

EXTRA JUDL. EXEC. VICTIM FAMILIES ASSN. & ANR.

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v.

UNION OF INDIA & ORS.

(Writ Petition (Crl.) No. 129 of 2012)

JULY 14, 2017

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**[MADAN B. LOKUR AND UDAY UMESH LALIT, JJ.]**

*Constitution of India – Art.21 and 32 – Fake encounter killings – Use of excessive force or retaliatory force by police personnel and personnel in uniform of the armed forces in the State of Manipur – Writ petition alleging that 1528 persons killed in fake encounters – Documentation found inadequate to order any inquiry into allegations made – Issuance of direction to complete the documentation – Information collected with regard to 655 deaths out of 1528 alleged, wherein deaths were investigated by Commissions of inquiry, Judicial Inquiries, High Court, NHRC, and Justice Santosh Hegde Commission and registration of FIRs was directed in these complaints – Issuance of direction to CBI to constitute a Special Investigation Team to investigate the alleged extra judicial killings in Manipur – Officers of the Manipur Police not associated with Special Investigating Team, since in some of the cases the role of the Manipur Police itself has been adversely commented upon.*

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*Administration of Justice – Fake encounter killings – Petition at the instance of third party, next of the kin having themselves given a quietus to the incidents – Maintainability of – Held: It cannot be said that the Court cannot take up the issue at the instance of a third party – Access to justice is certainly a human right and it has been given a special place in the constitutional scheme where free legal aid and advice is provided to a large number of people in the country – To provide access to justice to every citizen and to make it meaningful, this Court has evolved its public interest jurisprudence – In the instant petitions, the next of kin could not access justice in the local courts and the petitioners took up their cause in public interest – Constitutional jurisprudence does not permit to shut the door on such persons and the constitutional obligation requires to give justice and succour to the next of kin of the deceased.*

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- A        *Compensation – Fake encounter killings – Compensation, whether an appropriate relief – Held: Compensation having been paid to the next of kin for the unfortunate deaths, it cannot be said that it may be not necessary to proceed further in the matter – Compensation has been awarded to the next of kin for the agony they have suffered and to enable them to immediately tide over their*
- B        *loss and for their rehabilitation – This cannot override the law of the land, otherwise all heinous crimes would get settled through payment of monetary compensation – Constitutional jurisprudence does not permit this and certainly cannot encourage or countenance such a view.*
- C        *Delay/Laches – Fake encounter killings – Some of the incidents of considerable vintage – Re-opening of the issues for investigation – Held: Crime which involves the death of a person who is possibly innocent, cannot be over-looked only because of a lapse of time – It was the obligation of the State to have suo motu*
- D        *conducted a thorough inquiry at the appropriate time and soon after each incident took place – Merely because the State has not taken any action and has allowed time to go by, it cannot take advantage of the delay to scuttle an inquiry.*
- E        *Protection of Human Rights Act, 1993 – National Human Rights Commission – Implementation of its communications and Guidelines – Plea of NHRC that there should be implementation of its communications and Guidelines, enforcement of the orders passed by it and necessary provision for its effective functioning – Held: Intention of the NHRC is to more effectively assist the criminal justice delivery system and avoid any factual controversies while respecting*
- F        *human rights – Unless the communications and Guidelines laid down by the NHRC are adhered to, the respect and dignity due to the dead and the human rights of all will remain only on paper – Request made by NHRC to be expeditiously and favourably respected and considered by the Union of India for the effective functioning of*
- G        *NHRC – Issuance of direction to Union of India to take note of the concerns of the NHRC and remedy them at the earliest.*

**Adjourning the matter, the Court**

**HELD: 1.1 The submission that some of the incidents are of considerable vintage and at this point of time it may not be**

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appropriate to re-open the issues for investigation, cannot be accepted. If a crime has been committed, a crime which involves the death of a person who is possibly innocent, it cannot be overlooked only because of a lapse of time. It was the obligation of the State to have *suo motu* conducted a thorough inquiry at the appropriate time and soon after each incident took place. Merely because the State did not taken any action and allowed the time to go by, it cannot take advantage of the delay to scuttle an inquiry. [Para 18][378-A-C]

1.2 The submission that there were local pressures and the ground level situation was such that it would not be surprising if the inquiries were biased in favour of the citizens and against the State, is rejected. If there had been a break-down of the rule of law in the State of Manipur, surely the Government of India was under an obligation to take appropriate steps. To suggest that all the inquiries were unfair and motivated is casting very serious aspersions on the independence of the authorities in Manipur at that point of time, is not at all warranted. [Para 19][378-D-E]

1.3 The submission that in many instances the next of kin of the deceased had not approached this Court and there is no reason why this Court should entertain a petition filed by a third party, is rejected. Access to justice is certainly a human right and it has been given a special place in the constitutional scheme where free legal aid and advice is provided to a large number of people in the country. The primary reason is that for many of the deprived sections of society, access to justice is only a dream. To provide access to justice to every citizen and to make it meaningful, this Court has evolved its public interest jurisprudence where even letter-petitions are entertained in appropriate cases. The history of public interest litigation over the years has settled that the deprived sections of society and the downtrodden such as bonded labourers, trafficked women, homeless persons, victims of natural disasters and others can knock on the doors of the constitutional courts and pray for justice. This is precisely what has happened in the instant petitions where the next of kin could not access justice even in the local courts and the petitioners have taken up their cause in public interest.

