

Confidential:



**Public (Law & Order-A) Department,
Secretariat, Chennai-9.**

Letter No.3471/L&O-A/2008-1, Dated: 27.06.2008.

From

Thiru D. Jothi Jagarajan, I.A.S.,
Secretary to Government.

To

All Collectors.

Sub: PSO 151 (Old PSO 145) – Magisterial Inquiry under PSO 151 by the Sub Collector/ RDO and SDM – Compilation of instructions – Already issued – Salient features – Communicated – Regarding.

I am sure that you are aware that the Government in Public Department has already brought out a Confidential “**Manual on PSO 145 Enquiry (New PSO 151)**” as early as in 1994 and supplied sufficient number of copies to all the Collectors, Sub-Collectors/RDOs so as to enable them to be clear about the fail-safe procedure to be adopted at every stage from the commencement of preliminary inquiry to the final stage of submitting the final magisterial enquiry report (MER) to the Government through the District Collectors. The Manual also contains a neatly structured and elaborate instructions on the proper procedure to be followed even after the issue of Government orders on merits in appropriate cases for criminal prosecution or departmental action or both against the police officials found responsible for the custodial death, torture, custodial violence, rape etc. All the Government orders and instructions issued till then have been incorporated in the Annexure of the above Manual. The arrangements of Chapters is as mentioned below;

1. Chapter I - Object of the Manual and General Guidelines.
2. Chapter II - Procedure at the First Stage and mandatory report to NHRC. and to Government
3. Chapter III - Procedure during the detailed inquiry examination of witnesses etc. on various types of cases of death.
4. Chapter IV - Preparation of Final Inquiry Report and the contents of the Report.

5. Chapter V - General Guidelines for conducting PSO 151, careful assessment of evidence and culling out truth.
6. Chapter VI - Procedure to be followed by the Collector.
7. Chapter VII - Procedure to be followed by the Collector after orders are passed by the Government.
8. Chapter VIII - Procedure to be followed by the Police Authorities in departmental action.

2. Despite these doubt-proof compendium of instructions, the experience demonstrates that the Final Magisterial Enquiry Reports (MER) received from the Sub Collector/RDO through the District Collectors suffer from the following defects. (This results in unnecessary correspondences and causes delay in issuing final orders)

- (a) The names and designation of the police officials responsible for the reported incident are not specifically mentioned with reference to their specific role in the tragic episode or area of negligence and omission in duty.
- (b) The Medical Officers expert opinion on the cause of death is not specifically ascertained or recorded as deposition after the receipt of the Forensic Analysis Report. A general cause of "myocardial infarction", is simply repeated without probing the other probable contributing reasons like number of wounds or injuries, size of them, found on the dead body and whether such injuries /wounds would have been contributed to the resultant death and whether such wounds/injuries could have been caused during the alleged interrogation or illegal detention and type of the weapons / material that might have caused such wounds/injuries etc.
- (c) Findings are arrived at even without the Forensic Analysis Report.
- (d) In the case of **suicidal hanging**, the report is absent as to how the deceased came into possession of materials used by him to hang himself in police custody as against the codal provisions that stipulate that the detinue be allowed into custody only in the underwear.
- (e) In the case of custodial deaths **by consumption** of poison, the explanatory details as to the nature of substance used, how the victim was able to access it, the possibility of forced consumption of poisonous substance etc. are not furnished.

- (f) Non reporting of information of custodial death to NHRC, New Delhi within 24 hours by the District Collectors / SPs. / Superintendent of Prisons.

3. The above omissions are only of illustrative in nature and not exhaustive. In order to avoid such pitfalls and to improve the quality of the final report with precise findings and flawless documentation of the events, the Government in Public (L&O-A) Department have now recompiled the above instructions with the addition of the guidelines / instructions issued by the National Human Rights Commission and the Government on the basis of these instructions on this subject of custodial death, torture, custodial violence etc. and posted them in the departmental website of the SC&CRA. The name of the website is <http://intra.tn.nic.in/revenue>.

4. This information has been communicated to all the District Collectors in this Department's Letter No.13632/L&O-A/07, dt. 20.12.2007 with instructions to the District Collectors to bring this to the notice of the Sub Collectors/RDOs, PAs (Gl.) and the MHAs. and make them study the instructions and also to enable them **download the updated Manual with copies of all G.Os. and instructions and make use of it as and when the need arises**. As the District Collectors and the Sub Collectors / RDOs are already having internet connections and as the District Collectors are regularly sending web-based daily and weekly reports on various schemes to the SC & CRA, this website was chosen to disseminate the information quickly to them.

5. In order to sharpen the inquiry skills of the SCs /RDOs., the officers at the cutting edge level as far as the PS O 151 inquiry is concerned, ensure that they become reasonably thorough with the procedure, an **“itemized list of step-by-step procedure”** taken out from the same Manual in the form of short bullet points has been prepared to attract their immediate attention and which will help to serve as a reference guide at the time of inquiry and at all times.

6. I am therefore directed to enclose a **list of Salient Features** of PSO 151 (Old PSO 145). This will also be posted in the departmental website of the SC & CRA i.e. <http://intra.tn.nic.in/revenue> for the benefit of the SCs / RDOs, PAs(G) and MHS who play a vital role in PSO 151 inquiry. I am therefore to request you to ensure that these ready-to-use instructions are downloaded and sufficient copies are made out and a copy of this is furnished to the SCs/RDOs and PAs(G) under acknowledgement. The SCs / RDOs may also be requested to go through them, update the fund of their knowledge with the procedure to avoid omissions and submit the Final Inquiry Reports in full and complete shape to Government within 30 days from the date of incident.

