

Supreme Court of India

People'S Union For Civil ... vs State Of Maharashtra & Ors on 23 September, 2014

Author: L . R.M.

Bench: Chief Justice, Rohinton Fali Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1255 OF 1999

People's Union for Civil Liberties & Anr. ... Appellants

Versus

State of Maharashtra & Ors. ... Respondents

WITH

CRIMINAL APPEAL NO.1256 OF 1999

CRIMINAL APPEAL NO.1367 OF 1999

WRIT PETITION (C) NO.316 OF 2008

CONTEMPT PETITION (C) No.47 OF 2011

IN

WRIT PETITION (C) NO.316 OF 2008

TRANSFERRED CASE (C) NO.27 OF 2011

O R D E R

R.M. LODHA, CJI.

Page 1 On 03.09.2014, the arguments were heard on the question of the procedure to be followed in investigating police encounters. The present order is confined to the above question.

2. In the three writ petitions, which were filed by People's Union for Civil Liberties (for short, "PUCL") before the Bombay High Court, the issue of genuineness or otherwise of nearly 99 encounters between the Mumbai police and the alleged criminals resulting in death of about 135 persons between 1995 and 1997 was raised. Inter alia, the following prayers were made:

i) directing the Respondent Nos. 1 to 3 to furnish the particulars regarding the number of persons killed in last one year in police encounters, their names, addresses, the circumstances in which they were killed, the inquiries, if any,

conducted with respect to the said killings and any other relevant information and the action taken, if any, by them;

ii) directing the respondent No. 1 i.e. State of Maharashtra to register offence under Section 302 of Indian Penal Code and other enactments against the police officers found prima-facie responsible for the violations of fundamental rights and other provisions of the Indian Penal Code and other relevant enactments;

iii) directing the 4th respondent viz., the Coroner of Mumbai to submit a detailed report and the details of action taken by him under the provisions of the Coroners Act 1871;

iv) directing an appropriate authority to enquire into and report to this Court in all the police encounters that have taken place not only in the city of Mumbai but also in the entire State of Maharashtra in which persons have been killed or injured in police encounters;

v) directing the State of Maharashtra to constitute the Maharashtra State Human Rights Commission as provided Page 2 under Section 21 and other provisions contained in the Human Rights Act 1993,

vi) directing the State Government to frame appropriate guidelines governing planning and carrying out encounters for the purpose of protection of life and liberty guaranteed under Article 21 read with Article 14 of the Constitution of India.

3. It is not necessary to notice the facts of the three writ petitions in detail. Suffice it to say that while considering the above prayers, the High Court directed the following guidelines to be followed necessarily and mandatorily by the police in the State:

1. Whenever the respondents-police are on the receipt of intelligence or a tip off about the criminal movements and activities pertaining to the commission of grave crimes, it shall be entered into a case diary. If the receiving authority is the police officer of a particular police station, the relevant entry has to be made in the General diary and if the receiving authority is the higher police officer, the relevant entry to the said effect has to be made by a separate diary kept and provided therefor and then pursue further in accordance with the procedural law.

2. Regarding any encounter operation is over and persons are killed or injured and the same is reported to either orally or writing to the police in furtherance of Section 154 of the Criminal Procedure Code, it shall be registered in Crime Register of that particular police station and that further the said First Information Report along with copies to the higher officials and the Court in original shall be sent with immediately without any delay whatsoever through proper channel so as to reach to the Court without any delay at all. A report, as enjoined under Section 157(1) of the Criminal

Procedure Code, shall also be followed necessarily by the concerned police station.

