

## **A Fact Finding Report into the extra-judicial killings of 4 suspected Maoists at Attapaddi, Kerala**

*"We, the people as a nation, constituted ourselves as a sovereign democratic republic to conduct our affairs within the four corners of the Constitution, its goals and values. We expect the benefits of democratic participation to flow to us – all of us -, so that we can take our rightful place, in the league of nations, befitting our heritage and collective genius. Consequently, we must also bear the discipline, and the rigour of constitutionalism, the essence of which is accountability of power, whereby the power of the people vested in any organ of the State, and its agents, can only be used for promotion of constitutional values and vision."<sup>1</sup>*

Supreme Court of India in Nandini Sundar & Ors vs State Of Chattisgarh

dated 5<sup>th</sup> July, 2011

### **1. Introduction**

On 28<sup>th</sup> October 2019 and 29<sup>th</sup> October 2019 at the forest areas at Attapaddi, Palakkad district, the Thunderbolt which is the special wing of the Kerala police "encountered" 4 persons who they have termed as belonging to the Communist Party of India (Maoists). As per the police, 3 persons were killed on 28<sup>th</sup> October during cross firing, and 1 person was killed on 29<sup>th</sup> October 2019 at the same spot. The Government has claimed that they have been shot in cross-firing.

On 9<sup>th</sup> and 10<sup>th</sup> November 2019 a team consisting of Dr E.Rati Rao, Adv Maitreyi Krishnan & K M Venugopalan (all belonging to All India People's Forum – AIPF), Adv. P A Pouran & G. Haridasan (both from People's Union for Civil Liberties–PUCL), Vilayodi Venugopal (National Alliance of People's Movements- NAPM) and T Vijayan Karippode (social activist) conducted a fact-finding enquiry into the reported encounters and death of 4 maoists in firing by Thunderbolt police. The team visited the neighbouring village, Mele Manjikandi which is about 2.5 kilometres from the spot of encounter. The team spoke to several villagers of Mele Manjikandi and many people from different locations

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<sup>1</sup> Order of the Supreme Court of India dated 5<sup>th</sup> July, 2011 in Nandini Sundar & Ors vs State Of Chattisgarh AIR 2011 SC 2839

in Attappadi including the Adivasi hamlet Danyam , which is located in the valley otherside of Manchikandi hill. The team met and talked with Smt. Shivani who works on the issues faced by adivasis and is a member of Thakulam which is an adivasi women's organization based in Attappadi. The Team also visited Agali police station and spoke to the Station House Officer and Inspector Mr Hidayathulla and few local police officers. On the second day, the team went to the district police headquarters at Palakkad with a view to meeting few higher police officers including the SP. Being told that most of the higher officials were out of station and thus were not available in the concerned offices, a telephonic conversation with Mr Feroz M. Shafi, DySP (Crime Branch), who is the investigating officer in respect of the incident that took place on 28th October, 2019 was done. The Team spoke to Mr Sunil Kumar, Mannarkhad Divisional Forest Officer, Ms Shyamala, Range Officer over telephone and had conversation with few local forest officials as well. The Team also spoke with the lawyers representing two close relatives of slain Manivasakam and Karthi before the High Court and Sessions Court.

## **2. Version of the police**

The team met the Police Inspector, Agali Police Station, Mr Hidayathulla and had a telephonic conversation with the DySP (Crime Branch), Mr Feroz M. Shafi, the investigating officer in respect of the incident that took place on 28<sup>th</sup> October, 2019.