7. It is considered important that the MHAs and the PAs(Gl) to the Collectors should also be instructed to refresh their knowledge on this subject so that their scrutiny at Collectorate level and follow up of the Criminal Prosecution in deserving cases becomes really meaningful and omission-proof final Inquiry report with the proper recommendations are received from the District Collectors. It may also be assured that the Final Inquiry Reports of the

SCs/RDOs **are prepared in 5 copies.** The RDO will retain a copy and submit 4 copies to the Collector. The Collector shall keep a copy for the office record and submit 3 (three) copies to the Government including the original Inquiry Report with the original statements of depositions of all the witnesses of public as well as the police officials.

8. It has often been noticed that there is considerable delay in launching criminal prosecution against the police officials after the Government orders for criminal prosecution in appropriate cases of custodial deaths, torture etc. on merits. The usual reasons attributed to the delay are (a) the transfer of the RDO concerned, or (b) the transfer of the accused police officials on promotion to other Districts or (c) on routine transfer, (d) non availability of original inquiry reports, (e) non co-operation of local APP etc. The District Collectors have to play proactive role and take significant efforts and see that criminal complaints are filed quickly as laid down under Chapter VII.

9. I am also directed to request you to see that this downloaded manual on PSO 151 Enquiry and this ready reference guide are kept under the personal custody of the SCs / RDOs along with the "Standard Documents". As and when the incumbents are transferred, the successor SCs / RDOs should go through them and familiarize with their onerous responsibility within 15 days of their assumption of charge. I am directed to request to ensure this in the larger interest of their functional expertise and upholding justice at times of need.

10. I am directed to request you to acknowledge the receipt of this letter.

Yours faithfully,

for Secretary to Government.

SALIENT FEATURES OF PSO 151 (OLD 145) ENQUIRY MANUAL
STEP BY STEP PROTOCOL FOR CONDUCT OF INQUIRY UNDER PSO
151.

CHAPTER -I

OBJECT OF THE MANUAL

- ❖ (1) In a democratic set up, incidents of death, torture and rapes in police custody assumes tremendous importance. They affect the entire credibility of the Government and the human face of the party in power, apart from according a bad name to the police. Such incidents, if left unchecked, can do untold damage to the administration as well as to the police machinery. The formation of National Human Rights Commission has created an awareness among the public especially amongst the women folk who are understandably greatly agitated over such incidents. The Government consider that all possible steps are taken to prevent the occurrence of such unpleasant incidents. The enquiry under PSO 151 is the basis for proceeding against police personnel who are involved in the crime so as to create confidence amongst the public that the Government and Magistracy are impartial in safeguarding their human rights.
- ❖ (2) In exercise of the powers conferred by Section 2 of the Madras Revenue Enquires Act 1893 (Madras Act V of 1893), the Government invests the Revenue Divisional Officer with powers to summon any person to appear before such officer or

to produce any document or thing in possession or under the control of such person, the production of which, in the opinion of such officer, is necessary to conduct an inquiry into a charge of torture, or causing deaths, or grievous hurt, rape and other sexual offences against any police official under P.S.O. 151. A detailed procedure has been prescribed under PSO 151 for the conduct of enquires on the charges against such offences.

- ❖ (3) This enquiry is essentially a quasi-judicial, fact finding enquiry and the Government expects the Sub Divisional Magistrate to personally draft it so as to seek and record the truth, weigh the evidence and fix the responsibility and culpability of those involved, so that the strictest penalties the law can administer are given to them.
- ❖ (4) Although many Government orders and instructions have been issued in the past, it has been the frequent experience that such enquiry reports have been drafted poorly and are lacking in essential details stressed upon in various instructions.

From past experience,

- ❖ (5) the Government observe that it has not been possible to take effective and deterrent action against the erring police officials due to delay in conducting the enquires and submission of inconsistent, imperfect or incomplete reports by the concerned Enquiry Officers.
- ❖ (6) In most of the reports, the Enquiry Officers do not fix any specific responsibility or specify the names of police personnel

found responsible for the crime. They simply advise criminal and or departmental action against "all concerned" police personnel, thereby defeating the very purpose of conducting a fact-finding enquiry.

- ❖ (7) The police personnel involved also are able to go scot-free without any punishment.

- ❖ (8) Keeping all these defects in mind, the Government have decided to bring out a Manual on custodial crimes to specify in detail the various steps to be taken by the law enforcing authorities and the Enquiry Officer at various stages of the enquiry. The object of this Manual is to educate them of all the procedures to be adopted so as to enable them to conduct the enquiry in a manner as to establish the truth, instill confidence in the minds of the public and when charges against erring personnel stand proved, to have a proper base of evidence leading to the successful prosecution of those arraigned.

- ❖ (9) The procedure to be adopted by the Enquiry Officer/ Collectors/Police officers have been detailed in the chapters that follow.

- ❖ (10) Important Government orders passed by the Government in the past are also furnish in the annexure to this Manual for ready reference.

- ❖ (11) The Director General of Police, Madras should arrange programmes to impart training to the subordinate police

officers as to deal with the accused in a humane manner, the methods of interrogation to be adopted to extract the truth without resorting to third degree methods, or torture so as to avoid police excesses while under custody which are absolutely necessary to boost the image and morale of the police force.