3. After setting the law in motion by registering the First Information Report in the Crime Register by the concerned police officer of the particular police station, the investigating Page 3 staff of the police shall take such steps by deputing the man or men to get the scene of crime guarded so as to avoid or obliterate or disfigure the existing physical features of the scene of occurrence or the operation encounter. This guarding of the scene of occurrence shall continue till the inspection of occurrence takes place by the investigating staff of the police and preparation of spot panchnama and the recovery panchnama.
4. The police officer who takes part in the operation encounter or the investigating officer of the concerned police station, shall take all necessary efforts and arrangements to preserve finger prints of the criminals or the dreaded gangster of the weapons who handled immediately after the said criminal was brought down to the ground and incapacitated and that the said fingerprints, if properly taken and preserved, must be sent to the Chemical Analyzer for comparison of the fingerprints of the dead body to be taken.
5. The materials which are found on the scene of occurrence or the operation encounter and such of the materials including the blood stained earth and blood stained materials and the sample earth and other moveable physical features, shall also be recovered by the investigating staff under the cover of recovery panchnama attested by the independent witnesses.
6. To fix the exact date and actual place of occurrence in which operation encounter has taken place, a rough sketch regarding the topography of the existing physical features of the said place shall be drawn by the police or the investigating staff of the police either by themselves or by the help of the staff of the Survey Department even during the spot panchnama is prepared.
7. The inquest examination shall be conducted by the investigating staff of the police on the spot itself without any delay and statements of the inquest witnesses are to be recorded under Section 161 of the Code of Criminal Procedure and the inquest panchnama shall be sent along with the above case record prepared along with the First Information Report without any delay whatsoever to the Court.
8. If the injured criminals during the operation encounter are found alive, not only that they should be provided medical aid immediately but also arrangements and attempts Page 4 shall be taken by the police to record their statements under Section 164 of the Criminal Procedure Code either by a Magistrate, if possible and if not, by the Medical Officer concerned duly attested by the hospital staff mentioning the time and factum that while recording such statements the injured were in a state of position that they will be able to give statements and the connected certificates by the doctors appended thereto.
9. After the examination of further witnesses and completing the investigation inclusive of securing the accused or accused persons, the concerned police is directed to send final report to the Court of competent jurisdiction as required under Section 173 of the Criminal Procedure Code for further

proceeding.

10. Either in sending the First Information Report or sending with the general diary entry referred in the guideline nos. 1 and 2, the concerned police shall avoid any iota of delay under any circumstances whatsoever so also rough sketch showing the topography of the scene and the recovery of the materials and the blood stained materials with the sample earth and the blood stained earth with the other documents viz, the spot panchnama, recovery panchnama - all seems very vital documents - the respondents-police are also directed to send them to the Court of concerned jurisdiction without any delay.

4. PUCL was not satisfied with the adequacy of the reliefs granted by the High Court and, consequently, it filed three SLPs against the judgment and order dated 22-25.02.1999. Few other matters have been connected with these three petitions.

5. After initial grant of leave, the matters came up for consideration before the two-Judge Bench on 05.11.2008. On that day, Mr. Prashant Bhushan, learned counsel appearing for the appellants placed before the Court the guidelines issued by the National Human Rights Commission (for short, "NHRC") and also his own suggestions.

Looking at the gravity of the matter, the Court on that day directed issuance of notice to the Union of India, States and Union Territories for consideration of issuance of final directions / guidelines in the matter by this Court. After the notice was issued, the Union of India, States and Union Territories, have filed their affidavits.

6. On 28.08.2014, having regard to the importance of the matter, we appointed Mr. Gopal Sankaranarayanan as amicus curiae to assist the Court in the matter. Mr. Sankaranarayanan, learned counsel, after thorough research and study, placed before us his written submissions including the suggestions / guidelines.

7. Article 21 of the Constitution of India guarantees "right to live with human dignity". Any violation of human rights is viewed seriously by this Court as right to life is the most precious right guaranteed by Article 21 of the Constitution. The guarantee by Article 21 is available to every person and even the State has no authority to violate that right.

8. In *D.K. Basu*¹, this Court was concerned with custodial violence and deaths in police lockups. While framing the requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf, this Court issued certain directives as preventive measures.

D.K. Basu v. State of West Bengal; [(1997) 1 SCC 416] Page 6 While doing so, the Court in para 29 (page 433 of the Report) made the following weighty observations:

29. How do we check the abuse of police power? Transparency of action and accountability perhaps are two possible safeguards which this Court must insist upon. Attention is also required to be paid to properly develop work culture, training

and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Efforts must be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third-degree methods during interrogation.

