**

The following points should be ensured before proceeding for the enquiry:

1. The District authorities, witnesses and the complainant should be intimated well in time so that they are available during the visit of the investigation team.
2. Sufficient stationery, relevant letter pads, identification proof, communication equipment etc. should be collected. A note book to record details about the date and time of visit, telephone numbers of the District Authorities, (including those of the driver and the liaison officer) names of the witnesses to be examined, documents to be obtained, etc. should be available.
3. Instead of original documents and case file only a paper book copy of the case file should be carried.
4. Questionnaires for the examination of witnesses and authorities should be prepared in advance.
5. Cameras for still & video photography should be secured, as clear photographic evidence is invaluable.

### **3. Examination of witnesses:**

The spot investigation should be conducted in an objective manner, while being sensitive to any violations of human rights. There should not be any pre-conceived notions or prejudices about the compliant/complainant. The IO should observe basic courtesies and always be polite to the complainant and to the witnesses during the spot enquiry.

A variety of witnesses may be generally required to be examined during the spot investigation. They may include:

- (i) The complainant and his/her supporting witnesses.
- (ii) Government officials, including police officials.
- (iii) Women
- (iv) Children
- (v) Eye-witnesses/independent witnesses
- (vi) Nervous and frightened witnesses
- (vii) Non cooperative witness
- (viii) Senior citizens
- (ix) Patients in hospitals
- (x) Witnesses under judicial custody

While recording statements of the witnesses the IO may ensure:

- (i) Statements of witnesses are recorded at a place where there are the least disturbances and distractions. The witness should be informed the purpose of the interaction and assisted to be comfortable and relaxed. Routine questions can be asked to begin with so that the witness is relaxed.
- (ii) As far as possible, women and child witnesses should be examined at their homes, in the presence of a lady or some



respectable person from the community. This person may, if necessary, be placed out of hearing so that this witness can speak freely.

- (iii) The name, parentage, age and complete address, with telephone/contact numbers of the witness should be written at the top of the statement sheet.
- (iv) Whenever possible, two IOs should conduct the interview. While examining a witness, one IO can record the statement, while the other prepares a check list on the basis of the statement for further questioning.
- (v) The questions put to the witnesses should be simple and easy to understand. Leading questions and open ended questions should not be asked.
- (vi) The IO should listen to the witness attentively and carefully watch his/her demeanour. In case a witness provides some information but declines to make a written statement, the IO should record the same with his comments.
- (vii) The statements of the witnesses should ordinarily be recorded in first person in English or Hindi. It should be signed or thumb impressed by the witness after being read over to the witness. Each page of the statement should be initialled by the witness and by the IO. At the end of the page the IO should record the following - 'ROAC' (Read over and admitted to be correct) above the witness's signature or thumb impression, followed by -'Recorded by me' (name of the IO).

#### **4. Specific guidelines:**

While conducting spot investigation the IO should specifically look into the aspects mentioned here under. These guidelines are only

illustrative and the IO should take into account other relevant aspects depending upon the facts and circumstances of each case. Further, the IO should specifically ascertain whether relevant guidelines if any, of the Commission on the particular matter have been complied with by the concerned authorities.

After the investigation, investigation report should be submitted in the format provided at Appendix-3.

## **1. Enquiry into Encounter Death Cases**

- 1.1 In the context of Police operations the term 'encounter' normally refers to a situation where Police uses lethal force in self defence against armed criminals/offenders. Use of such force in self-defence is permitted by the law.
- 1.2 Relevant Statutes and guidelines:
  - a) Article 21 and Article 22 of the Constitution of India
  - b) Section 95 to 105, 300, 304, 304A, 364 and 201 of the Indian Penal Code, 1860
  - c) Section 46 & 176 (1-A) of the Criminal Procedure Code, 1973
  - d) NHRC's Guidelines dated 10-5-2010 pertaining to death in police action<sup>1</sup>
- 1.3 During enquiry into encounter death cases, the following aspects should be ascertained:
  - (i) whether the force was used by the police in 'self-defence'.
  - (ii) whether sufficient warning to surrender was given by the police before use of force;

<sup>1</sup> Available at <http://nhrc.nic.in/documents/Death%20During%20the%20course%20of%20Police%20Action.pdf>

- (iii) whether minimum necessary force was used; and
- (iv) whether the use of force resulting in the death of the deceased was justified.