CHAPTER II

PROCEDURE TO BE ADOPTED AT THE FIRST STAGE

Preliminary Report by Collectors/Superintendents of Police

- ❖ The Collectors and Superintendents of Police concerned should send the preliminary information report to the Government within an hour of the incident either by telephone or FAX on the occurrence of death in police custody/torture/rape/police firing to Public Department.

Public (Law & Order) Department

Direct Line Telephone : 25670101 / 25672396

Fax No. : 25677128

(On all working days and Saturdays within office hours)

Chief Secretary's Control Room: (During night and Sundays)

Direct Line Telephone : 25671388

Fax No. : 25677128

Detailed Report by Collectors and Superintendents of Police

- ❖ (2) A detailed report on all the above incidents should be sent within 2 days to Chief Secretary to Government and Secretary, Public (Law & Order) Department without fail. An immediate report should also be sent **to the National Human Rights Commission, New Delhi within 24 hours in all cases of deaths in custody by the**

**District Collectors/Superintendents of Police/Revenue
Divisional Officers/Superintendents of Central Prisons.**

- ❖ (3) On receipt of information from the Station House Officer, Inspector of Police, Village Administrative Officer or other sources, the Sub Divisional Magistrate of the area concerned should immediately inspect the place of occurrence and hold an inquest and collect details in the prescribed format. (for format of inquest report see the annexure.)

Recording of Statements when alive/Identification Parades

- ❖ (4) If the victim is alive, a dying declaration statement should be recorded by the Enquiry Officer.
- ❖ (5) The details regarding the nature of injuries inflicted (in cases of imminent death), persons responsible for torture (names) reasons for torture and nature of wounds and injuries should be recorded.
- ❖ (6) In the case of rapes, or attempt to rape and molestation, **identification parade** should be conducted before the victim so as to enable pinpointing of guilt.

Recording of wounds/injuries when dead

- ❖ (7) If the victim is dead, details regarding the nature of wounds/injuries found on the corpse, the dresses worn/whether mutilated, torn or intact, any other symptoms found on the body should be recorded in the presence of Panchayatdars, witnesses and signatures should be obtained from them in the statement.
- ❖ (8) The inquest report is an important document usable as evidence and should be personally filled up by the Magistrate.

Photographs

- ❖ (9) Photographs showing the position of the body and photographs of the place where the incident took place should also be taken and sent along with the report.

Collection of evidence

- ❖ (10) The Enquiry Officer should also record a statement from the witnesses and also from persons suspected regarding their involvement in the crime etc., and collect all the material evidence from the place of occurrence.

Seizure of Records

- ❖ (11) If during the inquest, any prima facie case is made out regarding the involvement of the police or even if it is suspected to be so, then the enquiry officer should immediately seize the following station records and take them into his possession:

1. General Diary
2. PSR
3. Duty Roster
4. Sentry Relief Book
5. Register of arrest
6. Pocket Diaries of the involved persons
7. Any other station records relating to the offence

- ❖ (12) Before seizing the records, all the pages and entries **should be verified and signed as a token of verification**, if possible in the presence of the Station House Officer to avoid subsequent interpolations of **entries or tampering and destruction of records**.

Post-Mortem

- ❖ (13) At the next stage, the Enquiry Officer should send the body for post-mortem. The post mortem should be conducted by a team of not less than 2 Medical Officers.
- ❖ (14) The Post-mortem certificate should be obtained on the same day itself by the Enquiry Officer.

Chemical Analysis Report

- ❖ (15) The materials collected should be sent to the Forensic department for chemical analysis.
- ❖ (16) The Forensic report should be obtained within 15 days.
- ❖ (17) If the report is delayed, the Enquiry Officer should take up the matter with the Joint Director, Health of the District for taking disciplinary action against those concerned for delay. (instructions issued in this regard by the Health and Family Welfare Department is appended to this manual for information).

Rape Cases

- ❖ (18) In cases of rape, the victim should be sent to a nearby Hospital/Medical officer for **Medical check-up within 6 hours** of occurrence of crime and medical opinion should be obtained on the same day.
- ❖ (19) It is essential that the victim should be subjected to Medical Examination to prove the offence of rape.

At the next stage,

- ❖ (20) The Enquiry officer should send a preliminary report to the Collector based on investigation and enquiries made, with suggestions for (or not) ordering a detailed enquiry under PSO 151.

(Note: All the above procedures should be attended by the Enquiry Officer

on the day of occurrence itself)

Ordering for PSO 151 Enquiry by Collector:

- ❖ (21) The Collector, after analyzing the **preliminary report**, submitted by the Enquiry Officer, should order for an enquiry under PSO 151, if there are sufficient grounds for it.
- ❖ (22) The order instituting the enquiry should contain the terms of reference of the enquiry, the time stipulated. (i.e. **20 days** for the submission of the report)
- ❖ (23) A copy of the order should be sent to Government.

CHAPTER III

PROCEDURE TO BE FOLLOWED IN THE SECOND STAGE

Calling witness

- ✓ On receipt of orders of PSO enquiry from the Collector, the Revenue Divisional Officer/Sub Divisional Magistrate should immediately commence the enquiry.
- ✓ (2) Wide publicity to be given to call for witnesses from persons knowing the incident, to depose before him including notices in the Press.
- ✓ (3) If necessary, the Enquiry Officer can seek the assistance of a Gazetted police officer to assist him in the enquiry.
- ✓ (4) Every effort should be made to ensure that witnesses are not intimidated or prevented from tendering evidence.