9. The observations made by this Court in Om Prakash² (para 42, page 95 of the Report) are worth noticing:

42. It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial.

This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to State-sponsored terrorism. But, one cannot be oblivious of the fact that there are cases where the police, who are performing their duty, are attacked and killed. There is a rise in such incidents and judicial notice must be taken of this fact. In such circumstances, while the police have to do their legal duty of arresting the criminals, they have also to protect themselves. The requirement of sanction to prosecute affords protection to the policemen, who are sometimes required to take drastic action against Om Prakash and Ors. v. State of Jharkhand through the Secretary, Department of Home, Ranchi-1 and Anr.; [(2012) 12 SCC 72] Page 7 criminals to protect life and property of the people and to protect themselves against attack. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide and vindictive, they cannot be subjected to prosecution. Sanction must be a precondition to their prosecution. It affords necessary protection to such police personnel. The plea regarding sanction can be raised at the inception.

10. The statistics of the National Crime Records Bureau, 2013 are worth noticing. Table 14.2 under the title “Persons Killed Or Injured in Police Firing During 2013 (Event-Wise)” shows that there were 684 occasions of police firing classified as “Riot Control”, “Anti-Dacoity Operations”, “Against Extremists and Terrorists” and “Against Others” in 2013 and, in these police firings, 103 civilians were killed and 213 were injured and, as regards policemen, 47 were killed and 1158 were injured.

10.1 Table 15.1 gives details of police personnel killed across the country in 2013 in terrorist/extremists operations, dacoity operations or other raids by riotous mobs and by other criminals.

10.2 Table 16.1 catalogues the complaints/cases registered against police personnel during 2013. During the year 2013, 51120 complaints were received, of which 26640 were declared false or

unsubstantiated. Of the rest, 14928 were dealt departmentally. Of this, 3896 were reported for regular departmental action while 799 were sent up for trials/charge-

sheeted. In the completed trials, 53 were convicted. In departmental Page 8 proceedings, 544 were dismissed from service and 3980 had been awarded major punishment.

10.3 Incidence of human rights violations by police during 2013 is indicated in Table 16.2. This Table lists only two fake encounters (both from Assam). The figure raises doubts about its correctness.

11. In some of the countries when a police firearms officer is involved in a shooting, there are strict guidelines and procedures in place to ensure that what has happened is thoroughly investigated. In India, unfortunately, such structured guidelines and procedures are not in place where police is involved in shooting and death of the subject occurs in such shooting. We are of the opinion that it is the constitutional duty of this Court to put in place certain guidelines adherence to which would help in bringing to justice the perpetrators of the crime who take law in their own hands.

12. Mr. Prashant Bhushan, learned counsel for PUCL has suggested the following guidelines:

Whenever the police are in receipt of any intelligence or tip off regarding criminal movements or activities pertaining to the commission of grave criminal offences, it shall be entered into a case diary. If the receiving authority is the police officer of a particular police station, the relevant entry must be made in the general diary and if the receiving authority is a police officer of higher rank, the relevant entry must be made in a separate diary kept and provided therefor Page 9 and then be pursued further in accordance with the procedural law.

A dedicated investigative team / separate cadre of police be formed/established which shall be attached to the NHRC/SHRC to investigate encounters and other matters of which NHRC/SHRC is seized. Till the time such dedicated team/police cadre is established, it is mandatory that the matters relating to encounter deaths/injuries are handed over for investigation to an independent investigating agency such as CBI/SHRC. NHRC/SHRC shall direct as to who will conduct the investigation.

Whenever a police party is involved in an encounter it shall immediately inform the NHRC/SHRC and the local police station of the encounter and shall seal off the premises to avoid any contamination till such investigative team of the NHRC/SHRC arrives subject to compliance with the other guidelines regarding the preservation of fingerprints etc. When a Police Officer receives any information, either orally or in writing, in furtherance of section 154 of the Cr.P.C. regarding death or injuries caused in the course of an encounter operation between the Police party and others, he shall enter the information in the Crime Register or any other appropriate register of that particular police station and shall immediately send the Report (First Information Report) to the court without any further delay through a proper channel. The copies of the said report shall also be sent to the higher officials including the DGP of the concerned State and NHRC/SHRC. The DGP

must also send his report with regard to such encounter death to NHRC. The DGP shall take disciplinary action against the officer-in-charge of the police station if he/she fails to send the report regarding the encounter death to NHRC and DGP. A report, as enjoined under section 157(1) of the Criminal Procedure Code, shall also be followed necessarily by the concerned police station.