#### 1.4 Initial study of case file:

Before proceeding for enquiry, the following points should be ascertained by studying the case file:

- (a) If the case is registered on a complaint alleging fake encounter, the relationship of the petitioner with the victim. In case the complainant is a Non-Governmental Organization (NGO), then the main allegation and the source of the allegation. In case any enquiry report is attached, the same should be examined and material facts noted.
- (b) If the case is registered on intimation from the police authorities, the following points be noted: place, date and time of the encounter, number of persons killed, type of vehicle/s used by the deceased, criminal background of the deceased, etc. Any complaint regarding the encounter, apart from this intimation, and media reports may also be carefully examined.

The aim should be to familiarise the team members with every detail of the encounter in advance and identify areas of doubt as well as points to be verified in the enquiry.

#### 1.5 Examination of documents:

- (a) The following documents should be carefully examined, specifically with respect to the points mentioned against each:
  - (i) Magisterial Enquiry Report (MER) - statements of the next of kins and family members of the deceased, independent witnesses and police witnesses.

- (ii) Post Mortem Reports - nature of injuries on each of the deceased, direction of firing, distance of firing (blackening, tattooing, etc), presence of torture marks if any, state of clothing with bullet holes/blood/ markings, viscera and histopathological examination report, etc.
- (iii) Inquest reports; whether prepared at the spot or in the hospital may be noted.
- (iv) FIR/s and Case Diary file of police investigation - site plan, photographs of the place of occurrence taken immediately after the encounter. Seizures made from the scene of occurrence including weapons, ammunition, empties, vehicles, documents, etc.
- (v) Medico legal certificate (MLC) records/treatment records of the police personnel injured during the encounter.
- (vi) Relevant entries in the General Diary of the police station, Log-book entries of the police vehicles used during the encounter and wireless message records.
- (vii) Inspection report/s of vehicle/s used by the deceased criminals and the police (if relevant).
- (viii) Details of weapons used by the police party and number of rounds fired by them along with number of empty cases recovered.
- (ix) Type of weapons used by the criminals and number of rounds fired along with number of empty cases recovered.
- (x) Ballistic examination report of the weapons and empty cases allegedly seized from the site of encounter.
- (xi) Report on fingerprints taken from the weapons seized from the site of encounter

- (xii) Forensic examination report of the hand wash of the deceased.
- (xiii) Criminal background of the deceased. Sections of law, progress and present position of the cases.
- (xiv) Video-recording of the post-mortem proceedings.
- b) The place where the encounter took place should be visited and a site plan be prepared.
- c) Each member of the encounter Team should be separately examined, preferably at the site of encounter; their statements should be recorded, and contradictions, if any, be carefully noted.
- d) Statements of independent witnesses to the incident and close relatives of the deceased should be recorded.
- e) Depending on type and place of encounter natural witnesses such as shopkeepers, etc. should be identified and examined.
- f) The Medical Officer(s) who conducted the post mortem of the deceased be examined, especially with reference to the ante-mortem injuries on the deceased, if any; range of firing and the track of the bullets inside the body of the deceased.

## **2. Enquiry into cases of death in Police firing**

2.1 In order to disperse a violent 'unlawful assembly', the law permits use of force by the Executive Magistrate/police, subject to certain restrictions. The police and the Executive Magistrate have also been given some protection against prosecution for acts done while dispersing an unlawful assembly.

2.2 Relevant Statutes and guidelines:

- a) Article 21 of the Constitution of India

- b) Section 95 to 105, 147, 148, 149, 188, 300, 304 and 304 A, 333 & 334 of the Indian Penal Code, 1860
- c) Section 46, 129 and 144 of the Criminal Procedure Code, 1973
- d) NHRC's Guidelines dated 10-5-2010 pertaining to death in police action<sup>2</sup>

2.3.1 During enquiry of such cases, following important aspects need to be ascertained:

- (i) whether the assembly was declared 'unlawful' by the authorities present on the spot;
- (ii) whether sufficient warning was given before use of force;
- (iii) whether minimum force was used; and
- (iv) whether the use of force was justified.