Serving of Summons

- ✓ (5) Summons should be sent to all persons concerned including the Medical Officers, Public and Police witnesses.
- ✓ (6) All the procedures laid down for serving summons should be adopted without fail. Certificate of service should be part of the records of enquiry.

Failure on the part of public

- ✓ (7) If any member of the public fails to attend the enquiry, action may be initiated under section 2 of the Madras Revenue Enquiries Act, 1893.

Failure on the part of police

- ✓ (8) The police personnel should attend the enquiry without fail on the date specified by the Enquiry Officer.

- ✓ (9) It is the duty of the Gazetted police officer or the Deputy Superintendent of Police concerned to secure the police personnel for the enquiry.
- ✓ (10) A detailed procedure has been laid down in PSO 75 as to what action can be initiated for failure by the police to attend the enquiry. Extract of PSO 75 is annexed for ready reference.

Examination of witnesses

- ✓ (11) The witnesses called for should be asked to depose all facts known to them, regarding the commission of the offence.
- ✓ (12) The Enquiry Officer should ask leading questions about the incident, and also test the veracity of the witnesses.
- ✓ Their previous statement, if any, should be compared with the present statement deposed. If any contradiction is found, the witness should be asked to explain the same and to depose the correct statement.

Cross examination

- ✓ (14) The Enquiry officer should also cross examine the witnesses so as to find out the credibility of the witnesses. Cross examination of witnesses by the accused police personnel is not allowed under PSO 151.
- ✓ (15) The demeanour of the witnesses should also be recorded by the Magistrate in his report and used as a basis for assessing its evidentiary value.

Recording of statement of witnesses

- ✓ (16) Statements of witnesses should be recorded by the Enquiry Officer.

- ✓ (17) If the witness is literate, they may be asked to record their statement in writing.
- ✓ (18) If he is illiterate, the statement should be recorded, read out to them and their signatures or thumb impression should be obtained in the statement so recorded.
- ✓ (19) This should be counter signed by the Enquiry officer in their presence.

Examination of Medical Officer

- ✓ (20) At the next stage, the Medical officer who conducted the postmortem/medical examination, should be examined by the enquiry officer.
- ✓ (21) They may be asked to explain the nature of wounds, injuries if any recorded in the postmortem certificate and as to whether the wounds/injuries were the cause for the death of the victims.
- ✓ (22) If the doctor suspects the wounds/injuries to have been caused by any weapon, the type of weapon that might have been used and the terminal nature of injuries caused by those weapons should be ascertained and recorded.
- ✓ (23) If no wound or injury is found, the doctors may be asked to explain in detail the reasons that would have caused the death of the victim.
- ✓ (24) Each of the doctors should be examined separately.

Death on the way to hospital:

- ✓ (25) In some cases, the victim would have been alive at the police station and would have died on the way to hospital or after admission in the hospital.

- ✓ (26) In such cases, the type of medical aid provided to the victim and the reasons that would have caused the death subsequently should be ascertained from the Medical Officer, who attended on him, and recorded. In any case, the cause of death should have been ascertained without any doubt.
- ✓ (27) The statements of the medical officer should be got signed by them and should be countersigned by the enquiry officer in their presence.

Examination of Forensic Report

- ✓ (28) The Forensic Report, the chemical analysis report should be examined by the enquiry officer thoroughly, if necessary with the aid of the Medical Officer who conducted the postmortem.

Expert Medical opinion

- ✓ (29) If the Medical opinion differs or is inconclusive, the enquiry officer can refer the matter to the Head of department of the concerned discipline for an expert opinion and a conclusive decision should be arrived at on the terminal nature of wounds/injuries that caused the death.
- ✓ (30) In all such cases, the utmost expedition should be shown in obtaining final reports.
- ✓ (31) The Enquiry officer should examine each of the police personnel involved separately. They may be interrogated on the following:-
 1. Their role in apprehension of the victim, whether victim was secured on his own or by order from higher authorities, the offence for which he was apprehended.
 2. To find out the facts in the FIR filed.

3. Reasons for the delay, if any, in filling of FIR.
4. Entries in the G.D., P.S.R. sentry Relief Book, duty roster, pocket diaries.
5. Interpolations, over writing, missing facts and entries in the station records, reasons thereof, persons responsible for the lapses.

In the case of "reported" suicidal hanging:-

- (a) the accessories used for hanging
- (b) how the victim was able to get them
- (c) height of the place used for hanging
- (d) persons who were on duty at the time of hanging

Note: Using the photograph of the place of occurrence taken by the R.D.O. at the time of inquest, the statement given by the concerned police officials can be verified as to whether it is possible.