The independent investigating team shall take such steps by deputing the man or men to get the scene of crime guarded so as to avoid or obliterate or disfigure the existing physical features of the scene of occurrence or the operation encounter. This guarding of the scene of occurrence shall continue till the inspection of occurrence takes place by the aforesaid independent investigating team and preparation of spot panchnama and the recovery panchnama.

Page 10 The police officer involved in the encounter operation and the independent investigating team, shall make all necessary efforts and arrangements immediately after the said criminal was brought down to the ground and incapacitated to preserve finger prints of the criminals or the dreaded gangster, and those on the weapons handled during the course of the encounter. The said fingerprints, properly taken and preserved, must be sent to the Chemical Analyzer for comparison of the fingerprints of the dead body to be taken.

The materials which are found on the scene of occurrence or the operation encounter and such of the materials including the blood stained earth and blood stained materials and the sample earth and other moveable physical features, shall also be recovered by the independent investigating team under the cover of recovery panchnama attested by independent witnesses.

To fix the exact date and actual place of occurrence in which operation encounter has taken place, a rough sketch regarding the topography of the existing physical features of the said place shall be drawn by the aforesaid independent investigating team either by themselves or by the help of the staff of the Survey Department when the spot panchnama is prepared.

The inquest examination shall be conducted by aforesaid independent investigating team on the spot itself without any delay and statements of the inquest witnesses are to be recorded under section 161 of the Code of Criminal Procedure and the inquest Panchnama shall be sent along with the above case record prepared along with the First Information Report without any delay whatsoever to the Court.

A Magisterial Inquiry must invariably be held in all cases of death which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry.

In every case when a complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognizable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall also be investigated by the aforesaid investigating team.

Page 11 Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry/the said investigation. Prosecution of such delinquent

officers shall be conducted by the investigating agency. Such delinquent officers must be placed under suspension.

Question of granting of compensation to the dependents of the deceased would depend upon the facts and circumstances of each case and it shall be determined by NHRC. However, in every case of a person being killed by the police party in the course of an encounter, the compensation granted must necessarily be at least the same as that granted to the dependants of a police officer killed by terrorists in the course of duty by the Government.

No out-of-turn promotion, cash award or gallantry reward shall be bestowed on the concerned officers pursuant to their role in an encounter as this may be an incentive for officers to conduct encounters.

A six monthly statement of all cases of deaths in police action in the State shall be sent by the Director General of Police to the Commission, so as to reach its office by the 15 th day of January and July respectively. The statement may be sent in the following format along with post-mortem reports and inquest reports, wherever available and also the inquiry reports:-

1. Date and place of occurrence.
2. Police Station, District.
3. Circumstances leading to deaths:
 - i. Self defence in encounter ii. In the course of dispersal of unlawful assembly iii. In the course of affecting arrest.
4. Brief facts of the incident
5. Criminal Case No.
6. Investigating Agency
7. Findings of the magisterial Inquiry/enquiry by Senior Officers:
 - a. disclosing in particular names and designation of police officials, if found responsible for the death; and b. whether use of force was justified and action taken was lawful.

Page 12 In order to ascertain the identity of persons killed in Police encounter, their photographs and other details should be advertised on T.V., newspapers etc. With respect to the post mortem conducted after an encounter it is imperative that such a post mortem is, at the least, conducted in the District Level Government Hospital in the presence of at least three qualified doctors of which one must be a senior doctor. All such post-mortems must also necessarily be videotaped and copies of such videotapes preserved.

If the injured criminals during the operation encounter are found alive, not only that they should be provided medical aid immediately but also arrangements and attempts shall be taken by the independent investigative team to record their statements under Section 164 of the Criminal Procedure Code, either by a Magistrate, if possible and if not, by the Medical Officer concerned, duly attested by the hospital staff mentioning the time and factum that while recording such statements the injured were in a state of position that they will be able to give statements and the connected certificates by the doctors appended thereto.