We were informed that two cases have been registered in regard to the "encounters". In regard to the incident that took place on 28<sup>th</sup> October, 2019 Crime number 291/2019 was registered. As per the said complaint registered on 28<sup>th</sup> October, 2019, 14 Thunderbolt were on patrol at around 12.20 pm, a group of persons who belong to the Communist Party of India (Maoist) opened fire at the police. The members of the Thunderbolt fired back killing 3 persons, including 1 woman. The Police claim that they had camped at the said spot and that they had found cooked rice in a tent. Crime Number 292/2019 has been registered under Section 143, 144, 147, 148, 253, 307 read with Section 149 IPC; Section 3 read with Section 25 (1)(b) of the Arms Act; Section 16, 20, 38, 39 and 49 of the Unlawful Activities Prevention Act (UAPA) and Section 27(1)(e) of the Kerala Forest Act against an unnamed group of people on the basis of a complaint given by one of the members of the Thunderbolt. We were informed by the DySP (Crime Branch), Mr Feroz M. Shafi that these cases after having been transferred to the District Crime Branch have been renumbered respectively as Cr

No-495/CB CU-III/KKD/R/19 (Agali PS Cr. 291/2019) & Cr No-496/CB CU-III/KKD/R/19 (Agali PS Cr. 291/2019)

About the three slain persons, we were informed that one of them was named Shri Karthik. In regard, to the other two persons, we were initially informed by the Police Inspector, Mr Hidayuthula that the two of them were named Shri Aravind and Rama. When asked how they found out the names, he stated that it was through sources. However, thereafter, Mr Feroz M. Shafi, DySP (Crime Branch) informed us that the person identified as Shri Aravind had actually been identified as Shri Shrinivasan, by his family, through photos. However, he stated that his family was still to identify the body of Shri Shrinivasan.

When we asked them, as to how the provisions of Unlawful Activities Prevention Act had been invoked when the deceased persons had not been identified, we were informed by Mr Feroz M. Shafi, DySP (Crime Branch) that the same had been mentioned in the complaint itself given by one of the members of the Thunderbolt. No further information in this regard was provided.

As per the police, no FIR has been registered against any of the members of the Thunderbolt, and the only FIR registered, as stated above, is against those who were killed.

In regard to the incident that occurred on 29<sup>th</sup> October, 2019, we were informed that about 60 people including several Thunderbolt, members of the Q branch, Tamil Nadu, the Deputy Commissioner, Palakkad, the Superintendent of Police (Operations), the Police Inspector, Agali Police Station were present and the inquest was being conducted. According to Mr Hidayuthulla, they heard shots from the Western side, and all of them were directed to duck down. The Thunderbolt then shot and one person was killed, his name being Shri Manivasakam. They also said that other persons who were with him ran away. Crime number 292/2019 was registered against one accused, i.e. the deceased himself. Mr Feroz M. Shafi, DySP (Crime Branch) informed us that as per the postmortem, Shri Manivasakam had two fractures, on his knee and thigh. He said that those injuries were perimortem (i.e, injuries taking place at or around the time of death).

In regard to the incident that occurred on 29<sup>th</sup> October, 2019, it is necessary to note that after the incident occurred on 28<sup>th</sup> October, 2019, the entire area was cordoned off to a circumference of 400 metres. The body of Shri Manivasakam, according to the Inspector, Mr Hidayuthulla, was found within 40 metres from where they were standing, within the 400 metre cordoned off region.

### **3. Meeting with the villagers and members of the organization Thaikulam**

The team met with some of the villagers of Melle Manjikandi, who told us that the incident had occurred the day after Diwali, and there was too much noise and they could not hear the firings on 28<sup>th</sup> October, 2019. While expressing that the killings were inhuman, they were apprehensive about giving specifics about the incident.

We also met Smt. Shivani, Smt Narjari and Smt Shivakami from the organization, Thaikullam. Smt. Shivanni is also a member of the district monitoring committee under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. She stated that there was serious doubts in the versions of the police, and that these doubts showed that the killings were not "encounters", but in fact extra-judicial killings. She stated that the body of the woman who was killed on 28<sup>th</sup> October, 2019 was decomposing at the time itself indicating that she had been killed at an earlier time. They said that they had visited the place on 29<sup>th</sup> October, 2019 and could see that there was cooked food there, indicating that those who had been killed could have been eating when they had been killed. She stated that she was informed that on 28<sup>th</sup> October, 2019, stretchers were brought before the incident took place, indicating that the pre-planned nature of the incident. While it was being said that three casualties happened in the encounter on 28 October, why did they bring 4 stretchers instead of 3? She asked, suggesting that the second day's incident was obviously pre-planned . These women also wondered while Shri Manivasakam had suffered two fractures on his legs, how could he have walked or could have been agile to be able to shoot at the police or the Thunderbolt.