In case of "reported" suicide by consumption of poison:-

- (a) nature of substances used
- (b) how the victim was able to get it**
- (c) the possibility of consuming such substances while in custody

In the case of "reported" self immolation:-

- (a) what type of substance was used
- (b) how the victim was able **to get it while in custody.**
- (c) The person who noticed it first**
- (d) Whether any first aid was **given and attempt** made to save the victim

In the cases of "reported" suicidal hanging outside the police station:-

- (a) how the **detenue escaped** from the lock up
- (b) persons responsible for the lapse

- (c) persons who were on duty

In the cases of custodial rape:-

- (a) the time when the victim was taken to the police station and under what circumstances – and the offence allegedly committed by the victim.
 - (b) Whether FIR filed
 - (c) Reasons for keeping the woman in the police station, particularly after sunset.
 - (d) The person if any who accompanied the woman to the police station
 - (e) Whether any women police official was posted in the company of the woman if she was detained in the night.
 - (f) Persons responsible for the rape and persons abetting the commission of such an offence
 - (g) Cross examination of the facts and points raised by the public witnesses
 - (h) Verification, corroboration of depositions of police.
 - (i) Verification of medical report obtained if necessary with the assistance of Medical Officer preferably a lady Medical Officer.
- ✓ (32) In all the above cases, statements should be obtained from the police officials/witnesses in their own handwriting and should be countersigned by the Enquiry officer in their presence.

Examination of material exhibits

- ✓ (33) The Enquiry officer should verify the material exhibits, if any, obtained and to record the proof of material exhibits.

Classification of evidences

- ✓ (34) The Enquiry officer should classify the evidences, depositions and records and the material exhibits as primary evidence and secondary evidence.

Primary Evidence:-

1. Inquest report
2. Post mortem certificate
3. Forensic report
4. Final Medical opinion
5. Expert Medical opinion
6. Dying declaration
7. Wounds certificate
8. General diary
9. P.S.R.
10. Sentry Relief Book
11. Duty roaster
12. Register of arrest
13. Remand register
14. Pocket diaries
15. Statements of eye witnesses wife/husband/parents, close relatives (Public)
16. Statements of witnesses (Public)
17. Statements of police witnesses
18. Any other evidence having a direct bearing on the matter under enquiry.
19. Material exhibits
20. Photographs etc.

SECONDARY EVIDENCE:-

1. statements of hearsay witnesses
2. Oral accounts

(Kindly arrange the evidence and witnesses as primary and secondary for writing the reports and for documentation purpose)

CHAPTER IV

PROCEDURE TO BE FOLLOWED AT THE THIRD STAGE

Preparation of enquiry report by Sub Collr/R.D.O.

❖ (1) The enquiry report should be prepared and submitted to Collectors

within 20 days from the date of the incident positively. The report should

invariably contain information on the following:-

1. Facts given in the inquest report in brief.
2. Deposition of co-prisoners if any (facts only)
3. Deposition of eye witnesses if any (facts only)
4. Deposition of other public witnesses if any (facts only)
5. Deposition of police officials if any (facts only)
6. Statement of Medical officers
7. Facts unearthed in Station record
8. Nature of wounds, abrasions, injuries etc., as per the postmortem report
9. Contents of Forensic Report
10. Final medical opinion
11. Facts unearthed in the enquiry after critical analysis of all pieces of evidence
12. Conclusive opinion of the Enquiry Officer.
13. Persons specifically responsible for the crime.
14. Criminal / Departmental action recommended against each delinquent police official. Where criminal

prosecution is recommended, based on the evidence gathered, the specific IPC offence should be indicated.

15. The primary and secondary evidence collected should be serialised for easy reference.

16. The enquiry report along with other documents should be sent to Collector within the stipulated time.

CHAPTER V**DETAILED GUIDELINES FOR CONDUCTING PSO 151 (OLD 145)****ENQUIRY****Verification of FIR**

- ❖ (1) While making an enquiry into the deaths in custody, allegations of torture/rape etc., the Sub Divisional Magistrate soon after holding the enquiry should verify whether FIR has been registered as per section 154 of the Cr.P.C. and also check up the time of death etc.
- ❖ (2) The time of registering the FIR, the contents of the FIR and details of person who gave the first information and time, whether the complaint was properly registered by the police in the FIR statement should be noted.
- ❖ (3) The SDM should also check up whether a copy of the FIR on the grave occurrence was sent to the District Magistrate (i.e.) Collector as express report as specified under PSO 577.

Verification of offences

- ❖ (4) An analysis of many PSO 151 (old 145) reports shows that most of the custodial victims are the persons accused of commission of prohibition offences, theft, member of unlawful assembly, causing public nuisance, causing grievous/simple hurts, assault, robbery, dacoity, cheating etc.
- ❖ (5) While making an enquiry under PSO 151 (old 145), the Revenue Divisional Officer should check up the details of the offence for which the accused was taken to custody and as to whether the alleged offence was recorded in the FIR through a

proper complaint. The Revenue Divisional Officer should also enquire the time of the alleged commission of the offence and time of registering the complaint in the FIR and if the FIR is not registered immediately, he should investigate the reasons for the delay in registration.

- ❖ (6) This will reveal whether during the delay in registering the FIR, the accused was unlawfully taken into custody or kept under illegal detention. The mode of investigation commenced by the police, the actual time of arresting the accused and the time recorded in the General Diary, PSR and Sentry Relief Books should be cross checked and the entries made in the station records immediately after the arrest of the accused, should be compared.
- ❖ (7) Discrepancies noted will be revealing.
- ❖ (8) The Enquiry Officer should be aware that most of the offences charged against the accused are either bailable or non-cognizable.
- ❖ (9) The police can arrest a person without warrant (from the competent Magistrate) only for the commission of cognizable offences. In non-cognizable cases, a warrant from the Magistrate is absolutely necessary.
- ❖ (10) Hence, **while enquiring the case the Sub Divisional Magistrate should clearly check whether the offence in question requires a warrant for arrest or not and if no warrant is required whether the arrest was made as per section 46 Cr.P.C. (i.e.)** the quantum of force used in

apprehending the accused and whether the force used was necessary to arrest the accused under such circumstances.