After the examination of further witnesses and completing the investigation inclusive of securing the accused or accused persons, the independent investigative team is directed to send final report to the Court of Competent jurisdiction as required under Section 173 of the Criminal Procedure Code for further proceeding.

Either in sending the First Information Report or sending with the general diary entry referred in the guideline nos. 1 and 2, the concerned police / independent investigative team, shall avoid any iota of delay under any circumstances whatsoever so also rough sketch showing the topography of the scene and the recovery of materials and the blood stained materials with the sample earth and the blood stained earth with the other documents viz, the spot panchnama, recovery panchnama - all seems very vital documents - the respondents police are also directed to send them to the Court of concerned jurisdiction without any delay.

13. The revised guidelines/procedures to be followed in cases of deaths caused in police action framed by NHRC read as under:

Page 13 A. When the police officer in charge of a police station receives information about death in an encounter with the police, he shall enter that information in the appropriate/ register.

B. Where the police officers belonging to the same police station are members of the encounter party, whose action resulted in death, it is desirable that such cases are made over for investigation to some other independent investigation agency, such as State CBCID.

C. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognizable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall be investigated by State CBCID or any other specialized investigation agency.

D. A magisterial enquiry must be held in all cases of death which occurs in the course of police action, as expeditiously as possible, preferably, within three months. The relatives of the deceased, eye witnesses having information of the circumstances leading to encounter, police station records etc. must be examined while conducting such enquiry.

E. Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry/police investigation.

F. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officer is established beyond doubt.

G. (a) All cases of deaths in police action in the states shall be reported to the Commission by the Senior Superintendent of Police/Superintendent of Police of the District within 48 hours of such death in the following format:

1. Date and place of occurrence

2. Police station, district

3. Circumstances leading to death :

(i) Self-defence in encounter

Page 14

(ii) In course of dispersal of unlawful assembly

(iii) In the course of effecting arrest

(iv) Any other circumstances

4. Brief facts of the incident

5. Criminal case No.

6. Investigating agency

(b) A second report must be sent in all cases of death in police action in the state by the Sr. Superintendent of Police/Superintendent of Police to the commission within three months providing following information:

1. Post mortem report

2. Inquest report

3. Findings of the magisterial enquiry/enquiry by senior officers disclosing:

(i) Names and designation of police official, if found responsible for the death:

(ii) Whether use of force was justified and action taken was lawful:

(iii) Result of the forensic examination of 'handwash' of the deceased to ascertain the presence of residue of gun powder to justify exercise of right of self defence; and

(iv) Report of the Ballistic Expert on examination of the weapons alleged to have been used by the deceased and his companions.

14. Union of India in its counter affidavit has given its comments to the guidelines framed by the High Court and so also to the guidelines suggested by learned counsel for PUCL. Union of India has expressed its reservation on certain guidelines on diverse counts including the practical difficulties in their implementation. As regards States and Union Territories, their views are not uniform on the guidelines framed by the High Court and also the guidelines suggested by PUCL. In respect of some of the guidelines, some States and Union Territories have toed the line of Union Page 15 of India in not accepting the same on the ground of practical difficulties in their implementation. Few States have highlighted the procedure that is being followed by them when any death or encounter takes place. As regards investigation in such cases, some of the States have highlighted that the investigation of such cases cannot be done by officers / employees of the same police station and it is ensured that investigation of such cases is done by some higher officer. On the other hand, few States / Union Territories have stated that initial investigation may be conducted by the local police because local police is acquainted with the modus operandi of local criminals and crime.

15. Before we proceed further, we put on record our appreciation for the efforts of learned amicus curiae in collating the guidelines framed by the High Court, guidelines suggested by PUCL and guidelines issued by NHRC and their acceptability or otherwise by the Union / States / Union Territories and his own comments.

16. Article 21 of the Constitution provides “no person shall be deprived of his life or personal liberty except according to procedure established by law”. This Court has stated time and again that Article 21 confers sacred and cherished right under the Constitution which cannot be violated, except according to procedure established by law. Article 21 Page 16 guarantees personal liberty to every single person in the country which includes the right to live with human dignity.