A The constitutional jurisprudence does not permit to shut the door on such persons and the constitutional obligation requires to give justice and succour to the next of kin of the deceased. [Paras 20-21][378-F-H; 379-A-B]

B 1.4 The submission that compensation has been paid to the next of kin for the unfortunate deaths and therefore, it may be not necessary to proceed further in the matter, cannot be accepted. Compensation has been awarded to the next of kin for the agony they have suffered and to enable them to immediately tide over their loss and for their rehabilitation. This cannot override the law of the land, otherwise all heinous crimes would get settled through payment of monetary compensation. The constitutional jurisprudence does not permit this and certainly cannot encourage or countenance such a view. [Para 22][379-C-D]

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D 1.5 As far as the appointment of a Special Investigating Team is concerned, it was suggested that officers of the Manipur Police may be associated. It is not appropriate to associate any officer of the Manipur Police particularly since in some of the cases the role of the Manipur Police itself has been adversely commented upon. There is no hesitation in directing the constitution of a Special Investigating Team to investigate the cases. In none of the cases has an FIR been registered against the Manipur Police or any uniformed personnel of the armed forces of the Union. On the contrary, FIRs have been registered against the deceased for alleged violations of the law. Under these circumstances, it would be inappropriate depend upon the Manipur Police to carry out an impartial investigation more particularly when some of its own personnel are said to be involved in the fake encounters and the Manipur Police has not registered any FIR at the instance of the next of the kin of the deceased. More appropriate course of action would be to appoint an independent investigating team to examine the said cases. [Paras 23-25][379-D-H; 380-A-C]

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H 1.6 It would be appropriate if the Central Bureau of Investigation (or the CBI) is required to look into these fake encounters or use of excessive or retaliatory force. The Director of the CBI is directed to nominate a group of five officers to go

through the records of the cases mentioned in the three tables given lodge necessary FIRs and to complete the investigations into the same by 31<sup>st</sup> December, 2017 and prepare charge sheets, wherever necessary. The entire groundwork has already been done either by the Commissions of Inquiry or by a Judicial Inquiry or by the Gauhati or Manipur High Court or by the NHRC. It is left to the Special Investigating Team to utilize the material already gathered, in accordance with law. The State of Manipur is expected to extend full cooperation and assistance to the Special Investigating Team. The Union of India is expected to render full assistance to the Special Investigating Team to complete the investigation at the earliest without any unnecessary hindrances or obstacles. [Para 26][380-D-F]

1.7 The Director of the Central Bureau of Investigation would nominate a team and inform this Court of its composition within two weeks, as also any other requirement. These petitions should also be listed within the stipulated period to ensure compliance with the directions for investigation by Central Bureau of Investigation. [Para 48][388-D-E]

2.1 Under the provisions of the Protection of Human Rights Act, 1993 the NHRC has been constituted as a high-powered statutory body whose Chairperson is and always has been a retired Chief Justice of India. Amongst others, a retired judge of the Supreme Court and a retired Chief Justice of a High Court is and has always been a member of the NHRC. The NHRC has essentially four roles to play, namely that of protector, advisor, monitor and educator of human rights. It is in this capacity that the NHRC as a protector and monitor of human rights through effective investigations has issued guidelines from time to time with regard to various aspects including reporting of matters relating to custodial death and rape, videography of post-mortem examination etc. [Paras 30, 32][381-H; 382-A-B]

2.2 The submission by the NHRC that all its communications and Guidelines have remained only on paper and are not enforced by any State Government; and that to ensure that good quality reports are available, the Guidelines need to be strictly enforced is accepted. It is made clear that the intention of the NHRC is to more effectively assist the criminal justice delivery system and

A avoid any factual controversies while respecting human rights. It is not as if the dignity of only living persons needs to be respected but even the dignity of the dead must be given due respect. Unless the communications and Guidelines laid down by the NHRC (which have been prepared after wide ranging and detailed consultations) are adhered to, the respect and dignity due to the dead and the human rights of all will remain only on paper. [Para 38][384-F-H]

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2.3 It is quite clear from the reading of s. 11 of the Protection of Human Rights Act, 1993 that the Central Government is under an obligation ('shall make available') to provide adequate officers and staff so that the NHRC can perform its functions efficiently. C The difficulties faced by the NHRC due to inadequate officers and staff and something to worry about from a human rights perspective. [Para 41][385-H; 386-A]

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2.4 Considering that such a high powered body-NHRC has brought out its difficulties through affidavits and written submissions filed in this Court, there is no doubt that it has been most unfortunately reduced to a toothless tiger. Any request made by the NHRC in this regard must be expeditiously and favourably respected and considered by the Union of India otherwise it would become impossible for the NHRC to function effectively and would also invite avoidable criticism regarding respect for human rights E in the country. The Union of India is directed to take note of the concerns of the NHRC and remedy them at the earliest and with a positive outlook. [Para 44][387-A-B]

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2.5 In the context of non-compliance of the orders of the NHRC, it has also been brought by the NHRC that the directions issued by it for payment of compensation to victims of violation of human rights are sometimes not adhered to. There are some instances where the directions given by the NHRC for payment of compensation have not been implemented by the State of Manipur. This is very unfortunate but the assurance of counsel appearing for the State of Manipur is accepted that the compensation awarded by the NHRC will soon be paid to the G next of kin of the deceased. All State Governments are expected to abide by the directions issued by the NHRC in regard to compensation and other issues as may arise from time to time. If the people of the country are deprived of human rights or cannot have them enforced, democracy itself would be in peril. H [Paras 45-46][387-C-E]

