

**NATIONAL HUMAN RIGHTS COMMISSION
MANAV ADHIKAR BHAWAN, INA, NEW DELHI
(Full Commission)**

**In Reference : Review of Commission's Guidelines dated 04th
September, 2020 in light of New Provisions inserted in Bharatiya
Nyaya Sanhita(BNSS), 2023, qua, Judicial Enquiry in Custodial
Death/Rape**

Date : 14th May, 2024

In view of the enforcement of the Bharatiya Nyaya Sanhita (BNSS), 2023 notified on 25th December, 2023 which will come into force with effect from 01.07.2024, under the existing provisions of Cr. P.C. section 176(1A) of 1973, Section 176 (1A), Cr.P.C., the magisterial enquiry used to be conducted by Judicial Magistrate. In this regard, the Full Commission considered the matter on 04.09.2020 and interpreted section 176(1A) Cr.P.C. and passed the following resolution:-

"There is apparent ambiguity in the interpretation of Section 176 (1A) Cr.P.C., circular dated 5.4.2010 issued by the Commission may be withdrawn since in every case falling within the section 176 (1A) shall require a Judicial Magistrate or Metropolitan Magistrate to mandatorily hold inquiry.

Accordingly, the circular of the Commission issued on 5.4.2010 in case No. 41663/24/26/08-09-JCD is revoked and

withdrawn in reference to the amended provision of the Section 176 (1A) Cr.P.C., which was inserted by an Act of Parliament, 25 of 2005. A notification to that effect may be issued to all the State Governments and Union Territories."

BNSS, 2023 will come into force with effect from 01.07.2024.

The provisions that has been inserted in the BNSS, Section 194 (4)

with respect to holding of the enquiry, is as under:-

"(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-Divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate."

Section 196 has also been inserted. The relevant portion is extracted as under:-

"Section 196 of the BNSS, 2023 states the inquiry by Magistrate into cause of death, which is stated herein below:-

"Inquiry by Magistrate into cause of death – (1) When the case is of the nature referred to in clause (i) or clause (ii) of sub-section (3) of Section 194, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in sub-section (1) of Section 194, any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence.

(2) 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 authorised by the

Magistrate or the Court, under this Sanhita in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Magistrate within whose local jurisdiction the offence has been committed.

- (3)
- (4)
- (5)
- (6)

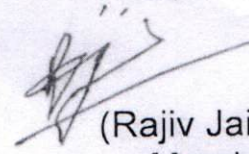
Having regard to the provisions under Section 196, read with Section 194 (4) of the BNSS, 2023, the NHRC circular dated 4th September, 2020 has become nugatory since Section 176 (1) (A) of the Code is no more in existence with the repealing of the Criminal Procedure, 1973. Therefore, NHRC Circular dated 4th September, 2020 is withdrawn being annulled.

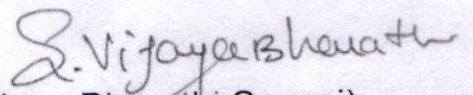
However, Section 531 of the BNSS, 2023 provides repeal and saving clause which, inter-alia, states that if, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, **inquiry** or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement, as if this Sanhita had not come into force.

Therefore, in cases where magisterial inquiry had already been pending, that to be conducted by the Judicial/ Metropolitan Magistrate, under Section 176 (1) (A) of Cr.P.C. and such inquiry shall continue by the Judicial/ Metropolitan Magistrate. The decision of the Commission dated 05.04.2020 is modified accordingly subject to saving of pending enquiries as on 01.07.2024.

Let a circular be issued to all concerned as well the same be uploaded in NHRC website.


(Justice Arun Mishra)
Chairperson


(Rajiv Jain)
Member


(Vijaya Bharathi Sayani)
Member