17. In line with the guarantee provided by Article 21 and other provisions in the Constitution of India, a number of statutory provisions also seek to protect personal liberty, dignity and basic human rights. In spite of Constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, the cases of death in police encounters continue to occur. This Court has been confronted with encounter cases from time to time. In Chaitanya Kalbagh³, this Court was concerned with a writ petition filed under Article 32 of the Constitution wherein the impartial investigation was sought for the alleged killing of 299 persons in the police encounters. The Court observed that in the facts and circumstances presented before it, there was an imperative need of ensuring that the guardians of law and order do in fact observe the code of discipline expected of them and that they function strictly as the protectors of innocent citizens.

18. In R.S. Sodhi⁴, a writ petition was brought to this Court under Article 32 of the Constitution relating to an incident in which 10 persons were reported to have been killed in what were described

as “encounters” between the Punjab militants and the local police. The Court observed, Chaitanya Kalbagh and Ors. v. State of U.P. and Ors.; [(1989) 2 SCC 314] R.S. Sodhi, Advocate v. State of U.P. and Ors.; [1994 Supp (1) SCC 143] Page 17 “Whether the loss of lives was on account of a genuine or a fake encounter is a matter which has to be inquired into and investigated closely”. The Court entrusted the investigation to the Central Bureau of Investigation (for short, “the CBI”) to ensure that the investigation did not lack credibility.

19. In Satyavir Singh Rathi⁵, the matter before this Court arose from the First Information Report (for short, “FIR”) registered against police personnel involved in a shoot-out for an offence punishable under Sections 302/34 of the Indian Penal Code (for short, “IPC”). In the complaint, it was alleged that the police officials had surrounded the car and had fired indiscriminately and without cause at the occupants, killing the two and causing grievous injuries to the third. This Court concurred with the High Court and the trial Court on the conviction under Section 302 IPC and rejected the defence set up by the accused persons relying on Exception 3 in Section 300 IPC as it was found to be not in good faith or due discharge of their duty.

20. In Prakash Kadam⁶, the allegation was that the accused persons decided to eliminate the deceased in a false police encounter. The Court noted that this was a very serious case wherein prima facie some police officers and staff were engaged by some private persons to kill their Satyavir Singh Rathi, Assistant Commissioner of Police and Ors. v. State through Central Bureau of Investigation; [(2011) 6 SCC 1] Prakash Kadam and Ors. v. Ramprasad Vishwanath Gupta and Anr.; [(2011) 6 SCC 189] Page 18 opponent and the police officers and the staff acted as contract killers for them. The Court warned policemen that they would not be excused for committing murder in the name of “encounter” on the pretext that they were carrying out the orders of their superior officers or politicians. The Court said that the “encounter” philosophy is a criminal philosophy.

21. In Om Prakash², the allegation against the accused persons was that the complainant’s son was killed by them in a fake police encounter. The Court, however, held that the encounter was a genuine one though NHRC guideline for photography of the autopsy was not complied with.

22. A two-Judge Bench of this Court in B.G. Verghese⁷ dealt with two writ petitions. In Writ Petition (Criminal) No.31/2007, it was stated that during the years 2003-2006, 21 police encounter killings took place in the State of Gujarat. It was alleged that the so-called police encounters were fake and the persons were killed by the police officials in cold blood. In the writ petition a prayer was made for ordering an inquiry into all the cases of police encounters, which, according to the petitioner, were fake in order to establish the rule of law and to bring out the truth in each case. In the other Writ Petition (Criminal) No. 83/2007, the allegation related to the killing of one person in a police encounter. It was alleged that this too was B.G. Verghese v. Union of India and Ors.; [(2013) 11 SCC 525] Page 19 an instance of fake encounter in which the victim was killed by the officers of the crime branch of police in cold blood and in a premeditated manner.

The prayer was made in the writ petition to order an independent investigation by a special investigation team into all the fake encounters.

During the pendency of the matter before this Court, the State of Gujarat had constituted a Monitoring Authority and Special Task Force for investigation of police encounters. Since the former Judge of this Court was appointed as Chairman of the Monitoring Authority, the Court requested the Chairman of the Monitoring Authority to look into all the cases of alleged fake encounters as enumerated in the two writ petitions and to have them thoroughly investigated so that full and complete truth comes to light in each case.