2.4 The following be taken into consideration while conducting enquiry into deaths in police firing:

a) Documents to be examined:

- (i) Magisterial Enquiry Report
- (ii) Post Mortem Report (PMR) - position of injuries on the body of the victims, distance and direction of firing.
- (iii) Inquest reports; whether prepared at the spot or in the hospital.
- (iv) Medico legal certificates (MLC), records/treatment records of the civil/police personnel injured during the incident.
- (v) Relevant entries in the General Diary of the police station, Vehicle Log-book entries and wireless message records.

<sup>2</sup> Available at <http://nhrc.nic.in/documents/Death%20During%20the%20course%20of%20Police%20Action.pdf>

- (vi) FIR and case-diaries of the police investigation with site-plan, seizures made if any.
- (vii) Details of weapons used by the police party and number of ammunition used by them along with number of empty cases recovered.
- (viii) Relevant orders issued by the District officials prior to and after the incident.
- b) The place of incident should be visited and a site plan prepared.
- c) Civilians and police personnel involved in the action should be separately examined, preferably at the site of incident; their statements should be recorded, and contradictions, if any, should be carefully noted.
- d) Statements of independent witnesses of the incident and close relatives of the deceased should be recorded.
- e) Any video films or audio visual records, and media reports of the incident be collected and examined.
- f) The Medical Officer(s) who conducted the post mortem examination of the deceased should be examined with reference to the injuries caused to the deceased/injured persons and the range of firing.

### **3. Enquiry into cases of death in police or judicial custody.**

- 3.1 Death in police/judicial custody can take place due to different reasons such as suicide by various means, homicide by different means, death due to neglect of medical treatment, death in road accident during transit or while escaping from custody, death during prison riots etc. Before going for the enquiry the Investigating Officer should carefully read the complaint or the intimation received. Reports such as Inquest Reports, Magisterial Enquiry Reports, Post Mortem Reports

and Medical Treatment Records, if available before hand, should be carefully analyzed before proceeding for the spot enquiry.

3.2 Relevant Statutes and guidelines:

- a) Article 21 and Article 22 of the Constitution of India
- b) Section 167, 201, 218, 300, 304, 304A, 364, 466 and 471 of the Indian Penal Code, 1860.
- c) Section 46, 50, 56, 57, 76, 80, 167 & 176 (1-A) of the Criminal Procedure Code, 1973.
- d) The Prisons Act, 1894.
- e) The Prisoners Act, 1900.
- f) The Transfer of Prisoners Act, 1950
- g) State Jail Manuals and Rules.
- h) NHRC's Guidelines pertaining to death in police custody<sup>3</sup>.

3.3 In case of death in police custody, the Investigation Officer should visit the place of occurrence such as the police station lock-up and examine it carefully. The following facts be ascertained during the enquiry:

- a. Whether the deceased was in legal custody or the custody was illegal. Relevant records such as General Diary, arrest memo register, case diaries etc. should be examined for this.
- b. Circumstances under which the death took place in the lock-up such as alleged suicide, medical reasons or while escaping from police custody.
- c. In case of hanging, the material used as ligature and how it became available to the deceased, the height of the point

---

<sup>3</sup> Available at <http://nhrc.nic.in/Documents/sec-1.pdf>



used for tying the ligature and the manner in which the hanging was achieved may be examined at the spot.

- d. Statements of police officials of the concerned police station should be recorded separately, especially of the sentry constables and of the Munshi/Mohrar Constable/Station Writer who were on duty at the relevant time. Contradictions, if any, should be clarified.
- e. Statements of the doctors who conducted the post mortem examination of the deceased should be recorded with regard to nature and possible causes of injuries. Statements of persons who conducted inquest proceedings, independent witnesses, arrested persons kept in the lock-up at the relevant time period and relatives of the deceased should also be recorded.
- f. Reports such as Medical examination Report, Inquest Report, Post Mortem Report, Magisterial Enquiry Report and medical treatment report, if any, should be properly examined. Contradictions if any, regarding the injuries mentioned in the Inquest report and the Post Mortem Report should be clarified.