2.6 It is confirmed from the website of the NHRC that all States do not have Human Rights Commissions. While the Protection of Human Rights Act provides for the constitution of a State Human Rights Commission u/s. 21 of the Act, it is not made mandatory. However, the provisions of Part III of the Constitution particularly the essence of Article 21 does require every State to constitute a State Human Rights Commission, but it is not appropriate to issue any such direction, particularly in the instant writ petitions. But, it is felt imperative to bring it to the notice of all State Governments that it would be but a small step in the protection of life and liberty of every person if a State Human Rights Commission is constituted at the earliest. [Para 47][387-F-H]

2.7 Disappointment is expressed on the failure of the NHRC to bring out its Annual Reports. A perusal of the website of the NHRC brings out that the latest Annual Report is of 2012-2013. Several years have gone by since then, but no Annual Report has been published-there is no idea what is the stage of preparation or consideration of the subsequent Annual Reports. There is hope that given the importance of human rights, the Annual Reports of the NHRC would be made available with due expedition. [Para 48][388-B-C]

*Naga People's Movement of Human Rights v. Union of India.* (1998) 2 SCC 109 : [1997] 5 Suppl. SCR 469; *Bharati Tamang v. Union of India & Ors.* (2013) 15 SCC 578 : [2013] 14 SCR 525; *R.S. Sodhi v. State of U.P.* (1994) Suppl. 1 SCC 143; *Ram Deo Chauthan v. Bani Kanta Das* (2010) 14 SCC 209 – referred to.

Case Law Reference

[1997] 5 Suppl. SCR 469	referred to	Para 1
[2013] 14 SCR 525	referred to	Para 24
(1994) Suppl. 1 SCC 143	referred to	Para 25
(2010) 14 SCC 209	referred to	Para 31

CRIMINAL ORIGINAL JURISDICTION: Writ Petition (Criminal) No. 129 of 2012.

A Under Article 32 of the Constitution of India

WITH

W. P. (Crl.) No. 445 of 2012.

Dr. Menaka Guruswamy, Govind Manoharan, Amicus Curies.

Mukul Rohatgi, AG, Colin Gonsalves, Mrs. V. Mohana, V. Giri, Sr.

B Advs., Ms. Jyoti Mendiratta, Ms. Olivia Bang, Wareppam Basantakumar, Ashok Kumar Singh, R. Bala, Sunil J. Mathews, M.K. Maroria, Rajiv Nanda, Ms. Binu Tamta, B.K. Prasad, Prabhas Bajaj, Pranav Kumar, Rohit Rathi, Ms. Sabah Iqbal Siddiqui, Sunil Methoo, Ms. Ananya Mishra, P.K. Dey, Pankaj Pandey, Himanshu Shekhar, Naresh Kumar Gaur, C Niranjan Saanasam, Manav Vohra, Svadha Shankar, Rana Ranjit Singh, Ravish Singh, Satya Mitra, Ms. Mrinmayee Sahu, Ms. Pinky Behera, Ms. Shobha, Bonny Mehra, Advs. for the appearing parties.

The Judgment of the Court was delivered by

D **MADAN B. LOKUR, J. 1.** In the present petitions, the allegation was that 1528 persons had been killed in fake encounters by police personnel and personnel in uniform of the armed forces of the Union. By our judgment and order dated 8<sup>th</sup> July, 2016<sup>1</sup> we respectfully followed the view laid down by a Constitution Bench of this Court in *Naga People's Movement of Human Rights v. Union of India*.<sup>2</sup> The Constitution Bench held that an allegation of use of excessive force or retaliatory E force by uniformed personnel resulting in the death of any person necessitates a thorough enquiry into the incident. We were of opinion that even the 'Dos and Don'ts' and the 'Ten Commandments' of the Chief of Army Staff believe in this ethos and accept this principle. However, after considering the submissions at law, we found that the documentation was inadequate to immediately order any inquiry into the F allegations made by the petitioners and therefore directed them to complete the documentation indicating whether the allegations were based on any judicial enquiry or an enquiry conducted by the National Human Rights Commission or an enquiry conducted under the Commissions of Inquiry Act, 1952.

G 2. A tabular statement has since been filed by learned counsel for the petitioners and this statement has been accepted by learned *Amicus* and no objection was raised by the Union of India or by the State of Manipur. We therefore proceed on the basis of the tabular statement before us.

<sup>1</sup> (2016) 14 SCC 578 (2)

H <sup>2</sup> (1998) 2 SCC 109

3. The petitioners have been able to gather information with regard to 655 deaths out of 1528 alleged in the writ petitions. The break-up is as follows:

Sl. No.	PARTICULARS	No. of cases
1.	Commission of Inquiry cases	35
2.	Judicial Inquiry and High Court cases	37
3.	NHRC cases	23
4.	Cases with written complaint	170
5.	Cases with oral complaint	78
6.	Cases with eye witnesses	134
7.	Family claimed cases	178
	Total number	655

4. We have perused the tabular statement given with regard to cases with written complaints, oral complaints and eye-witness accounts as well as family claimed cases but find that apart from a simple allegation being made, no substantive steps appear to have been taken by either lodging a First Information Report (FIR) or by filing a writ petition in the concerned High Court or making a complaint to the National Human Rights Commission (NHRC). The allegations being very general in nature, we do not think it appropriate to pass any direction for the time being in regard to the cases concerning these written complaints, oral complaints, cases with eye-witness accounts and family claimed cases. It is not that every single allegation must necessarily be inquired into. It must be remembered that we are not dealing with individual cases but a systemic or institutional response relating to constitutional criminal law.

