

**BIHAR HUMAN RIGHTS COMMISSION**  
**9, Bailey Road, Patna – 15**

File No. **BHRC/COMP.** CD – 186/10

Case of **PRABHAWATI DEVI**

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This file is about custodial death of under-trial prisoner Prabhawati Devi (hereinafter referred to as the deceased) – of Siwan District Jail – in Sadar Hospital Siwan on 13.9.2010.

The deceased was admitted in the District Jail Siwan as an under-trial prisoner in connection with Sessions Trial No.21/2010 under sections 363, 364A/34 IPC on 20.1.2009. After she complained of medical problems she was subjected to blood test on 18.7.2010 and diagnosed as suffering from hepatitis. On 2.8.2010 the Jail Doctor recommended that she be examined by a physician. One Dr. Indra Mohan visited the jail and examined her on the same day but no follow-up treatment was provided. On 18.8.2010 tests were again held. On 19.8.2010 Civil Surgeon-cum-CMO was informed about her condition. On 20.8.2010 she was admitted in the Sadar Hospital. On 31.8.2010 a Medical Board examined her and on its advice she was sent to PMCH on 3.9.2010. Curiously, she was sent back to jail on the very next day i.e. 4.9.2010. On 9.9.2010 she was again admitted in Sadar Hospital. On 13.9.2010 she expired.

The post-mortem was held by team of doctors who after noting her internal physical conditions, came to the conclusion that the death was due to 'hepatic failure' (hepatitis). The Judicial Magistrate who conducted enquiry under section 176(1A) Cr.P.C. also came to the conclusion that the deceased died of hepatitis. He also held that death was in course of treatment and that proper treatment had been provided to the deceased and there was no negligence on the part of the Jail Administration. It is significant to mention that the magistrate on the basis of the medical reports and the statements of witnesses found that the deceased initially suffered from jaundice which developed into hepatitis.

Copies of the reports were sent to the family of the deceased for comments/response. Her husband, Ramji Rai, (hereinafter 'objector') filed response. While assailing the veracity of the reports he stated that the deceased was in good health at the time of her admission in jail, she apparently contracted the disease inside the jail. Despite serious nature of the illness and her deteriorating condition, the jail administration did not consider it worthwhile to intimate the family about her ailment. The objector has also stated that the age of the deceased was 45 years at the time of her death. She has left behind three unmarried daughters. The objector belonged to the BPL category and he is

somehow earning his livelihood by working as a labourer. He has claimed compensation for the deceased's death.

The matter was heard in presence of Shri U.K. Sharan AIG Prisons on behalf of the Department and Shri Kamla Kant Tiwari, Advocate appearing for the objector on 12.8.2011.

In a similar case of custodial death of Saroj Tiwari (File No. BHRC/COMP. 524/10: CD -40) who died in Shaheed Khudiram Bose Central Jail Muzaffarpur on 5.2.2006, the Commission noted that hepatitis B takes about 60-150 days time to develop from infection ordinarily caused by used infected needle. The deceased being in judicial custody since 20.1.2009, it is clear that she had contracted the disease while in custody. Although the conclusion of the Judicial Magistrate is favourable to the Administration, the Commission is inclined to think that there was negligence on the part of the jail officials as well as Hospital Administration and as a result, the condition of the deceased got aggravated. Hepatitis is no doubt a serious disease but curable. As found in the magisterial enquiry report, the deceased initially suffered from jaundice. Had proper diet been given to her and precaution taken, she would have been cured and the disease would not have developed into hepatitis.

As observed in the case of Saroj Tiwari (supra) it is the duty of the state and its functionaries to take due care of prisoner – in the matter of his or her medical treatment. Having taken custody of a person and kept him in prison, they cannot leave him in the lurch to fend for himself. If the state cannot provide proper treatment to him, steps should be taken for his release. A prisoner, completely at the mercy of the authorities, is bound to die if proper timely treatment is not provided.

In the instant case, there was clear delay in providing treatment to the deceased. As per the record, the first show of action by way of treatment was made on 18.7.2010. She died within less than two months thereafter. During the intervening period she was admitted in the Sadar Hospital after more than a month of the diagnosis on 20.8.2010. Eleven days thereafter the Medical Board recommended that she be taken to PMCH. She was indeed taken there but only to be sent back on the very next day.

The Commission has not been informed about the nature of the treatment provided to the deceased during the period of less than two months. Clearly, the treatment was deficient and belated. In the case of Saroj Tiwari (supra) the Commission was informed on behalf of the Department there is no shortage of funds in any jail and, as a matter of fact, the fund sometimes remains unutilised and is surrendered at the end of the financial year. The Commission was also

informed that the medicines are normally purchased by the Administration and supplied as per the requirement and where the medicines are not available, they can be purchased from open market, in which case amount of money is reimbursed. The Commission observed that it was a sad reflection on the part of the Jail Administration that though fund remains unutilised, the inmates die for want of proper timely treatment. Coming to the instant case, the deceased was clearly left high and dry The treatment (of whatever worth it was) apparently commenced at a very late stage and it was clearly deficient. The Jail Officials did not think it proper to even inform the deceased's family so that they could be by her side and take care of her. In the facts and circumstances, the Commission finds that the case of the deceased stands on a similar footing – if not worse – as the case of Saroj Tiwari (supra) in which the Commission awarded a compensation of Rs. two lakhs to his next-of-kin.

The Commission would, thus, award compensation of Rs. two lakhs in the instant case as well.

The Commission accordingly directs the State Government through Secretary, Home (Special) Department to pay the sum of Rs. two lakhs to the objector, Ramji Rai, for self and three daughters, and submit compliance within eight weeks.

Copy of this order may be sent to Secretary, Home (Special) Department for compliance and Ramji Rai for information.

Justice S.N. Jha  
Chairperson