3.4 In case of death in judicial custody, the Investigation Officer should visit the jail and carefully examine the place of occurrence. The following facts should be ascertained during the enquiry:

- a. Circumstances under which death took place in the jail; whether due to alleged suicide, medical reasons or otherwise.
- b. In case of hanging, the material used as ligature and how it became available to the deceased, the height of the point used for tying the ligature and the manner in which the hanging was achieved may be examined at the spot.

- c. Statements of the jail officials, especially of the warders and the sentry constables who were on duty at the relevant time, should be separately recorded. Contradictions, if any, should be clarified.
- d. Statements of the doctors who conducted the post mortem examination of the deceased should be recorded, especially with regard to nature and possible causes of injuries. Statements of witnesses to the inquest proceedings, jail inmates lodged in the jail at the relevant time period and relatives of the deceased should also be recorded.
- e. Reports such as Initial Health Check-up Report, Inquest Report, Post Mortem Report, Magisterial Enquiry Report and medical treatment records should be properly examined. Contradictions if any, regarding the injuries mentioned in the Inquest report and the Post Mortem Report should be clarified.
- f. In case of death due to disease, the medical treatment history of the deceased prisoner should be got examined by an expert in order to ascertain adequacy of diagnosis and medical treatment given to the deceased.
- g. The status of medical facilities in the jail hospital such as availability of adequate number of doctors and para-medical/nursing staff, availability of medicines, availability of ambulance, regular visits by specialists/consultants, delays in referral if any, facilities for the treatment of mentally challenged prisoners, availability of separate ward for prisoners suffering from contagious diseases, etc. may also be examined so that a comprehensive picture of the medical care can be formed. Cleanliness, hygiene, sanitation and quality of food provided to the inmates may also be relevant in this context.

#### **4. Enquiry into cases of illegal detention and custodial torture.**

##### 4.1 Relevant Statutes and guidelines:

- a) Article 21 and Article 22 of the Constitution of India
- b) Section 220, 330 and 331 of the Indian Penal Code, 1860.
- c) Section 50, 56, 57, 76, 80, & 167 of the Criminal Procedure Code, 1973.

##### 4.2. The following witnesses and records may be examined during the spot enquiry:

- a. Possible reasons for illegal detention and torture of the alleged victim; whether the victim was a suspect, an accused or in possession of some relevant knowledge. Was the alleged victim subsequently implicated in a case or not.
- b. The alleged victim, witnesses from the place from where the detainee was picked up, and relatives of the arrested person.
- c. Relatives/friends who provided food to the arrested person while in detention, and persons working at the 'dhabas'/ eateries and tea shops located close to the police station who normally cater to the staff of the police station.
- d. Persons who had been detained or under arrest along with the alleged victim during the relevant period of time.
- e. Complainants who visited the police station for lodging their complaints or visitors to the police station during the period of alleged unlawful detention.
- f. Cleaners, gardeners, cooks, etc. employed in the police station.

- g. Police personnel posted in the police station, especially sentry constables on duty during the relevant period of time.
- h. Police Station records such as General Diary, Arrest memo register, etc.
- i. Log book of the official vehicle which might have been used to pick up the alleged victim.
- j. Attendance record of the person at his place of work.
- k. Records of Mobile Phone/telephone calls made by relevant police personnel with the victim or with his family members.
- l. Any formal/ informal complaint lodged by relatives/friends with senior police officers or courts

## **5. Enquiry into Child Marriage cases**

- 5.1 Section 3 of the Prohibition of Child Marriage Act, 2006 states that a child marriage shall be voidable at the option of the contracting party who was a child (twenty-one years of age for the groom and eighteen years for the bride) at the time of the marriage. The Act provides for punishments for contracting a child marriage to anyone who performs, conducts, directs or abets any child marriage; and to anyone who solemnizes a child marriage including by promoting such a marriage, permitting it to be solemnized or negligently failing to prevent the marriage. The Act provides for the appointment of Child Marriage Prohibition Officers by the State Governments and gives powers to these Officers to prevent and prosecute solemnization of child marriages and to create awareness on the issue. The Act also gives the District Magistrate powers to stop and prevent solemnization of mass child marriages by employing appropriate measures apart from giving him all the powers of the Child Marriage Prohibition Officer.