They said that the conditions of the adivasis living in Attapaddi was very difficult and they were a neglected population, and the State instead of addressing their needs was treating them with suspicion and harassing them. They said that subsequent to the incident the surveillance on persons residing in the nearby hamlets and those who were vocal, including themselves has risen. This led to the people living a life of constant fear, knowing that their every move was being watched upon.

They also said that posters purported to be put up by an organization Adivasi Yuvata supporting the police action in the killings were put up. She said that such organization had not been heard of and it appears that the posters had been put up by the police themselves.

#### **4. Response of the State Government**

Mr Pinarayi Vijayan, Kerala Chief Minister has defended the killing of the 4 persons and in fact has stated before the media not to paint the Maoists as "lambs" or "holy souls". The Chief Secretary of Kerala, Mr Tom Jose, has written an article titled "***It is like war: Kill or be killed***" appearing in Times of India on 5<sup>th</sup> November, 2019, where he makes the following statements amongst others:

*"There is no rationale in stating that Maoists who indulge in armed conflict have got the same human rights and privileges as normal citizens. Not only that it cuts at the very root of the principles we live by, but also mocks and insults the ordinary people who go about their daily lives obeying the laws of the society..."*

*"It is either kill or be killed. When our soldiers fight our enemies across the border, we don't portray them in bad light. We applaud them. Then why blame our police forces when all they do is to protect the citizens from Maoist terrorists?"*

There can be no two ways that the statements made by the Chief Minister, Mr Pinarayi Vijayan and the article penned by the Chief Secretary, Tom Jose is highly condemnable. The branding of those killed as Maoists, when admittedly they have not even been identified displays the pre-judged manner in which the State has responded. Even otherwise, comparisons of Maoists to terrorists or enemies from across the border and

stating that they do not have human rights goes against the fundamental principles of the rule of law which assures equality and equal protection of the law to all citizens.

The pre-determined statements of the Chief Minister and the Chief Secretary also give cause for apprehension that the investigation being carried out would not be independent and would be coloured by the existing bias and prejudice from which these statements stem. Short-circuiting of the judicial process and the encroachment of the executive into the judicial realm by passing judgment through such extra-judicial killings is a cause for serious concern.

While looking into the response of the State into the incident, it is also necessary to note a subsequent development, which indicates the manner in which the Government has responded to the issue at hand. Alan Shuhaib and Thaha Fasal, both law students from Thalassery, were arrested for distributing brochures criticising the extra-judicial killing of the four suspected Maoists at the Pantheerankavu market on 2<sup>nd</sup> November 2019. Stating that they were distributing "pro maoist" brochures, both the students have been arrested and an FIR under the Unlawful (Activities) Prevention Act has been filed. This arrest which has met with heavy criticism from all quarters once again raises very serious issue on the manner in which the Government is dealing with dissent of any form, and the labeling of all persons who dissent in any form as Maoists and members of terrorist organization.

Summary executions of suspected militants and militant sympathizers in staged "encounters" have a history in counter-insurgency operations throughout India. The present incident is required to be seen in the context of extra-judicial killings that have taken place in the past. A brief note on previous encounters is at Appendix – I.

## **Guidelines of the Supreme Court in regard to extra-judicial killings**

The Supreme Court in its order dated 23.09.2014 in People's Union for Civil Liberties vs. Union of India [(2014) 10 SCC 635] has laid down detailed guidelines in respect of encounters and the steps required to be taken in case of the same placed in Appendix – II. The Guidelines include *inter alia* the registration of an FIR in every case of an

encounter, independent investigation into the same, information to the next of kin and surrender of the weapons for forensic and ballistic analysis.