#### Deaths investigated by Commissions of Inquiry

5. With regard to 35 deaths dealt with in reports given by Commissions constituted under the Commissions of Inquiry Act, 1952 we find that two of the deaths: in respect of L.D. Rengtuiwan and N. Sanjita Devi were not mentioned in the writ petition. We pass no orders in respect of these two cases.

A 6. As far as the death of Thangjam Manorama is concerned, the issues are pending in this Court in Civil Appeal Nos. 65-69 of 2015 and therefore we make no comment in this regard.

B 7. As far as the remaining 32 deceased victims are concerned, we find that independent Commissions of Inquiry have made adverse comments against personnel of the Manipur Police and the Central Reserve Police force (as the case may be) for the use of excessive force or retaliatory force. In our opinion, more than a *prima facie* case is made out for lodging an FIR in the appropriate police station in respect of the death of these 32 persons. We direct the registration of FIRs in these cases. The details of 'Commissions of Inquiry Cases' are given below in Table-I.

#### COMMISSIONS OF INQUIRY CASES

Sl.No.	NAME OF VICTIM (Total = 35)	NOTIFICATION DATE	UNIT
1.	L. D. Rengtuiwan	16.03.2005	Not in WP
2.	Thangjam Manorama	?	Pending in SC
3.	N. Sanjita Devi	06.12.2003	Not in WP
4 to 14.	Amom Rajan Meitei and 10 others	04.07.2001	CRPF
15 to 19.	Major Shimareingam Shaiza and 4 others	?	Manipur Police
20 to 21.	Thoudam Munindro Singh and another	27.12.1996	Manipur Police
22.	Oinam Ongbi Amina Devi	06.04.1996	CRPF
23 to 35.	Angom Raghumani Singh and 12 others	15.06.1985	CRPF

TABLE-I

**Deaths considered by Judicial Inquiries and High Court**

8. With regard to the 'Judicial Inquiry and High Court cases' the Gauhati High Court had entertained writ petitions into allegations of the death of as many as 37 persons in fake encounters through the use of excessive or retaliatory force and in some cases ordered a judicial enquiry.

9. Two writ petitions are still pending in the High Court and we request Hon'ble the Chief Justice of the concerned High Court (whether it is the Gauhati High Court or the Manipur High Court) to expeditiously dispose of the writ petitions if they have not already been disposed of.

10. One writ petition [W.P. (Criminal) No.103 of 2009] has been dismissed meaning thereby that the High Court found no substance in the allegations made and therefore this case may be treated as closed.

11. There is no specific information with regard to two other writ petitions and we leave it to the investigating team that we propose to appoint to ascertain the correct factual position.

12. With regard to the remaining writ petitions, the High Court has awarded compensation to the next of kin of the deceased meaning thereby that more than a *prima facie* case has been found of a fake encounter or the use of excessive or retaliatory force contrary to the decision of the Constitution Bench of this Court. We direct the registration of FIRs in these cases. The details of these writ petitions are given below in Table – II.

**JUDICIAL INQUIRY & HIGH COURT CASES**

S. No.	Name of Victim (Total= 37)	Case No.	Result	Unit
1 to 3.	Moirantem Ibungo + 2 others	W.P. (C) No. 92 of 2013.	Pending	Manipur Police, Assam Rifles
4.	Athokpam Angousana Meitei	W.P. (Crl.) No. 108 of 2011	Compensation awarded	Manipur Police
5.	Leishangthem Santosh	W.P. (Crl.) No. 40 of 2009	Compensation awarded	Manipur Police

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6.	Sorensangbam Sanayaima	W.P. (Cri.) No. 103 of 2009	Dismissed	Manipur Police	
7.	Ningthoujam Thokchao Singh	W.P. (C) No. 75 of 2008	Compensation awarded	BSF	
B	8.	Ningthoujam Binoy alias Khaiba Singh	W.P. (Cri.) No. 25 of 2009	Compensation awarded	Manipur Police
	9.	Sagolsem Vikram Singh	W.P. (Cri.) No. 5 of 2007	Compensation awarded	Assam Rifles
C	10.	Pheiroijam Keshorjit	W.P. (Cri.) No. 2 of 2006	Compensation awarded	Assam Rifles
	11 to 12.	Sanasam Ngongo - 1 other	W.P. (C) Nos. 1201 and 1205 of 2005	Compensation awarded	21 PARA
D	13.	Pharoijam Sanajit	W.P. (Cri.) No. 2 of 2005 and W.P. (Cri.) No. 16 of 2012	Compensation awarded	Rajput Rifles
E	14 to 17.	Seikholun Baite + 3 others	W.P. (C) No. 752 of 2010 and W.P. (C) No. 663 of 2007	Compensation awarded	CRPF
	18 to 27.	Kshetrimayum Inaocha + 9 others	W.P. (C) No. 1268 of 2002	Compensation awarded	Assam Rifles
F	28.	R.K. Lakshana alias Beto	W.P. No. 10 of 2010 (Ref. W.P. (C) No. 1986 of 2001)	Compensation awarded (but not yet paid)	Manipur Police
G	29.	Ramaso Shingnaisui	W.P. No. 591 of 1999	Compensation awarded	Assam Rifles
	30.	Md. Zakir	W.P. (C) No. 114 of 1999	Compensation awarded	CRPF