5.2 Relevant Statutes and guidelines:

- a) Article 45 and Article 243G of the Constitution of India
- b) Section 363, 366, 375, 467 and 494 of the Indian Penal Code, 1860.
- c) Section 50 and 482 Criminal Procedure Code, 1973.
- d) The Prohibition of Child Marriage Act, 2006

5.3 The following points should be considered while conducting enquiry into an allegation of child marriage:

- a. The source of information or the complainant should be verified properly to know the circumstances of the case. The motive for the complaint or intimation may be ascertained, as it may be relevant.
- b. The age of the child is of paramount consideration. This may be established by the birth certificate, school leaving certificate or any other relevant government record. Records regarding date of birth of siblings can also be useful to ascertain the age of the child. Medical examination can be an alternative in case no credible record of age can be found.
- c. If the marriage is yet to be solemnised the concerned district authorities should be requested for intervention to prevent the marriage ceremony. Direct intervention by the IO will not be resorted to.
- d. In order to prove that a child marriage has taken place, photographs and videos of the function should be obtained. Statements of the marriage hall owner and of service providers such as caterers, etc. should be recorded.
- e. In case of allegations of negligence or omissions by the public authorities, the facts & circumstances of the case

should be ascertained as even if the marriage has been solemnized and consummated, there can be a case of wilful negligence and omission on the part of the concerned public authority in preventing the child marriage.

## **6. Enquiries into allegations of Illegal Mining**

6.1 Illegal mining, usually on private land, may involve many violations of human rights, injuries or even death of labourers, occupational diseases like silicosis, employment of child labour, exploitation of women and different types of pollution.

6.2 Relevant Statutes and guidelines:

- a) The Mines Act 1952
- b) The Mines & Minerals (Development and Regulation) Act, 1957
- c) The Bonded Labour System (Abolition) Act, 1976
- d) The Contract Labour Act, 1970
- e) Minimum Wages Act 1948
- f) Weekly Holidays Act 1942
- g) The Payment of Wages Act, 1936
- h) The Workmen's Compensation Act, 1923
- i) The EPF Act 1952
- j) The ESI Act
- k) The Inter State Migrant Workmen Act, 1979
- l) The Environment (Protection) Act, 1986
- m) The Forest (Conservation) Act, 1980
- n) State specific laws and regulations relating to grant of license and lease for mining.

6.3 The following aspects should be looked into by the Investigation Officers when conducting enquiries into complaints alleging illegal mining.

- a) The Mine owners are required to maintain records such as the mining lease, annual returns, production, dispatch and stock register and pollution certificate. The IO should check all these records.
- b) The IO should study the map and verify if the area of mining is within or beyond the permissible limits.
- c) It may be verified if the conditions laid down in the mining lease are being complied.
- d) In some places mining is carried out on 'patta lands'. The land owners lease the lands to contractors who carry out mining and in case of problems, the land owners and the contractor shift the responsibility to each other. The IOs should verify the land records and see whether any contractual agreements exist.
- e) Even in licensed and leased mines, the mine owners may not take all precautions for the safety and security of the labourers. It should be verified that the labourers are provided all safety equipments and make use of them. The IO should verify the provision for providing safety equipments and see whether these provisions are being implemented properly or not.
- f) In case children are employed in violation of provisions of Child Labour Prohibition and Regulation Act, action should be recommended against the mine owner.
- g) The Investigating Officer should verify if required measures have been taken by the mine owners to check pollution.
- h) Mines require no objection certificates (NOC) from

environment and forest departments. These records should be verified by the Investigating Officer.

- i) The Investigating Officer should check whether the labourers have been provided proper dwellings with basic amenities, health care facilities, facilities for education, and immunisation and other health care needs for the children of labourers employed in the mining activities.
- j) The Investigating Officer should see whether the state authorities have fulfilled their responsibilities in implementing provisions of the applicable labour laws; inspection report, etc. may be examined.
- k) The Investigating Officer should examine the following registers/records to ascertain facts related to payment of minimum wages:
  - a. Attendance register (Muster Roll)
  - b. Register of Wages
  - c. Register of Advances
  - d. Wage Slips
- l) If the labourers belong to a State other than the State where they are working it should be ascertained whether the contractor and the employer are registered under Inter-State Migrant Workers Act, and whether the benefits under the Act have been extended to the labourers or not.
- m) The labourers should be questioned outside the presence of the owners so that a true picture is obtained.