In the instant case it becomes clear that the guidelines have not been complied with. Firstly there is requirement that if any information in respect of any persons suspected of having arms is received the same must be immediately put down in writing. However no such information appears to have been put down in writing. Secondly the Supreme Court has clearly stated then FIR must be registered immediately on any such encounter. In the instant case an FIR has been registered only against those who have been killed whereas no FIR have been registered against the thunderbolt or the police. Thirdly, the question of surrendering the weapons has also not been done by the officers involved.

The Team met Advocate Soya and spoke to Advocate Tushar who are representing Smt. Lakshmi sister of Manivasakam and Murugesan brother of Karthi. A petition had been filed before the Sessions Court at Palakkad praying for an order to preserve the bodies until postmortem examinations were done in strict compliance of Supreme Court guidelines in *People's Union for Civil Liberties vs. Union of India* [(2014) 10 SCC 635]. The Sessions Court while directing the Police to preserve the body until 04.11.2019, rejected the prayer to register an FIR against the members of the Thunderbolt.

The Kerala High Court has passed order dated 12.11.2019 directing the Police to comply with the directions in *People's Union for Civil Liberties vs. Union of India* [(2014) 10 SCC 635] and has held that "*Causing death in fake encounters is nothing but cold blooded and brutal murder by persons who are supposed to uphold the law. The encounter philosophy is a criminal philosophy*". The High Court has, while finding that there was delay in handing over the weapons, directed for the immediate seizing of firearms. The High Court has also directed the investigation of the circumstances and causes of the death of Shri Karthik and Shri Manivasakam.

## **Conclusions and Findings**

1. Contradictions and circumstances that place serious doubts on the versions of the police: Three persons were killed on 28<sup>th</sup> October, 2019, allegedly after they opened fire on the Thunderbolt. The police have categorically admitted that not a single member of the Thunderbolt suffered any injury. The presence of cooked

food as has been noted in various reports, raises doubt in regard to the version of the Thunderbolt. This places serious doubts in regard to the police claim of firing from the other side.

2. The incident that occurred on 29<sup>th</sup> October, 2019 raises several questions. Admittedly Shri Manivasakam had fracture of his knee and his thigh, and was found around 40 metres from where everyone was standing, within the cordoned areas (of circumference of 400 metres). How did Shri Manivasakam enter the area armed undetected and how could he have made such attempts to shoot when he was so severely injured?
3. The Police admit that of the 3 people killed on 28<sup>th</sup> October, 2019, they have not identified two of them. When such persons remain unidentified, on what basis have they been declared as Maoist and how has the Unlawful Activities Prevention Act been invoked against them?
4. The failure of the police to register an FIR in respect of the death of the four persons is in violation of the order of the Supreme Court in PUCL vs Union of India, and raises questions as to what they State does not want investigated.
5. The statements made by the Chief Minister and the Chief Secretary branding those who have been killed as Maoist and justifying the action of the Thunderbolt, apart from being wholly improper and violative of constitutional obligations, raise concerns about the possibility of a free and fair investigation into the extra-judicial killings that have taken place.
6. The complaints of harassment and surveillance of the members of the adivasi communities by the Government in the name of investigation or "combing operations" suggest further assault on an already vulnerable and historically exploited community. The Government instead of addressing socio-economic issues at hand is further victimizing the adivasi community

## **Demands**

In this context we demand the following

1. An FIR under Section 302 of the Indian Penal Code for murder must be immediately registered against the members of the Thunderbolt who are responsible for the killing of the four persons and a fair and impartial enquiry must be conducted into the same.
2. The bodies of the deceased persons must be maintained and a postmortem

enquiry in the manner prescribed by the supreme court must be conducted.