- ❖ (11) He should check if there were injuries or wounds caused to the person arrested and whether such excessive use of force was necessary according to the circumstances.
- ❖ (12) The law permits the police to use minimum force required for arrest. If excessive use of force is evident, the person who uses such excessive force will be criminally responsible and liable for punishment.
- ❖ (13) These factors should be investigated by the Magistrate. While making an enquiry, the Sub Divisional Magistrate should critically analyse the use of force in apprehending an accused, whether the circumstances justified it or not and record his specific opinion in the matter.
- ❖ (14) Similarly, most of the offences charged against the accused in the PSO enquiry are bailable.
- ❖ (15) It should be noted that the police officer has no discretion to refuse bail when the offence is bailable and in certain cases the arrested person is entitled to bail as a matter of right.
- ❖ (16) **So when a person is arrested, he has to be either let out on bail or remanded to judicial custody within 24 hours and keeping such persons in the police lock up without an order of the Magistrate** beyond 24 hours amounts to illegal detention.
- ❖ (17) The police can be charged for this omission.

- ❖ **(18) It is quite common that the accused kept in the lock up have wounds, injuries, abrasions etc. and generally the police attribute this to attempts made by the accused to escape from arrest.**
- ❖ **(19) The accused, however invariably, point their fingers against the police that they have inflicted the injuries on them.**
- ❖ **(20) According to Section 53 of the Cr.P.C. the police are bound to send the accused for medical examination if he has injuries or is in ill-health.**
- ❖ **(21) Hence, if an accused is found in the lock up with injuries / ill health, without being sent to medical examination an adverse presumption should be made that the injuries and wounds were caused by the police while under their custody in the lock up.**

Verification of time of arrest

- ❖ (22) In almost all the PSO cases, it is invariably found that the accused is kept in the lock-up without registering a case.
- ❖ (23) There are no entries in the station records. In such cases, the enquiry officer should verify the records and find out whether the accused was arrested at the time noted in the station records or earlier.
- ❖ (24) Attempt should be made to relate these times to depositions of independent witnesses.

- ❖ **(25) The statements of the independent witnesses have to be taken into account about the time of arrest to check on the uniformity of timings recorded, from the depositions of the independent witnesses, other persons kept in the lock up on those days should be examined to find out the real time of the arrest of the accused.**
- ❖ **(26) If the time of the arrest does not tally with the time recorded in the station records, it has to be concluded that the accused was kept under illegal detention, till such time.**

Medical evidence

- ❖ (27) In an enquiry under PSO, the guilt of the accused police officials should, of course, be proved conclusively.
- ❖ (28) It is seen that where there were no external or internal injuries on the body of the deceased and no signs of torture were visible the enquiry officer are not taking the medical and the Forensic report as the conclusive evidence to prove the cause of death of the deceased apart from other evidences.
- ❖ **(29) The enquiry officer should therefore ascertain the facts behind the medical opinion conclusively from the team of doctors by cross-examining them separately. It must be remembered that if there is any suspicion as to the cause of death, the final medical opinion, postmortem and Forensic report which are critical to successful prosecution should be referred to experts for a conclusive opinion as to the cause of death.**

- ❖ (30) In most of cases, the medical opinion is inconclusive and indecisive and it is seen to be primarily an expression of opinion and not of facts.
- ❖ **(31) If there is no evidence from eye witnesses or other evidence to prove the cause of death, medical evidence has to be relied on, to determine the cause of death.**
- ❖ **(32) Where direct evidence of eye witnesses is available on record as to the physical harm inflicted on the deceased and this evidence is in conflict with medical evidence on record, the enquiry officer need not always give credence to the medical opinion so as to render other evidence entirely useless.**
- ❖ (33) In such a situation the enquiry officer should analyse other corroborative or circumstantial evidence to prove the case in addition to the eyewitnesses or medical evidence.
- ❖ (34) Where there are conflicting opinions between Medical Officers and experts, **the reasonable course would be to accept the opinion which is not in conflict with the direct evidence.**
- ❖ (35) In most of the cases of deaths in custody, the final medical opinion as to the cause of death of the victim read as **“the deceased would appear to have died of “Myocardial infarction”.**
- ❖ (36) In such cases, the enquiry officer conclude the cause of death as a natural one and no liability is fixed on the

delinquent police officials who have kept the victim under illegal detention or tortured them to meet this tragic end.

- ❖ **(37) Deaths due to myo-cardial infarction are not always because of natural cause but may also be due to some attending factors which hasten this natural end.**
- ❖ (38) If the victim was not subjected to severe torture or other forms of cruelty while in custody, deaths due to heart attack **(myocardial infarction)** can be avoided.
- ❖ (39) Whenever, the death is due to myocardial infarction the enquiry officers should ascertain the factors which led to the death from the medical officers and the role played by each of the delinquent police personnel and fix up criminal responsibility against them.