## **7. Enquiries into Complaints of Domestic Violence**

### **7.1 Relevant Statutes and guidelines:**

- a) Section 498 A, 406, 315 and 509 of the Indian Penal Code, 1860



- b) Dowry Prohibition Act, 1961
- c) The Medical Termination of Pregnancy Act, 1971
- d) The Prohibition of Child Marriage Act, 2006
- e) The Protection of Women from Domestic Violence Act, 2005

7.2 Section 2 (f) of the Protection of Women from Domestic Violence Act, 2005, defines “Domestic Relationship” as a *“relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family”*.

Section 2 (a) of the Act defines ‘Aggrieved Person’ as *“any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent”*.

Section 3 of the Act states that *“any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:-*

- a. harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- b. harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

- c. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- d. otherwise injures or causes harm, whether physical or mental, to the aggrieved person”.

7.3. The following aspects should be looked into by the Investigation Officers while conducting enquiries into cases related to domestic violence:-

- i) The complaint/intimation should be read carefully to find out who the victim is and what the grievances are.
- ii) It should be ascertained whether the victim has approached the police or the protection officer appointed by the Government under the Act, and whether adequate action has been taken by the concerned public authority.
- iii) The statements of the victim, complainant, neighbors and other material witnesses should be recorded.
- iv) Previous history if any, such as earlier complaints made to authorities should be documented.
- v) Any other relevant records such as medical records should be collected.

## **8. Enquiries into complaints regarding Illegal organ trade/transplant**

8.1 Organ transplant is the removal of an organ from a donor's body and transferring it into a receiver's body to replace a faulty or damaged organ. The growing demand for human organ transplants has led to illegal trade in organs. Often poor and illiterate victims are induced into donating their organs for a small price.

8.2 Relevant Statutes and guidelines:

1. The Transplantation of Human Organs Act, 1994
2. NHRC's letter dated 29-1-2004 on the Remedial Measures Suggested to Check Illegal Trade in Human Organs<sup>4</sup>.

8.3 The following aspects should be specifically looked into by the Investigation Officers while conducting enquiries into cases related to illegal trade in human organs:

- (a) Whether the donor authorized removal of the organ in such manner and subject to such conditions as prescribed by the Act, or whether a deceased donor, before his death, authorized removal of any human organ of his body for therapeutic purposes.
- (b) Whether the removal of organ was done by a registered medical practitioner.
- (d) Whether the approval for the removal and transplantation of the human organ was granted by the Authorization committee.
- (e) Whether the hospital where removal, storage or transplantation of any human organ was undertaken, is registered under the Act.
- (f) Whether the registered medical practitioner who performed the removal or transplantation of human organ had explained, in such manner as prescribed by the Act, all possible effects, complications and hazards connected with the removal and transplantation to the donor and the recipient respectively.
- (g) Whether the government authorities had periodically inspected the hospital for examination of the quality of the processes employed in removal and transplantation.

<sup>4</sup> Available at <http://nhrc.nic.in/documents/ar/ar03-04eng.pdf>

- (h) Whether due follow-up medical care was provided to the donor and the recipient.

8.4 The Investigating Officer should also investigate if anyone -

- a. Is willing/offering to supply any human organ on payment;
- b. is negotiating any arrangement, involving making of payment, for the supply of any human organ;
- c. is publishing any advertisement inviting persons to supply any human organ on payment, or, indicating that the advertiser is willing to initiate or negotiate any such arrangement.

## **9. Enquiry into cases of Bonded Labour cases**

- 9.1 Section 2 (g) of the Bonded Labour System (Abolition) Act, 1976 states that *“bonded labour system” means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that, (i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, on such advance, or (ii) in pursuance of any customary or social obligation, or (iii) in pursuance of an obligation devolving on him by succession, or (iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or (v) by reason of his birth in any particular caste or community, he would— (1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or (2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or (3) forfeit the*

*right to move freely throughout the territory of India, or (4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under 3 which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor”.*