3. The directions of the Supreme Court in its order dated 23.09.2014 in People's Union for Civil Liberties vs. Union of India [(2014) 10 SCC 635] must be strictly complied with.
4. No out of turn promotion or gallantry awards must be given to any of the persons Thunderbolt involved in this incident
5. Immediate steps must be taken identify the families of those who have been killed, who must also be compensated for such extra-judicial killing.
6. The government must stop all forms of harassment and surveillance of the Adivasi communities and must instead address the socio-economic issues being faced by them.
7. We condemn the arrest of Alan Shuhaib and Thaha Fasal, both law students under the Unlawful Activities Prevention Act and demand their immediate release.
8. The article written by the Chief Secretary and the statement given by the Chief Minister are highly condemnable and are violative of the fundamental principles of the Constitution. We seek that the same is immediately retracted and an assurance must be given that a fair and proper enquiry into this incidents will be carried out.
9. We demand a judicial enquiry to look into all extra-judicial killings that have taken place in Kerala and for steps be taken to punish those responsible for the same and further compensate the families of those killed

## **Appendix**

### **Appendix-I: Previous extra-judicial killings in Kerala and extra-judicial Killings in the name of "Encounters"**

The summary executions of suspected militants and militant sympathizers in staged "encounters" has a history in counter-insurgency operations throughout India. The present incident is required to be seen in the context of extra-judicial killings that have taken place in the past.

On 7<sup>th</sup> March, 2019, a suspected Maoist, Shri CP Jallel was shot in an extra-judicial killing at Lakkidi, Wayanad. As per the statement of his brother, he was shot from behind with the intent of killing him. Prior to this, Shri Kuppuswamy Devaraj, 65, and Smt. Ajitha, 45, were killed in an extra-judicial killing with police in Nilambur forests on November 24, 2016.

The history of extra-judicial killings in Kerala, in fact, goes back to the killing of A. Verghese on 18<sup>th</sup> February, 1970 in Wayanad. As is well-known, the former Inspector-General of Police, K. Lakshmana was convicted of murder on the basis of the revelation made by the former police constable, P. Ramachandran Nair, who revealed in 1998 — that he had shot Verghese dead on the orders of the then Superintendent of Police, Mr. Vijayan, and the then Deputy Superintendent of Police, Mr. Lakshmana.

In May, 2006, the Planning Commission set up an Expert Group on "Development Issues to deal with the causes of Discontent, Unrest and Extremism" which submitted its report in April, 2008. The Report of the Expert Group to the Planning Commission, April 2008 on Development Challenges in Extremist Affected Areas, notes the correlation between extremism and poverty, which points to the myopic view taken by the Government when it sees such extremism solely as a law and order problem, instead of looking at the larger socio-economic issues at hand.

*"While the official policy documents recognize that there is a direct correlation between what is termed as extremism and poverty, or take note of the fact that the implementation of all development schemes is ineffective, or point to the deep relationship between tribals and forests, or that the tribals suffer unduly from*

*displacement, the governments have in practice treated unrest merely as a law and order problem. It is necessary to change this mindset and bring about congruence between policy and implementation. There will be peace, harmony and social progress only if there is equity, justice and dignity for every one."*

In fact, the Expert Committee recommends *inter alia* that:

*"5.7.10 While condemning occasional bursts of wanton violence by the extremist groups, a government constituted by law and mandated to maintain rule of law can not commit any illegal act in countering rural extremism. Government should strictly prohibit extra judicial killings by its security forces. Such acts of illegality by the authorities tend to legitimise extremist violence in the eyes of millions of non-committed on-lookers."*

A Civil Rights Committee headed by Former Judge of the Bombay High Court, Shri V.M. Tarkunde, conducted an enquiry into the "encounters" of those killed in 1975-76 and released an interim report titled "Encounters' are Murders", where the Committee demanded that the officers responsible for extra-judicial killings be tried for murder. The Andhra Pradesh Civil Liberties Committee has repeatedly stressed on the need to view such extra-judicial killings as murder. In the petition filed by them before the Andhra Pradesh High Court, the Full Bench held in *A.P. Civil Liberties Committee (APCLC) and Ors. Vs. Government of A.P. and Ors.*, while looking into the question of steps to be taken on an extra-judicial killing, held:

*"Executive and even judicial sanctions against life and liberty, it is axiomatic, must be explicitly spelt out in legislative authority. This is the essence of civilized and constitutional governance. In the context of our constitutional scheme and qua Article 21, the State shall not deprive any person of life or liberty except in accordance with the procedure established by law. Considered in the context of the several other fundamental values which substrate the Indian constitutional architecture, including those in Articles 14 and 19, it is beyond disputation that an executive agency of the State (including the police) is not authorized to deprive a person of his life without substantive legislative authority and in accordance with the procedure established by law. This non-*

*derogable constitutional value and the concomitant executive and governance obligation could be preserved only by eternal vigilance towards maintaining the sanctity of life and liberty, effectuated and operationalised by relentless pursuit and administering of the sanctions enjoined by law, against depredation of life and liberty, by the unlawful conduct of any person, agency or instrumentality.*

*In a rule of law society operating under a constitutional order, either deterrent or preemptive executive action against prohibited human conduct including terrorist acts must be pursued only within the matrix of legislatively spelt out substantive and procedural rules of engagement and sanction. The executive, whether political or the professional has no legitimate authority to act in derogation, independent of or beyond the sanction of law. This is the price civil society and all institutions of government willingly pay for a constitutional way of life."*

The Court finally arrives at the conclusion that there is a need for an FIR to be registered in every such case, and the justification of self-defense is one that would be required to be proved in trial.

*"206. The analysis in the preceding paragraphs compels the conclusion that a self- defense justification cannot be assumed to be legitimate or established on the mere assertion by or on behalf of the perpetrator, without the rigor of a focused investigation for the purpose of collecting relevant evidence after registration of the FIR incorporating the name of the perpetrator(s), if and as disclosed in the information conveyed and duly enumerating the appropriate provisions of substantive law.*

*207. In our considered view the failure to record and register the primary offence (of the death of civilian(s) in a transaction involving exchange of fire with officers of the police establishment of the State) is a grave and wholly unwarranted transgression of constitutional and sovereign responsibility. The State is legislatively mandated to record and register a cognizable offence and thereafter set the criminal law in motion including the immediately following process of investigating into the offence."*

It is also necessary to note the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions adopted on

24.05.1989 by the Economic and Social Council Resolution 1989/65 that mandates that Governments shall prohibit by law all extra-legal, arbitrary and summary executions enumerate standards that list out the regime of investigative procedures to be followed in the event of any such killing.

## **Appendix-II: Previous extra-judicial killings in Kerala and extra-judicial Killings in the name of "Encounters"**

The summary executions of suspected militants and militant sympathizers in staged "encounters" has a history in counter-insurgency operations throughout India. The present incident is required to be seen in the context of extra-judicial killings that have taken place in the past.

On 7<sup>th</sup> March, 2019, a suspected Maoist, Shri CP Jallel was shot in an extra-judicial killing at Lakkidi, Wayanad. As per the statement of his brother, he was shot from behind with the intent of killing him. Prior to this, Shri Kuppuswamy Devaraj, 65, and Smt. Ajitha, 45, were killed in an extra-judicial killing with police in Nilambur forests on November 24, 2016.

The history of extra-judicial killings in Kerala, in fact, goes back to the killing of A. Verghese on 18<sup>th</sup> February, 1970 in Wayanad. As is well-known, the former Inspector-General of Police, K. Lakshmana was convicted of murder on the basis of the revelation made by the former police constable, P. Ramachandran Nair, who revealed in 1998 — that he had shot Verghese dead on the orders of the then Superintendent of Police, Mr. Vijayan, and the then Deputy Superintendent of Police, Mr. Lakshmana.

In May, 2006, the Planning Commission set up an Expert Group on "Development Issues to deal with the causes of Discontent, Unrest and Extremism" which submitted its report in April, 2008. The Report of the Expert Group to the Planning Commission, April 2008 on Development Challenges in Extremist Affected Areas, notes the co-relation between extremism and poverty, which points to the myopic view taken by the Government when it sees such extremism solely as a law and order problem, instead of looking at the larger socio-economic issues at hand.