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31 to 32.	Seram Priyokumar + 1 other	W.P. (C) No. 840 of 2014	Pending	Assam Rifles
33.	Khudrakpam Tejkumar	W.P. (Crl.) No. 3 of 2005	Compensation awarded	Assam Rifles
34.	Asem Romajit	W.P. (C) No. 646 of 2007	?	CRPF
35.	Yumnaim Robita	W.P. (C.) No. 647 of 2007	?	CRPF
36.	Kangujam Ojit	Reported as 1999 Cri. L. J. 3584	Compensation awarded	Indian Army
37.	Naorem Krishnamohon Singh	First Revision Appeal No. 3 of 2009	Compensation awarded	Manipur Police

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**TABLE- II**

**Deaths inquired into by the NHRC**

13. As many as 20 deaths were reported to the NHRC as a result of fake encounters or the use of excessive or retaliatory force. Of them, 7 complaints are pending before the NHRC. We request the NHRC to take a decision on these complaints as soon as possible.

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14. There is no specific information with regard to two complaints and we leave it to the investigating team to ascertain from the NHRC the result of these complaints.

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15. In the remaining complaints, the NHRC has awarded compensation to the next of kin of the deceased meaning thereby that there is more than a *prima facie* case of a fake encounter or the use of excessive or retaliatory force. We direct the registration of FIRs in respect of these complaints.

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16. The details of the complaints in which a reference has been made to the NHRC are given below in Table-III.

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NHRC Cases

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S. No.	Name of Victim (Total= 23)	Result	Unit
1.	Md. Zamir Khan	Compensation awarded	Imphal West Police Commando
2 to 3.	Md. Ishaque Ali + 1 other	Compensation awarded	Imphal East and West Police Commando
4.	Hawaibam Amujao	Pending	Assam Rifles
5 to 6.	Oinam Ananda <i>alias</i> Girani Meitei + 1 other	Pending	Assam Rifles
7.	Longjam Dhamen	Pending	Imphal East and West Police Commando
8.	Wahengbam Jayenta	Pending	Imphal West Police Commando
9.	Sorem Ranjit Singh <i>alias</i> Rojit	Compensation awarded	Imphal East Police Commando
10.	Wahengbam Manglemba Singh	Compensation awarded	BSF
11.	Ningthoujam Premkumar	?	Manipur Police Commando
12.	Thokchom Somorjit	Pending	Manipur Police Commando, Maratha Light Infantry

13 to 14.	Kshetrimayum Govind + 1 other	Pending	Imphal West Police Commando, Maratha Light Infantry	A
15.	Thangjam Anil	Compensation recommended, but not yet received.	Imphal West and East Police Commando, Sikh Regiment	B
16.	Irengbam Ratankumar	Compensation recommended, but not yet received.	Imphal West Police Commando	C
17.	Laishram Ranbir <i>alias</i> Eshel	Compensation awarded	Imphal West Police Commando	D
18.	Laishram Lincoln <i>alias</i> Nicolson	Pending	Imphal West Police Commando	E
19.	Thokchom Ranjit	Compensation awarded	Imphal East Police Commando	E
20 to 23.	Khular Prakash Lamkang + 3 others	?	BSF	F

TABLE - III

**Inquiry by Justice Santosh Hegde Commission**

17. It may be recalled that six cases were earlier considered by a Commission headed by Justice Santosh Hegde (a retired judge of this Court) and which finds mention in our earlier orders. There is no doubt that in these cases also an FIR must be lodged and after due investigations, further steps need to be taken in accordance with law. We direct the registration of FIRs in these cases also.

**A Submissions and consideration**

18. It was submitted by the learned Attorney General that some of the incidents are of considerable vintage and at this point of time it may not be appropriate to re-open the issues for investigation. We are not in agreement with the learned Attorney General. If a crime has been committed, a crime which involves the death of a person who is possibly innocent, it cannot be over-looked only because of a lapse of time. What is also not acceptable is that the law having been laid down by the Constitution Bench, it was the obligation of the State to have *suo motu* conducted a thorough inquiry at the appropriate time and soon after each incident took place. Merely because the State has not taken any action and has allowed time to go by, it cannot take advantage of the delay to scuttle an inquiry.

19. It was also submitted by the learned Attorney General that there were local pressures and the ground level situation was such that it would not be surprising if the inquiries were biased in favour of the citizens and against the State. This is only a submission which is noted and rejected. If there had been a break-down of the rule of law in the State of Manipur, surely the Government of India was under an obligation to take appropriate steps. To suggest that all the inquiries were unfair and motivated is casting very serious aspersions on the independence of the authorities in Manipur at that point of time, which we do not think is at all warranted.

20. It was also submitted that in many instances the next of kin of the deceased had not approached this Court and there is no reason why we should entertain a petition filed by a third party. Since the next of the kin had themselves given a quietus to the incidents, there is really no occasion for this Court to take up the issue at the instance of a third party. We reject this submission as well.

21. Access to justice is certainly a human right and it has been given a special place in our constitutional scheme where free legal aid and advice is provided to a large number of people in the country. The primary reason is that for many of the deprived sections of society, access to justice is only a dream. To provide access to justice to every citizen and to make it meaningful, this Court has evolved its public interest jurisprudence where even letter-petitions are entertained in appropriate cases. The history of public interest litigation over the years has settled that the deprived sections of society and the downtrodden such as bonded labourers, trafficked women, homeless persons, victims of natural

disasters and others can knock on the doors of our constitutional courts and pray for justice. This is precisely what has happened in the present petitions where the next of kin could not access justice even in the local courts and the petitioners have taken up their cause in public interest. Our constitutional jurisprudence does not permit us to shut the door on such persons and our constitutional obligation requires us to give justice and succour to the next of kin of the deceased.

22. It was finally submitted by the learned Attorney General that compensation has been paid to the next of kin for the unfortunate deaths and therefore it may be not necessary to proceed further in the matter. We cannot agree. Compensation has been awarded to the next of kin for the agony they have suffered and to enable them to immediately tide over their loss and for their rehabilitation. This cannot override the law of the land, otherwise all heinous crimes would get settled through payment of monetary compensation. Our constitutional jurisprudence does not permit this and we certainly cannot encourage or countenance such a view.

#### **Special Investigation Team**

23. As far as the appointment of a Special Investigating Team is concerned (which we have adverted to above), it was suggested to us that officers of the Manipur Police may be associated. We do not think it appropriate to associate any officer of the Manipur Police particularly since in some of the cases the role of the Manipur Police itself has been adversely commented upon.

24. In *Bharati Tamang v. Union of India & Ors.*<sup>3</sup> this Court held that to ensure that criminal prosecution is carried on without any deficiency a special team can be constituted under the orders of this Court. Consequently, we have no hesitation in directing the constitution of a Special Investigating Team to investigate the cases that we have mentioned above. It is interesting to note at this stage that we were informed that in none of the cases has an FIR been registered against the Manipur Police or any uniformed personnel of the armed forces of the Union. On the contrary, FIRs have been registered against the deceased for alleged violations of the law. Under these circumstances, it would be inappropriate for us to depend upon the Manipur Police to carry out an impartial investigation more particularly when some of its own personnel are said to be involved in the fake encounters and the

<sup>3</sup> (2013) 15 SCC 578

- A Manipur Police has not registered any FIR at the instance of the next of the kin of the deceased.

25. In *R.S. Sodhi v. State of U.P.*<sup>4</sup> this Court observed as follows:-

- B "... We think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them."

It is in view of the above that the more appropriate course of action would be to appoint an independent investigating team to examine the cases mentioned above.

- D 26. Having considered the issues in their entirety, we are of opinion that it would be appropriate if the Central Bureau of Investigation (or the CBI) is required to look into these fake encounters or use of excessive or retaliatory force. Accordingly, the Director of the CBI is directed to nominate a group of five officers to go through the records of the cases mentioned in the three tables given above, lodge necessary FIRs and to complete the investigations into the same by 31<sup>st</sup> December, 2017 and prepare charge sheets, wherever necessary. The entire groundwork has already been done either by the Commissions of Inquiry or by a Judicial Inquiry or by the Gauhati or Manipur High Court or by the NHRC. We leave it to the Special Investigating Team to utilize the material already gathered, in accordance with law. We expect the State of Manipur to extend full cooperation and assistance to the Special Investigating Team. We also expect the Union of India to render full assistance to the Special Investigating Team to complete the investigation at the earliest without any unnecessary hindrances or obstacles. The Director of the CBI will nominate the team and inform us of its composition within two weeks.

- G **NHRC – a toothless tiger**

27. We have also heard Mr. Gopal Subramaniam, Senior Advocate on behalf of the NHRC with regard to some issues on the basis of which it was earlier pleaded before us that the NHRC is nothing but a toothless tiger.

H <sup>4</sup> (1994) Supp. 1 SCC 143

28. There is no doubt that the rule of law has been placed on a pedestal ever since the time of Aristotle. More recently Dicey has also expounded on the constituents of the rule of law and it is now expected that all modern democratic jurisdictions accept the rule of law as the guiding light and a shield available to the people against arbitrary executive action. As far as we are concerned, the rule of law has also been accepted as a part of the basic structure of our constitutional jurisprudence. Undoubtedly, the protection and preservation of human rights is one of the most important aspects of the rule of law.

29. Keeping this in mind, as well as the Universal Declaration of Human Rights, Parliament enacted the Protection of Human Rights Act, 1993. The Statement of Objects and Reasons for the Protection of Human Rights Act, 1993 is of considerable significance and accepts the importance of issues relating to human rights with a view, *inter alia*, to bring accountability and transparency in human rights jurisprudence. The Statement of Objects and Reasons reads as under:-

“1. India is a party to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural rights, adopted by the General Assembly of the United Nations on the 16<sup>th</sup> December, 1966. The human rights embodied in the aforesaid covenants stand substantially protected by the Constitution.

2. However, there has been growing concern in the country and abroad about issues relating to human rights. Having regard to this, changing social realities and the emerging trends in the nature of crime and violence, Government has been reviewing the existing laws, procedures and systems of administration of justice; with a view to bringing about greater accountability and transparency in them, and devising efficient and effective methods of dealing with the situation.

3. Wide ranging discussions were held at various fora such as the Chief Ministers’ Conference on Human Rights, seminars organized in various parts of the country and meetings with leaders of various political parties. Taking into account the views expressed in these discussions, the present Bill is brought before Parliament.”

30. Under the provisions of the Protection of Human Rights Act, 1993 the NHRC has been constituted as a high-powered statutory body whose Chairperson is and always has been a retired Chief Justice of

A India. Amongst others, a retired judge of the Supreme Court and a retired Chief Justice of a High Court is and has always been a member of the NHRC.

B 31. In *Ram Deo Chauhan v. Bani Kanta Das*<sup>5</sup> this Court recognized that the words ‘human rights’ though not defined in the Universal Declaration of Human Rights have been defined in the Protection of Human Rights Act, 1993 in very broad terms and that these human rights are enforceable by courts in India. This is what this Court had to say in this regard in paragraphs 47-49 of the Report:

C “Human rights are the basic, inherent, immutable and inalienable rights to which a person is entitled simply by virtue of his being born a human. They are such rights which are to be made available as a matter of right. The Constitution and legislations of a civilised country recognise them since they are so quintessentially part of every human being. That is why every democratic country committed to the rule of law put into force mechanisms for their enforcement and protection.

D Human rights are universal in nature. The Universal Declaration of Human Rights (hereinafter referred to as UDHR) adopted by the General Assembly of the United Nations on 10-12-1948 recognises and requires the observance of certain universal rights, articulated therein, to be human rights, and these are acknowledged and accepted as equal and inalienable and necessary for the inherent dignity and development of an individual. Consequently, though the term “human rights” itself has not been defined in UDHR, the nature and content of human rights can be understood from the rights enunciated therein.

F Possibly considering the wide sweep of such basic rights, the definition of “human rights” in the 1993 Act has been designedly kept very broad to encompass within it all the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. Thus, if a person has been guaranteed certain rights either under the Constitution or under an International Covenant or under a law, and he is denied access to such a right, then it amounts to a clear violation of his human rights and NHRC has the jurisdiction to intervene for protecting

it.”

H <sup>5</sup> (2010) 14 SCC 209

32. It was submitted (and we agree) that the NHRC has essentially four roles to play, namely that of protector, advisor, monitor and educator of human rights. It is in this capacity that the NHRC as a protector and monitor of human rights through effective investigations has issued guidelines from time to time with regard to various aspects including reporting of matters relating to custodial death and rape, videography of post-mortem examination etc.

33. On 14<sup>th</sup> December, 1993 the NHRC directed law and order agencies across the country to report matters relating to custodial deaths and rapes within 24 hours. (At that time, death in police action was classified under 'custodial deaths').

34. A couple of years later, on 10<sup>th</sup> August, 1995 the NHRC sent a letter to all Chief Ministers advising them of the necessity of introducing video-filming of post-mortem examinations from 1<sup>st</sup> October, 1995 onwards to avoid distortion of facts. This was followed by another letter dated 27<sup>th</sup> March, 1997 sent by the NHRC to all Chief Ministers recommending that all States adopt the "Model Autopsy Form" and "Additional Procedure for Inquest" prepared by the NHRC which was based on discussions with experts and the UN Model Autopsy Protocol. This was to ensure that all information was collected by the concerned officer and supplied to NHRC without delay.

35. On 29<sup>th</sup> March 1997 the NHRC issued Guidelines recommending the procedure to be followed by States and Union Territories with regard to encounter deaths. It was recommended, *inter alia*, that:

- i. Deaths should be entered in an appropriate register at the Police Station;
- ii. It should be treated as a cognizable offence and investigation should commence;
- iii. It should be investigated by an independent agency such as the State CID, and not by officers of the same Police Station;
- iv. Compensation to the victim's dependants should be considered in cases ending in conviction.

36. These Guidelines were revised and circulated on 2<sup>nd</sup> December, 2003 to introduce greater transparency and accountability, since the States were not regularly intimating the NHRC of encounter deaths thereby

A affecting statistical data. The revised Guidelines contained the following major changes, in addition to the previous Guidelines:

a. If a specific complaint was made against the police, an FIR must be lodged;

B b. A Magisterial Inquiry was now mandatory in every encounter death;

c. It also required the State Director General of Police to send a 6-monthly statement of details of all deaths in police action to the NHRC.

C 37. As one would expect, there was continued non-compliance of the Guidelines by the States, making it necessary for the NHRC to further revise and circulate the Guidelines on 12<sup>th</sup> May, 2010 containing the following major changes, in addition to the previous guidelines:

a. The Magisterial Inquiry was required to be completed within 3 months;

D b. Every death in police action was to be reported to the NHRC by the District Superintendent of Police within 48 hours;

E c. A second report was to be sent to the NHRC by the District Superintendent of Police within 3 months, with the Post-Mortem Report, Inquest Report, Ballistic Report and findings of the Magisterial Inquiry.

These Guidelines are currently operational.

F 38. It was submitted by the NHRC that all its communications and Guidelines have remained only on paper and are not enforced by any State Government. The submission of the NHRC was that to ensure that good quality reports are available, the Guidelines need to be strictly enforced. We agree with this submission and make it clear that the intention of the NHRC is to more effectively assist the criminal justice delivery system and avoid any factual controversies while respecting human rights. It is not as if the dignity of only living persons needs to be respected but even the dignity of the dead must be given due respect. Unless the communications and Guidelines laid down by the NHRC (which have been prepared after wide ranging and detailed consultations) are adhered to, the respect and dignity due to the dead and the human rights of all us will remain only on paper.

H

**Other issues concerning the NHRC**

39. Apart from a lack of concern for the communications and Guidelines issued by the NHRC or the absence of attention that they deserve, the difficulty faced by the NHRC is that even if there is half-hearted compliance, there are unexplained delays on the part of the State Government in sending reports; the quality of the reports is certainly not up to the mark and as expected; sometimes some columns are left blank in the reports and on other occasions some documents are illegible etc. All this, according to the NHRC, hampers its efficient functioning and causes delays in the implementation of the human rights of aggrieved persons.

40. It was also submitted that the NHRC receives a very large number of complaints on a daily basis and quite frequently as many as 450 complaints are received in one day. The NHRC has been requesting for an adequate number of trained staff but, instead of additional staff being provided, the staff strength is depleting. This has resulted in overburdening the existing staff. In this context, our attention was drawn to Section 11 of the Protection of Human Rights Act, 1993 which reads as follows:

**“11. Officers and other staff of the Commission - (1) The Central Government shall make available to the Commission -**

**(a) an Officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and**

**(b) such police and investigative staff under an officer not below the rank of a Director-General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission.**

**(2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary.**

**(3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.”**

41. It is quite clear from a reading of the above provision that the Central Government is under an obligation (‘shall make available’) to

A provide adequate officers and staff so that the NHRC can perform its functions efficiently. The difficulties faced by the NHRC due to inadequate officers and staff and something to worry about from a human rights perspective.

B 42. The general submission of the NHRC is that there should be implementation of its communications and Guidelines, enforcement of the orders passed by it and serious consideration of the recommendations made by the NHRC and necessary provision for its effective functioning.

C 43. The NHRC has placed before us the following table indicating the change in its work-load and a careful scrutiny of it clearly indicates the remedial steps that need to be taken with regard to the staff strength.

Comparison between the Investigation Division Sanctioned Strength and work load during 2014-15 with that in 1995-96.			
	Present (31-03-2015)	Previous (31-3-1995)	% Increase/decrease
D	Sanctioned Staff	49**	59* - 16.94%* decrease in staff strength
E	Total complaints received annually	1,14,167	7843 1455% increase
	Investigation	53	13 407% increase
F	Custodial Death Cases	5496	444 1237% increase
	Fact Finding Cases	1851	706 262% increase
G	Rapid Action Cell (RAC) cases (started after 2007)	120 (More than 100 cases were added in last three months alone).	NIL 120 times

H

Table-IV

44. Considering that such a high powered body has brought out its difficulties through affidavits and written submissions filed in this Court, we have no doubt that it has been most unfortunately reduced to a toothless tiger. We are of the clear opinion that any request made by the NHRC in this regard must be expeditiously and favourably respected and considered by the Union of India otherwise it would become impossible for the NHRC to function effectively and would also invite avoidable criticism regarding respect for human rights in our country. We direct the Union of India to take note of the concerns of the NHRC and remedy them at the earliest and with a positive outlook.

45. In the context of non-compliance of the orders of the NHRC, it has also been brought by the NHRC that the directions issued by it for payment of compensation to victims of violation of human rights are sometimes not adhered to. We have seen in Table – III above that there are some instances where the directions given by the NHRC for payment of compensation have not been implemented by the State of Manipur. This is very unfortunate but we accept the assurance of learned senior counsel appearing for the State of Manipur that the compensation awarded by the NHRC will soon be paid to the next of kin of the deceased.

46. We expect all State Governments to abide by the directions issued by the NHRC in regard to compensation and other issues as may arise from time to time. If the people of our country are deprived of human rights or cannot have them enforced, democracy itself would be in peril.

#### **State Human Rights Commissions**

47. We have been informed that not all States have Human Rights Commissions and this is confirmed from the website of the NHRC.<sup>6</sup> While the Protection of Human Rights Act, 1993 provides for the constitution of a State Human Rights Commission under Section 21 of the said Act, it is not made mandatory. However, in our opinion, the provisions of Part III of our Constitution particularly the essence of Article 21 of the Constitution does require every State to constitute a State Human Rights Commission, but we do not think it appropriate to issue any direction, particularly in the present writ petitions, to State Governments to constitute a State Human Rights Commission. But, we

<sup>6</sup> nhrc.nic.in

- A do feel it imperative to bring it to the notice of all State Governments that it would be but a small step in the protection of life and liberty of every person in our country if a State Human Rights Commission is constituted at the earliest.

### **Annual Reports**

- B 48. We must express our disappointment on the failure of the NHRC to bring out its Annual Reports. A perusal of the website of the NHRC brings out that the latest Annual Report is of 2012-2013. Several years have gone by since then, but no Annual Report has been published – we have no idea what is the stage of preparation or consideration of
- C the subsequent Annual Reports. We express the hope that given the importance of human rights, the Annual Reports of the NHRC will be made available with due expedition.

### **Orders**

- D 1. As already directed, the Director of the Central Bureau of Investigation will nominate a team and inform us of its composition within two weeks, as also any other requirement. List these cases immediately after three weeks for compliance.
- E 2. These petitions should also be listed positively in the second week of January, 2018 to ensure compliance with our directions for investigation by Central Bureau of Investigation.