

Justice G.P. Mathur
Acting Chairperson
(Former Judge, Supreme Court of India)



National Human Rights Commission
Faridkot House, Copernicus Marg
New Delhi-110 001
Phone: 91-11-23387328
Fax: 91-11-2338 4863
E-mail: gp.mathur@nic.in

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12th May, 2010

Dear Chief Minister,

The National Human Rights Commission is concerned about the death during the course of a police action. The police does not have a right to take away the life of a person. Under the scheme of criminal law prevailing in India, it would not be an offence if the death is caused in exercise of right of private defence. Another provision under which the police officer can justify causing the death of a person, is section 46 of the Criminal Procedure Code. This provision authorizes the police to use reasonable force, even extending up to the causing of death, if found necessary to arrest the person accused of an offence punishable with death or imprisonment for life. Thus, it is evident that death caused in an encounter if not justified would amount to an offence of culpable homicide.

The Commission considered the issue and recommended a procedure to be followed in the cases of encounter death by all the States/UTs in the country. The guidelines were conveyed to all the States/UTs vide letter dated 29.3.1997, which were further revised vide letter dated 2.12.2003.

The Commission finds that most of the States are not following the recommendations issued by it in the true spirit. The matter was again considered by the Commission and it was felt that the existing guidelines require some modifications. After a careful consideration of the whole matter, the Commission has revised the procedure to be followed by the States/UTs in all cases of deaths in the course of police action. Revised guidelines are enclosed herewith.

It is requested that the concerned authorities of the State/UT may be given appropriate instructions to follow the enclosed guidelines in all cases where death is caused in police action.

With regards,

Yours sincerely,

G.P. Mathur

(G P Mathur)

Shri K. Rosaiah,
Chief Minister,
Government of Andhra Pradesh,
Secretariat,
Hyderabad-500 022.

and as per list attached

Revised Guidelines/Procedures to be followed in cases of deaths caused in police action.

- A. When the police officer in charge of a Police Station receives information about death in an encounter with the Police, he shall enter that information in the appropriate register.
- B. Where the police officers belonging to the same Police Station are members of the encounter party, whose action resulted in death, it is desirable that such cases are made over for investigation to some other independent investigating agency, such as State CBCID.
- C. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognisable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall be investigated by State CBCID or any other specialised investigation agency.
- D. A magisterial enquiry must be held in all cases of death which occurs in the course of police action, as expeditiously as possible, preferably, within three months. The relatives of the deceased, eye witness, witnesses having information of the circumstances leading to encounter, police station records etc. must be examined while conducting such enquiry.
- E. Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry/ police investigation.
- F. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/ recommended only when the gallantry of the concerned officer is established beyond doubt.
- G. (a) All cases of deaths in police action in the states shall be reported to the Commission by the Senior Superintendent of Police/ Superintendent of Police of the District within 48 hours of such death in the following format:
1. Date and place of occurrence
 2. Police station, district

P.T.O.

3. Circumstances leading to death:
 - (i) Self defence in encounter
 - (ii) In course of dispersal of unlawful assembly
 - (iii) In the course of effecting arrest
 - (iv) Any other circumstances
4. Brief facts of the incident
5. Criminal case No.
6. Investigating agency

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

1. Post mortem report
2. Inquest report
3. Findings of the magisterial enquiry/ enquiry by senior officers disclosing:-
 - (i) Names and designation of police official, if found responsible for the death;
 - (ii) Whether use of force was justified and action taken was lawful;
 - (iii) Result of the forensic examination of 'handwash' of the deceased to ascertain the presence of residue of gun powder to justify exercise of right of self defence; and
 - (iv) Report of the Ballistic Expert on examination of the weapons alleged to have been used by the deceased and his companions.