23. In Rohtash Kumar⁸, again a two-Judge Bench of this Court was confronted with killing of a person in an encounter by the police officials. Having found that the death took place in the fake police encounter, the Court directed an independent investigating agency to conduct the investigation so that guilty could be brought to justice.

24. The above cases have been referred only by way of illustration to show that killings in police encounters require independent Rohtash Kumar v. State of Haryana through the Home Secretary, Government of Haryana, Civil Secretariat, Chandigarh and Ors.; [(2013) 14 SCC 290] Page 20 investigation. The killings in police encounters affect the credibility of the rule of law and the administration of the criminal justice system.

25. We are not oblivious of the fact that police in India has to perform a difficult and delicate task, particularly, when many hardcore criminals, like, extremists, terrorists, drug peddlers, smugglers who have organized gangs, have taken strong roots in the society but then such criminals must be dealt with by the police in an efficient and effective manner so as to bring them to justice by following rule of law. We are of the view that it would be useful and effective to structure appropriate guidelines to restore faith of the people in police force. In a society governed by rule of law, it is imperative that extra-judicial killings are properly and independently investigated so that justice may be done.

26. Learned amicus curiae submits that when a police encounter occurs, it is important that a complaint is registered; the evidence is preserved; independent and fair investigation takes place; victims are informed and inquest is conducted.

Page 21

27. Sections 174□175□and 176□of the Code of Criminal Procedure, 1973 (for short “Code”) provide for Magisterial inquiries into cases of unnatural death. It is apposite to mention that a system for investigating the cause of death in cases of unusual or suspicious circumstances is in place in most countries. The system centers around Section 174. Police to inquire and report on suicide, etc. - (1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub- divisional Magistrate, shall proceed to the place

where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

(3) When-

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(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 175. Power to summon persons. - (1) A police officer proceeding under section 174, may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case and every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police officer to attend a Magistrate's Court. Section 176. 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 174, the nearest Magistrate empowered to hold inquests shall, and in

any other case mentioned in sub- section (1) of section 174, 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 Page 22 the policy to have reassurance that unexplained deaths do not remain unexplained and that the perpetrator is tried by a competent court established by law.

28. Universal Declaration of Human Rights (UDHR) has framed certain general principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions□ The principles so framed 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.

(1A) Where,-

(a) any person dies or disappears, or

(b) rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or in any other custody authorized by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.

(2) The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any manner hereinafter prescribed according to the circumstances of the case.

(3) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

(4) Where an inquiry is to be held under this section, the Magistrate shall, wherever practicable, inform the relatives of the deceased whose names and addresses are known, and shall allow them to remain present at the inquiry.

(5) The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under sub-section (1A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical man appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing.

Explanation.- In this section, the expression “relative” means parents, children, brothers, sisters and spouse.

1. Requiring states to provide the investigative authority with sufficient power to compel any relevant parties including the official implicated to testify (Provision 10).

2. Obliging states to provide for an independent inquiry into alleged police misconduct through an appointed commission when existing procedures are inadequate or when there are allegations of such inadequacies. The commission members must be independent of individuals implicated in the incident (Provision 11).

3. Requiring that those conducting autopsies must be able to function independently and impartially (Provision 14).

4. Requiring states to protect those who witness or allege police misconduct and obligating states to remove the implicated officers from any involvement in the investigation (Provision 15).

5. Affording the victim's family and legal representative the right to request that an independent qualified representative be present during the autopsy of the victim's body (Provision

16).

Page 23 by the UDHR are intended to guarantee independence while investigating police killings and help in preventing potential for abuse, corruption, ineffectiveness and neglect in investigation.

29. The United Nations Code of Conduct for Law Enforcement Officers (which includes all officers of the law, who exercise police powers) lays down that in the performance of duties, Law Enforcement Officers shall respect and protect human dignity and maintain and uphold human rights of all persons. Basic human rights standards for good conduct by Law Enforcement Officers by Amnesty International, inter alia, suggest, (1) Do not use force except when strictly necessary and to the minimum extent required under the circumstances and (2) Do not carry out, order or cover up extra-judicial executions or "disappearances" and refuse to obey any order to do so.

30. Minnesota Protocol (Model protocol for a legal investigation of extra-legal, arbitrary and summary executions) establishes a long line of requisite steps. The Protocol sets the principles and medico legal standards for the investigation and prevention of extra legal, arbitrary and summary executions. The Protocol provides for in-depth guidance in a

6. Calling for the prompt submission of a written report on the investigation specifically detailing the methods utilized as well as the findings of fact and law resulting from the inquiry. It further requires that such reports be released to the public (Provision 17).

7. Recognizing that those undertaking these investigations must "have at their disposal all the necessary budgetary and technical resources for effective investigation" into police killings.

Page 24 general way on the subjects (1) purpose of an inquiry (2) procedure for an inquiry (3) processing of the crime scene (4) processing of the evidence (5) avenues to investigation (6) personal testimony etc. In Section C of the Minnesota Protocol, a long list of requisite steps is suggested, some of which being:

1. the area in which evidence is located should be closed off to the public;
2. photographs of the scene and physical evidence located at the scene should be taken in a prompt manner;
3. investigators should promptly record the condition of the body;
4. weapons such as guns, projectiles, bullets and cartridge cases should be taken and preserved;
5. tests for gunshot residue and trace metal detection should be performed on the victims' bodies and the police officers involved;
6. fingerprints of relevant persons should be preserved;
7. information should be obtained from witnesses;
8. all persons at the scene should be identified;
9. a report detailing the work of the investigators during their on-site visit should be kept and later disclosed;
10. evidence should be properly collected, handled, packaged, labeled, and placed in safekeeping to prevent contamination and loss of evidence.

31. In light of the above discussion and having regard to the directions issued by the Bombay High Court, guidelines issued by NHRC, Page 25 suggestions of the appellant – PUCL, amicus curiae and the affidavits filed by the Union of India, State Governments and the Union Territories, we think it appropriate to issue the following requirements to be followed in the matters of investigating police encounters in the cases of death as the standard procedure for thorough, effective and independent investigation:

(1) Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form.

Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

(2) If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be

registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the Page 26 report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.

(3) An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

(a) To identify the victim; colour photographs of the victim should be taken;

(b) To recover and preserve evidentiary material, including blood-stained earth, hair, fibers and threads, etc., related to the death;

(c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;

(d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and Page 27 time of death as well as any pattern or practice that may have brought about the death;

(e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

(f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be In-

charge/Head of the District Hospital. Post-mortem shall be video-

graphed and preserved;

(g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved.

Wherever applicable, tests for gunshot residue and trace metal detection should be performed.

(h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

(4) A Magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Code.

Page 28 (5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation.

However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.

(6) The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.

(7) It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned Court.

(8) After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the chargesheet submitted by the Investigating Officer, must be concluded expeditiously.

(9) In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.

(10) Six monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six monthly statements reach to NHRC by 15 th day of January and July, respectively. The statements may be sent in the Page 29 following format along with post mortem, inquest and, wherever available, the inquiry reports:

- (i) Date and place of occurrence.
- (ii) Police Station, District.
- (iii) Circumstances leading to deaths:
 - (a) Self defence in encounter.
 - (b) In the course of dispersal of unlawful assembly.
 - (c) In the course of affecting arrest.
- (iv) Brief facts of the incident.
- (v) Criminal Case No.
- (vi) Investigating Agency.
- (vii) Findings of the Magisterial Inquiry/Inquiry by Senior Officers:
 - (a) disclosing, in particular, names and

designation of police officials, if found responsible for the death; and

(b) whether use of force was justified and action taken was lawful.

(11) If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.

Page 30 (12) As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.

(13) The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.

(14) An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer / counselling, same must be offered.

(15) No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt.

(16) If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon Page 31 such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein.

32. The above guidelines will also be applicable to grievous injury cases in police encounter, as far as possible.

33. Accordingly, we direct that the above requirements / norms must be strictly observed in all cases of death and grievous injury in police encounters by treating them as law declared under Article 141 of the Constitution of India.

.....CJI.

(R.M. Lodha)

NEW DELHI;
SEPTEMBER 23, 2014.

.....J.
(Rohinton Fali Nariman)