9.2 Relevant Statutes and guidelines:

- a) Section 374 of the Indian Penal Code, 1860
- b) The Bonded Labour System (Abolition) Act, 1976
- c) The Contract Labour Act, 1970
- d) The Minimum Wages Act 1948
- e) The Weekly Holidays Act 1942
- f) The Payment of Wages Act, 1936
- g) The Workmen’s Compensation Act, 1923
- h) The Factories Act, 1948
- i) The EPF Act 1952
- j) The ESI Act
- k) The Inter State migrant workmen Act, 1979
- l) The SC/ST (Prevention of Atrocities) Act, 1989

9.3 The District Authorities may be informed in advance about the visit of the enquiry team and the Sub-Divisional Magistrate / Executive Magistrate empowered under the Act to take action on the matters related to bonded labour should be associated with the enquiry team. In case the complaint was also sent to the district authorities such as District Magistrate /Sub

Divisional Magistrate/Labour Commissioner of the District, action taken by them on the complaint, if any, should be ascertained from them. Effort should also be made to associate a member of the District/Sub-division Vigilance Committee in the enquiry.

9.4 On the spot the following steps are required to be taken:

- (I) Statements of the complainant, alleged victims and other labourers should be recorded, away from the presence of the employer/contractor, in order to specifically ascertain the following:
  - a. whether labourers (or their family members) have taken advance from the employer or the contractor;
  - b. wages paid to them;
  - c. whether the victim labourers were forced or partly forced to work;
  - d. whether movement of labourers has been restricted by the employer or his representatives;
  - e. whether the labourers have been denied the selling of their labour in the market at competitive rates or to seek work in a profession of their choice.
- (ii) The statements of the employer, his staff and the contractor should be recorded to specifically ascertain facts related to payment of minimum wages, payment of advances, working conditions, etc.
- (iii) The following registers/records must be checked:
  - a. Attendance register (Muster Roll)
  - b. Work done record register
  - c. Register of Wages
  - d. Register of Advances

- e. Wage Slip
- f. Registration of the work premises
- (iii) If the labourers belong to a State other than the State where they are working then it should be ascertained whether the contractor and the employer are registered under Inter-State Migrant Workers Act, and whether the benefits under the Act have been extended to the labourers or not.
- (iv) The IO should also examine and report about the existence and functioning of the Vigilance Committee at District and Sub-division levels.

## **10. Enquiry into cases of caste clashes, violence against weaker sections and political/communal clashes.**

### 10.1 Relevant Statute and guidelines:

1. Article 17 of the Constitution of India.
2. The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
3. The Indian Penal Code, 1860

### 10.2 The following may be ascertained during the enquiry:

- a. Reasons of conflict between the people of the two groups and the circumstances leading to the situation turning violent.
- b. Extent of violence; damage to persons and property during the incident; and other alleged excesses such as molestation/misbehaviour with women.
- c. Action taken by the district authorities to control the situation - was it appropriate or whether there were excesses or omissions by them before and during the incident.

- d. Whether proper and timely assistance was provided to the victims of clashes by the district authorities.
- e. Whether appropriate steps were taken by the authorities to reduce tension and to build up confidence in the opposing groups.
- f. Whether appropriate steps were taken by the authorities to prosecute those responsible for the incident and for committing offences during the incident. Whether cases under appropriate sections of law were registered separately for each complaint.
- g. Whether proper action has been taken to carry out investigation and arrests of the perpetrators.
- h. Whether appropriate steps were taken by the authorities for rehabilitation and relief of the affected people, and to ensure that peace is completely restored.
- i. The Investigating Officer should examine relevant records of the local police station, Panchayat office, District Police office and District Magistrate's office.
- j. The Investigating Officer should also examine print as well as electronic media reports in the periods before, during and after the disturbances.

## **11. Enquiry into cases of Child Labour.**

Relevant Statute and guidelines:

- a. Article 21 A and 24 of the Constitution of India
- b. The Child Labour (Prohibition and Regulation) Act, 1986
- c. The Factories Act, 1948
- d. The Mines Act, 1952.



National Human Rights Commission

- e. The Juvenile Justice (Care and Protection) of Children Act, 2000
- f. The Right of Children to Free and Compulsory Education Act, 2009

## **12. Enquiry into Environmental issues.**

Relevant Statutes and guidelines:

- a) Article 48 a and 51 A of the Constitution of India
- b) Section 268 of the Indian Penal Code, 1860
- c) The Water (Prevention and Control of Pollution) Act, 1974
- d) The Air (Prevention and Control of Pollution) Act, 1981
- e) The Environment (Protection) Act, 1986
- f) The Environment (Protection) Rules, 1986 and Schedules
- g) Hazardous Wastes (Management and Handling) Rules, 1989
- h) Bio-Medical Waste (Management and Handling) Rules, 1998
- i) The Noise Pollution (Regulation and Control) Rules, May 2002

## Appendix-1

### **Provisions of the PHRA, 1993 relating to Inquiries**

#### **Section 13. Powers relating to inquiries**

- (1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and, in particular, in respect of the following matters, namely:
  - (a) Summoning and enforcing the attendance of witnesses and examining them on oath;
  - (b) Discovery and production of any document;
  - (c) Receiving evidence on affidavits;
  - (d) Requisitioning any public record or copy thereof from any court of office;
  - (e) Issuing commissions for the examination of witnesses or documents;
  - (f) Any other matter which may be prescribed.
- (2) The Commission shall have power to require any person, subject to any privilege which may be claimed by the person under any law for the time being in force, to furnish information on such points or matters as in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required

shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

- (3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorized in this behalf by the Commission, may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies there from, subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.
- (4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179 section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded, shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.
- (5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of section 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

- (6) Where the Commission considers it necessary or expedient so to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act;

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

- (7) Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it were a complaint initially filed before it.

## **Section 14. Investigation**

- (1) The Commission may, for the purpose of conducting any investigation pertaining to an inquiry, utilize the services of any officer or investigation agency of the Central Government or any State Government, with the concurrence of the Central Government or the State Government as the case may be.
- (2) For the purpose of investigating into any matter pertaining to the inquiry any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission:-
- (a) summon and enforce the attendance of any person and examine him;
  - (b) require the discovery and production of any document; and
  - (c) requisition any public record or copy thereof from any office.
- (3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency

whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

- (4) The officer or agency whose services are utilised under sub-section (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.
- (5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation ) as it thinks fit.

## Appendix-2

### **Format for submission of Action Plan**

#### NATIONAL HUMAN RIGHTS COMMISSION (Investigation Division)

##### **Action Plan**

1. PRELIMINARY:
  - (a) Date of incident :
  - (b) Date on which complaint received :  
in the Commission
  - (c) Date of Commission's directions for :investigation
  - (d) Date of receipt of case file in the : Investigation Division
  - (e) Proposed dates of spot investigation :
  - (f) Places to be visited :
  - (g) Name of IOs :
  - (h) Proposed date for submission of :  
draft report
  - (i) Case listed on :
2. Gist of Complaint:
3. Direction of the Commission:
4. Gist of Reports received from the Authorities:
5. Issues Involved:

National Human Rights Commission

- 6 Government Officials to be examined:
- 7 Witnesses to be examined:
- 8 Documents to be Collected/Examined:
- 9 Proposed Date of Submission of Report:

Date: (Signatures of Investigation Officers)

## Appendix-3

### **Format for Submission of Spot Enquiry Report**

National Human Rights Commission  
(Investigation Division)  
Spot Investigation Report

1. Preliminary:

- (a) Name and address of the :  
Complainant
- (b) Date of incident :
- (c) Place of incident :
- (d) Date of complaint received in the :  
NHRC
- (e) Date of Commission's directions for :  
Spot investigation
- (f) Date of receipt of file in the :  
Investigation Division
- (e) Dates of spot investigation :
- (f) Places visited :
- (g) Name of the IOs :

2. Gist of Complaint:

3. Direction of the Commission:



National Human Rights Commission

4. Issues Involved:
5. Modalities Adopted by the Team during the inquiry:
6. Gist of the Important Statements Recorded:
7. Gist of the Important Documents Collected:
8. Discussions on Issues Involved:
9. Findings/Conclusions:
10. Recommendations:

Date:

(Signatures of Investigation Officers)



सर्वे  
भवन्तु सुखिनः



**National Human Rights Commission**

Manav Adhikar Bhawan, C - Block, GPO Complex

INA, New Delhi - 110 023

Website : [www.nhrc.nic.in](http://www.nhrc.nic.in)