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DELHI POLICE ACADEMY



SUPREME COURT OF INDIA

People's Union for Civil Liberties & Anr. … Appellants
Versus
State of Maharashtra & Ors. … Respondents

Mandatory Supreme Court Guidelines for Police Encounter Investigations

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Mandatory Supreme Court Guidelines for Police Encounter Investigations

CRIMINAL APPEAL NO.1255 OF 1999

Date of Judgement: 23/09/2014

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Facts of the Case:

This matter pertains to multiple writ petitions filed by the People's Union for Civil Liberties (PUCL) before the Bombay High Court. These petitions challenged nearly 99 alleged police encounters in Mumbai between 1995 and 1997, which reportedly resulted in the deaths of about 135 persons. PUCL questioned the genuineness of these encounters, alleging that many might have been staged or "fake" encounters, and demanded comprehensive details of the encounters—such as identities, circumstances, and investigative procedures followed. The petitioner sought measures including the registration of FIRs against officers involved, independent investigations (possibly by agencies like the CBI or human rights commissions), and the formulation of strict guidelines for conducting and investigating police encounters. Although, the Bombay High Court had issued several guidelines to regulate the investigation process, but, PUCL was dissatisfied with the relief provided and moved this appeal before the Hon'ble Supreme Court.

ISSUE ADVANCED:

Whether existing guidelines for investigating police encounters were adequate to ensure transparency, accountability, and justice?

JUDGEMENT:

The Supreme Court, after considering submissions from PUCL, the NHRC, and various stakeholders, laid down 16 mandatory guidelines for the investigation of police encounters involving death or grievous injury.

The relevant paras of the judgement are reproduced as under:

Para 31. In light of the above discussion and having regard to the directions issued by the Bombay High Court, guidelines issued by NHRC, 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 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 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 Incharge/Head of the District Hospital. Post-mortem shall be videographed 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.

(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 15th day of January and July, respectively. The statements may be sent in the 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 effecting 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.

(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 such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein.

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

Para 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

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