Rape cases

- ❖ (40) The inserted sections 114-A and 114-B of the Indian evidence Act, empower the court of draw a presumption against the accused in prosecution for rape and dowry deaths.
- ❖ (41) Instructions have been issued that no woman (except in certain cases) should be kept in the lock up before dawn and after sun set.
- ❖ **(42) The woman accused should be searched only by woman police and they should be kept under lock-up (if necessary) in woman Police Station under the control of Women Police Constables only.**

- ❖ (43) Despite these strict instructions, cases of molestation and custodial rape have been reported.
- ❖ (44) Whenever a complaint of rape in custody against the police is made, the Sub Divisional Magistrate should immediately subject the victim to medical examination as early **as possible within 6 hours of the incident and arrange to send the dresses worn by the victim at the time of the incident for chemical analysis and report.**
- ❖ (45) **Based on the medical and forensic evidence and testimony of the ravished Woman and by other evidences, the enquiry officer can draw inference whether the alleged rape was committed or not.**
- ❖ (46) In cases of custodial rape, it is almost impossible to get any other independent evidence to corroborate the testimony of the victim. **Hence, if the presence of the women in custody is established after sun set till the morning (without reasonable cause) by any sources, the allegations of molestation or rape against any specific person or all the persons on duty in the police station stands established on presumption under section 114-A of the Indian Evidence Act.**
- ❖ (47) **The complainants in most of the custodial rape cases are married women.**
- ❖ (48) **Establishing rape on married women without medical examination, within 6 hours, would be extremely difficult.**

- ❖ **(49) Medical evidence showing injury to her private parts, injury to other parts of her body, seminal stains on her clothes or the clothes of the accused or marks of struggle at the places of occurrence are the vital evidences to prove an offence of rape and attempts should be made by the Enquiry Officer to establish this by enquiry.**

Suicidal hanging

- ❖ (50) It is noticed that most of the accused who were kept in the lock-up or called for interrogation to the police station were found hanging either in the bathroom or other places in the Police Station or outside the police station premises.
- ❖ (51) In such cases, attempts are made to tamper with the entries in the station records viz., GD., PSR, Sentry relief book and pocket diaries etc.
- ❖ **(52) Hence, the enquiry officer should seize these records immediately and verify whether corroborative entries were made first in the G.D., PSR, and Sentry relief book respectively, to establish the presence of the victim in police custody.**
- ❖ (53) If the presence of the victim could not be established through the entries in the station records, **the co-prisoners and other independent witnesses should be examined to prove the presence of the victim in the police station under illegal detention.**

- ❖ (54) After establishing the presence of the victim in the Police Station, responsibility lies with the police to account for the presence of the victim in his custody.
- ❖ (55) If the victim is found hanging in the lock up or the bathroom of the police station, the enquiry officer should critically analyse the **height of the place, the accessories used for hanging, the need for the presence of such accessories in the lock-up or the bathroom, whether such accessories like hurricane lamp, rope, furnitures etc. were accounted for in the articles register of the Police Station.**
- ❖ (56) In most of the cases the victims have been allegedly hanging by dhotis, towels, sarees and ropes etc, in the lock-up.
- ❖ (57) Normally, the detenues are allowed into custody only in their underwear.
- ❖ (58) The dresses worn by the detenu and the **dresses are deposited in the station under the security of the police and these should be entered in the PSR.**
- ❖ (59) Hence, a check of the **PSR would disclose** details of the dresses worn by the detenu while in the lock-up and it **would help the enquiry officer to fix up responsibility as to whether actually the detenu was wearing the dhoti or towel etc. while in the lock up and was able to use this for committing suicide by hanging.**

- ❖ (60) If the detenu was hanging outside the police station by a tree etc., the enquiry officer should probe as to how the detenu was also to escape from the lock up.
- ❖ (61) The primary onus of explanation and responsibility should be fixed on the sentry PC along with other personnel on duty.
- ❖ **(62) If it is a case of illegal detention, primary responsibility lies with the Station House Officer along with other personnel on duty.**
- ❖ (63) If the dead body is found on a tree outside the police station, the enquiry officer should explore as to how the deceased was able to climb on the tree and what were the accessories used by him for committing suicide by hanging.
- ❖ (64) Hence, the type of ligature marks on the neck, other injuries, condition of tongue/eyeballs etc. are extremely significant and are attendant features to be taken note of. If the body is thrown on the high way or in a well, the enquiry should reveal the accident or injury marks on the body.
- ❖ **(65) In all these cases, medical evidence is of paramount importance and it should disclose whether the hanging was ante-mortem or post-mortem and whether the death was due to the injuries sustained or due to hanging alone.**
- ❖ **(66) In suicidal cases, the scar marks around the neck on the place of knot and the rupture of hyoid and other neck bones and other specific injury marks on the body**

of the deceased would establish whether the hanging was ante-mortem or post-mortem.

- ❖ **(67) If it is a case of ante-mortem, the persons responsible are liable for being charged with culpable homicide amounting to murder and if it is otherwise, the police are liable for criminal negligence etc.**
- ❖ (68) It is often noticed that some of the detenus in the lock-up died due to flames.
- ❖ (69) The police allege that the detenus set fire to his body. In one peculiar case, a detenu kept in the lock-up with an underwear who was escorted to the lavatory to ease himself is reported to have burnt himself and died.
- ❖ **(70) In this case, as to how the kerosene in the hurricane lamp came to be transferred into a plastic bottle and how he got hold of a match box, where he kept these articles hidden while being dressed only in an underwear, were not explained by the police or by the Enquiry Officer.**
- ❖ **(71) In such cases , the enquiry officer should critically examine the presence of such articles with a detenu in the lock-up and should fix-up specific responsibility against the police for allowing this to happen.**

CHAPTER VI

PROCEDURE TO BE FOLLOWED BY COLLECTOR

- ❖ (1) On receipt of enquiry report from the Revenue Divisional Officers concerned, the Collectors, after perusing the deposition of witnesses, medical evidences, should analyse the findings of the enquiry officer with records of enquiry.
- ❖ (2) If the enquiry report contains any discrepancy or if the enquiry conducted is not sufficient to prove the crime, it should be returned to the enquiry officer pointing out the discrepancy for rectification. **Enquiry report in complete form, should be sent to Government along with the recommendation of the Collector, categorically stating whether he agrees with the findings of Enquiry Officer. If not, the Collector should specify points where he disagrees with the Enquiry Officer and send his recommendation specifying the action recommended whether criminal prosecution/ Department action against the delinquent police officials.**
- ❖ (3) It has been noticed that many of the reports of **Collectors are content with merely forwarding letters with no comments on the evidence collected, conclusions reached, recommendations made.** The Collectors should particularly relate the evidence to the conclusions reached and in case any gap is found in presentation, **records referred to or section of the law, these should invariably find place in his report.**

- ❖ (4) **Two copies of Enquiry Report along with the recommendation of Collector should reach Government within 30 days from the date of occurrence.** If under any unavoidable circumstances, the Collector is unable to send the report within the stipulated time, a report may be sent to Government explaining in detail the circumstances under which it was not possible.

CHAPTER VII

PROCEDURE TO BE FOLLOWED AFTER ORDERS ARE PASSED BY

GOVERNMENT ON THE ENQUIRY REPORT

Preparation of draft complaint

- The Collectors / Sub Divisional Magistrates on receipt of orders from the Government for the criminal prosecution against the delinquent police personnel, should send a copy of the **order of enquiry report and other required information to Public Prosecutor / Assistant Public Prosecutor concerned for drafting a complaint against the delinquents.**

Verification

- (2) Subsequently, the contents of the draft complaints viz., name and other particulars of the accused, charges against the accused etc., referred to in the complaint should be verified with the particulars in the enquiry report. **A copy of the Enquiry report along with Government orders should be sent to DGP, Madras for taking departmental action.**

Filing in Court

- (3) The draft complaint after due verification and approval should be filed in **Court by Sub –Divisional Magistrate within 7 days from the date of receipt of the order from the Government. The Collector should** ensure the filing of draft complaint within the stipulated time.
- (4) After filing the case, the C. C. No. of the case should be intimated to Government immediately.

Production of Witnesses

- (5) Collector/Sub Divisional Magistrate/Superintendent of Police of the district concerned should ensure production of all witnesses in the Court and the progress of the case to be intimated to Government without fail.
- (6) If stay or appeal petition is filed by the accused, copies of such orders and petitions should be sent to Government for filing Counter Affidavits.

Final Result

- (7) If the case ends in acquittal, the Sub Divisional Magistrate should obtain the opinion of the Public Prosecutor concerned as to whether it is a fit case for filing an appeal or review the case and should send it to Government for consideration.
- (8) Where the case ends in conviction, the result along with judgement copy should be sent to Government for further action.

CHAPTER VIII

PROCEDURE TO B FOLLOWED FOR DEPARTMENTAL ACTION BY THE POLICE AUTHORITIES.

- ❖ When the Government orders departmental action against the accused Police personnel, it is noticed that there is inordinate delay by the Police Department in taking action which nullifies the efforts taken by the District authorities. **In one interesting case, the punishing Authority viz. the Superintendent of Police, rightly imposed the punishment "Removal from service" on two Police Constables for the charges held proved against them that "High handed behaviour and unbecoming member of disciplinary force that they along with other Police Constables assaulted and caused grievous injuries to one Thiru Punniamorthy, S/o Villappan of Thalyamangalam Village on 24.10.1989 at 10 hours".**
- ❖ (2) But the appellate authority viz. Deputy Inspector General of Police, who expressed his concurrence with the punishing Authority took a lenient view on some extraneous consideration, showing importance to the members of the family who have been affected and modified the punishment as "Reduction in time scale of pay for 2 years for 2 stages without cumulative effect".
- ❖ (3) **The Government considered that such lenient views will not be conducive to the maintenance of discipline in the Police force and ordered the Director General of Police to issue suitable instructions in this regard to the Unit officers to refrain from issuing such orders on the basis of extraneous**

considerations. A copy of the order issued is appended to this Manual.

- ❖ (4) The case cited is not the only one. In a large number of cases, the Departmental officer/Punishing Authority do suggest only to “drop” further action against the delinquent Police personnel and that the charges are held as “not proved”. Since the very purpose of conducting enquiries and the efforts taken and by the Government are defeated by such lapses, the Government are of the view that departmental action is ordered only after a careful consideration of the evidence and report sent by the Sub Divisional Magistrate and after getting orders from the Hon’ble Chief Minister. As such, the Government consider that in Departmental action, ordered by them, the enquiry should be commenced within a month from the date of receipt of the Government Order and it should be processed quickly in accordance with the rules in force. The result of the departmental action along with the findings of the Enquiry Officer, the punishment suggested by Punishing Authority and imposed by the Appellate authority should be sent to Government for approval.