*"While the official policy documents recognize that there is a direct correlation between what is termed as extremism and poverty, or take note of the fact that the implementation of all development schemes is ineffective, or point to the deep relationship between tribals and forests, or that the tribals suffer unduly from displacement, the governments have in practice treated unrest merely as a law and order problem. It is necessary to change this mindset and bring about congruence between policy and implementation. There will be peace, harmony and social progress only if there is equity, justice and dignity for every one."*

In fact, the Expert Committee recommends *inter alia* that:

*"5.7.10 While condemning occasional bursts of wanton violence by the extremist groups, a government constituted by law and mandated to maintain rule of law can not commit any illegal act in countering rural extremism. Government should strictly prohibit extra judicial killings by its security forces. Such acts of illegality by the authorities tend to legitimise extremist violence in the eyes of millions of non-committed on-lookers."*

It is in this context that the instant killing of 4 persons and the justification of the Government is to be viewed.

A Civil Rights Committee headed by Former Judge of the Bombay High Court, Shri V.M. Tarkunde, conducted an enquiry into the "encounters" of those killed in 1975-76 and released an interim report titled "Encounters' are Murders", where the Committee demanded that the officers responsible for extra-judicial killings be tried for murder. The Andhra Pradesh Civil Liberties Committee has repeatedly stressed on the need to view such extra-judicial killings as murder. In the petition filed by them before the Andhra Pradesh High Court, the Full Bench held in A.P. Civil Liberties Committee (APCLC) and Ors. Vs. Government of A.P. and Ors., while looking into the question of steps to be taken on an extra-judicial killing, held:

*"Executive and even judicial sanctions against life and liberty, it is axiomatic, must be explicitly spelt out in legislative authority. This is the essence of civilized and constitutional governance. In the context of our constitutional scheme and qua Article 21, the State shall not deprive any person of life or liberty except in accordance with*

*the procedure established by law. Considered in the context of the several other fundamental values which substrate the Indian constitutional architecture, including those in Articles 14 and 19, it is beyond disputation that an executive agency of the State (including the police) is not authorized to deprive a person of his life without substantive legislative authority and in accordance with the procedure established by law. This non-derogable constitutional value and the concomitant executive and governance obligation could be preserved only by eternal vigilance towards maintaining the sanctity of life and liberty, effectuated and operationalised by relentless pursuit and administering of the sanctions enjoined by law, against depredation of life and liberty, by the unlawful conduct of any person, agency or instrumentality.*

*10. In a rule of law society operating under a constitutional order, either deterrent or preemptive executive action against prohibited human conduct including terrorist acts must be pursued only within the matrix of legislatively spelt out substantive and procedural rules of engagement and sanction. The executive, whether political or the professional has no legitimate authority to act in derogation, independent of or beyond the sanction of law. This is the price civil society and all institutions of government willingly pay for a constitutional way of life."*

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It is also necessary to note the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions adopted on 24.05.1989 by the Economic and Social Council Resolution 1989/65 that mandates that Governments shall prohibit by law all extra-legal, arbitrary and summary executions enumerate standards that list out the regime of investigative procedures to be followed in the event of any such killing.

## **Appendix-2 Guidelines of the Supreme Court in regard to extra-judicial killings**

The Supreme Court in its order dated 23.09.2014 in People's Union for Civil Liberties vs. Union of India [(2014) 10 SCC 635] has laid down detailed guidelines in respect of encounters and the steps required to be taken in case of the same. The guidelines can be summarised as follows

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.
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.
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
4. A Magisterial inquiry under Section 176 of the Code must 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.
5. The information of the incident without any delay must be sent to NHRC or the State Human Rights Commission
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.
11. It must be ensured that the six monthly statements reach to NHRC by 15<sup>th</sup> day of January and July, respectively.
12. 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 Indian Penal Code, disciplinary action against such officer must be promptly initiated and he be placed under suspension.
13. As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided Under Section 357A of the Code must be applied.
14. 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.
15. 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.
16. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence.