



THE STATE OF THE RIGHT TO LIFE IN INDIA



ASIAN CENTRE FOR HUMAN RIGHTS



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Abbreviations

ACHR	Asian Centre for Human Rights
AFSPA	Armed Forces (Special Powers) Act
AOGs	Armed Opposition Groups
AR	Assam Rifles
BSF	Border Security Force
CB-CID	Crime Branch-Criminal Investigation Department
CBI	Central Bureau of Investigation
CrPC	Code of Criminal Procedure, 1973
CRPF	Central Reserve Police Force
FIR	First Information Report
GCM	General Court Martial
GoI	Government of India
IPC	Indian Penal Code
IB	Intelligence Bureau
J&K	Jammu and Kashmir
LWE	Left Wing Extremism
MHA	Ministry of Home Affairs
MoD	Ministry of Defence
NCRB	National Crime Records Bureau
NCST	National Commission for Scheduled Tribes
NDFB	National Democratic Front of Bodoland
NHRC	National Human Rights Commission
PHRA	Protection of Human Rights Act of 1993
RIMS	Regional Institute of Medical Sciences
SC	Scheduled Caste
SHRC	State Human Rights Commission
SIT	Special Investigation Team
ST	Scheduled Tribe
RSASTF	Red Sanders Anti-Smuggling Task Force
TADA	Terrorist and Disruptive Activities (Prevention) Act
ULFA	United Liberation Front of Asom
UN	United Nations
UPR	Universal Periodic Review

1. METHODOLOGY

Article 21 of the Constitution of India provides that “*No person shall be deprived of his life or personal liberty except according to procedure established by law*”. The United Nations Human Rights Committee in its “General Comment No. 14: Article 6 (Right to life)” stated that “*the right to life enunciated in the first paragraph of article 6 of the International Covenant on Civil and Political Rights is the supreme right from which no derogation is permitted even in time of public emergency..... It is basic to all human rights.*”¹

The Supreme Court of India has over the years expanded the ambit of the right to life to cover elements such as the right against solitary confinement, against being handcuffed, against delayed execution, against public hanging, against sexual harassment of women, the right to privacy, to shelter, to medical assistance, legal aid, to reputation, to education, to food, to a clean and healthy environment, to go abroad, etc.

This report does not examine the status of these elements of the right to life. It covers the violation of the right to life as physical life by the State agencies through imposition of death penalty in violation of international human rights standards on fair trial, deaths in judicial and police custody, deaths in police firing for crowd control and deaths in “fake encounters”, an euphemistic term for extrajudicial executions. The report also covers the failure of the Government of India (GoI) to protect citizens’ right to life when violated by non-state actors i.e. armed opposition groups (AOGs) and societal non-State actors on the basis of gender, caste, tribal or religious identity, or in the pursuit of political and ideological goals. The violations of the right to life by the non-State actors are included on the basic assumption that the killings by the non-state actors are not cases of ordinary murder but instances where the State has failed in its responsibility to protect the right to life. The GoI itself has recognised its responsibility to protect through various laws and programmes, including the Scheduled Castes and Scheduled

1. General comment No. 14: Article 6 (Right to life), UN Human Rights Committee available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f4723&Lang=en

Tribes (Prevention of Atrocities) Act of 1989,² the Dowry Prohibition Act of 1961,³ and the Central Scheme for Assistance to Civilian Victims of Terrorist, Communal and Naxal Violence, 2010.⁴

This study relies upon the government statistics including the Annual Reports of the National Human Rights Commission (NHRC), the Ministry of Home Affairs (MHA) and its National Crime Records Bureau (NCRB), as well as government's replies to the questions raised in the Parliament. These figures undoubtedly do not reflect the true extent of violations of the right to life in the country but certainly indicate the extent and patterns of violations of the right to life in India. The emblematic cases cited in this report have been mostly concluded before the judicial and quasi-judicial institutions.

Finally, as the report is primarily concerned with the right to life as physical life and in particular the direct violations by the State, and less so with the State's inability to prevent violence against members of specific groups that has some social sanction, there is much less exploration and analysis of gender, caste and communal violence related killings.

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2. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Rules, 1995 provides for compensation for various atrocities committed upon them.
 3. Section 6(a) 4) for Dowry Prohibition Act provides that "The Court may direct that the fine, if any, imposed under this section or such portion thereof as the Court deems proper shall be paid to the wife as compensation".
 4. Central Scheme for Assistance to civilian Victims of Terrorist, Communal and Naxal violence dated 25 January 2010. Ministry of Home Affairs, Government of India, available at http://www.mha.nic.in/sites/upload_files/mha/files/pdf/T-Guide141008.pdf
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2. EXECUTIVE SUMMARY

Article 21 of the Constitution of India guarantees the right to life but ‘*procedures established by law*’ sanction violation of the right to life through imposition of death penalty in violation of the international standards on fair trial, dispersal of unlawful assembly (crowd control), self-defence (extrajudicial executions in fake encounters), and effecting arrest and dealing with unlawful assembly of civilians in ‘disturbed’ areas. Further, there are blatant failures of the State to ensure citizens’ right to life when it is threatened by non-state actors who violate the right to life on the basis of gender, caste, tribal or religious identity, or in the pursuit of political and ideological goals.

The right to life is perhaps the most violated right in India. In the last 10 years from 2004-2005 to 2013-2014, as per official records the right to life of at least 130,407 persons or 1,086 persons per month were violated either by the State agencies or caused by the failure of the State agencies to fulfill their responsibilities to prevent violations by the non-State actors. The majority of the victims are women (80,947)⁵ followed by victims of custodial deaths (16,465)⁶, encounter deaths (10,900)⁷, deaths in police firing (2,527)⁸, deaths of 10,219 civilians in militancy/Naxal related violence⁹; deaths in caste related violence (8,138)¹⁰ and deaths in communal violence (1,211)¹¹.

For the same period, as for the State security forces, this report counts 16,465 cases of custodial death (with 1,389 deaths in police custody and 15,076 deaths in judicial custody)¹²; 23 cases of death in the custody of the army

5. See NCRB reports from 2004 to 2013 available at: <http://ncrb.nic.in/>

6. NHRC “Annual Reports from 2004-05 to 2010-11 & See Annexure referred to in reply to Lok Sabha Unstarred Question No.1414 answered by Minister of State in the Ministry of Home Affairs, Kiren Rijiju on 2.12.2014 at: <http://164.100.47.132/LssNew/psearch/QResult16.aspx?qref=8551> [Accessed 6.1.2015]

7. Source: MHA annual Reports 2004-05 to 2013-14 and http://mha.nic.in/sites/upload_files/mha/files/LWEViolanceStatistics2014.pdf

8. See NCRB’s Crime in India report series, 2004 to 2013, available at: <http://ncrb.gov.in/>

9. Ministry of Home Affairs, Annual Reports, 2004-05 to 2013-14

10. See NCRB reports from 2004 to 2013 available at: <http://ncrb.nic.in/>

11. MHA Annual Reports 2004-05 to 2013-14 & Annexure in reply to parts (a) to (c) of the Lok Sabha Unstarred Question No. 7400 for 22.5.2012 <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=124101>

12. NHRC “Annual Reports from 2004-05 to 2010-11 & See Annexure referred to in reply to Lok Sabha Unstarred Question No.1414 answered by Minister of State in the Ministry of Home Affairs, Kiren Rijiju on 2.12.2014 at: <http://164.100.47.132/LssNew/psearch/QResult16.aspx?qref=8551> [Accessed 6.1.2015]

and the central paramilitary forces¹³; 10,900 deaths in “encounters” (1,654 deaths involving police and 9,246 deaths involving the armed forces and para-military forces, of which 4,005 in Jammu and Kashmir (J&K),¹⁴ 3,650 in the North East¹⁵ and 1,591 in the Naxal affected areas)¹⁶; and 2,527 deaths in police firing.¹⁷

The State’s failure to safeguard the right to life of individual citizens and those belonging to vulnerable groups during the same period also resulted in the death of 80,947 women (79,404 dowry killings and 1,543 killings of those suspected of witchcraft)¹⁸; 10,219 civilians in militancy/Naxal related violence¹⁹; 8,138 (1,646 Scheduled Tribes and 6,492 Scheduled Castes) in identity-related violence²⁰; and 1,211 persons in communal violence.²¹

Ironically, the Supreme Court of India, which has gradually expanded elements of the right to life, has not been immune from its role to diminish the right to life. The Supreme Court had imposed death penalty in at least eight cases²² based on judgements which were subsequently held as *per incuriam* (out of error or ignorance). That the President of India rejected mercy plea of death row convict, Saibanna Nigappa Natikar of Karnataka on 4 January 2013 despite being informed by 14 former judges of the High Courts and the Supreme Court in separate letters on 1 June 2012 that the judgement sentencing Natikar had been declared *per-incuriam* by the Supreme Court, explains the malaise that result in the violations of the right to life in India.²³

13. NHRC’s Annual Reports from 2004-05 to 2010-2011. Figures for the years 2011-12, 2012-13 and 2013-14 are not available as these reports are yet to be made public

14. MHA annual Reports 2004-05 to 2013-14

15. MHA annual Reports 2004-05 to 2013-14

16. Source: MHA annual Reports 2004-05 to 2013-14 and http://mha.nic.in/sites/upload_files/mha/files/LWEViolanceStatistics2014.pdf

17. See NCRB’s Crime in India report series, 2004 to 2013, available at: <http://ncrb.gov.in/>

18. See NCRB reports from 2004 to 2013 available at: <http://ncrb.nic.in/>

19. Ministry of Home Affairs, Annual Reports, 2004-05 to 2013-14

20. See NCRB reports from 2004 to 2013 available at: <http://ncrb.nic.in/>

21. MHA Annual Reports 2004-05 to 2013-14 & Annexure in reply to parts (a) to (c) of the Lok Sabha Unstarred Question No. 7400 for 22.5.2012 <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=124101>

22. The eight *per incuriam* cases are *Shivaji @ Dadya Shankar Alhat v. State of Maharashtra*, *Mohan Anna Chavan v. State of Maharashtra*, *Bantu v. The State of U.P.*, *Surja Ram v. State of Rajasthan*, *Dayanidhi Bisoi v. State of Orissa*, *State of U.P. v. Sattan @ Satyendra and Ors*, *Saibanna v. State of Karnataka and Ankush Maruti Shinde and Ors. v. State of Maharashtra*

23. *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra*: (2009)6SCC498

The root causes for blatant violations of the right to life are not hard to find: impunity at all levels and across the spectrum and the dispensability of the victims because of their caste, creed, ethnic origin, economic status, gender or simply geographical location i.e. residing in areas notified as “disturbed areas” under the Armed Forces Special Powers Act (AFSPA) of 1958.

The most blatant violation of the right to life is extrajudicial execution, euphemistically called deaths in “fake encounters” in India. There are no witnesses in most encounter killings and the security forces usually register “attempt to murder cases” against the deceased, thereby stopping further processes there itself. The Andhra Pradesh High Court in a judgement on 6 February 2009 made registration of First Investigation Report (FIR) mandatory against the police officers for the death caused to any person in encounters and put the onus on the police to prove they were acting in self-defence resulting in death in encounters. On appeal by the *Andhra Pradesh Police Officers Association*, the Supreme Court in an order²⁴ on 4 March 2009 stayed the decision of the five-judge bench (Full Bench) of the Andhra Pradesh High Court. The Supreme Court is yet to dispose this appeal.

In another decision relating to encounter killings by police, the Supreme Court on 23 September 2014 in the case of the *People’s Union for Civil Liberties & Anr v. State of Maharashtra & Ors*²⁵ issued 16-point guidelines to deal with encounter killings. In these guidelines, the Supreme Court essentially stated that it is not necessary to register the FIR against the police officers for the death caused to any person in encounters or putting the onus on the police to prove they were acting in self-defence resulting in death in encounters. The guidelines further limited the powers of the National Human Rights Commission (NHRC) both on reporting of encounter killings by the police and in awarding compensation. The NHRC, responding responsibly, filed a writ petition before the Supreme Court against the judgement in December 2014²⁶ and this judgement has direct bearing on pending case of *A.P. Police*

24. A.P. Police Officers Association v. A.P. Civil Liberties Committee & Ors [SLP(C) NO. 5933/2009]

25. People’s Union for Civil Liberties & Anr v. State of Maharashtra & Ors, 23.09.2014, available at: <http://supremecourtindia.nic.in/outtoday/ar12551999.pdf>

26. NHRC files a Writ Petition in the Supreme Court in connection with its order in a case of PUCL on encounter deaths (12.12.2014), available at <http://www.nhrc.nic.in/dispatchive.asp?fno=13460>

Officers Association v. A. P. Civil Liberties Committee & Ors [SLP(C) NO. 5933/2009].

The fallacious nature of the Supreme Court judgement in the PUCL case stands exposed from the direction of the Andhra Pradesh High Court on 16 April 2015 to register FIR against the members of the Special Task Force for murder of 20 labourers dubbed as smugglers in a forest in Chittoor district on 7 April 2015.²⁷

It is equally pertinent to mention that the Supreme Court had also upheld the constitutional validity of the AFSPA empowering a non-commissioned officer to use fire-arms and force, even to the causing of death.²⁸ This judgement of the apex court sits uneasily with the specific recommendations made to the GoI by the Justice Jeevan Reddy Committee to Review the Armed Forces Special Powers Act,²⁹ the Second Administrative Reforms Commission,³⁰ and the Justice J S Verma Committee,³¹ in addition to plethora of recommendations of the United Nations Human Rights Committee,³² the UN Committee on the Elimination of All Forms of Racial Discrimination,³³ and the UN Human Rights Council under its Universal Periodic Review (UPR).³⁴ It is another matter that it was Justice J S Verma himself who as the Chief Justice of India had upheld the constitutional validity of the AFSPA in 1997 but

27. Tirupati red sanders encounter: Murder case against STF men, Andhra Pradesh informs high court, Indian Express, 16 April 2015 available at <http://indianexpress.com/article/india/india-others/ap-police-file-murder-case-in-chittoor-firing-incident/>

28. Naga People's Movement of Human Rights v. Union of India [AIR 1998 SC 431]

29. Lok Sabha, "Repeal of AFSPA", Starred Question No.34 answered on 25.11.2014 by Kiren Rijiju, Minister of State in the Ministry of Home Affairs [Accessed 3.12.2014]

30. See <http://arc.gov.in/5th%20REPORT.pdf> [Accessed 3.12.2014]

31. Report of the Committee on Amendments to Criminal Law, 23 January 2013, available at: <http://www.thehindu.com/news/resources/full-text-of-justice-vermas-report-pdf/article4339457.ece>

32. The UN Human Rights Committee (CCPR/C/79/Add.81 dated 4 August 1997) in its concluding observation expressed concerns at the continuing reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations, in particular with respect to articles 6, 7, 9 and 14 of the International Covenant on Civil and Political Rights, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups.

33. The CERD Committee in its Concluding Observations (CERD/C/IND/CO/19 of 5 May 2007) recommended India "to repeal the Armed Forces (Special Powers) Act and to replace it "by a more humane Act," in accordance with the recommendations contained in the 2005 report of the above Review Committee set up by the Ministry of Home Affairs. It also requests the State party to release the report".

34. India was recommended Report of the Working Group on the Universal Periodic Review-India, (A/HRC/21/10), dated 9 July 2012) to "repeal the Armed Forces Special Powers Act or adopt the negotiated amendments to it that would address the accountability of security personnel, the regulation concerning detentions as well as victims' right to appeal in accordance to international standards (Slovakia)".

went to recommend its review in 2012 as the Chairman of the Justice Verma Committee set up following the Nirbhaya gang rape and murder case in Delhi.

In cases of police firing for dispersal of unlawful assembly (crowd control), the use of force is often justified by magisterial inquiries and conviction of any law enforcement personnel for the excessive use of firearms for crowd control is an exception.

In the highly unusual situation that an independent and timely investigation is secured and a chargesheet filed against State security force personnel, prosecution is virtually impossible to pursue since Section 6 of the AFSPA and Section 197 of the Code of Criminal Procedure (CrPC) stipulate that prior permission must be sought from the government. There are well-known cases in which prosecution has stopped for want of permission from the government to prosecute, such as the fake encounter deaths of Sohrabuddin Sheikh and Tulsiram Prajapati³⁵ and of Ishrat Jahan³⁶ of Gujarat and the Nandigram firing in West Bengal.³⁷

The violations of the right to life have been an integral part of India's law enforcement, counter-terrorism and national security strategies. Both the executive and the judiciary have been complicit; and ensuring the right to life remains a challenging task.

35. Sohrabuddin Sheikh fake encounter case: Charges against Geeta Johari dropped, Firstpost, 3 March 2015 http://www.firstpost.com/india/sohrabuddin-sheikh-fake-encounter-case-charges-geeta-johari-dropped-2132439.html?utm_source=FP_TOP_NEWS

36. Business Standard, "Ishrat case: No sanction to prosecute IB men from Centre yet", 6.2.2015, http://www.business-standard.com/article/pti-stories/ishrat-case-no-sanction-to-prosecute-ib-men-from-centre-yet-115020601744_1.html

37. Daily News and Analysis, "Nandigram firing: CBI asks West Bengal govt why no action taken against IPS officers" 23.2.2015, <http://www.dnaindia.com/india/report-nandigram-firing-cbi-asks-west-bengal-govt-why-no-action-taken-against-ips-officers-2063524>

3. LAWS SANCTIONING VIOLATIONS OF THE RIGHT TO LIFE

Article 21 of the Constitution of India provides that “*No person shall be deprived of his life or personal liberty except according to procedure established by law*”. That is, the right to life is not absolute and a person may be deprived of his/her life by the State “*according to procedure established by law*”.

The Supreme Court in *Maneka Gandhi v. Union of India*³⁸ held that “*the procedure [depriving a person of their right/ right to life] cannot be arbitrary, unfair or unreasonable one*” [sic]. In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*,³⁹ the Supreme Court further held that “*Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful*”.

In reality, “procedure established by law” has come to mean establishing procedures to violate the right to life through imposition of death penalty in violation of international human rights standards, the power to fire upon or otherwise use force even to the causing of death by the security forces, and the use of force for dispersal of unlawful assembly, use of force in exercise of self-defence and use of force in effecting arrest. Enforcement of all these procedures can at best be described as arbitrary, unfair, unreasonable, unjust, whimsical or fanciful.

3.1. The use of death penalty

There are number of laws providing death penalty. At present, death penalty is provided under the Indian Penal Code (IPC) for offences as follows:

- Treason, for waging war against the Government of India (Section 121);
- Abetment of mutiny actually committed (Section 132);

38. *Maneka Gandhi v. Union Of India* on 25 January, 1978, 1978 AIR 597, 1978 SCR (2) 621

39 *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*, 13 January, 1981, 1981 AIR 746, 1981 SCR (2) 516

- Perjury resulting in the conviction and death of an innocent person (Section 194);
- Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person (Section 195A);
- Murder (Section 302);
- Abetment of suicide by a minor, insane person or intoxicated person (Section 305);
- Attempted murder by a serving life-convict (Section 307(2));
- Kidnapping for ransom (Section 364A);
- Dacoity with murder (Section 396);
- Repeat offenders of rape (Section 376E); and
- Person committing an offence of sexual assault and inflicting injury which causes death or causes the person to be in a persistent vegetative state (Section 376A).

Further, special laws enacted to address specific issues or situations and local laws enacted by the State Governments also provide for death penalty. These laws include:

- Army Act, 1950 [Section 34, Section 37, Section 38, Section 69]
- Air Force Act, 1950 [Section 34, Section 35, Section 38, Section 71]
- Navy Act, 1950 [Section 34, Section 35, Section 36, Section 37, Section 38, Section 39, Section 43, Section 44, Section 49, Section 56, Section 59, Section 77]
- Indo Tibetan Border Police Act, 1992 [Section 16, Section 19, Section 20, Section 49]
- Assam Rifles Act, 2006 [Section 21, Section 24, Section 55]
- Border Security Force Act, 1968 [Section 14, Section 15, Section 17, Section 18, Section 46]
- Sashastra Seema Bal Act, 2007 [Section 16, Section 19, Section 20, Section 49]

- Defence and Internal Security Act, 1971 [Section 5]
- Narcotic Drugs and Psychotropic Substances (Prevention) Act, 1985 as amended in 1988 [Section 31A]
- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [Section 3(2)(i)]
- Explosive Substances Act, 1908 as amended in 2001 [Section 3(b)]
- Unlawful Activities Prevention Act, 1967, as amended in 2004 [Section 16 (1)]
- Maharashtra Control of Organised Crime Act, 1999 [Section 3(1)(i)]
- Karnataka Control of Organised Crime Act, 2000 [Section 3(1)(i)]
- Andhra Pradesh Control of Organised Crime Act, 2001 [Section 3(1)(i)]
- Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002. [Section 3(1)(G)(i)]

The UN Human Rights Committee in its Concluding Observations in 1997 had recommended to India to “..... *limit the number of offences carrying the death penalty to the most serious crimes, with a view to its ultimate abolition*”.⁴⁰ However, the GoI continues to enact laws which impose the death penalty for crimes that are not “the most serious”, such as kidnapping not resulting in

40. The UN Human Rights Committee (CCPR/C/79/Add.81 dated 4 August 1997) expressed concern about the continuing reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed. It also expressed concern about serious human rights violations, in particular with respect to Articles 6, 7, 9 and 14 of the International Covenant on Civil and Political Rights, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups.

death,⁴¹ drug-related offences,⁴² and sabotage of oil and gas pipelines.⁴³

3.2. The power to fire upon or otherwise use force, even to the causing of death under the AFSPA

The GoI enacted the AFSPA in 1958 and established a procedure under which any commissioned officer, warrant officer or non-commissioned officer or any other person of equivalent rank may legally deprive a person or persons of their lives, not just in cases of self-defence, but also for contravening laws or orders prohibiting the assembly of five or more persons.

Section 4 of the AFSPA⁴⁴ provides that a non-commissioned officer “(a) *if he is of opinion that it is necessary to do so for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force; even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances*”.

This legal procedure authorizing arbitrary deprivation of the right to life in areas declared as “disturbed” currently remains in force in North Eastern

41. Section 364A of the IPC relating to kidnapping for ransom, etc provides that “Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or 159[any foreign State or international inter-governmental organization or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.
42. Section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985 provides, “31A. Death penalty for certain offences after previous conviction.-(l) Notwithstanding anything contained in section 31, if any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under 3 [section 19, section 24, section 27 A and for offences involving commercial quantity of any narcotic drug or psychotropic substance] is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence relating to- (a) engaging in the production, manufacture, possession, transportation, import into India, export from India or transshipment, of the narcotic drugs or psychotropic substances specified under column (1) of the Table below and involving the quantity which is equal to or more than the quantity indicated against each such drug or substance, as specified in column (2) of the said Table..... and (b) financing, directly or indirectly, any of the activities specified in clause (a), shall be punishable with death.
43. Section 15(4) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Amendment Act, 2012 provides “(4) Whoever, with the intent to cause or knowing that he is likely to cause damage to or destruction of any pipeline laid under section 7, causes by fire, explosive substance or otherwise damage to the pipeline being used for transportation of petroleum products, crude oil or gas with the intent to commit sabotage or with the knowledge that such act is so imminently dangerous that it may in all probability cause death of any person or such bodily injury likely to cause death of any person, shall be punishable with rigorous imprisonment which shall not be less than ten years but may extend to imprisonment for life or death..
44. AFSPA is available at: http://mha.nic.in/sites/upload_files/mha/files/pdf/armed_forces_special_powers_act1958.pdf

States of Assam,⁴⁵ Arunachal Pradesh,⁴⁶ Manipur⁴⁷, Meghalaya⁴⁸ and Nagaland⁴⁹ as well as in the state of Jammu and Kashmir⁵⁰. In May 2015, the State Government of Tripura revoked the AFSPA from the State, which was in force since 1997.⁵¹

3.3. Laws sanctioning violations of the right to life by use of force

There are a number of circumstances in which the use of force by law enforcement personnel is deemed to be legitimate such as the use of force to the extent of causing death in the course of dispersal of unlawful assembly or controlling of riots, self-defence in encounters with criminals/ terrorists/ extremists or in the course of effecting arrest of somebody charged with a crime punishable with death or imprisonment for life.

i. Dispersal of unlawful assembly

The legal provisions governing the dispersal of unlawful assemblies are provided under Sections 129 to 132 of the CrPC. Section 129 CrPC gives power to the Executive Magistrate or Officer in-charge of a police station or, in the absence of an officer in charge, any police officer not below the rank of sub- inspector, to command an unlawful assembly to disperse, including by use of force, if it is likely to cause disturbance of public peace. How much force is necessary to disperse the unlawful assembly has to be decided by the Executive Magistrate or the police officer concerned. They must assess the situation on the spot and take a decision immediately.⁵² If the assembly still

45. MHA Notification No. S.O. 2818(E), 4.11.2014, http://mha.nic.in/sites/upload_files/mha/files/Noti2818_251114.pdf

46. See AFSPA extended in 3 districts, http://www.arunachalpradesh.gov.in/csp_ap_portal/pdf/Documents/afspa-extended-3districts.pdf

47. The Indian Express, "Manipur government extends 'disturbed area status' for one more year", 3.12.2014, <http://indianexpress.com/article/india/india-others/manipur-government-extends-disturbed-area-status-for-one-more-year/>

48. MHA Notification No. S.O. 2818(E), 4.11.2014, http://mha.nic.in/sites/upload_files/mha/files/Noti2818_251114.pdf

49. MHA Notification No. S.O. 1646 (E), 30.6.2014, http://mha.nic.in/sites/upload_files/mha/files/Notification1646-250714.PDF

50. Presently the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 is enforced in 20 out of 22 districts of Jammu & Kashmir notified as disturbed namely Kathua, Samba, Jammu, Rajouri, Reasi, Udhampur, Ramban, Doda, Kistwar, Poonch, Anantanag, Kulgam, Pulwama, Shopian, Budgam, Srinagar, Ganderbal, Bandipora, Barumallah and Kupwara.

51. The Hindu, 'Tripura withdraws AFSPA, says insurgency on the wane', 28 May 2015, <http://www.thehindu.com/news/national/other-states/tripura-withdraws-afspa-says-insurgency-on-the-wane/article7252919.ece>

52. Section 129 of CrPC [Dispersal of assembly by use of civil force] provides as follows:

does not disperse, a Magistrate might request the intervention of the armed forces which “*shall use as little force, do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons*”.⁵³

Policing and public order are State subjects according to the Seventh Schedule to the Constitution. Nonetheless, the MHA developed a Code of Conduct for Police in India that was communicated to all state governments and central police organizations on 4 July 1985. The Code of Conduct and the procedures adopted by the States on the use of force are to be based on the principles of necessity and proportionality. That is, force should be used only to the extent it is required for the legitimate ends of law enforcement and maintaining public order.⁵⁴

ii. Use of force in exercise of self-defence

Sections 96 to 106 of the IPC pertain to the right of private defence of person and property. The IPC allows all manner of actions to be taken in order to exercise the “right of private defence”, to safeguard person and property.⁵⁵

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1. Any Executive Magistrate or officer in charge of a police station or, in the absence of such officer in charge, any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.
 2. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination, not to disperse, any Executive Magistrate or police officer referred to in Sub-Section (1), may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.
 53. Section 130 of CrPC [Use of armed forces to disperse assembly] provides as under:
 1. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Executive Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces.
 2. Such Magistrate may require any officer in command of any group of persons belonging to the armed forces to disperse the assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.
 3. Every such officer of the armed forces shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.
 54. Guideline 4 provides that, “In securing the observance of law or in maintaining order, the police should as per as practicable, use the method of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used”. The Code of Conduct for the Police in India, available at: <http://police.pondicherry.gov.in/MHA%20-%20Model%20Code%20of%20Conduct%20-%20Indian%20Police.pdf> [Accessed 5.12.2014]
 55. Section 96 of IPC provides “Nothing is an offence which is done in the exercise of the right of private defence.” <http://indianlawcases.com/Act-Indian.Penal.Code,1860-1524>
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But, there are significant constraints on this right. The persons exercising their right to defence may only inflict injury that is commensurate with the threat.⁵⁶ The right to private defence of the body extends to the voluntary causing of death in the following six cases:

- i) The person exercising the right fears a deadly assault. [Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault];
- ii) The person exercising their right to private defence fears grievous hurt. [Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault];
- iii) The person is being assaulted with the intention of rape;
- iv) The person fears assault with the intention of gratifying unnatural lust;
- v) The person believes the assault is with the intention of kidnapping or abducting; and
- vi) The person believes the assault is with the intention of wrongfully confining them and they fear not having recourse to the public authorities for their release.⁵⁷

Law enforcement personnel enjoy the same right of private defence to protect life and property as ordinary citizens under Section 99 of the IPC. Deaths reported in encounters are justified as being sanctioned by the right to private defence.

56. However, the right given under Sections 96 to 98 and Sections 100 to 106 is governed by Section 99 of the IPC which explains that the injury which is inflicted by a person exercising the right should be commensurate with the injury with which he is threatened. Section 99 IPC provides: "Acts against which there is no right of private defence.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. Extent to which the right may be exercised.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence"

57. Section 100 of the IPC.

iii. Use of force in effecting arrest

The police can also justify the use of force under Section 46 of the CrPC, which authorises the use of reasonable force, even up to the causing of death, if that is deemed necessary to arrest a person, provided that person is accused of an offence punishable with death or imprisonment for life.⁵⁸

58. Section 46 states “[Arrest how made] (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. (2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest. (3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.”

4. PATTERNS AND PRACTICES OF VIOLATIONS OF RIGHT TO LIFE BY STATE ACTORS

There are rampant violations of the right to life through imposition of death penalty in violation of the international standards on fair trial and the use of force for dispersal of unlawful assembly (crowd control), self-defence (fake encounters) and effecting arrest and dealing with disturbed areas and killing in custody

4.1. Death penalty

Death penalty has been imposed rampantly in India. In 1980, the constitutional bench of the Supreme Court in *Bachan Singh v. State of Punjab*⁵⁹ stipulated that death penalty should be imposed only in the “rarest of rare” cases. However, the imposition of death penalty on 5,054 convicts by the Sessions Courts from 2004 to 2013 show that the “rarest of rare” doctrine is not followed in letter or spirit. Out of 5,054 convicted to death by the Sessions Courts, 1,303 sentences were confirmed, while 3,751 convicts had their death sentences commuted to life imprisonment.⁶⁰ There were 125 confirmed death sentences in 2004; 164 in 2005, 129 in 2006, 186 in 2007, 126 in 2008, 137 in 2009, 97 in 2010, 117 in 2011, 97 in 2012 and 125 in 2013.⁶¹

Whether deprivation of the right to life through judicial process constitutes violation of the right of the life is a subject matter of debate. However, the right to life stands violated if death sentence is being imposed based on judgements held to be *per incuriam* or death sentence is imposed in clear violation of the international standards on fair trial such as conviction solely based on self-incriminatory confession, and if mercy pleas of mentally unfit or insane persons are rejected by the President of India.

59. *Bachan Singh v. State Of Punjab* [AIR 1980 SC 898], [1980 CriLJ 636]

60. NCRB, “Prison Statistics India” report series from 2004 to 2013 available at: <http://ncrb.gov.in/>

61. NCRB, “Prison Statistics India” report series from 2004 to 2013 available at: <http://ncrb.gov.in/>

i. *Per incuriam* cases

As per the *Bachan Singh* judgement, death penalty can only be imposed in the “rarest of rare” cases after considering aggravating circumstances relating to the crime and mitigating circumstances relating to the criminal. A balance sheet of these elements should be spelt out in the judgement.

The Supreme Court vide judgement dated 13 May 2009 in *Santosh Kumar Satish Bhushan Bariyar v. State of Maharashtra* held the decision in *Ravji @ Ravi Chandra v. State of Rajasthan* as *per incuriam* because it only considered the aggravating circumstances of the crime without conforming with the *Bachan Singh* judgment which directed imposition of death penalty only after considering both aggravating circumstances and mitigating circumstances relating to the crime and the criminal. In the same case, the Supreme Court also declared six other judgements as *per-incuriam* as reasoning propounded in *Ravji v. State of Rajasthan* was followed in awarding death penalty. These six decisions are *Shivaji @ Dadya Shankar Alhat v. State of Maharashtra*⁶², *Mohan Anna Chavan v. State of Maharashtra*⁶³, *Bantu v. The State of U.P.*⁶⁴, *Surja Ram v. State of Rajasthan*⁶⁵, *Dayanidhi Bisoi v. State of Orissa*⁶⁶, and *State of U.P. v. Sattan @ Satyendra and Ors.*⁶⁷

In 2009, the Supreme Court also declared *Saibanna v. State of Karnataka* as *per incuriam* on the ground that it upheld mandatory death sentence under Section 303 of the IPC, which was struck down by the Supreme Court in *Mithu v. State Of Punjab* in 1983.⁶⁸ As late as 3 February 2014, the Supreme Court admitted the petitions filed by condemned prisoners in *Ankush Maruti Shinde and Ors. v. State of Maharashtra* as they were sentenced to death based on *Ravji alias Ram Chandra v. State of Rajasthan* which has already been held as *per incuriam*.⁶⁹

62. Shivaji @ Dadya Shankar Alhat v. The State of Maharashtra, [AIR2009SC56]

63. Mohan Anna Chavan v. State of Maharashtra [(2008)11SCC113]

64. Bantu v. The State of U.P., [(2008)11SCC113]

65. Surja Ram v. State of Rajasthan, [(1996)6SCC271]

66. Dayanidhi Bisoi v. State of Orissa, [(2003)9SCC310]

67. State of U.P. v. Sattan @ Satyendra and Ors [2009(3)SCALE394]

68. Santosh Kumar Satish Bhushan Bariyar v. State of Maharashtra [(2009) 6 SCC 498]

69. Times of India, “SC revisiting death penalties, stays three more” 6 February 2014, <http://timesofindia.indiatimes.com/india/SC-revisiting-death-penalties-stays-three-more/articleshow/29920086.cms>

However, the admission of error by the Supreme Court was too late for two condemned prisoners namely Ravji @ Ram Chander and Surja Ram who were executed on 4 May 1996 and 7 April 1997 respectively on the basis of flawed judgments.⁷⁰

What is most disconcerting is the rejection of mercy petition of death row convict Saibanna Nigappa Natikar of Karnataka by the President of India on 4 January 2013 despite 14 former judges of the Supreme Court and the High Courts in separate letters informing the President of India on 1 June 2012 that the Supreme Court had in a judgement in 2009 declared death sentence imposed on Saibanna as *per incuriam* for being inconsistent with “*Mithu and Bachan Singh*”.⁷¹ Saibanna was initially convicted for life for murder of his first wife in 1992. While on parole in September 1994, Saibanna killed his second wife and his minor daughter and attempted to commit suicide.⁷² On conviction, the trial court awarded death sentence to Saibanna on 4 January 2003. A Division Bench of the Karnataka High Court which heard Saibanna’s appeal against the death sentence gave a split verdict. His appeal was then referred to a third judge, who confirmed his death sentence.⁷³

ii. Death sentencing based on self-incrimination without any corroboration

India imposes the death penalty based on self-incriminating confession without corroborative evidence in clear violation of fair trial standards. These constitute violations of the right to life.

Devender Pal Singh Bhullar⁷⁴ was convicted for an assassination attempt on M.S. Bitta, then President of the Indian Youth Congress(I) in New Delhi on 11 September 1993, which resulted in the death of nine persons. On 25 August 2001, Bhullar was sentenced to death by the Designated Court under the Terrorist and Disruptive Activities (Prevention) Act (TADA) based solely on his confession as recorded by Deputy Commissioner of Police B.S. Bhola

70. The Hindu, “Take these men off death row” 6.7.2012, <http://www.thehindu.com/opinion/lead/take-these-men-off-death-row/article3606856.ece>

71. Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra: (2009)6SCC498

72. High Court of Karnataka [Criminal Ref. Case No. 2/2003 and Criminal Appeal No. 497 of 2003] <http://judgmenthck.kar.nic.in/judgments/bitstream/123456789/367873/1/CRLRC2-03-10-10-2003.pdf>

73. Criminal Ref. Case No. 2/2003 and Criminal Appeal No. 497 of 2003, High Court of Karnataka, Judgment available at: <http://judgmenthck.kar.nic.in/judgments/bitstream/123456789/367873/1/CRLRC2-03-10-10-2003.pdf>

74. Devender Pal Singh v. State (NCT of Delhi) [(2002)5 SCC 234]

under Section 15 of the TADA. While two judges of the Supreme Court confirmed the conviction and death sentence on Bhullar on 22 March 2002, Justice M. B. Shah delivered a dissenting judgement, and pronounced Bhullar as innocent. Justice Shah held that there was nothing on record to corroborate the confessional statement and police did not verify the confessional statement including the hospital record to find out whether D. S. Lahoria, one of the main accused went to the hospital and registered himself under the name of V. K. Sood on the date of incident and left the hospital after getting first aid. None of the main accused, i.e. Harnek or Lahoria was convicted⁷⁵ but Bhullar, the alleged conspirator was sentenced to death. In April 2013, Anoop G Chaudhari, the Special Public Prosecutor who had appeared against Devinder Pal Singh Bhullar in the Supreme Court in 2002 stated that though two of the three judges on the Supreme Court bench upheld his arguments, he found himself agreeing with the dissenting verdict delivered by the presiding judge, M B Shah, who had acquitted Bhullar. Chaudhari had stated “*Surprising as it may sound, I believe that Shah was right in not accepting my submissions in support of the trial court’s decision to convict Bhullar in a terror case, entirely on the basis of his confessional statement to the police*”.⁷⁶ It is indeed ironical that the two main accused of the crime were acquitted⁷⁷ but Bhullar, accused as a conspirator, was sentenced to death!

Similarly in the case of the assassination of Rajiv Gandhi, former Prime Minister of India, the Central Bureau of Investigation (CBI) charge-sheeted 26 accused for various offences.⁷⁸ The Special Judge of the TADA Court sentenced all 26 main accused to death.⁷⁹ On 11 May 1999, the Supreme Court set aside convictions under the TADA but confirmed the death sentence passed by the TADA Court on Nalini, Santhan, Murugan and Arivu.⁸⁰ Interestingly, in a documentary released in November 2013 on

75. ACHR “Death Penalty Through Self Incrimination in India”, October 2014, <http://www.achrweb.org/reports/india/Incrimination.pdf>

76. Public prosecutor turns surprise ally for Bhullar, The Times of India, 18 April 2013, <http://timesofindia.indiatimes.com/india/Public-prosecutor-turns-surprise-ally-for-Bhullar/articleshow/19606737.cms>

77. ACHR “Death Penalty Through Self Incrimination in India”, October 2014, <http://www.achrweb.org/reports/india/Incrimination.pdf>

78. They were charged under Section 302 read with Section 120-B of the Indian Penal Code and Section 3 & 4 of the TADA.

79. They were sentenced under Section 302 read with Section 120-B IPC. One of accused was also sentenced to death under Section 3(1)(ii) of the TADA.

80. The death sentence was under Section-120B read with Section 302 IPC. State through Superintendent of

Arivu, the former Superintendent of Police of the CBI Mr P V Thiagarajan admitted that he had manipulated Arivu's confessional statements in order to join the missing links in the narrative of the conspiracy in order to secure convictions. Thiagarajan stated *"But [Perarivalan] said he did not know the battery he bought would be used to make the bomb. As an investigator, it put me in a dilemma. It wouldn't have qualified as a confession statement without his admission of being part of the conspiracy. There I omitted a part of his statement and added my interpretation. I regret it."*⁸¹

In the cases of both Arivu and Bhullar, the confessions made to the police officers are in violation of the Indian Evidence Act,⁸² which does not allow confessions made to police officers as admissible evidence, and of the fair trial standards which prohibit self-incrimination under the International Covenant on Civil and Political Rights.⁸³ Had they been tried under the IPC based on the evidence taken under the India Evidence Act, both would have certainly been acquitted. Had they been tried under only the TADA, they would not have been sentenced to death as the maximum punishment for abetment under the TADA is five years imprisonment.⁸⁴ Since Arivu was discharged under the TADA, the evidence (confession made to police officer) extracted under the TADA should not have been used as evidence in trial under the IPC and in that case Arivu should have been released because confession made to a police officer is not admissible under the Indian Evidence Act and therefore he could not have been sentenced under the IPC. Similarly, Devender Pal Singh Bhullar, if tried under the IPC without relying on the evidence obtained under the TADA (confession made to a police officer), too would have certainly been acquitted.

Police, CBI/SIT vs. Nalini and Ors.[AIR1999SC2640]

81. Ex-CBI man altered Rajiv death accused's statement, The Times of India, 24 November 2013, available at: <http://timesofindia.indiatimes.com/india/Ex-CBI-man-altered-Rajiv-death-accuseds-statement/articleshow/26283700.cms>
82. Section 25. Confession to police officer not to be proved - No confession made to police officer shall be proved as against a person accused of any offence.
83. Article 14 (3). In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (g) Not to be compelled to testify against himself or to confess guilt."
84. Under Section 3(3) of the TADA the punishment for abetting terrorism is "imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine".

A clear precedent has been developed in India in the trial and conviction of terror-related offences, whereby prosecutors tend to present evidence gathered under special laws like the TADA in trials conducted under the IPC to secure maximum punishment and the Courts have been ready to accept the same without any qualm. This is nothing but abuse of the law driven by the desire for retribution, rather than meeting the basic requirements of justice.

iii. Rejection of mercy pleas of mentally unfit or insane persons

The President of India also rejects mercy pleas of death row convicts who had been declared mentally unfit to be hanged. These rejections constitute clear violations of the Guidelines of the GoI on consideration of mercy pleas⁸⁵ and universal fair trial standards and therefore, constitute a clear violation of the right to life.

On 21 January 2014, the Supreme Court commuted the death sentence of death row convict Sundar Singh of Uttarakhand to life imprisonment on the ground of mental illness after the President had rejected his mercy plea on 31 March 2013. The Supreme Court noted that the MHA, despite being informed in detail about Singh's mental illness, had neither referred those facts to the Home Minister nor had the case summary sent to the President made any reference to Singh's mental condition, which had been attested to by three doctors.⁸⁶

Similarly, Maganlal Barela of Madhya Pradesh was sentenced to death on 3 February 2011 by a trial court for the murder of his five daughters, and his death sentence was confirmed by the Madhya Pradesh High Court and the Supreme Court. On 2 February 2012, Maganlal Barela sent a mercy petition through jail authorities addressed to the President of India and the Governor of Madhya Pradesh. The prison authorities while forwarding the mercy petition

85. While preparing advice to the President on the mercy pleas, the MHA is required to examine the following: i. Personality of the accused (such as age, sex or mental deficiency) or the circumstances of the case (such as provocation or other similar justification); ii. Cases in which the Appellate court has expressed its doubt as to the reliability of the evidence and has nevertheless decided on conviction; iii. Cases where it is alleged that fresh evidence is obtainable mainly with a view to seeing whether fresh enquiry is justified; iv. Where the High Court has reversed on appeal an acquittal by a Session Judge or has on appeal enhanced the sentence. v. Difference of opinion in a Bench of two Judges necessitating reference to the third Judge of the High Court. vi. Consideration of evidence in fixation of responsibility in gang murder cases. vii. Long delays in the investigations and trial etc.

86. *Shatrughan Chauhan v. Union of India* [(2014)35SCC1]

stated *inter alia* that the petitioner was suffering from mental illness and was under constant treatment at the Central Jail, Bhopal. Yet, on 6 June 2013, the MHA advised the President of India to reject the mercy petition. There was no reference to the petitioner's mental health report in the note prepared for approval of the President. On 16 July 2013, the President rejected the petitioner's mercy petition. The Supreme Court while commuting Barela's death sentence to life imprisonment in January 2014 stated as under:

*"...the summary prepared by the Ministry of Home Affairs for the President fails to consider the mental illness as well as the opinion offered by the Prison Superintendent in terms of the M.P. Prison Manual as a ground for commutation of sentence. For all these reasons, more particularly, with regard to his mental illness, we feel that ends of justice would be met by commuting the sentence of death into life imprisonment".*⁸⁷

4.2. Violations of the right to life in custody

The violations of the right to life in police and judicial custody take place on daily basis. In order to address the menace, on 14 December 1993 the NHRC issued Guidelines directing "the District Magistrates and Superintendents of Police of every district to report to the Secretary General of the Commission about custodial deaths within 24 hours of occurrence or of these officers having come to know about such incidents" and further that the "failure to report promptly would give rise to presumption that there was an attempt to suppress the incident".⁸⁸ Pursuant to the said directions, the NHRC recorded 16,465 cases of custodial death in India from 2004-05 to 2013-14. These include 1,389 deaths in police custody and 15,076 deaths in judicial custody.⁸⁹

These statistics very likely do not accurately reflect the actual scale of the problem – many deaths in police and prison custody are not even reported to the NHRC. Further, as per Section 19 of the Protection of Human Rights Act of 1993, the NHRC does not have the jurisdiction over the armed forces.

87. Shatrughan Chauhan v. Union of India [(2014)35SCC1]

88. Available at <http://www.nhrc.nic.in/Documents/sec-1.pdf>

89. NHRC "Annual Reports from 2004-05 to 2010-11 & See Annexure referred to in reply to Lok Sabha Unstarred Question No.1414 answered by Minister of State in the Ministry of Home Affairs, Kiren Rijiju on 2.12.2014 at: <http://164.100.47.132/LssNew/psearch/QResult16.aspx?qref=8551> [Accessed 6.1.2015]

Not surprisingly, the NHRC recorded only 24 cases of death in the custody of paramilitary or defence forces from 2001-2002 to 2010-2011.⁹⁰

i. Deaths in police custody

The most common - and gravest - violation of the right to life in police custody is torture resulting in death.

The NHRC recorded 1,389 cases of death in police custody from 2004-2005 to 2013-2014. The death toll by year was 136 in 2004/05⁹¹; 139 in 2005/06⁹²; 119 in 2006/07⁹³; 187 in 2007/08⁹⁴; 127 in 2008/09⁹⁵; 124 in 2009/10⁹⁶; 146 in 2010/11⁹⁷; 128 in 2011/12⁹⁸; 143 in 2012/13⁹⁹; and 140 in 2013/14¹⁰⁰.

The Asian Centre for Human Rights has consistently underlined that the majority of the deaths in police custody are a result of torture and occur within 48 hours of the victims being taken into custody. Torture is used to extract confessions, extort bribes and settle personal scores. Terror suspects are at increased risk of torture, as there is immense pressure on the police to solve these cases and secure convictions.

These custodial deaths are often passed off as suicide, sudden medical events, self-inflicted injury, natural death, etc. Indeed, many who die in police custody are shown to fall ill the moment they are taken into custody, commit suicide

90. NHRC "Annual Reports from 2004-05 to 2010-11 & See Annexure referred to in reply to Lok Sabha Unstarred Question No.1414 answered by Minister of State in the Ministry of Home Affairs, Kiren Rijiju on 2.12.2014 at: <http://164.100.47.132/LssNew/psearch/QResult16.aspx?qref=8551> [Accessed 6.1.2015]

91. NHRC "Annual Report 2008-2009" Annexure-11, p. 169

92. NHRC "Annual Report 2008-2009" Annexure-11, p. 169

93. NHRC "Annual Report 2008-2009" Annexure-11, p. 169

94. NHRC "Annual Report 2008-2009" Annexure-11, p. 169

95. NHRC "Annual Report 2008-2009" Annexure-11, p. 169

96. NHRC "Annual Report 2009-2010" p. 18

97. NHRC "Annual Report 2010-2011" p. 174

98. See Annexure referred to in reply to Lok Sabha Unstarred Question No.1414 answered by Minister of State in the Ministry of Home Affairs, Kiren Rijiju on 2.12.2014 at: <http://164.100.47.132/LssNew/psearch/QResult16.aspx?qref=8551> [Accessed 6.1.2015]

99. See Annexure referred to in reply to Lok Sabha Unstarred Question No.1414 answered by Minister of State in the Ministry of Home Affairs, Kiren Rijiju on 2.12.2014 at: <http://164.100.47.132/LssNew/psearch/QResult16.aspx?qref=8551> [Accessed 6.1.2015]

100. See Annexure referred to in reply to Lok Sabha Unstarred Question No.1414 answered by Minister of State in the Ministry of Home Affairs, Kiren Rijiju on 2.12.2014 at: <http://164.100.47.132/LssNew/psearch/QResult16.aspx?qref=8551> [Accessed 6.1.2015]

with innocuous objects such as shoelaces, and are even able to access poison. The NCRB attributes the deaths in police custody to illness/natural death, suicide, hospitalization treatment, accident; mob attacks/riots, escaping from custody etc.¹⁰¹

The police are granted excessive powers for arbitrary arrest and detention. The Supreme Court framed the guidelines on arrest and detention but these guidelines are seldom followed and deaths in custody continue to take place.¹⁰²

101. NCRB “Crime in India 2013” Chapter 17

102. On 18 December 1996, the Supreme Court in the case of *D.K. Basu v. the State of West Bengal* [(1997) 1 SCC 416] laid down guidelines to be followed in all cases of arrest or detention until legal provisions are made in order to prevent custodial violence. The guidelines are as follows:

- 1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
- 2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
- 3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- 4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- 5) The persons arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- 6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particularly of the police officials in whose custody the arrestee is.
- 7) The arrestee should, where he so requests be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The “Inspection Memo” must be signed both by the arrestee and the police officer effecting the arrest and its copy provide to the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- 8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.
- 9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Illaqa Magistrate for his record.
- 10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
- 11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

i) Emblematic cases

While there are thousands of cases of custodial deaths, in this report Asian Centre for Human Rights highlights a few of them in which violation of the right to life as a result of torture has been established by the NHRC.

Case 1: Mohan Lal, Jammu and Kashmir - tortured to death

Mohan Lal, a rickshaw puller, of Mahal village in Amritsar, Punjab was suspected of being involved in burglaries that had taken place in Jammu in J&K. On 21 June 2003, police from J&K picked him up from Amritsar and took him to Jammu for interrogation. He was tortured in custody and moved to hospital on 1 July 2003, after his condition deteriorated. On 2 July 2003, he succumbed to his injuries.

Post-mortem examination revealed 41 ante-mortem injuries, including incised wounds of the kind made with broken bottles or knives, blisters and electric current marks.

Based on these findings, the NHRC concluded in September 2009 that Mohan Lal had died due to torture in custody and directed the State Government of J&K to pay Rs. 500,000 (five hundred thousand) as compensation to his family. However, the state government refused to comply, arguing that the NHRC was exceeding its jurisdiction by issuing such directions in the context of a death in State police custody. On 27 December 2010, the NHRC set aside the contention of the Jammu & Kashmir Government and reiterated its order. The State Government then filed a writ petition in the J&K High Court challenging the order of the NHRC.¹⁰³

Case 2. Krishna Murthy, Tamil Nadu - tortured to death

On 1 February 2009, Krishna Murthy died in police custody at Tiruverumbur police station in Tiruchirapalli district, Tamil Nadu. He was taken into custody for interrogation in connection with a case of theft on 31 January 2009. Police claimed Krishna Murthy had been taken ill after having a meal on the way to the police station. After the meal, he complained of chest pain

103. Writ petition No.980/2011. ACHR complaint dated 9.7.2003 to NHRC, registered as Case No. 55/9/2003-2004-AD

and difficulty in breathing. He was then taken to hospital for examination. The doctors declared him dead on arrival. His family members alleged that Krishna Murthy died due to police torture.

The post mortem report revealed a number of injuries. The histopathology report concluded that death had been caused by blunt wounds to the thorax and abdomen, including the liver, kidneys and heart. A magisterial enquiry concluded that these wounds were caused due to police torture during interrogation. The enquiry noted that Krishna Murthy was already suffering from ailments of the liver, kidney and heart, which were aggravated by the blows inflicted on him by the police, leading to his death.

The State Government of Tamil Nadu admitted that police personnel were responsible and paid Rs. 100,000 as compensation to Krishna Murthy's family. The NHRC declared this as grossly inadequate and directed the state government to pay Rs. 500,000 (five hundred thousand).¹⁰⁴

Case 3: Sngewlem Kharsati, Meghalaya - tortured to death

On 9 May 2009, Sngewlem Kharsati, a minor of 17 years of age, died in the custody of Mawryngkneng Police Outpost in the East Khasi Hills district of Meghalaya. Kharsati was returning home from work when he was picked up by a group of police personnel. He was tortured in custody and died shortly after. The police took him to hospital where he was declared dead on arrival. The police claimed that Kharsati died due to injuries he suffered when beaten by truck drivers while he was attempting to rob in a traffic jam.

The post mortem report revealed several abrasions, contusions and lacerations and a magisterial enquiry report concluded that *"the police version of the incident is not validated"*. The NHRC also rejected the police version, observing, *"It is difficult to believe that any person would dare commit robbery when there is a traffic jam and so many persons are around. The victim had already died when he was taken to the hospital."* The NHRC held the police guilty for Kharsati's death and directed the State Government of Meghalaya to pay

104. ACHR's complaint dated 4.2.2009 to NHRC, registered as Case No. 2349/22/36/08-09-AD

compensation of Rs. 500,000 (five hundred thousand) to his family, which the Government complied with.¹⁰⁵

Case 4: Rajbal, Uttar Pradesh - tortured to death

On 7 July 2009, Rajbal died in custody of the Chappar police station in Muzaffarnagar district, Uttar Pradesh. Rajbal, a Dalit, was brought to the Chappar Police Station for interrogation on the same day after a complaint was filed against him in a case related to a land dispute. Rajbal's brother Mayaram, who was also brought to the police station along with him, said Rajbal was beaten with sticks till he fell unconscious. When Rajpal regained consciousness, he was again beaten with sticks. His condition rapidly deteriorated and the police took both brothers to hospital, where the attending doctor declared that Rajbal had been brought dead to the hospital. The police claimed Rajbal died of a heart attack.

The Crime Branch-Criminal Investigation Department (CB-CID) which investigated the case established that three police officials, a sub-inspector and two constables, had caused Rajbal's death through torture, and filed a charge sheet against them. The State Government of Uttar Pradesh paid compensation of Rs. 500,000 (five hundred thousand) to Rajbal's family as directed by the NHRC.¹⁰⁶

Case 5: Sampath, Kerala - tortured to death

On 30 March 2010, Sampath, who had been accused in a murder case, died due to torture in the custody of the Palakkad North police station in Palakkad district of Kerala. Sampath was picked up for questioning in a murder case and taken to various parts of Coimbatore for recovering evidence. The police claimed Sampath had complained of chest pain and died in hospital. However, his family alleged that he died due to torture.

The post-mortem report revealed that Sampath died of internal hemorrhage due to injuries in the head inflicted due to torture. He had sustained 63 injuries, including three broken ribs, apparently due to the use of extreme

105. ACHR complaint dated 11.5.2009 to NHRC, registered as Case No. 10/15/2/09-10-AD

106. ACHR's complaint dated 8.7.2009 to NHRC, registered as Case No. 14530/24/57/09-10-PCD

torture methods, such as being hit with hard objects, the report said. The State Government of Kerala paid compensation of Rs. 500,000 (five hundred thousand) to Sampath's wife following the recommendation of the NHRC.¹⁰⁷

Case 6: Rajesh Bodra, Jharkhand - tortured to death

On 12 November 2013, Rajesh Bodra died due to torture in the custody of Potka police station in East Singhbhum district, Jharkhand. Rajesh Bodra was picked up by a police officer from his house on 11 November 2013. He was dropped back the next day in a serious condition and died shortly afterwards. The deceased's mother alleged that Rajesh Bodra had been tortured by the police, which resulted in his death.

The NHRC observed *"It appears that the deceased was allegedly taken to the police station Potka where he was subjected to custodial violence leading to his death in police custody."* The NHRC also noted that neither the District Magistrate nor the Superintendent of Police, East Singhbhum district reported the custodial death within 24 hours as is required by NHRC guidelines.¹⁰⁸ The case is pending with the NHRC.

ii. Deaths in judicial custody

Thousands of detainees die in prisons. According to the NCRB, 92.8% of the deaths reported from jails in India during 2013¹⁰⁹ are natural deaths. While the remaining deaths occurred due to suicide, murder by inmates, death due to firing, assault by outside elements etc.¹¹⁰ However, a number of deaths in judicial custody also take place as a result of torture, denial of medical facilities and inhuman prison conditions that amount to torture, inhuman or degrading treatment. The NCRB reported only 33 deaths due to negligence or excesses by jail personnel in the last 10 years from 2004 to 2013.¹¹¹ This is not the truth as the NHRC had recommended compensation to next of kin of deceased who died in judicial custody in 86 cases during 2010-11 alone.¹¹²

107. ACHR complaint dated 31.3.2010 to NHRC, registered as Case No. 113/11/10/2010-AD

108. JHRM complaint dated 13.11.2013 to NHRC, which was registered case No. 1430/34/6/2013.

109. NCRB recorded 1,597 deaths in jails across the country in the calendar year 2013. While the NHRC statistics pertains to financial years starting from April to March

110. NCRB "Prison Statistics India 2013" Chapter 9

111. NCRB, "Prison Statistics India 2004 to 2013"

112. NHRC, "Annual Report, 2010- 2011, Annexure-6, pp 179-187

a. Emblematic cases

Some illustrative cases are given below:

Case 1: Death of Kewal Singh at Central Jail Ferozepur, Punjab

On 20 April 2007, Kewal Singh @ Gola, an undertrial prisoner, died in the Central Jail Ferozepur, Punjab. Post mortem examination of Kewal Singh had revealed 13 injuries on his body. On 22 April, the Punjab and Haryana High Court taking cognizance of a newspaper report of the incident ordered a judicial enquiry into the circumstances leading to the death of the undertrial. The jail authorities claimed that the undertrial turned violent when taken out of his cell for taking a bath and sustained injuries after he started running and jumping from one wall to another. Later, he was rushed to hospital when his condition became critical and declared brought dead. The judicial enquiry concluded that the Kewal Singh died after being subjected to torture both at the Sub Jail, Moga and the Central Jail, Ferozepur. An executive magisterial enquiry report also concluded torture by the jail staff. The police informed the High Court that criminal prosecution had been initiated against the accused officials. On 15 February 2008, the High Court awarded Rs. 10,00,000 (one million) to the next of the deceased.¹¹³

Case 2: Death of 10 prisoners in Cherlapally Jail, Andhra Pradesh

At least 10 prisoners died at the Cherlapally Jail in Hyderabad, Andhra Pradesh from January to October 2007. Of them, nine died due to alleged lack of proper medical care and one identified as D. Bhaskar died due to torture. A report submitted to the NHRC by the Director General and Inspector General of Prisons and Correctional Services, Andhra Pradesh stated that torture of convict prisoner D. Bhaskar by Jailor R. K. Harinath, Head Warder K. Venkateswara Rao and two warders M. Anjaneyulu and D. Srinivasa Reddy was confirmed by an investigation by Additional Inspector General of Prisons, Hyderabad. The post mortem report of D Bhaskar found 23 external ante mortem injuries. Jailor R. K. Harinath was arrested and sent to judicial remand but the other accused jail officials

113. See “Punjab-Haryana High Court On Its Own Motion v. State Of Punjab”, 15.2.2008, at <http://indiankanoon.org/doc/1791797/>

obtained anticipatory bail from the High Court of Andhra Pradesh. All the four prison officials were suspended and further disciplinary action was initiated against them.¹¹⁴

Case 3: Death of Venkatesan at Central Jail, Puzhal, Tamil Nadu

On 31 January 2008, Venkatesan, a life convict, died in judicial custody at Central Jail, Puzhal, Tamil Nadu. The jail officials claimed that the prisoner died due to illness during treatment at hospital. The inquest report stated that the prisoner was brought dead to the hospital. In its order dated 10 April 2012, the Madras High Court concluded that death of *“Venkatesan was not due to any natural cause and it must be triggered by torture inflicted on him while he was in custody”*. Accordingly, the High Court ordered the state government of Tamil Nadu to pay Rs. 500,000 (five hundred thousand) as compensation to the next of kin of the deceased noting that once it is proved that there was torture inflicted on the prisoner who was kept inside, the State must take responsibility for the well being of the prisoner.¹¹⁵

Case 4: Death of Amulbabu @ Amul at Central Jail Cuddalore, Tamil Nadu

On 4 August 2009, Amulbabu @ Amul, an undertrial prisoner lodged at Central Jail, Cuddalore, Tamil Nadu, died on the way to hospital after he sustained injuries in the jail. A magisterial enquiry while rejecting the possibility of the prisoner committing suicide stated that there was the possibility of Amulbabu being tortured and recommended action against the jail officials for murder. Accepting the report of the magisterial enquiry the State Government of Tamil Nadu had ordered criminal action and departmental proceedings against 11 jail officials in connection with the death of Amulbabu.¹¹⁶

Case 5: Death of Sunder in Tihar jail, Delhi

In February 2010, Sunder, a prisoner lodged at Tihar Jail in Delhi, died of torture by two convicts and two jail officials during a quarrel. The inquest

114. ACHR's complaint dated 30.10.2007 to NHRC, registered as Case No. 938/1/7/07-08-AD

115. Madras High Court *“V.Valli v. The State Of Tamil Nadu, 10.4. 2012”* http://judis.nic.in/judis_chennai/qrydisp.aspx?filename=36229

116. The Hindu, *“Cuddalore jail officials face action for undertrial's death”*, 8.9.2011, <http://www.thehindu.com/todays-paper/tp-national/cuddalore-jail-officials-face-action-for-undertrials-death/article2434187.ece> [Accessed 19.1.2015]

report conducted on the deceased stated that the Head Warder and the Warder along with the two inmates were involved in beating the victim. On 24 May 2010, the Delhi High Court while enhancing compensation of Rs. 100,000 (one hundred thousand) offered by the Delhi government to Rs. 300,000 to the next of kin of Sunder observed that *“right to life of a person cannot be crippled or clipped by the authorities when he is in custody”*. The High Court had converted a letter written to the then Union Law Minister Veerappa Moily by a brother of the deceased regarding the incident into a petition. The deceased’s brother had written the letter when the jail authorities took no action on his complaint about the mysterious death of his brother. The Minister had forwarded the letter to the High Court.¹¹⁷

Case 6: Death of Puran Oraon at Birsa Munda Central Jail, Jharkhand

On 6 October 2014, Puran Oraon, a resident of Pithoria in Kanke block of Ranchi, Jharkhand, was sent to judicial custody at Birsa Munda Central Jail in connection with a case of attempt to murder. Four days later (10 October), Oraon was suddenly shifted to hospital and died on the same day. Jail officials claimed that Oraon was a junkie and sustained injuries when he banged himself against the walls and grills inside his cell. The family members alleged that Oraon was tortured to death inside the jail. In her complaint to the National Commission for Scheduled Tribes (NCST) Oraon’s daughter stated the body of her father’s bore sign of torture and that during their visit to the jail they found him hale and hearty prior to his death. Based on the complaint, the NCST had asked the Inspector General (Prisons), Jharkhand to file a formal FIR against the jail superintendent and other officials.¹¹⁸

Case 7: Death of Raju Punjabi @ Raj Guru in Taloja Central Jail, Maharashtra

On 13 November 2014, Raju Punjabi @ Raj Guru, an undertrial prisoner lodged at Taloja Central Jail in Navi Mumbai, Maharashtra, died at a hospital during treatment to injuries sustained on his body. The Jail Superintendent claimed that Raju Punjabi suddenly started vomiting blood and taken to hospital where he died. However, in a letter written by seven fellow inmates

117. ACHR “Torture in India 2011” <http://www.achrweb.org/reports/india/torture2011.pdf>

118. The Telegraph, “ST panel glare on jail death”, 5.11.2014, http://www.telegraphindia.com/1141105/jsp/jharkhand/story_18999446.jsp#.VLyfwSuUeS4 [Accessed 19.1.2015]

to the Metropolitan Magistrate's Court in Dindoshi alleged that the deceased had succumbed to injuries after being tortured by a senior jail official on 7 October 2014. The letter further alleged that they witnessed Raju Punjabi being severely beaten by the official including on his private parts and they were made to give false statements when the magisterial inquiry was conducted into the incident. The autopsy report of the deceased stated that he died due to rupture of blood vessels of the esophagus due to deep injuries inside the body. The medical examination also revealed injuries in the private parts as alleged by the inmates.¹¹⁹

iii. Deaths in the custody of the Army and the Central paramilitary forces

India continued to be seriously affected by terrorism and internal armed conflicts where the central para-military forces and the Army are deployed. At least 188 districts have been notified as “disturbed” under the AFSPA and declared affected by Left Wing Extremist (LWE) violence in 17 States. These included 71 districts notified as “disturbed” under the AFSPA in Assam¹²⁰; Arunachal Pradesh¹²¹; Manipur¹²²; Meghalaya¹²³; and Nagaland¹²⁴ in the north east India and 20 out of 22 districts in Jammu and Kashmir; and 105 districts declared as LWE affected in ten states of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra¹²⁵, Orissa, Telengana, Uttar Pradesh and West Bengal.¹²⁶

119. The Indian Express, “Undertrial beaten to death by official, Talaja jail inmates tell court”, 7.1.2015, <http://indianexpress.com/article/cities/mumbai/undertrial-beaten-to-death-by-official-taloja-jail-inmates-tell-court/> [Accessed 19.1.2015]

120. Entire state of Assam with 27 districts is notified as disturbed

121. Three districts namely Changlang, Longding and Tirap are notified as disturbed in Arunachal Pradesh and eight districts which share border with Assam within 20 km belt are also notified as disturb

122. Entire state of Manipur with nine districts, except Imphal Municipality area, is notified as disturbed

123. Nine out of 11 districts of Meghalaya sharing border with Assam within 20 km belt are notified as disturb

124. Entire state of Nagaland with 11 districts is notified as disturbed

125. Only 3 districts in Maharashtra are LWE affected as Aheri, which is a sub-division under Gadchiroli district, is wrongly shown as district by the MHA

126. Ministry of Home Affairs ‘Statistics of LWE violence (2009 to 2014)’ http://mha.nic.in/sites/upload_files/mha/files/LWEViolenceStatistics2014.PDF

Section 4 of the AFSPA empowers the central security forces to arrest without warrant¹²⁷ and search without warrant¹²⁸. Though Section 5 of the AFSPA directs the central security forces to hand over any person arrested and taken into custody under the Act to the officer in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest, this is seldom respected leading to deaths in custody. As the NHRC does not have the mandate over the armed forces as per Section 19 of the Human Rights Protection Act¹²⁹, 1993 and there is no system to record the deaths in the custody of the armed forces.

It is therefore not surprising that the NHRC recorded only 23 cases of death in paramilitary/defence forces custody i.e. 1 case in 2003-04¹³⁰; 7 cases in 2004-05¹³¹; 4 cases in 2005-06¹³²; 1 case in 2006-07¹³³; 4 cases in 2007-08¹³⁴; 6 cases in 2008-09¹³⁵; 2 cases in 2009-10¹³⁶; and 2 cases in 2010-11.¹³⁷

127. Section 4(c) of the AFSPA empowers any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area, to “arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest”.

128. Section 4(d) of the AFSPA empowers any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area, to “enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to, be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary.”

129. Section 19. “Procedure with respect to armed forces (1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely :- (a) it may, either on its own motion or on receipt of a petition, seek a report from the Central Government; b) after the receipt of the report, it may, either not proceed with the complaint or, as the case may be, make its recommendations to that Government.

(2) The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow.

(3) The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations.

(4) The Commission shall provide a copy of the report published under sub-section (3) to the petitioner or his representative.

130. NHRC “Annual Report 2003-2004” Annexure-15, p. 316

131. NHRC “Annual Report 2004-2005” Annexure-1, p. 211

132. NHRC “Annual Report 2005-2006” Annexure-2, p. 240

133. NHRC “Annual Report 2006-2007” Annexure-4, p. 215

134. NHRC “Annual Report 2007-2008” p. 7

135. NHRC “Annual Report 2008-2009” p. 7

136. NHRC “Annual Report 2009-2010” Annexure-2, p. 136

137. NHRC “Annual Report 2010-2011” Annexure-2, p. 174

a. Emblematic cases

Case 1: Death of Biswajit Acharjee due to torture by Indian Army, Assam

At about 11 pm on 31 May 2004, Biswajit Acharjee, resident of Jhulanpool Road under Lumding police station in Nagaon district, Assam, was apprehended by the 94th Field Regiment of Indian Army. He was in Army custody till 5.45 pm of 1 June 2004. Biswajit died on 2 June. In a petition filed in the Guwahati High Court the deceased's wife alleged that Biswajit Acharjee was tortured in Army custody and died as a result of the injuries sustained after his release. The allegation of torture was denied by the Army based on a medical examination report obtained from a doctor on 1 June who certified him to be both physically and mentally fit and that there were no injuries. However, a police enquiry concluded that Biswajit Acharjee was tortured by the Indian Army while he was in their custody. The autopsy report concluded that the deceased died due to shock and hemorrhage as a result of the injuries found on the body of the deceased. On 11 March 2014, the Guwahati High Court ruled that Biswajit Acharjee indeed died due to torture in Army custody and awarded Rs. 10,00,000 (one million) to the wife of the deceased.¹³⁸

Case 2: Death of Masud Rana Sarkar due to torture by the BSF, West Bengal

On 5 March 2007, Masud Rana Sarkar died due to torture by the personnel of 72nd Battalion of the Border Security Force (BSF) posted at Daudpur village under Kumarganj police station in South Dinajpur district, West Bengal. Three other family members of the deceased also sustained injuries due to torture. The Magisterial Enquiry Report submitted to the NHRC clearly established that a group of the BSF personnel caused grievous injuries to the victims, including two women and the deceased died due to the injuries. The General Security Force Court of the BSF had exonerated all the five accused BSF personnel who were tried for committing offences under Section 45 of BSF Act and rules i.e. 'committing a civil offence' read with Sections 302 and 323 of the IPC i.e. 'culpable homicide amounting to murder' and 'voluntarily causing hurt'. The Director General of the BSF requested the NHRC to close

138. Guwahati High Court "WP(C) No. 4454 of 2005 dated 13.3.2014" <http://ghconline.gov.in/Judgment/WPC44542005.pdf> [Accessed 23.1.2015]

the case without providing the grounds on which the accused personnel were exonerated in the first place. However, based on the magisterial inquiry, the NHRC directed the Ministry of Home Affairs to pay compensation of Rs 500,000 (five hundred thousand) to the next of kin of the deceased, and Rs 50,000 (fifty thousand) each to the injured victims.¹³⁹

Case 3: Death of Burman Moran due to torture by the Indian Army, Assam

On 27 October 2009, the NHRC directed the Ministry of Defence (MoD) to pay compensation of Rs. 500,000 (five hundred thousand) to the family of Burman Moran who died due to torture in the custody of the 6th Jat Regiment of the Indian Army on 19 February 2003. The State Government of Assam informed the NHRC that Burman Moran was apprehended by the personnel of the 6th Jat Regiment on 5 February 2003 on suspicion of having links with extremists. On 6 February, Burman Moran was produced at Doomdooma police station and an FIR under various sections of the IPC was registered against him. On 8 February, he was sent to judicial custody with multiple injuries. On 19 February, Burman Moran succumbed to the injuries while undergoing treatment in hospital. On 29 April 2009, the NHRC concluded that Burman Moran died due to torture subjected by the personnel of the 6th Jat Regiment.¹⁴⁰

Case 4: Death of Sajahan Gazi due to torture by the BSE, West Bengal

On 11 November 2009, Sajahan Gazi, son of Afsar Gazi, died due to torture in the custody of the 126th Battalion of the BSF at Dobila Camp under Swarupnagar police station in 24 Parganas (North) district of West Bengal. Sajahan Gazi was apprehended by the BSF personnel on the charge of being a smuggler on 10 November. According to the autopsy report, there were multiple injuries on the body of the deceased. The Medical Officer opined that the cause of death was due to the effect of injuries noted in the autopsy report. The Magisterial Enquiry Report concluded that Sajahan Gazi was mercilessly beaten with rifle butts in custody resulting in his death. The magisterial enquiry report also stated that the police connived with the BSF

139. ACHR's complaint dated 20.3.2007 to NHRC, registered as Case No. 180/25/18/07-08-PF

140. NHRC, A.nnual Report 2009-10, pp. 40-41, http://nhrc.nic.in/Documents/AR/NHRC_Annual_Report-09-10_Eng.pdf

to cover up the incident. The NHRC directed the MHA to pay Rs. 500,000 (five hundred thousand) to the deceased's family.¹⁴¹

Case 5: Killing of Abdul Haque, Tripura

On 27 January 2011, Abdul Haque, a local resident was killed by a BSF personnel at Durgapur village near India-Bangladesh border in West district of Tripura. The local residents alleged that the deceased was an auto rickshaw driver and killed in cold blood. The BSF claimed that the deceased was a cattle smuggler and killed when a personnel of the BSF opened fire in self defence when he was surrounded by five men who were attacking him with sticks and *daos*. However, the NHRC rejected all the claims of the BSF which justified the killing and directed the MHA to pay compensation of Rs. 500,000 to the next of kin of the deceased. The payment of compensation established that the killing was unlawful.¹⁴²

Case 6: Killing of Abu Hanif, Tripura

On 14 May 2011, Abu Hanif, a daily wage labourer, was killed by a BSF personnel at Sonapur area under Sonamura Sub-Division in West District of Tripura. The deceased was returning home from the local market when he was shot dead from point blank range by the accused BSF personnel belonging to the 19th Battalion of the BSF posted at Bolardhepa Border Out-post. The BSF personnel opened fire at the deceased without issuing any warning. The BSF claimed that the deceased was a smuggler and killed in self defence by the BSF. The NHRC directed the MHA to pay a compensation of Rs. 700,000 to the next of kin of the deceased after it found that the deceased was killed unlawfully. The NHRC closed the case on compliance of its order.¹⁴³

Case 7: Death of Heikham Nando Singh due to alleged torture by the Assam Rifles, Manipur

On 26 November 2011, Heikham Nando Singh, son of H Manglemjao, resident of Khurkhul Mayai Leikai village under Sekmai police station in Imphal West district of Manipur, died due to alleged torture in the custody of the 30th AR. Nando Singh was picked up on suspicion of being involved

141. Joint complaint of ACHR & MASUM dated 29.11.2009 to NHRC, registered as Case No. 606/25/15/09-10-AD

142. ACHR complaint dated 28.1.2011 to NHRC, registered as Case No. 7/23/4/2011-PF

143. ACHR complaint dated 3 June 2011 to NHRC, registered as Case No. 24/23/4/2011-PF

in anti-social activities by the AR posted at Loitang Khunou Spinning Mill on 25 November 2011. Family members and locals present at the place when the deceased was being picked up stated that the AR personnel did not give specific reason or issue arrest memo when asked for. Following report of the death of Nando Singh, the residents of the area held a public meeting demanding action against the guilty. Currently, a Division Bench of the NHRC is examining the reports submitted by the authorities for final adjudication of the case.¹⁴⁴

Case 8: Death of Gulach Munda due to torture in CRPF custody, Jharkhand

On 14 January 2012, Gulach Munda, an alleged member of the CPI-Maoist, was taken into custody by personnel of the Central Reserve Police Force (CRPF) from his residence under Musabani police station in West Singhbhum district of Jharkhand. Later, he was handed over to the police and died. Bhojo Munda, father of the deceased, alleged that his son was tortured by the CRPF which resulted in his death. However, the police claimed that Gulach Munda died during treatment in hospital due to illness. The NHRC which intervened into the matter pursuant to a complaint filed by Jharkhand Human Rights Movement concluded that *“The postmortem report found several injuries on the body, and noted that these were ante-mortem caused by a hard and blunt object, and sufficient to cause death collectively in the ordinary course of nature.* Rejecting the claim of the police and the CRPF that the injuries were inflicted by the Maoists, the NHRC noted *“The claim of the police about the Maoists inflicted the injuries from which Gulach Munda died is not, therefore, tenable”.* The NHRC strongly observed in its report, *“If, within three hours after his arrest, Gulach Munda had to be brought to the PHC in the condition recorded by the doctor (who did not record that the patient was intoxicated); the injuries could only have been inflicted while he was in the custody of the CRPF or the police.”* Further observing violation of human rights of Gulach Munda, the NHRC stated *“it would be appropriate for the State to make reparations. It therefore asks the Government of Jharkhand to show cause why it should not recommend relief for the next of kin.”*¹⁴⁵

144. ACHR's complaint dated 29.11.2011 to NHRC, registered as Case No. 124/14/15/2011-AD

145. JHRM complaint dated 17.01.2012 to NHRC, which was registered case No. 106/34/6/2012-AD

Case 9: Killing of six persons by BSF in Jammu and Kashmir

On 18 July 2013, at least six persons were killed and about 24 injured after the BSF personnel opened fire on protesters in Ramban district of Jammu and Kashmir. Four persons died on the spot and two others succumbed to injuries in hospital. The BSF personnel opened fire following clashes with the agitated protestors. The protesters alleged desecration of a mosque and beating up of an Imam by some BSF personnel.¹⁴⁶ The State Government of Jammu and Kashmir provided Rs. 500,000 to next of kin of each of the deceased.¹⁴⁷

4.3. Violations of the right to life in encounters

The violation of the right to life through extrajudicial executions in alleged armed encounters is one of the most serious human rights violations. The security forces including the police, the Central paramilitary forces and the army regularly resort to violations of the right to life in fake encounters.

i. Extrajudicial killings by the police

The NHRC registered 1,654 cases of encounter deaths at the hands of the police from 2004-05 to 2013-14. These include 122 cases in 2004-2005¹⁴⁸; 157 cases in 2005-2006¹⁴⁹; 301 cases in 2006-2007¹⁵⁰; 177 cases in 2007-2008¹⁵¹; 132 cases in 2008-2009¹⁵²; 111 cases in 2009-2010¹⁵³; 199 cases in

146. India Today, "Kashmir Valley tense, to remain under curfew from today following BSF firing which left 6 dead", 18.7.2013, <http://indiatoday.intoday.in/story/jammu-and-kashmir-bsf-firing-incident-ramban-district-protesters/1/291947.html>

147. Daily News and Analysis, "BSF firing in Ramban: Amarnath yatra suspended for second day as curfew remains in effect", 20.7.2013, <http://www.dnaindia.com/india/report-bsf-firing-in-ramban-amarnath-yatra-suspended-for-second-day-as-curfew-remains-in-effect-1863331>

148. NHRC "Annual Report 2004-2005" p. 211

149. NHRC "Annual Report 2005-2006" p. 240

150. NHRC "Annual Report 2006-2007"

151. NHRC "Annual Report 2007-2008"

152. NHRC "Annual Report 2008-2009"

153. NHRC "Annual Report 2009-2010"

2010-2011¹⁵⁴; 150 cases in 2011-2012¹⁵⁵; 168 cases in 2012-2013¹⁵⁶ and 137 cases in 2013-14¹⁵⁷.

Among the states, Uttar Pradesh reported the highest number of encounter deaths with 636 cases during 2004-2005 to 2012-2013, followed by Assam (295); Andhra Pradesh (86); Maharashtra (75); Jharkhand (58); Chhattisgarh (51); Madhya Pradesh (47); Delhi and Uttarakhand (45 each); Odisha (41); Manipur (40); Karnataka (38); Meghalaya (35); West Bengal (31); Haryana (29); Tamil Nadu (26); Bihar (24); Rajasthan (14); Punjab (13); Arunachal Pradesh (8); Gujarat (7); Jammu & Kashmir (6); Tripura (2); Kerala and Andaman & Nicobar Islands (1 each).

A significant number of the encounter deaths had been held fake by the NHRC. In December 2012, the NHRC informed the Supreme Court that it had awarded compensation in 191 cases of fake encounter killings in the last five years.¹⁵⁸

A. Emblematic cases of fake encounter killings by the police

Case 1: Killing of Israt Jahan and three others, Gujarat

On 15 June 2004, Ishrat Jahan, Pranesh Pillai @ Javed Sheikh, Amjad Ali Rana and Zeeshan Johar were killed by a police team led by Deputy Inspector General of Police, D G Vanjara in an alleged encounter in Ahmedabad, Gujarat. The police claimed that Ishrat Jahan and three others were a part of the terror group Lashkar-e-Toiba which was planning to assassinate then Chief Minister of Gujarat Narendra Modi and they were killed in an encounter. However, the

154. Annexure referred to in reply dated 17.12.2013 to Lok Sabha Unstarred Question No. 1979 by Minister of State in the Ministry of Home Affairs, <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=149197> [Accessed 28.11.2014]

155. Annexure referred to in reply dated 17.12.2013 to Lok Sabha Unstarred Question No. 1979 by Minister of State in the Ministry of Home Affairs, <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=149197> [Accessed 28.11.2014]

156. Annexure Referred to in reply dated 17.12.2013 to Lok Sabha Unstarred Question No. 1979, by Minister of State in the Ministry of Home Affairs, <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=149197> [Accessed 28.11.2014]

157. Annexure referred to in reply dated 13.8.2014 to Rajya Sabha Unstarred Question No. 3733 by Minister of State in the Ministry of Home Ministry, <http://mha1.nic.in/par2013/par2014-pdfs/rs-130814/RS%203733.pdf> [Accessed 7.1.2015]

158. The Times of India, "191 fake encounters in last five years, NHRC tells Supreme Court", 5.12.2012 <http://timesofindia.indiatimes.com/india/191-fake-encounters-in-last-five-years-NHRC-tells-Supreme-Court/articleshow/17486080.cms> [Accessed on 28 November 2014]

CBI which investigated the case following order by the Gujarat High Court in a chargesheet filed before a local court in Gujarat in July 2013 stated that Ishrat Jahan and three others were killed in cold blood by the Gujarat Police after they were picked up. The CBI found no evidence to establish that they had come to Gujarat to kill the then Chief Minister. The CBI named eight police officers of Gujarat for their involvement in the killing.¹⁵⁹ Earlier, a court appointed Special Investigation Team (SIT) and a magisterial enquiry concluded the encounter fake.¹⁶⁰ The CBI had arrested eight police officers accused in the case namely G L Singhal, Tarun Barot, J G Parmar, N K Amin, Bharat Patel, Anaju Chaudhary, D G Vanzara¹⁶¹ and P P Pande.¹⁶²

Case 2: Killing of Sohrabuddin Sheikh, Gujarat

On 26 November 2005, Sohrabuddin Sheikh was killed by the Anti-Terror Squad (ATS) team of Gujarat Police in an alleged encounter near Gandhinagar in Gujarat. The police claimed that Sohrabuddin was an alleged gangster having links with Pakistan-based terror outfit Lashkar-e-Taiba and killed in an encounter. However, family members alleged that Sohrabuddin and his wife, Kausarbi were abducted by the ATS when they were on way from Hyderabad to Sangli in Maharashtra. Sohrabuddin was killed while his wife disappeared and suspected to have been killed.¹⁶³ In April 2007, D G Vanzara, then Deputy Inspector General of Police, was arrested along with two other police officers, Rajkumar Pandian and Dinesh M N, in connection with the encounter killing.¹⁶⁴ Tulsiram Prajapati, an aide of Sohrabuddin and an eyewitness to the encounter, was also allegedly killed by the police at Chapri village in Banaskantha district in Gujarat in December 2006. In

159. IBN Live, "Ishrat case: CBI may seek more time from HC to probe conspiracy angle", 4.7.2013 <http://ibnlive.in.com/news/ishrat-case-cbi-may-seek-more-time-from-hc-to-probe-conspiracy-angle/403924-3-238.html>

160. Hindustan Times, "Ishrat case timeline", 2.12.2011, <http://www.hindustantimes.com/india-news/ishrat-case-timeline/article1-686478.aspx>

161. Ishrat case: Court grants permission to arrest Vanzara, The Hindu, 4 June 2013, <http://www.thehindu.com/news/national/other-states/ishrat-case-court-grants-permission-to-arrest-vanzara/article4781428.ece>

162. Out on Bail in Ishrat Jahan Encounter Case, Gujarat Cop Gets His Old Post Back, NDTV, 11 February 2015, <http://www.ndtv.com/india-news/out-on-bail-in-ishrat-jahan-encounter-case-gujarat-cop-gets-his-old-post-back-738287>

163. Sohrabuddin Sheikh fake encounter case: Charges against Geeta Johari dropped, Firstpost, 3 March 2015 http://www.firstpost.com/india/sohrabuddin-sheikh-fake-encounter-case-charges-geeta-johari-dropped-2132439.html?utm_source=FP_TOP_NEWS

164. Former Gujarat top cop Vanzara gets bail in Sohrabuddin case, The Indian Express, 11 September 2014, <http://indianexpress.com/article/india/india-others/former-gujarat-top-cop-vanzara-gets-bail-in-sohrabuddin-case/>

September 2012, the case was transferred to Mumbai at the CBI's request for fair trial. In 2013, the Supreme Court had clubbed Tulsiram Prajapati's encounter killing case with that of Sohrabuddin. On 2 March 2015, a special CBI court dropped charges against Gujarat Additional Director General of Police Geeta Johari in connection with Sohrabuddin Sheikh and Tulsiram Prajapati fake encounter cases for want of mandatory sanction from the Gujarat government for her prosecution. Johari was charged with delaying the investigations in the Prajapati case and destruction of evidence. Earlier, the court had discharged then Gujarat Home Minister and current national President of ruling Bharatiya Janata Party and others from the case.¹⁶⁵

Case 3: Killing of Dara Singh, Rajasthan

On 23 October 2006, Dara Singh, an alleged criminal, was killed by a Special Operation Group team of Rajasthan Police in an alleged fake encounter on the outskirts of Jaipur, Rajasthan. Dara Singh's widow alleging the encounter as fake approached the Supreme Court for a fair investigation. The Supreme Court handed over the investigation to the CBI.¹⁶⁶ The CBI registered the case on 23 April 2010 and took up investigation. On 3 June 2011, the CBI filed charge-sheet against 16 accused persons.¹⁶⁷ In 2011, a division bench of the Supreme Court while directing two senior police officers allegedly involved in the fake encounter killing to surrender observed that *"Fake encounter killings by cops are nothing but cold-blooded brutal murder which should be treated as the rarest of rare offence and police personnel responsible for it should be awarded death sentence. They should be hanged"*.¹⁶⁸

Case 4: Killing of Ram Narayan Gupta, Maharashtra

On 11 November 2006, a police team picked up Ram Narayan Gupta alias Lakkhan Bhaiya, from Vashi on the suspicion that he was a member of fugitive gangster Chhota Rajan. Ram Narayan was killed in an alleged encounter

165. Sohrabuddin Sheikh fake encounter case: Charges against Geeta Johari dropped, Firstpost, 3 March 2015 http://www.firstpost.com/india/sohrabuddin-sheikh-fake-encounter-case-charges-geeta-johari-dropped-2132439.html?utm_source=FP_TOP_NEWS

166. Times of India, "Dara Singh fake encounter: Ponnuchami gets interim bail", 10.5.2014, <http://timesofindia.indiatimes.com/city/jaipur/Dara-Singh-fake-encounter-Ponnuchami-gets-interim-bail/articleshow/34895734.cms>

167. CBI Press Release dated 7.4.2012, http://cbi.nic.in/pressreleases/pr_2012-04-07-1.php

168. NDTV, "Hang cops involved in fake encounters: Supreme Court", 8.8.2011, <http://www.ndtv.com/india-news/hang-cops-involved-in-fake-encounters-supreme-court-464111>

near Nana Nani Park in suburban Versova in Western Mumbai on the same evening. In February 2008, the Bombay High Court ordered a magisterial inquiry following a petition filed by the deceased's brother. The magisterial enquiry concluded that it was a "cold-blooded" murder. In September 2009, the High Court constituted a SIT to probe the case. On 12 July 2013, a trial court awarded life sentence to 21 persons including 13 police personnel for killing Ram Narayan Gupta in a fake encounter.¹⁶⁹

Case 5: Killing of Mithun Chakravarthy, Tamil Nadu

On 3 April 2008, Mithun Chakravarthy was allegedly extrajudicially killed by the police who claimed that it was an "encounter" in Thanjavur, Tamil Nadu. The father of the deceased filed a petition before the Madras High Court challenging the investigation conducted by a Revenue Divisional Officer which had exonerated the accused policemen from all allegations. In December 2008, the Madras High Court ordered fresh investigation by the CB-CID observing that the enquiry earlier conducted by a Revenue Divisional Officer was conducted in a "perfunctory" manner and was "far from satisfactory".¹⁷⁰

Case 6: Killing of Akoijam Priyobrata, Manipur

On the night of 15 March 2009, Akoijam Priyobarta alias Bochou, son of Akoijam Rajen, was killed by the Manipur Police Commandos in an alleged encounter at Langol in Imphal West district of Manipur. The police claimed that the deceased was a suspected cadre of the banned Kangleipak Communist Party and killed in an encounter. The police further claimed to have recovered one 9 mm pistol with five live rounds from the deceased.

However, the deceased's family members stated that the deceased was killed in a fake encounter. According to the deceased's family members, he had gone out from his house driving a Bajaj Pulsar (MN1M-5073) carrying Rs 8000 at around 4 pm on 15 March but when the deceased's body was found, the cash amount was missing.¹⁷¹ The NHRC which intervened pursuant to a

169. Daily News and Analysis, "2006 Mumbai fake encounter case: 21 get life imprisonment", 12.7.2013, <http://www.dnaindia.com/india/report-2006-mumbai-fake-encounter-case-21-get-life-imprisonment-1860292>

170. The Hindu, "Court orders CB-CID probe into encounter death, 26.12.2008, <http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/court-orders-cbcid-probe-into-encounter-death/article1402041.ece>

171. ACHR complaint dated 24.3.2009 to NHRC, registered as Case No. 48/14/0/08-09-FE

complaint filed by ACHR noticed that no magisterial inquiry was conducted and the post mortem was conducted after a week. On the basis of the inquest and post mortem reports, the NHRC rejected the “version of the police that the deceased was killed in an encounter”. The NHRC also concluded that Akoijam Priyobarta was tortured before death. It issued show cause notice to State Government of Manipur under Section 18 of the Protection of Human Rights Act (PHRA), 1993 as to why recommendation should not be made to pay monetary relief to the next of kin of the deceased.¹⁷² In its report submitted to the Supreme Court, Justice Hedge Commission also concluded that the deceased did not die in a genuine encounter.¹⁷³

Case 7: Killing of Juma Khan, Manipur

On 23 March 2009, Juma Khan alias Boy, son of Md. Manouwar Ali of Lilong, Thoubal District, was killed by the Manipur Police Commandos in an alleged encounter at Kangjabi Mainam Leikai in Imphal, Manipur. The deceased was a salesman by profession. On 24 March, a photograph of Juma Khan’s dead body appeared in the local newspapers. It was reported in the news that Juma Khan was killed in a fake encounter. Thereafter, the deceased’s family went to morgue of the RIMS and identified the dead body.

The Manipur Police commandos claimed that Juma Khan was killed in an encounter and recovered arms from his possession. However, the deceased’s relatives alleged that he was killed in a fake encounter. Pursuant to a complaint filed by ACHR, the NHRC found that no magisterial enquiry was conducted into the incident and accordingly directed the State of Manipur to conduct a magisterial enquiry. Further on 24 October 2013, the NHRC directed the State of Manipur to issue a general order requiring that in all cases of magisterial inquiry, in addition to giving public notice through newspaper publication, individual notice / intimation shall be given to the near relatives of the deceased / victim so that they get an opportunity to appear before the inquiry officer to adduce evidence and present their witnesses. The direction was issued after the NHRC noticed that in almost all cases while conducting

172. ACHR complaint dated 24.3.2009 to NHRC, registered as Case No. 48/14/0/08-09-FE

173. The case of Akoijam Priyobarta was one of the six cases investigated by Supreme Court appointed Justice Santosh Hegde Commission. Report of Commission is available at: <https://humanrightsmanipur.files.wordpress.com/2013/07/ejevam.pdf> [Accessed 8.12.2014]

the magisterial inquiry, no notice/intimation is given to the near relatives of the victims, and the notices are only published in the newspapers. As a result, the near relatives of the victims did not come across such notice and being unaware of the magisterial inquiry, they failed to appear before the inquiry officer and give evidence in a number of cases. The case is presently pending final adjudication by the NHRC.¹⁷⁴

Case 8: Killing of Nameirakpam Govind Meitie and Nameirakpam Nobo Meitie, Manipur

On 4 April 2009, Nameirakpam Gobind Meetei and Nameirakpam Nobo Meetei were killed by the Manipur Police Commandos in an alleged fake encounter at Near Election Office under Lamphel Police Station in Imphal West District of Manipur. The deceased's families alleged that both Govind and Nameirakpam Nobo went out to have tea in the evening but did not return home. Next day, the family came to know through local news bulletin ISTV that they were killed in an encounter by the security forces. The security forces claimed that both the deceased were killed in an encounter and arms and ammunition were recovered from their possession. However, the deceased's family members and residents of the area alleged that they were killed in a fake encounter. A magisterial inquiry report concluded that the encounter was a real encounter, among others, on the ground that firing was from a distant range. Rejecting the finding of the magisterial inquiry report, the NHRC held *"Prima facie we are satisfied that there was violation of human rights in this case and the Govt. of Manipur is liable to compensate the next of kin of the victims"*.¹⁷⁵ This case was one of the six cases investigated by the Supreme Court appointed Justice Santosh Hegde Commission. In its report submitted to the apex court the Commission concluded *"medical evidence coupled with contradictions and discrepancies in the oral evidence referred to hereinabove, are sufficient to come to the conclusion that the incident in question is not an encounter, but an operation by the security forces wherein death of victims was caused knowingly"*.¹⁷⁶

174. ACHR complaint dated 5.2.2010 to NHRC, registered as Case No. 8/14/4/2010-FE & 8/14/4/2010-AFE

175. ACHR complaint dated 5.2.2010 to NHRC, registered as Case No. 7/14/4/2010-AFE

176. Report of Justice Santosh Hegde Commission, <https://humanrightsmanipur.files.wordpress.com/2013/07/ejevfam.pdf> [Accessed 8.12.2014]

Case 9: Killing of Sagolsem Anand Singh, Manipur

On 29 April 2009, Sagolsem Anand Singh (18 years), son of Sagolsem Manjor Singh, was killed by the Manipur Police commandos in an alleged encounter at Hiyangthan Tarahei, Heibok Chingkhong in Imphal West district of Manipur. The deceased's family alleged that Sagolsem Anand Singh was killed in a fake encounter. On the intervention of the NHRC, the investigation of the case was taken-over by the CB-CID in June 2010. The CB-CID in a report to the NHRC stated that during the course of enquiry it was stated by a witness that she saw three youths being dragged out of a police Gypsy vehicle by police personnel and taken towards Taraei Konjil and she heard the sound of firing towards the foot hill of Heibok Ching. Based on the facts and circumstances of case and the statement of the witnesses, the NHRC concluded that the deceased was killed extra-judicially and his human rights were violated and decided to recommend monetary relief to the next of kin of the deceased.¹⁷⁷

Case 10: Killing of Ranbir Singh, Uttarakhand

On 3 July 2009, Ranbir Singh, a resident of Uttar Pradesh, was killed by police in an alleged encounter in Ladpur forest area of Dehradun, Uttarakhand. The police claimed that Ranbir Singh was killed in an encounter. The deceased's father alleged that Ranbir Singh had gone to Dehradun in search of a job where he was taken into police custody on pretext of being involved in some robbery and killed in a staged encounter. The case was investigated by the CBI which filed a chargesheet on 22 December 2009 against 18 police officials in the CBI Court, Dehradun. The trial of the case was transferred to Delhi by the Supreme Court. In June 2014, the CBI Court, Delhi awarded life imprisonment to 17 policemen for killing Ranbir Singh in a fake encounter. The 17 convicts were identified as Santosh Kumar Jaiswal (Inspector); Gopal Dutt Bhatt; Rajesh Bhist; Neeraj Kumar; Nitin Chouhan; Chandra Mohan Singh Rawat (all Sub-Inspectors) and Constables Ajeet Singh; Satbir Singh; Sunil Saini; Chandra Pal; Saurab Nautiyal; Nagendra Rathi; Vikas Baluni; Sanjay Rawat; Mohan Singh Rana; Inder Bhan Singh; and Manoj Kumar. One policeman convicted in a lesser offence was released as he had already undergone the jail term.

177. ACHR complaint dated 7.9.2009 to NHRC, registered as Case No. 22/14/4/09-10-AFE

Case 11: Killing of Chongkham Sanjit Singh, Manipur

On 23 July 2009, Chongkham Sanjit Singh, son of Chongkham Khelson of Kongpal Sajor Leikai, was killed in broad day light by the Manipur Police Commandos in an alleged encounter at Maimu Pharmacy near Gambhir Singh Shopping Arcade at the BT Road area in Imphal, Manipur. The deceased was a former cadre of banned Peoples' Liberation Army. He had surrendered to the police and was working as an attendant in a private hospital. Police claimed that deceased was killed in an encounter after he fired on the team. However, the photographs released by *Tehelka* (news magazine) contradict the police version of the encounter. The photographs clearly show that before the killing, deceased Sanjit Singh was cornered and frisked by the Manipur Police Commandos and not chased as claimed by the police. In the photographs Sanjit Singh was seen standing in a Public Call Office booth surrounded by the police commandos adjacent to a pharmacy and was calmly walking away with the heavily armed police commandos. There was no sign of resistance. A pregnant woman was also killed in the alleged encounter. The State Government of Manipur constituted a judicial commission headed by Justice (Retd.) P. G. Agarwal to investigate the incident and a report was submitted to the state government. But the report is yet to be made public. Separately, an investigation by the CBI was also ordered and on the basis of the investigation, chargesheet was filed in the court against seven police personnel and the trial is going on. Vide its proceedings dated 8 July 2014 the NHRC directed the Chief Secretary, Government of Manipur to furnish the information regarding the action taken on the report of the judicial commission. The NHRC also directed the Director of the CBI to submit a copy of the chargesheet filed and inform about the status of the trial of the case.¹⁷⁸

Case 12: Killing of Khumbongmayum Orshonjit, Manipur

On 16 March 2010, Khumbongmayum Orshonjit, son of Khumbongmayum Imo, was killed in an alleged fake encounter by the Manipur Police commandos at Taothong under Lamshang police station in Imphal west district of

178. ACHR complaint dated 3.8.2009 to NHRC, registered as Case No. 17/14/4/09-10-AFE

Manipur. According to Orshonjit's family, Orshonjit went out riding a Honda Activa scooter (bearing registration No. MN01M-8382) at about 8.30 am 16 March. Around 10.20 am, Orshonjit's mother T. Lata Devi called him up on his mobile phone asking him to return home for lunch. Orshonjit told her mother that he was at a scooter repairing shop and would return as soon as the scooter was repaired. At around 11:30 am, one of the local boy informed Orshonjit's family that Orshonjit was arrested by a team of the police commandos from M.G. Avenue near OK Hotel. On receiving the information, Orshonjit's family went to Imphal Police Station and made a verbal submission. The police officer on duty denied any report of arrest but he recorded the verbal submission. Thereafter, the family also went to Porompat police station and then to Police Commandos Complex at Minuthong who also denied any report of arrest. On the evening of the same day, Orshonjit's dead body was shown on the local news bulletin ISTV while his family was watching the news. On 17 March, the family went to the morgue of the RIMS at Lamphel and confirmed the death. The security forces claimed that Orshonjit was an underground activist and killed in an encounter. Further, the security forces claimed to have recovered one .32 pistol loaded with two live rounds along with an Activa Honda (MN01M-8382) from the possession. However, the deceased's family stated that Orshonjit was innocent and shot dead after being tortured in the custody of the Manipur Police Commandos of Imphal West. The family found signs of torture marks on the deceased's body. Orshonjit's left fingers were badly broken and his right hand was fractured. On 24 October 2013, the NHRC directed the State Government of Manipur to pay a sum of Rs. 500,000 as interim relief to the next of kin of the deceased.¹⁷⁹

This case was one of the six cases investigated by the Supreme Court appointed Justice Santosh Hegde Commission. In its report submitted to the apex court the Commission concluded that Khumbongmayum Orsonjit was neither killed in an encounter nor was he killed in exercise of right to self defence. The Commission noted *"Looking at the number of the injuries suffered by the victim and the nature of the injuries as explained by the doctor, it is clear that the*

179. ACHR complaint dated 22.3.2010 to NHRC, registered as Case No. 20/14/4/2010-AFE

victim was shot at from a close distance” and “there was an intention to kill the victim”. The Commission also noted that Orshonjit did not have any criminal antecedents and not a member of any banned group.¹⁸⁰

Case 13: Killing of Kuldeep Singh, an Army jawan, Uttar Pradesh

On 1 May 2010, Kuldeep Singh, a personnel of the Rajputana Rifles of Indian Army, was killed by the Uttar Pradesh police in a fake encounter in Bulandshahar district of Uttar Pradesh. Kuldeep Singh, who was on a two months leave, had left his house at Bharari village, Kherka area in Aligarh district on the morning of 30 April 2010 to purchase some goods. But he did not return and later reportedly killed in a fake encounter with police. The police claimed that Kuldeep Singh was a robber and killed in exchange of fire. The NHRC which intervened into the case based on its enquiry concluded that Kuldeep Singh was killed in a fake encounter. On 15 March 2011, the NHRC issued notice to the State Government of Uttar Pradesh asking “*as to why the next of kins of the deceased be not recommended interim relief.*” However, the State Government failed to submit a response to the notice as on 13 March 2014.¹⁸¹

Case 14: Killing of Ningthoukhongjam Binodkumar, Manipur

On 31 December 2010, Ningthoukhongjam Binodkumar alias Inao, a Gram Panchayat member, was allegedly killed by the Manipur Police commandos at Khanagabok Part 1 under Thoubal Police Station in Thoubal district of Manipur. At around 3pm, the Manipur Police commandos came to Binodkumar’s house and he was dragged and beaten up on the charges of giving shelter to underground cadres in front of the family members. When Binodkumar’s relatives including his wife tried to intervene, they were pushed back and threatened. Binodkumar was taken away and later shot dead by the police commandos. The police commandos claimed that Binodkumar was killed in an encounter. The NHRC concluded that it was a fake encounter and directed the State Government of Manipur to pay interim compensation of Rs. 100,000 (one hundred thousand) to next of kin of the deceased and the

180. See Report of Justice Santosh Hegde Commission, <https://humanrightsmipur.files.wordpress.com/2013/07/ejevfm.pdf> [Accessed 8.12.2014]

181. NHRC Case No. 16877/24/18/2010-AFE, <http://www.nhrc.nic.in/display.asp?fno=16877/24/18/2010-AFE> [Assessed 3.3.2015]

wife of the deceased Smt. Ningthoujam (O) Laishram Bimola Devi who was appointed as a graduate teacher on permanent basis.¹⁸²

Case 15: Killing of Washing N Marak, Meghalaya

On 26 January 2011, Washing N Marak, a daily wage labourer, was killed by the Special Operation Team of the Meghalaya Police in an alleged encounter at Rongrekgre village under Williamnagar police station in the East Garo Hills district of Meghalaya. The police claimed that the deceased was a cadre of the banned Garo National Liberation Army. However, the residents of Rongrekgre village claimed that the deceased was innocent and killed in a fake encounter after arrest.¹⁸³ A magisterial enquiry report concluded *“It seems highly unlikely that the encounter was fake and staged or intentional”*. However, the NHRC stating that the conclusion of the Magistrate was based on surmises and conjectures found that the deceased was not killed in an encounter. The NHRC observed *“On careful examination of the records, we find credible evidence to show that deceased Washington N. Marak was a mason having job card of MNREGA. He had no criminal history. There is no evidence to indicate his involvement with any terrorist activity. The testimony of the owner of the house and the Nokma of the village shows that he was sleeping in the house on the fateful night of occurrence and had no weapon. His hand wash was taken during investigation, but no residue of gun powder was detected during examination in the laboratory. The forensic report thus shows that he had not used any weapon. All these facts persuade us to disbelieve the police version.”* On 10 February 2015, the NHRC directed the State Government of Meghalaya to submit the chargesheet filed for its perusal.¹⁸⁴

Case 17: Killing of Mangal Honhanga, Jharkhand

On 30 June, 2011, Mangal Honhanga was killed in an alleged encounter in the Saranda Forest under Chhotanagra police station of West Singhbhum district in Jharkhand. The police claimed that Mangal Honhanga was a Maoist and was killed in an encounter. However, the villagers alleged that the security forces killed Mangal Honhanga in cold-blood. A magisterial enquiry report

182. ACHR complaint dated 14.6.2011 to NHRC, registered as Case No. 42/14/12/2011

183. NHRC Case No. 2/15/1/2011-AFE

184. NHRC Case No. 2/15/1/2011-AFE

concluded that Mangal Honhanga was killed in cold blood. The deceased's wife was given compensation of Rs. 200,000 and a government job.¹⁸⁵

Case 17: Killing of Monu @ Satender, Uttar Pradesh

In September 2011, Monu @ Satender, a wanted criminal carrying a reward of Rs. 50,000 on his head, was killed by the police in an alleged encounter at Doghat village in Baghpat district, Uttar Pradesh. The police claimed that Monu was intercepted when he was going with two accomplices on a motorcycle.¹⁸⁶ The magisterial enquiry did not hold any police personnel guilty in the death of Monu. However, the NHRC refuting the magisterial enquiry report concluded that Monu had not been killed in an encounter and directed the State Government of Uttar Pradesh to pay Rs. 500,000 compensation to the next of kin of the deceased.¹⁸⁷

Case 18: Killing of Ahanthem Amujao, Manipur

On 29 January 2012, Ahanthem Amujao (16 years), son of A Basanta of Sawombung Gate Maning Leikai, died in the custody of the Manipur Police commandos at Khuman Lampak Palli in Imphal West District of Manipur. The deceased, a school drop-out, used to work as a mason to help his poor parents. On 27 January at around 4.30 pm, the deceased left his home but never returned. As the deceased did not return, relatives began searching for him. On 30 January, police informed family members that Amujao was killed in an encounter with a team of the Manipur Police commandos on 29 January 2012. But the family members and the locals alleged that the deceased was never associated in any form with any armed group and alleged that he was murdered in cold blood after being arrested by the police. The case is currently pending for final adjudication by the NHRC.¹⁸⁸

185 See 'NHRC case no.1206/34/18/2011' & 'India: Saranda's Savagery exposed by national HR team' MAC. 25.10.2011 <http://www.minesandcommunities.org/article.php?a=11253>

186. Daily Bhaskar, "Wanted criminal killed in encounter", 11.9.2011, <http://daily.bhaskar.com/news/DEL-wanted-criminal-killed-in-encounter-2422421.html>

187. NHRC Case No. 40795/24/31/2011-ED, <http://nhrc.nic.in/display.asp?fno=40795/24/31/2011-ED> [Accessed 22.1.2015]

188. ACHR complaint dated 2.2.2012 to NHRC, registered as Case No. 55/14/15/2012-AFE

ii. Encounter killings by the Indian army and the central armed forces

India faces significant challenges of internal armed conflict. The intensity of this challenge can be assessed from the death of 3,411 security forces 1850 in the Naxalite affected areas, 1054 in Jammu and Kashmir¹⁸⁹ and 507 in the North East¹⁹⁰ respectively in the combat with the AOGs during 2004-2005 to 2013-2014.

The security forces also claimed to have killed 9,246 alleged terrorists 4,005 in Jammu and Kashmir,¹⁹¹ 3,650 in the North East¹⁹² and 1,591 in the Naxal affected areas¹⁹³ respectively during 2004 to 2014. There are consistent reports of fake encounters in these conflict situations.

A. Emblematic cases of fake encounter killings by the Army and the central armed forces

The Asian Centre for Human Rights (ACHR) highlights 20 cases of killing in fake encounter by the police¹⁹⁴, army and paramilitary forces as indicative of the problem of extrajudicial killings in India:

Case 1: Rape and killing of Thangjam Manorama Devi, Manipur

In the intervening night of 10-11 July 2004, Thangjam Manorama Devi was arrested by a team of the 17th Assam Rifles (AR) on the charge of being a member of a banned outfit from her house at Bamon Kampu Mayai Leikai under Irilbung police station in Imphal East District of Manipur. The multiple bullet-ridden dead body of Manorama Devi was found on a roadside near Yaiphorok village on the morning of 11 July. The AR claimed that Manorama Devi was shot dead when she attempted to escape from their custody. However, the report of the judicial Inquiry Commission constituted by the State Government of Manipur which was submitted to the Supreme Court in November 2014 revealed the torture including sexual assault suffered by Manorama Devi before being killed while in the custody of the AR personnel.

189. MHA annual Reports 2004-05 to 2013-14

190. MHA annual Reports 2004-05 to 2013-14

191. MHA annual Reports 2004-05 to 2013-14

192. MHA annual Reports 2004-05 to 2013-14

193. Source: MHA annual Reports 2004-05 to 2013-14 and http://mha.nic.in/sites/upload_files/mha/files/LWEViolenceStatistics2014.pdf

194. Police such as Manipur Police Commando Unit are included as they engage in anti-insurgency operations

The report stated that the “escape theory” and “firing at her legs” claimed by the AR was a “naked lie”. There were no injuries on the legs. The report on the basis of medical reports and injuries sustained by the victim stated that the victim fell down after receiving the first gunshot injury, but the personnel continued firing aiming at her vital parts of the body including the vaginal part. Thus the report noted *“the victim was fired in order to eliminate her and to destroy material evidence. Really, the firing on her person was made so brutally with a prominent feature to kill her ruthlessly. Every firing seemed to show that she should die and could not live any more”*.¹⁹⁵ On the allegation of rape on Manorama Devi, Chairman of the Commission, C. Upendra Singh, retired District and Sessions Judge, Manipur stated *“I am completely at the lost to understand how the Assam Rifles personnel had chosen as a target for firing the vaginal/ genital organ of an unmarried girl and after she was taken by them under arrest and taking to places unknown to the family members of the victim. Moreover, it cannot be received on the first shot and thus these evidences and circumstances clearly indicate that victim Manorama Devi might have been subjected to rape and sexual harassment. The arresting team of the Assam Rifles with a view to cover up the crime over the person of the victim, they had specifically fired on genital organ of an unmarried girl after taking her under arrest from the house. It appears to me that this aspect exposes not only barbaric attitude but also their attempt to fabricate false evidence with a view to cover up the offence committed by them”*.¹⁹⁶ The judicial commission report also revealed the blatant violations of the order of the Supreme Court in the case of *Naga Peoples Movement for Human Rights v. Union of India* in which the validity of the AFSPA was upheld. The report named Major N Dagar, Commander of the operational team of the 17th AR responsible either directly or vicariously, and four others namely Havildar Suresh Kumar, Rifleman T. Lotha, Rifleman Ajit Singh, and Rifleman Saikia who were directly responsible for killing Manorama Devi.

195. The Report of the Judicial Inquiry Commission on the death of Thangjam Manorama Devi was submitted to the Supreme Court in November 2014 by the State Government of Manipur after the apex court had demanded it as part of a hearing on a PIL seeking probe into custodial deaths in the north-east States. Since then it is in the public domain and available at: <https://bhrpc.files.wordpress.com/2014/11/manoramreport.pdf> [Accessed 15.12.2014]

196. The Report of the Judicial Inquiry Commission on the death of Thangjam Manorama Devi was submitted to the Supreme Court in November 2014 by the State Government of Manipur after the apex court had demanded it as part of a hearing on a PIL seeking probe into custodial deaths in the north-east States. Since then it is in the public domain and available at: <https://bhrpc.files.wordpress.com/2014/11/manoramreport.pdf> [Accessed 15.12.2014]

The AR had attempted to avoid inquiry by invoking the AFSPA.¹⁹⁷ On 18 January 2014, the Supreme Court directed the Government of India to pay Rs. 10,00,000 (one million) as compensation to the family of Manorama Devi. The Supreme Court remained silent on the prosecution of the guilty personnel. Manorama Devi's family stated that their demand was not for "compensation but justice".¹⁹⁸

Case 2: Killing of tribal woman Kunju Mushahary, Assam

On 30 November 2004, a tribal woman identified as Kunju Mushahary was killed by the personnel of the Gorkha Regiment of the Indian Army stationed at Runikhata in Chirang district in Assam. The husband of the deceased was also injured. The security forces claimed that Ms Mushahary was killed in crossfire when a patrol team was engaged in a gunfight with militants. However, family members and villagers contradicted the "crossfire" story of the Army. Nobody was allowed to go to the site of the killing even five hours after the incident. The villagers also accused the Army of forcing them to sign or give thumb impressions on a piece of paper. Pursuant to the NHRC's directions, Rs. 300,000 (three hundred thousand) was paid to the next-of-kin of the deceased, which shows that the human rights of the deceased was violated.¹⁹⁹

Case 3: Killing of Lal Lumsiem, Assam

On 15 December 2007, Lal Lumsiem was killed by the army personnel of 5th Bihar Regiment at Hmar Veng in Karbi Anglong district of Assam. The army claimed that the deceased was a member of the United Peoples' Democratic Solidarity, a banned organisation and was killed in an encounter. However, the local residents alleged that the deceased was innocent and he had no link with any underground group. That the State Government of Assam and MoD informed the NHRC that Rs. 500,000 as recommended by it was paid

197. The Report of the Judicial Inquiry Commission on the death of Thangjam Manorama Devi was submitted to the Supreme Court in November 2014 by the State Government of Manipur after the apex court had demanded it as part of a hearing on a PIL seeking probe into custodial deaths in the north-east States. Since then it is in the public domain and available at: <https://bhrpc.files.wordpress.com/2014/11/manoramreport.pdf> [Accessed 15.12.2014]

198. See "Can compensation replace Justice", The Morung Express, 3.1.2015, available at: http://nhrc.nic.in/documents/nhrc_in_news/2015_01_03.pdf

199. ACHR complaint dated 8.10.2004 to NHRC, registered as Case No. 114/3/2004-2005-AF

to next of kin of deceased established the fact that the deceased was killed in a fake encounter.²⁰⁰

Case 4: Torture and killing of Salam Gurung and Soubam Boucha, Manipur

On 28 December 2008, Salam Gurung alias Jingo and Soubam Boucha alias Shachuinta were killed by the combined forces of Imphal West Police Commando and the 23rd AR in a fake encounter at Leimakhong Mapal under Sagolband in Imphal West district in Manipur. On 29 December, the deceased's families were informed that two unidentified persons were shot dead by the combined forces. Later, family members of both the deceased went to the morgue of Regional Institute of Medical Sciences (RIMS) at Lamphel and identified the dead bodies. Bodies of both the deceased had clear marks of torture and the legs and hands were fractured. The deceased's families alleged that both of them were killed after being tortured in the custody of the security forces.²⁰¹ On 16 July 2014, the NHRC directed the State Government of Manipur to pay Rs. 500,000 each to the next of kin of the two deceased after it found that they were extrajudicially killed by the police and the AR. The NHRC also directed the State Government to get the incident investigated by the CBI to bring the delinquent security personnel to book. However, the state government declined to give its consent for the CBI investigation. Noting the non-cooperative attitude of the State Government of Manipur in complying with the directions/recommendations of the NHRC in several cases of alleged fake encounter killings the NHRC had decided to file an impleadment application in Writ Petition (Criminal) No.129/2012 being decided by the Supreme Court filed by the Extra Judicial Execution Victims Families Association, Manipur, in which the NHRC has been impleaded as a respondent.²⁰²

Case 5: Killing of Bishnu Tanti, a physically handicapped, Assam

On 30 January 2009, Bishu Tanti, a physically handicapped, was killed by the army personnel of the 318th Field Regiment of the Indian Army in an alleged fake encounter at Tingalibam tea estate near Sonari in Sivasagar district of

200. ACHR complaint dated 27.12.2007 to NHRC, registered as Case No. 187/3/8/07-08-AF

201. ACHR complaint dated 12.1.2009 to NHRC, registered as Case No. 33/14/0/08-09-AFE

202. ACHR complaint dated 12.1.2009 to NHRC, registered as Case No. 33/14/0/08-09-AFE

Assam. Family members of the deceased alleged that he was killed in a fake encounter after being shot dead from close range.

The police claimed a joint operation consisting of police and army personnel was conducted following inputs about the presence of the United Liberation Front of Assam (ULFA) militants at Tingalibam tea garden. After the tea garden was cordoned a suspected militant (Bishnu Tanti) was found hiding in tea bushes. The army team asked the militant to surrender but the militant popped off and fired upon the army party following which the personnel retaliated and the militant was killed in the encounter.

A magisterial enquiry gave contradictory findings by stating that *“It is evident that despite all care and caution taken the death of Shri Bishnu Tanti took place during a bonafide military operation and nobody could be blamed for the incident.”* Pertinently, the police claimed that the deceased was killed in retaliation when he opened fire at the joint team. The NHRC however concluded that the encounter was fake and directed the MoD to pay compensation of Rs. 500,000 to the father of the deceased. The MoD has complied with the direction of the NHRC.²⁰³

Case 6: Killing of Md. Azad Khan, Manipur

On 4 March 2009, Md. Azad Khan (about 12 years), son of Mohd. Wahid Ali, was shot dead by a combined team of the 21st AR and the Manipur Police Commandos (MPCs) in an alleged encounter at Phoubakchao village in Imphal West District, Manipur. The security forces claimed that the combined team had gone to Phoubakchao village in search of militants belonging to the Peoples United Liberation Front following a tip-off. On seeing the team, Md. Azad Khan along with another started running and firing at the security team. The security forces opened fire in self defence and Md. Azad Khan was killed during the encounter. The security forces claimed to have recovered a 9 mm pistol, a live magazine with three live rounds from the possession of deceased Md. Azad Khan. The other youth escaped taking advantage of the bamboo bushes.

203. ACHR complaint dated 4.2.2009 to NHRC, registered as Case No. 180/3/15/08-09-AF

However, Md. Azad Khan's family alleged that at about 11.50 am on 4 March 2009 a group of security personnel came to their house and dragged the deceased into a field and subjected him to torture in front of them. Following the torture, Md. Azad Khan fell down and the security personnel shot him dead and a pistol was thrown near his body. The family also stated that Md. Azad Khan was studying in Class VII at Phoubakchao High School. The Supreme Court appointed Justice Santosh Hegde Commission in its report submitted to the apex court in April 2013 concluded that Md. Azad Khan was neither killed in an encounter nor was he killed in exercise of right to self defence. The Commission noted a number of carelessness in the investigation by the security forces and the investigation agencies.²⁰⁴

Case 7: Killing of five civilians, Jharkhand

On 15 April 2009, five civilians were killed in an alleged encounter near Badaniya village under Barwadih police station in Latehar district of Jharkhand. The police claimed that the victims were Maoists and killed in an encounter. However, the family members alleged that the five civilians were picked up by the CRPF personnel. They were taken to the forest where they were shot dead. A magisterial enquiry report submitted to the State Government of Jharkhand mentioned that *"Those killed had no criminal background"*. The State Government announced compensation of Rs 500,000 and government job to each family member of the deceased persons. However, the enquiry report was not made public.²⁰⁵

Case 8: Killing of Elangbam Kiranjit Singh, Manipur

On 24 April 2009, Elangbam Kiranjit, son of E Ibohal Singh, was killed by the combined force of the Manipur Police Commandos and personnel of the 23rd AR in an alleged encounter at Laikot Ching under Lamlai police station in Imphal East district of Manipur. The security forces claimed that Elangbam Kiranjit was a cadre of proscribed Kangleipak Communist Party (MC) and killed in an encounter. However, the family members of the deceased alleged

204. The killing of Md. Azad Khan is one of the six cases investigated by Justice Santosh Hegde Commission appointed by the Supreme Court by its order dated 4 January 2013 in the case of *Extra Judicial Execution Victim Families Association and Anr. v. Union of India*, [(2013)2SCC493]

205 Maoist menace: Jharkhand villagers in a bind. NDTV 25 June, 2009. <http://www.ndtv.com/article/india/maoist-menace-jharkhand-villagers-in-a-bind-5075>

that Elangbam Kiranjit was innocent and killed in a fake encounter after being picked up by the Manipur Police Commandos on 23 April at around 3.30 pm while he had gone out to search for a missing cow.²⁰⁶ This case was one of the six cases investigated by the Supreme Court appointed Justice Santosh Hegde Commission. In its report submitted to the apex court the Hegde Commission concluded that Elangbam Kiranjit was killed in a fake encounter. The Hedge Commission concluded *“even if the case put forward by the complainant cannot be accepted, the case put forth by the security forces cannot also be accepted because they exceeded their right of private defence”*.²⁰⁷

Case 9: Killing of Jayanta Singh and Rajesh Bando, Assam

On 28 April 2009, Jayanta Singh and Rajesh Bando were killed by the personnel of the Kumaon Regiment of Indian Army based at Tihu Camp allegedly in a fake encounter at Haribhanga in Baska district of Assam. Both the deceased had reportedly gone to the camp on 13 April 2009 and failed to return home. The families identified their dead bodies with several bullet injuries at the hospital. The family members alleged that they were killed in a fake encounter as there were red marks on their wrists suggesting that they might have been tied up before being killed. However, the police claimed that both the deceased were banned ULFA cadres and killed in an encounter with the army. On 15 January 2015, the NHRC directed the MoD to inform whether any Staff Court of Inquiry was held in regard to the incident and if so, to submit its findings including the statements of witnesses recorded during the inquiry and evidence, if any to show their links with ULFA.²⁰⁸

Case 10: Killing of Chongtham Umakanta, Manipur

On 5 May 2009, Chongtham Umakanta alias Manaoton Singh, son of Chongtham Gunamani, was killed by the combined team of the Manipur Police Commandos and the 28th AR in an alleged fake encounter at Seilen Chingkhong near Seijang village under Lamalai Police Station in Imphal East district of Manipur. On 4 May at about 9.20 pm, Umakanta had gone out from his house to visit a friend identified as Nanao. While, Umakanta

206. ACHR complaint dated 28.4.2009 to NHRC, registered as Case No. 4/14/0/09-10-AFE

207. Report of Justice Santosh Hegde Commission, <https://humanrightsmanipur.files.wordpress.com/2013/07/ejevam.pdf> [Accessed 8.12.2014]

208. ACHR complaint dated 27.5.2009 to NHRC, registered as Case No. 37/3/18/09-10-AF

was at Nanao's house, a team of the police commandos came and asked the entire male folk to come out of the house and the police team whisked away Umakanta.²⁰⁹ The deceased's family stated that Umakanta was innocent and killed in a fake encounter after being picked up. The security forces claimed that Umakanta was a militant and killed in a joint operation launched by the police commandos and 28th AR. A magisterial enquiry report also concluded that there was an exchange of fire in which Umakanta was killed. However, the NHRC which intervened following a complaint filed by ACHR noted that the firing by the security forces was not in self-defence but "a case of serious violation of human rights". The NHRC directed the state government of Manipur to pay compensation of Rs. 500,000 to the next of kin of the deceased.²¹⁰ The Justice Santosh Hegde Commission also concluded that Umakanta was killed neither in an encounter nor in self-defence.²¹¹

Case 11: Killing of Sapam Gitchandra, Manipur

On 25 May 2009, Sapam Gitchandra, son of Sapam Subon Singh, was killed by the personnel of the 34th AR in an alleged encounter at Thoubal Khunou in Thoubal district of Manipur. The deceased's family members alleged that Sapam Gitchandra was killed in a fake encounter. The AR claimed that two underground cadres including Sapam Gitchandra were killed in an encounter. A magisterial enquiry into the incident concluded that the issue whether an actual encounter took place or not at the foot hills of Thoubal Khunou on 25 May 2009 cannot be settled beyond all reasonable doubt. The case is currently pending final adjudication by the NHRC.²¹²

Case 12: Killing of Laishram Kishorjit and Soram Priyokumar, Manipur

On 1 June 2009, Laishram Kishorjit, son of L Madhumangol, and Soram Priyokumar, son of Jugindra, were killed by the personnel of the 20th AR in an alleged encounter at Maipi Angbrasu in Chandel District of Manipur. However, the families of the deceased claimed that they were not associated with any banned organisation and extrajudicially killed in a fake encounter.

209. ACHR complaint dated 5.2.2010 to NHRC, registered as Case No. 6/14/4/2010-AFE

210. ACHR complaint dated 5.2.2010 to NHRC, registered as Case No. 6/14/4/2010-AFE

211. The case of Umakanta was one of the six cases investigated by Supreme Court appointed Justice Santosh Hegde Commission. Report of Commission is available at: <https://humanrightsmipur.files.wordpress.com/2013/07/ejevfm.pdf> [Accessed 8.12.2014]

212. ACHR complaint dated 7.9.2009 to NHRC, registered as Case No. 21/14/12/09-10-PF

The police in a report submitted to the NHRC claimed that the troops of the 20th AR led by Major Abishek Bharti laid an ambush at Maipi and Angbrashu track on 1 June at night after receiving information about the movement of some armed underground cadres in that area. The troops saw two persons moving in a suspicious manner and on being challenged by the troops to stop, the two deceased fired upon the troops. The troops retaliated in self defense and both of them were killed in the encounter. However, the NHRC concluded that the two deceased were extrajudicially killed by the AR personnel on the basis of unfounded suspicion. The NHRC also did not find any evidence even to faintly suggest that the deceased persons were involved in underground activity. Accordingly, the NHRC issued notice to the MHA to show cause why monetary relief of Rs. 500,000 each be paid to the next of kin of the two deceased persons.²¹³

Case 13: Killing of Kshetrimayum Gobind Singh and Ngasepam Danny, Manipur

On 8 September 2009, Kshetrimayum Gobind Singh, son of K. G. Singh and Ngasepam Danny alias Bode, son of Mr Ng. Achou Singh, were killed by the combined team of the Manipur Police Commandos of Imphal West area and the 12th Maratha Light Infantry of the Indian Army in an alleged encounter at Awang Khunou, under Patsoi police station in Imphal West district of Manipur. The combined team claimed that both the deceased were killed in an encounter. However, the deceased's family members alleged the deceased were killed in a fake encounter. The case is currently pending final adjudication by the NHRC.²¹⁴

Case 14: Killing of Bijay Boro, Assam

On 19 February 2010, a tribal youth identified as Bijay Boro, son of Muktaram Boro of Karigaon village, was killed by the personnel of the 5th Regiment of Rajputana Rifles of Indian Army in Singlijan Elephant reserve forest under Helem police station in Sonitpur district of Assam. The villagers and relatives of Bijoy Boro claimed that the army personnel had killed him in cold blood on mere suspicion of being a Bodo militant without verifying the

213. ACHR complaint dated 6.6.2009 to NHRC, registered as Case No. 11/14/2/09-10-PF

214. ACHR complaint dated 5.2.2010 to NHRC, registered as Case No. 24/14/4/09-10-AFE

facts. The NHRC following its intervention concluded that the deceased was extrajudicially killed by the army and directed the MoD to pay compensation of Rs. 500,000 (five hundred thousand) to the next of kin of the deceased. The MoD complied with the direction.²¹⁵

Case 15: Killing of Md. Faziruddin, Manipur

On 21 January 2010, Md. Faziruddin, son of Late Md Jaheruddin of Thoubal Moijing Awang Leikai, was killed by personnel of the 33rd AR in an alleged encounter at Kwakta Saiton area in Bishnupur district of Manipur. The AR claimed that deceased was a cadre of the banned People's Union Liberation Front (PULF) and killed in an encounter at Kwakta Saiton area. However, the deceased's relatives alleged that Md. Faziruddin was innocent and shot dead in an alleged fake encounter after he was picked up by unidentified person believed to be plain-clothes security forces on the night of 21 January 2010. The deceased was wearing a *lungie* while being whisked away. But, following the alleged encounter, dead body of Md. Faziruddin was found in a battle fatigue with his underwear and vest missing. Md. Faziruddin had no previous history of criminal record. According to the post mortem report, there were 11 ante mortem injuries and the death was caused due to injuries in vital organs resulting from multiple fire arm injuries on the body. The case is pending final adjudication by the NHRC.²¹⁶

Case 16: Killing of H Amujao Meetei, Manipur

On 18 March 2010, H Amujao Meetei (18 years), son of Ibobi of Sekmaiijin Mamang Leikai and working as a handyman of a bus, was killed by the personnel of the 28th AR in an alleged encounter in Thoubal **district** of Manipur. The deceased was picked up by three unidentified armed persons riding in an auto-rickshaw from Andro Parking. On 19 March, the AR claimed that he was killed in an encounter. However, the deceased's family alleged that the deceased was shot dead in a fake encounter. The AR denied that its personnel abducted and killed the deceased and in fact praised three of its personnel namely Captain Madhusudan BS, Rfn/GD Kumar Singh and Rifleman on Ground Duty Birendra Singh for killing the deceased in the

215. ACHR complaint dated 23.2.2010 to NHRC, registered as Case No. 40/3/16/2010-AF

216. ACHR complaint dated 27.1.2010 to NHRC, registered as Case No. 2/14/1/2010-PF

encounter. However, a magisterial enquiry report had held that the claim of the AR was false and deceased was killed in a fake encounter. The magisterial enquiry report submitted to the NHRC revealed as follows: *“the deceased Hawaibam Amujao Meitei was arrested from Andro Parking by three unknown individuals suspected to be personnel of 28 Assam Rifles on 18th March 2010 at around 2.30 pm and subsequently he was killed by the personnel of 28 Assam Rifles at Takhok Mapan on 18th March 2010 in between 10.15 pm to 10.30 pm in a fake encounter”*. Concurring with the findings of the magisterial enquiry, the NHRC held that the deceased was abducted and murdered. The NHRC asked the MHA why it should not recommend relief for the deceased and to issue instructions for appropriate action to be conducted against the three personnel of AR, who were prima facie responsible for the death of the deceased.²¹⁷

Case 17: Killing of three youth in Machil fake encounter, Jammu and Kashmir

On 29 April 2010, three youths identified as Shazad Ahmad Khan, Riyaz Ahmad Lone and Mohammad Shafi Lone, residents of Nadihal village in Baramulla district of Jammu and Kashmir, were lured to Machil on the pretext of jobs and good money as porters with the Army. The three were shot dead by soldiers of the 4th Rajput Regiment of the Indian Army in a staged encounter on 30 April. The victims were dubbed as Pakistani militants killed while trying to infiltrate across the Line of Control. Police investigation into the incident exposed the entire conspiracy, and led to the charge-sheet against three Army Officers, five soldiers, one Territorial Army personnel and two civilians in July 2010. In July 2012, the Chief Judicial Magistrate Court, Sopore allowed the Army to try its personnel in military court. In November 2014, the General Court Martial (GCM) of the Army sentenced Colonel Dinesh Pathania, Captain Upendra Singh, Havildar Devinder, and Lance Naiks Arun Kumar and Lakhmi to life imprisonment for killing the three youth in a fake encounter. The GCM also held that Colonel Dinesh Pathania, Captain Upendra Singh, Havildar Devinder and Lance Naiks Lakhmi and Arun Kumar should be cashiered from service including stripping of their ranks and all pension benefits. The killings of the three youth had sparked

217. ACHR complaint dated 22.3.2010 to NHRC, registered as Case No. 23/14/12/2010-AF

widespread protests in Kashmir valley, leading to death of nearly 120 people in firing by the security forces.²¹⁸

Case 18: Killing of 15-year-old Jatan Reang, Assam

On the night of 14 May 2010, a tribal boy identified as Jatan Reang (15 years), son of Koya Ram Reang, was killed in cold blood by the personnel of 14th AR at Gudgudi village under Katli Chara Police Station in Hailakandi district of Assam. The deceased Jatan Reang along with others was returning from Boirabi bazaar when they were ambushed by the 14th AR from North Tripura over a bridge at Gudgudi village. The AR personnel opened fire without any provocation and killed Jatan Reang although they were unarmed and innocent. The minor sustained bullet injury on his thigh but was not provided immediate medical care. Instead, the AR boarded a vehicle with the bleeding Jatan Reang and started for Damcherra, Tripura. The boy succumbed to his injuries on the way. The NHRC directed the MHA to pay a compensation of Rs. 500,000 to the next of kin of the deceased after finding the AR personnel guilty of the murder.²¹⁹

Case 19: Killing of Maheswar Ray, Assam

In the intervening night of 4-5 September 2010, Maheswar Ray was killed by the combined team of Assam Police and Army in an alleged encounter at Chandrapara (Bijulibari) near Onthai Gwolaw village in Kokrajhar district of Assam. The deceased was an alleged member of banned United Liberation Front of Assam (ULFA). The police claimed that the deceased was killed in an encounter with a group of 4/5 suspected members of the ULFA. However, the deceased's relatives alleged that on 4 September 2010 at about 9 pm, deceased Maheswar Ray was picked up by the combined team of Assam Police and Indian Army from the house of one Lankeswar Barman of Laltari village under Salakati police station in Kokrajhar district while he was having dinner along with the family members of Lankeswar Barman. Thereafter, the deceased was taken to Chandrapara village, about 18 to 20 km away from

218. The Times of India, "Machil fake encounter: 5 army men sentenced to life imprisonment", 14.11.2014 <http://timesofindia.indiatimes.com/india/Machil-fake-encounter-5-army-men-sentenced-to-life-imprisonment/articleshow/45142081.cms>

219. ACHR complaint dated 23 July 2010 to NHRC, registered as Case No. 170/3/21/2010-PF

the house of Lankeswar Barman and killed in custody in cold blood.²²⁰ The NHRC directed the State Government of Assam to pay a compensation of Rs. 500,000 to the deceased's family after the failure of the State Government to establish that the deceased was killed in a genuine encounter. The NHRC observed that *"the killing of the late Maheshwar Roy was a grievous violation of human rights, for which it would be appropriate for the State to make reparations"*.²²¹

Case 20: Killing of Siba Moran, Dhiraj Barua and Janak Moran, Arunachal Pradesh

On the night of 25 December 2011, three youth identified as Siba Moran, Dhiraj Barua and Janak Moran were killed by the personnel of the 26th Maratha Light Infantry of the Indian Army in an alleged encounter near the Noa-Dihing river bank under Namsai police station in Lohit (now Namsai) district of Arunachal Pradesh. All the three deceased, residents of Assam, were returning home in motor cycle after attending a feast. They were stopped for checking and taken into custody. Later, the three were shot dead from point blank range. The Army claimed that the three deceased were members of the ULFA and killed in an encounter. However, the relatives of the three deceased and the residents alleged that they were innocent and killed in cold-blood by the Army in a fake encounter.²²² The NHRC, which intervened pursuant to a complaint filed by ACHR, in its findings held that *"the circumstances of their killing indicate that their deaths did not take place in a genuine encounter"*. Observing that a grievous violation of human rights was committed, the NHRC directed the Ministry of Defence to pay compensation of Rs. 500,000 each to the next of each of the three deceased. Earlier in response to show cause notice issued by the NHRC, the Ministry of Defence vide its reply dated 27 August 2013 had opposed payment of any relief to the next of kin of the deceased. The NHRC had rejected the response of the Ministry of Defence and directed to comply with its direction to pay compensation. The case is presently pending for the compliance report.²²³

220. ACHR complaint dated 14.6.2011 to NHRC, registered as Case No. 129/3/11/2011-AF

221. ACHR complaint dated 14.6.2011 to NHRC, registered as Case No. 129/3/11/2011-AF

222. ACHR complaint dated 28.12.2011 with NHRC, registered as Case No. 2/2/11/2012-AF

223. ACHR complaint dated 28.12.2011 with NHRC, registered as Case No. 2/2/11/2012-AF

4.4. Extrajudicial killings in police firing

Disproportionate use of force, in particular, fire-arms by the police while controlling crowd causes violation of the right to life of a large number of people every year. The non-implementation of the principles of “absolutely necessary”, a stricter and more compelling test of necessity, and “proportionality for the use of force” as provided in the CrPC and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, has led to blatant deprivation of the right to life.

According to the NCRB, a total of 2,527 persons were killed in police firing from 2004 to 2013. These included 103 persons in 2013; 78 in 2012; 109 in 2011; 239 in 2010; 184 in 2009; 317 in 2008; 250 in 2007; 472 in 2006; 355 in 2005; and 420 in 2004.²²⁴ Of all the States, Uttar Pradesh recorded the highest number of deaths (743) followed by Andhra Pradesh (274); Jammu & Kashmir (245); Maharashtra (243); Chhattisgarh (188); Madhya Pradesh (106); Rajasthan (98); West Bengal (84); Tripura (76); Bihar (74); Assam (66); Tamil Nadu (56); Meghalaya (52); Gujarat (48); Orissa (37); Jharkhand (26); Karnataka (25); Delhi (24); Uttarakhand (23); Haryana (15); Manipur and Punjab (7 each); Kerala (5); Mizoram (3); and Arunachal Pradesh (2). There were no report of civilian deaths reported to the NCRB from Goa, Himachal Pradesh, Nagaland, Sikkim, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep and Puducherry.²²⁵

The NCRB data shows that the highest number of civilian deaths (834) took place during ‘operation against extremists/terrorists’ during the period.²²⁶

A. Emblematic cases

The still high number of deaths in police firing is indicative of non-implementation of the principles of “absolutely necessary”. Some of the illustrative cases are given below:

224. See NCRB’s Crime in India report series, 2004 to 2013, available at: <http://ncrb.gov.in/>

225. See NCRB’s Crime in India report series, 2004 to 2013, available at: <http://ncrb.gov.in/>

226. See NCRB’s Crime in India report series, 2004 to 2013, available at: <http://ncrb.gov.in/>

Case 1: Killing of four farmers, Maharashtra

On 9 August 2011, four persons, including a woman, were killed in police firing and 19 others were injured at Maval near Pune in Maharashtra when police fired on the civilians who were protesting against laying of a water pipeline project from Pauna dam in their area to Pimpri-Chinchwad Municipal Corporation, fearing that it would deprive them of water for their farms. Police also claimed that over 50 police personnel were injured in the clash. The State government had appointed a judicial commission headed by Justice M G Gaikwad, a former judge of Bombay High Court, to probe the incident. The judicial commission report stated the police fired when the protestors were retreating and that one of the senior officers took a self-loading rifle from a constable and fired at the protestors.²²⁷

Case 2: Killing of six Dalits, Tamil Nadu

On 11 September 2011, six persons belonging to Dalit community (Scheduled Castes) were killed and 30 others injured when the police opened fire on a stone-pelting mob at Paramakudi in Tamil Nadu. Three persons died on the spot while two succumbed to injuries in hospital. The police claimed they had to resort to firing in self defence and to protect public properties. However, the protestors alleged that the police shot at indiscriminately. A judicial enquiry constituted by the state government of Tamil Nadu had given clean chit to the police in 2013.²²⁸ The CBI also investigated the incident following a Madras High Court order and submitted its report to the government in December 2013. However, the report is yet to be made public.²²⁹

Case 3: killing of four persons killed, Assam

On 19-20 August 2014, four persons, including a school student, were killed and seven injured when police opened fire protestors in Golaghat district of Assam. One person was killed on 19 August and three others including the student were killed on 20 August. On 20 August, the Chief Minister of Assam

227. Mumbai Mirror, "Maval firing probe report indicts cops for shooting farmers" 9.5.2014, <http://www.mumbaimirror.com/mumbai/crime/Maval-firing-probe-report-indicts-cops-for-shooting-farmers/articleshow/34847568.cms>

228. Frontline, "Paramakudi firing: Clean chit to police", 29.11.2013, <http://www.frontline.in/the-nation/paramakudi-firing-clean-chit-to-police/article5338975.ece>

229. The Hindu, "Release CBI findings on Paramakudi police firing", 15.9.2014, <http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/release-cbi-findings-on-paramakudi-police-firing/article6411090.ece>

admitted that there was no need to resort to firing since no protester was seen in the television footage when the police was firing on 19 August incident.²³⁰ The state government constituted an enquiry commission to investigate the killing of three persons including the student.²³¹

Case 4: Killing of nine persons, Meghalaya

On 30 September 2005, nine persons, mostly students, were killed and several others were injured when the police opened fire on protesting mob at Tura and Williamnagar in the Garo Hills of Meghalaya. The students were protesting against the proposed shifting of the Meghalaya Board of School Education headquarters from Tura to Shillong. The police firing led to the death of four protesters in Tura under the West Garo Hills district and five in Williamnagar under the East Garo Hills district. The State Government instituted two judicial inquiries headed by Justice (ret'd) D. N. Chowdhury for Tura and Justice (ret'd) D. N. Baruah for the Williamnagar incident. Justice (ret'd) Baruah commission justified the killing of four students in Williamnagar. However, Justice (ret'd) Chowdhury Commission stated that the police had overstepped their limit by firing from close range at the crowd that was retreating in Tura.²³² In his report Justice Chowdhury stated *“The gravest mistake was done by the police and security personnel in firing on the people, who were quietly retreating from the field. Those who were in charge of the field failed to act rationally, the magistrates and the police were acting without direction and the security personnel, being panic stricken, resorted to indiscriminate firing”*.²³³

Case 5: Killing of 14 persons, West Bengal

On 14 March 2007, 14 persons were killed and about 162 others were injured when police opened fire on protestors at Nandigram, West Bengal. Some women were also raped during the incident. The people were protesting against acquisition of land by the state government of West Bengal to set

230 Business Standard, “Police firing kills three in Assam’s Golaghat district” 20.8.2014, http://www.business-standard.com/article/current-affairs/police-firing-kills-three-in-assam-s-golaghat-district-114082001395_1.html

231. The Telegraph, “Dispur sets up panel to probe attack”, 30.8.2014, http://www.telegraphindia.com/1140830/jsp/northeast/story_18778517.jsp#.VMCLBCuUeS4

232. The Indian Express, “Meghalaya firing: Tura deaths blamed on police”, 19.4.2007, <http://archive.indianexpress.com/news/meghalaya-firing-tura-deaths-blamed-on-police/28856/> [Accessed 24.12.2014]

233. The Telegraph, “Probe panel blames police for Tura firing”, 20.4.2007, http://www.telegraphindia.com/1070420/asp/guwahati/story_7671393.asp [Accessed 24.12.2014]

up a Special Economic Zone and a chemical hub. The Calcutta High Court declared that the action of the police to open fire was unconstitutional and unjustified under any provision of the law and directed the State Government to pay compensation to the families of the dead and injured persons and rape victims. The court also directed the CBI to take up investigation of police firing and other related crimes committed during the violence.²³⁴ The CBI filed its chargesheet against six police officers for being involved in the police firing. However, the State Government of West Bengal is yet to give sanction for their prosecution. On 23 February 2015, the CBI sought permission for the third time from the State Government to prosecute the accused police officers.²³⁵

Case 6: Killing of 14 tribals, Odisha

On 2 January 2006, 14 tribals were killed in indiscriminate police firing at Kalinga Nagar, Odisha. The deceased killed in the police action were protesting against the acquisition of land for a steel plant to be set up by the Tata Steel. According to a fact-finding team of Peoples Union for Civil Liberties, when the Tata Iron and Steel Co Ltd with the help of the district administration undertook the leveling of the land on 2 January, about 300-400 tribals, including women and children, wanted to enter the rope cordon. The police tried to stop them and used “stun shells” along with tear gas shells and rubber bullets. Later, in the melee, one policeman identified as Gopabandhu Mohanty, slipped and fell into the hands of the protesting tribals and was killed by the angry crowd. In order to avenge the killing of Mr Mohanty, other policemen ran amok and fired indiscriminately in the presence of District Collector, Saswat Mishra and Superintendent of Police, Binoytosh Mishra. Among the victims, two were shot in the back apparently while trying to flee, and two others were shot in the forehead from point-blank range. The State Government appointed a judicial inquiry.²³⁶ However, the judicial commission is yet to submit its report.

234. Association for Protection of Democratic Rights vs State Of West Bengal & Others, 16.11.2007 [2007 (4) CHN 842]

235. Daily News and Analysis, “Nandigram firing: CBI asks West Bengal govt why no action taken against IPS officers” 23.2.2015, <http://www.dnaindia.com/india/report-nandigram-firing-cbi-asks-west-bengal-govt-why-no-action-taken-against-ips-officers-2063524>

236. ACHR “India Human Rights Report 2007” <http://www.achrweb.org/reports/india/AR07/orissa.htm>

5. VIOLATIONS OF RIGHT TO LIFE BY THE NON-STATE ACTORS

A large number of non-State actors operate in India. These include AOGs as well as societal non-State actors who often violate the right to life of the persons belonging to the vulnerable groups.

The State has the responsibility to ensure enjoyment of the right to life of the citizens against violations by the societal non-state actors. Therefore, for the purposes of this report, the killing of women, SCs and STs and others in situation of armed conflicts and civil unrest are being treated as violations of the right to life rather than normal crimes such as murder. The State responsibility is further recognized in law by the provision for compensation under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act²³⁷ and the Dowry Prohibition Act, 1961²³⁸ while the Central Scheme for Assistance to Civilian Victims of Terrorist, Communal and Naxal violence provides for compensation to the victims of terrorism, communal violence and Naxal violence.²³⁹

5.1 Armed opposition groups

India continues to be seriously affected by terrorism and internal armed conflicts. At least 188 districts have been notified as “disturbed” under the AFSPA) and declared affected by LWE violence in 17 States. These included 71 districts notified as “disturbed” under the AFSPA in Assam²⁴⁰; Arunachal

237. Rule 20 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) (Amendment) Rules, 2014 provides for 20 Murder or Death (a) Non-earning Member of a family, “compensation of at least three lakh seventy five thousand rupees to each case with payment of 75 per cent after postmortem and 25 per cent on conviction by the lower court” and (b) for earning member of a family at least Seven lakh fifty thousand rupees to each case with payment of 75 per cent after postmortem and 25 per cent on conviction by the lower court. Please see <http://socialjustice.nic.in/pdf/amend-poa2014.pdf>

238. Section 6(a)(4) of the Dowry Prohibition Act provides that “The Court may direct that the fine, if any, imposed under this section or such portion thereof as the Court deems proper shall be paid to the wife as compensation”.

239. Central Scheme for Assistance to civilian Victims of Terrorist, Communal and Naxal violence dated 25 January 2010. Ministry of Home Affairs, Government of India, available at http://www.mha.nic.in/sites/upload_files/mha/files/pdf/T-Guide141008.pdf

240. Entire state of Assam with 27 districts is notified as disturbed

Pradesh²⁴¹; Manipur²⁴²; Meghalaya²⁴³; and Nagaland²⁴⁴ in the north east India and 20 out of 22 districts in Jammu and Kashmir; and 106 districts declared as LWE affected in ten states of Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Telengana, Uttar Pradesh and West Bengal.²⁴⁵

There are about 35 organisations which have been banned as terrorist organisations under the Unlawful Activities Prevention Act.²⁴⁶ The banned AOGs have been responsible for blatant violation of international humanitarian law by indiscriminate killings of civilians, kidnapping, hostage taking, extortion and *“passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples”* as provided under the Common Article 3 of the Geneva Conventions.

According to the MHA, a total of 10,219 civilians were killed in militancy/Naxal related violence from 2004 to 2013. These include 1587 in 2004, 1474 in 2005, 1219 in 2006, 1116 in 2007, 1217 in 2008, 1141 in 2009, 1078 in 2010, 570 in 2011, 413 in 2012 and 404 in 2013. Of these, 5419 civilians were killed in Naxal violence, 2088 civilians were killed in militancy related violence in Jammu and Kashmir and 2712 civilians were killed in extremist violence in North East India.²⁴⁷

The year-wise number of civilians killed in Naxal and militancy/extremist violence in Jammu and Kashmir and North East India is given in the table below²⁴⁸:

241. Three districts are notified as disturbed in Arunachal Pradesh while eight districts share border with Assam within 20 km belt which are notified as disturb

242. Entire state of Manipur with nine districts, except Imphal Municipality area, is notified as disturbed

243. Five districts of Meghalaya share border with Assam within 20 km belt which are notified as disturb

244. Entire state of Nagaland with 11 districts is notified as disturbed

245. Ministry of Home Affairs ‘Statistics of LWE violence (2009 to 2014)’ http://mha.nic.in/sites/upload_files/mha/files/LWEViolenceStatistics2014.PDF

246. List of banned terrorist organisations under section 35 of the Unlawful Activities (Prevention) Act, 1967 (as on 27-01-2014), Ministry of Home Affairs available at <http://www.mha.nic.in/BO>

247. Ministry of Home Affairs, Annual Reports, 2004-05 to 2013-14

248. Ibid

Year	LWE violence	Militancy related violence in J &K	Extremist violence in North East India
2004	466	707	414
2005	524	557	393
2006	521	389	309
2007	460	158	498
2008	660	91	466
2009	799	78	264
2010	937	47	94
2011	469	31	70
2012	301	15	97
2013	282	15	107
Total	5419	2088	2712

The Government is duty bound to protect the civilians and bring the perpetrators to justice. However, the AOGs have seldom been held accountable for human rights abuses.

The following cases documented by ACHR during 2014 are illustrative:

On 23 December 2014, more than 70 Adivasis including women and children were killed by members of the National Democratic Front of Bodolond (NDFB) of Songbijit faction in Sonitpur, Kokrajhar and Chirang districts of Assam.²⁴⁹ Heavily armed NDFB cadres swooped down on the Adivasi villages in the districts and opened indiscriminate firing in the evening. The NDFB reportedly targeted the Adivasi villagers on the suspicion of passing information to the Indian Army, which conducted counter-insurgency operation against the group that killed three of its cadres on 21 December.²⁵⁰

249. The Hindu, "Assam toll rises to 78, violence spreads to Kokrajhar", 25.12.2014, <http://www.thehindu.com/news/national/other-states/assam-toll-rises-as-violence-spreads-to-kokrajhar/article6724739.ece>

250. Livemint, "The recurring violence in Assam", 29.12.2014, <http://www.livemint.com/Opinion/76pziDYWE0RA68L7x2ncP/The-recurring-violence-in-Assam.html>

The attacks had resulted in a humanitarian crisis with over 3,00,000 persons being displaced.²⁵¹

On 21 December 2014, three persons namely Kusun, Lalan and Yadav were killed and four others were injured in a blast triggered by suspected extremists at a tea stall at Khuyathong in Imphal, Manipur. The deceased and injured were labourers hailing from Uttar Pradesh and Nagaland and had gathered at the tea stall to have tea and snacks in the morning. On 15 December, two labourers were killed in a similar blast at a betel leaf market in Thangal Bazar, Imphal.²⁵²

On 21 August 2014, NDFB (Songbijit faction) militants killed a 16-year-old school girl, Priya Basumatary, at Dwimuguri village under Runikhata police station in Chirang district of Assam. The militants reportedly arrived at the Dwimuguri village and forced the villagers to gather at a place where they shot Priya dead for allegedly passing information that led to killing of five NDFB cadres by the security forces a day earlier.²⁵³

On 3 June 2014, three civilians identified as Dubraj Manki, Nagi Manki and Surya Hansda were shot dead allegedly by the Maoists at Jojo in Khunti district of Jharkhand. The deceased were accused of being police informers.²⁵⁴

On 12 April 2014, seven polling officials were killed and three others were seriously injured in a landmine blast triggered by the Maoists at Ketulnar area in Bijapur district of Chhattisgarh. The team was returning after polling duty in a passenger bus which was blown up by the Maoists.²⁵⁵ Out of the seven deceased, five were teachers who were deputed for election duty. Four deceased were identified as Sonla Vijay, Yalam Ramchandram, Kursam Shankar and Samayya Jhadi.²⁵⁶

251. Displaced Adivasis of Assam, the largest conflict induced IDPs of the world in 2014, are being denied access to humanitarian crisis, Asian Centre for Human Rights, 2 January 2015 available at <http://www.achrweb.org/press/2015/IND01-2015.html>

252. The Telegraph, "Manipur blast sheds migrant blood", 22.12.2014, http://www.telegraphindia.com/1141222/jsp/nation/story_4685.jsp#.VKEsUWcAA

253. The Assam Tribune, "NDFB(S) guns down schoolgirl", 22.8.2014

254. IBN Live, "Three villagers killed by Maoists on suspicion of being police informers", 4.6.2014, <http://ibnlive.in.com/news/three-villagers-killed-by-maoists-on-suspicion-of-being-police-informers/476657-3-233.html>

255. The Hindu, "CRPF, poll personnel among 14 killed in Maoist strikes", 12.4.2014, <http://www.thehindu.com/news/national/other-states/crpf-poll-personnel-among-14-killed-in-maoist-strikes/article5905014.ece>

256. The Indian Express, "Maoists target teachers, ambulance", 13.4.2014, <http://indianexpress.com/article/>

5.2 Societal non-State actors

There are number of other non-State actors in the society who perpetrate violations of the right to life of the vulnerable groups. The societal non-State actors include individuals and groups who are not organized like the AOGs but their role in the violation is recognized under various laws of the country.

i. Violations of the right to life of women

Women are subjected to violation of the right to life for dowry, in the name of killing witches and honour killings (which also includes men).

According to the NCRB, a total of 79,404 women were killed for dowry in India from 2004 to 2013. These included 7026 in 2004, 6787 in 2005, 7618 in 2006, 8093 in 2007, 8172 in 2008, 8383 in 2009, 8391 in 2010, 8618 in 2011, 8233 in 2012 and 8083 in 2013.²⁵⁷

According to NCRB, 1543 persons were killed for practicing witchcraft across India from 2004 to 2013. These included 111 in 2004, 197 in 2005, 186 in 2006, 177 in 2007, 175 in 2008, 175 in 2009, 178 in 2010, 240 in 2011, 119 in 2012, and 160 in 2013.²⁵⁸

There is no official data on honour killings in India as honour crimes is not defined as a separate crime. On 24 November 2014, the MHA informed the Lok Sabha that the NCRB has started collection of data on 'honour killing' from 2014.²⁵⁹

ii. Violations of the right to life in communal violence

India was born out of the communal riots during the partition of India in 1947 and the riots have been an integral part of India. The communal riots continue to take place regularly with the acquiescence of the political parties and failure of the State agencies to effectively intervene to protect the right to life of those caught in communal violence. According to the MHA, a total

india/others/maoists-target-teachers-ambulance/

257. See NCRB reports from 2004 to 2013 available at: <http://ncrb.nic.in/>

258. See NCRB reports from 2004 to 2013 available at: <http://ncrb.nic.in/>

259. See 'Honour killing data', Press Information Bureau, Government of India, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=111810>

of 1211 persons were killed in 7419 incidents of communal violence across India from 2004 to 2013. These included 129 deaths in 2004, 124 in 2005, 133 in 2006, 99 in 2007, 167 in 2008, 125 in 2009, 116 in 2010, 91 in 2011, 94 in 2012, and 133 in 2013.²⁶⁰

iii. Violation of the right to life in caste violence

Despite various legal protection including under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the Dalits (Scheduled Castes) and the Scheduled Tribes (indigenous peoples) continue to be particularly vulnerable to violation including the right to life at the hands of the upper caste and non-tribals.

According to NCRB, 1646 persons belonging to the STs were killed by non-tribals in India from 2004 to 2013. These included 156 in 2004, 164 in 2005, 195 in 2006, 140 in 2007, 128 in 2008, 118 in 2009, 142 in 2010, 143 in 2011, 156 in 2012 and 122 in 2013.²⁶¹

According to NCRB, 6492 persons belonging to the SCs were killed by upper castes in India from 2004 to 2013. These included 654 in 2004, 669 in 2005, 673 in 2006, 674 in 2007, 628 in 2008, 624 in 2009, 570 in 2010, 673 in 2011, 651 in 2012 and 676 in 2013.²⁶²

260. MHA Annual Reports 2004-05 to 2013-14 & Annexure in reply to parts (a) to (c) of the Lok Sabha Unstarred Question No. 7400 for 22.5.2012 <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=124101>

261. See NCRB reports from 2004 to 2013 available at: <http://ncrb.nic.in/>

262. See NCRB reports from 2004 to 2013 available at: <http://ncrb.nic.in/>

6. IMPUNITY FOR VIOLATIONS OF THE RIGHT TO LIFE

In addition to lack of access to justice starting with the refusal of the Police to register the First Information Report (FIR), impunity has been provided to the law enforcement personnel under various laws of India. The sanctification of these laws by the Supreme Court of India has been the single most important factor for perpetuating the massive violations of the right to life through custodial deaths, fake encounters, police firing etc.

6.1 Laws providing impunity through requirement of prior sanction

Impunity for public servants was an integral part of colonial administration by the British in India. After independence, India embedded “good faith” clause in all the legislations to protect virtually all illegal and criminal acts by public servants through requirement of prior sanction from the concerned authorities for prosecution or institution of suit or other legal proceeding.

Section 197 of the CrPC²⁶³ provides that no government official or member of the armed forces alleged to have committed a criminal offence while acting or purporting to be acting in the discharge of his official duty can be prosecuted except with the prior sanction of the Central or State government. Section 45²⁶⁴ of the CrPC specifically protects members of the armed forces from arrest without prior sanction for anything done or purported to be done in the discharge of official duties. Section 132²⁶⁵ CrPC also protects police, armed forces and even civilians who engage in activities to help disperse crowd from prosecution without prior sanction.

263. See Chapter XIV “Prosecution of Judges and Public Servants” <http://www.icf.indianrailways.gov.in/uploads/files/CrPC.pdf>

264. See Chapter V “Protection of members of the Armed Forces from Arrest” at <http://www.icf.indianrailways.gov.in/uploads/files/CrPC.pdf>

265. See Chapter XA “Protection against prosecution for acts done under preceding sections” <http://www.icf.indianrailways.gov.in/uploads/files/CrPC.pdf>

Further Section 6 of the AFSPA, 1958 provides that *“No prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to be done in exercise of powers conferred by this Act.”*²⁶⁶ Section 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 provides the same immunity.²⁶⁷

The only exception has been made in the Criminal Law (Amendment) Act, 2013 which removed the requirement of prior sanction under Section 197 of the CrPC to prosecute a public servant accused of sexual offences under Section 166A, Section 166B, Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 370, Section 375, Section 376, Section 376A, Section 376C, Section 376D and Section 509 of IPC.²⁶⁸ The amendment was consistent with the recommendations of the Justice Verma Committee, constituted by the GoI in the wake of 16 December 2012 gang rape and murder of a young woman in Delhi.

However, the GoI refused to implement another key recommendation of Justice Verma Committee to amend Section 6 of the AFSPA to remove the requirement of prior sanction in cases of sexual assault by members of the armed forces.²⁶⁹ In a reply dated 8 May 2013 to a question in the Rajya Sabha, the Minister of State in the MHA stated that the recommendations of amending the AFSPA have not been incorporated in the Criminal Law (Amendment) Ordinance, and subsequent Criminal Law (Amendment) Act 2013 because of multitude and divergence of opinion on the issues.²⁷⁰ In reality it effectively implies that the armed forces deployed in the areas declared to be disturbed under the AFSPA shall continue to have protection for sexual offences including rape, gang rape etc.

266 .http://mha.nic.in/sites/upload_files/mha/files/pdf/armed_forces_special_powers_act1958.pdf

267. http://mha.nic.in/sites/upload_files/mha/files/pdf/Armedforces%20J&K%20Splpowersact1990.pdf

268. The Criminal Law (Amendment) Act, 2013 is available at http://egazette.nic.in/WriteReadData/2013/E_17_2013_212.pdf

269 .See Full Text of the Justice Verma Committee Report, 23 January 2013, available at:<http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committee%20report.pdf>, last accessed on 14 August 2013.

270. Rajya Sabha Unstarred Question No. 4590 dated 8 May 2013 asked by Member of Parliament Smt. Jharna Das and answered by Shri R.P.N. Singh, Minister of State in the Ministry of Home Affairs, available at: <http://mha.nic.in/par2013/par2013-pdfs/rs-080513/4590.pdf>

6.2 Immunity at work

The requirement of prior sanction has effectively come to mean absolute impunity and prosecution cannot take place despite the CBI finding certain security force personnel involved in the violation of the right to life.

In the fake encounter death of Sohrabuddin Sheikh and Tulsiram Prajapati, on 2 March 2015, the CBI Special Court dropped charges against Gujarat Additional Director General of Police Geeta Johari in connection with the cases for want of mandatory sanction from the Gujarat government for her prosecution. Johari was booked for delaying the investigations in the Prajapati case and also allegedly destroyed some case records.²⁷¹

Similarly in Ishrat Jahan fake encounter case, the trial has not commenced as the CBI is yet to get the sanction of the MHA to prosecute four officials namely former Special Director Rajendra Kumar, Tarun Mittal, M K Sinha and Rajiv Wankhede of the Intelligence Bureau (IB). According to the CBI, the killing of Ishrat Jahan and three others in a fake encounter was result of joint conspiracy of Gujarat police and the IB.²⁷²

In the Nandigram firing too, the CBI could not prosecute six police officers who have been mentioned in the chargesheet for being involved in the police firing at Nandigram, West Bengal on 14 March 2007, which left at least 14 people dead. The State Government of West Bengal is yet to give sanction for their prosecution. On 23 February 2015, the CBI sought permission for the third time from the State Government of West Bengal to prosecute the accused police officers.²⁷³

In the murder of five civilians dubbed as alleged terrorists on 25 March 2000 by the personnel of the 7th Rashtriya Rifles (RR) of India, the CBI filed chargesheet against Colonel Ajay Saxena, Major Brajendra Pratap Singh, Major

271. Sohrabuddin Sheikh fake encounter case: Charges against Geeta Johari dropped, Firstpost, 3 March 2015 http://www.firstpost.com/india/sohrabuddin-sheikh-fake-encounter-case-charges-geeta-johari-dropped-2132439.html?utm_source=FP_TOP_NEWS

272. Business Standard, "Ishrat case: No sanction to prosecute IB men from Centre yet", 6.2.2015, http://www.business-standard.com/article/pti-stories/ishrat-case-no-sanction-to-prosecute-ib-men-from-centre-yet-115020601744_1.html

273. Daily News and Analysis, "Nandigram firing: CBI asks West Bengal govt why no action taken against IPS officers" 23.2.2015, <http://www.dnaindia.com/india/report-nandigram-firing-cbi-asks-west-bengal-govt-why-no-action-taken-against-ips-officers-2063524>

Sourabh Sharma, Subedar Idrees Khan and some members of the troops of the 7th RR for the fake encounter. The CBI contented that *“killing innocent persons in a fake encounter in execution of a conspiracy cannot be a part of official duty and thus, in view of the facts of the case no sanction is required”*. However, the Supreme Court in May 2012 held that it has *“no hesitation to hold that sanction of the Central Government is required in the facts and circumstances of the case and the court concerned lacks jurisdiction to take cognizance unless sanction is granted by the Central Government.”*²⁷⁴ The case was handed over to the Army which, as expected, closed the case in January 2014 citing lack of evidence to establish a prima facie case against any of the accused Army officials.²⁷⁵

Sanction for prosecution is rarely given. In April 2012, the Army in a reply to an application under the Right to Information Act, 2005 revealed that 44 cases had been received during 1990-2011 for sanction for prosecution under AFSPA from the State Government of Jammu and Kashmir. Of these, sanction was denied in 35 cases, 9 cases were under process and in one case the Army conducted a court-martial and convicted and punished a soldier with dismissal and ten years’ imprisonment.²⁷⁶ The sanction for prosecution is extremely rare.

Therefore, sentencing of five army personnel, including two officers to life imprisonment by a military court in November 2014 for killing three persons in a fake encounter at Machil in Jammu and Kashmir in 2010²⁷⁷ appears to be an exception.

6.3 The supreme failure on impunity

The requirement of prior sanction for prosecution of the law enforcement personnel especially in cases of violations of the right to life is antithetical to the notion of the rule of law and raises serious questions about the

274. Judgement of the Supreme Court of India dated 1 May 2012 in CRIMINAL APPEAL NO. 257 of 2011 General Officer Commanding ...Appellant v. CBI & Anr. With CRIMINAL APPEAL NO.55 of 2006 available at <http://www.indiankanoon.org/doc/69000120/>

275. The Pioneer, “Army Closes Pathribal Fake Encounter Case; Anger in J&K”, 25.1.2014, <http://www.dailypioneer.com/nation/army-closes-pathribal-fake-encounter-case-anger-in-jandk.html>

276. The Indian Express, “In revised rape law, J&K lets troops retain shield”, 24.11.2014, <http://indianexpress.com/article/india/politics/in-revised-rape-law-jk-lets-troops-retain-shield/>

277. The Hindu, “Parrikar hails Macchil case verdict”, 14.11.2014, <http://www.thehindu.com/news/national/machil-fake-encounter-case-army-has-done-justice-says-parrikar/article6599996.ece>

independence of judiciary in India. The case studies show that irrespective of the merits of the findings by the country's premier investigating agency such as the CBI, the prosecution cannot proceed because permission is not given by the executive authorities. This denial cannot be subject to judicial review. In effect, the executive sits over the judiciary and the supremacy of the judiciary does not exist in India and the judicial discretion is taken away.

The Supreme Court has failed to protect the right to life on many occasions. It upheld the constitutional validity of the AFSPA in the *Naga Peoples Movement for Human Rights v. Union of India*²⁷⁸ which empowers a non-commissioned officer to use fire-arms and force, even to the causing of death, with impunity as provided under Section 6 of the AFSPA. This sits uneasily with plethora of recommendations for the repeal of the AFSPA by the UN Human Rights Committee,²⁷⁹ the UN Committee on the Elimination of All Forms of Racial Discrimination,²⁸⁰ the UN Human Rights Council under its Universal Periodic Review,²⁸¹ the Justice Jeevan Reddy Committee to Review the AFSPA²⁸² and the Second Administrative Reforms Commission²⁸³ and the Justice Verma Committee²⁸⁴.

Equally disturbing is the judgement of the Supreme Court in *People's Union for Civil Liberties & Anr v. State of Maharashtra & Ors*²⁸⁵ on 23 September 2014

278. AIR 1998 SC 431

279. The UN Human Rights Committee (CCPR/C/79/Add.81 dated 4 August 1997) in its concluding observation expressed concerns at the continuing reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations, in particular with respect to articles 6, 7, 9 and 14 of the Covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups.

280. The CERD Committee in its Concluding Observations (CERD/C/IND/CO/19 of 5 May 2007) recommended India "to repeal the Armed Forces (Special Powers) Act and to replace it "by a more humane Act," in accordance with the recommendations contained in the 2005 report of the above Review Committee set up by the Ministry of Home Affairs. It also requests the State party to release the report".

281. India was recommended Report of the Working Group on the Universal Periodic Review-India, (A/HRC/21/10), dated 9 July 2012) to "repeal the Armed Forces Special Powers Act or adopt the negotiated amendments to it that would address the accountability of security personnel, the regulation concerning detentions as well as victims' right to appeal in accordance to international standards (Slovakia)".

282. Lok Sabha, "Repeal of AFSPA", Starred Question No.34 answered on 25.11.2014 by Kiren Rijiju, Minister of State in the Ministry of Home Affairs [Accessed 3.12.2014]

283. See <http://arc.gov.in/5th%20REPORT.pdf> [Accessed 3.12.2014]

284. Report of the Committee on Amendments to Criminal Law, 23 January 2013, available at: <http://www.thehindu.com/news/resources/full-text-of-justice-vermas-report-pdf/article4339457.ece>

285. *People's Union for Civil Liberties & Anr v. State of Maharashtra & Ors*, 23.09.2014, available at: <http://supremecourtindia.nic.in/outtoday/ar12551999.pdf>

in which the apex court issued 16-point guidelines²⁸⁶ to deal with encounter death cases. The Supreme Court while accepting the argument of the State merely directed for registration of an FIR and rejected the order to file the FIRs against policemen involved in the encounter which means justifying the current practice i.e. registration of the FIR against the dead person on the charge of attempted murder of police officers and as the accused is already dead, s/he cannot defend and police exonerate themselves without taking the case to the court.²⁸⁷ Further, the apex court directed that the encounter killings be investigated by the CID or a police team from another police station despite apex court itself in numerous decisions handed over the investigation to the CBI.²⁸⁸ The order also restricted the authority and scope of the NHRC and empowered the police to choose to send the immediate information either to the NHRC or the State Human Rights Commission (SHRC) with most SHRCs having no capacity.²⁸⁹ The apex Court further stated that the intervention of the NHRC is not necessary unless there is serious doubt about the independence and impartiality of the investigation

286. The 16th Point Guidelines issued by the Supreme Court on encounter killings are:

1. Any intelligence or tip-off about criminal activities must be recorded either in writing or electronic form.
 2. An FIR initiating proper criminal investigation must be registered if pursuant to a tip-off the police resort to firearms and which results in death of a person.
 3. An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station, which has to fulfill eight minimum investigation requirements.
 4. Mandatory magisterial inquiry in all cases of death in encounters and a report thereof must be sent to judicial magistrate.
 5. The NHRC or State Human Rights Commission must be informed of the encounter death without delay.
 6. Medical aid should be provided to injured criminal/victim and magistrate/doctor should record his/her statement.
 7. Records such as FIR, diary entry, sketch, etc should be immediately forwarded to court.
 8. Trial must be concluded expeditiously.
 9. Next of kin of dead criminal/victim must be informed immediately.
 10. Six monthly statements of all cases of encounter deaths to be forwarded to NHRC along with reports of post-mortem, inquest, enquiry etc.
 11. If investigation concludes false encounter, disciplinary action against and suspension of a police officer must be initiated immediately.
 12. Award of compensation to next of kin of dead victim/criminal as provided under the CrPC must be applied.
 13. Police officers must surrender their weapons or other materials for investigation, subject to rights under Article 20 of the Constitution.
 14. Family of accused police officer must be informed about the incident and offered services of lawyer/counselor.
 15. No out-of-turn promotion or gallantry awards for the officers involved in encounter death.
 16. The family of the victim can approach court in case these guidelines are not followed
287. See *"Showing weak judgement"* by Colin Gonsalves, The Indian Express, 25.9.2014, <http://indianexpress.com/article/opinion/columns/showing-weak-judgement/>, & "Not enough, Your Honour!", Deccan Herald, 5.10.2014, <http://www.deccanherald.com/content/434202/not-enough-your-honour.html>
288. See *"Showing weak judgement"* by Colin Gonsalves, The Indian Express, 25.9.2014, <http://indianexpress.com/article/opinion/columns/showing-weak-judgement/>
289. "Of encounter killings, SC & human rights", By Satyabrata Pal, The Tribune, 2.10.2014, <http://www.tribuneindia.com/2014/20141002/edit.htm#6>

and that compensation to be provided to the dependents of the victims who suffered death in a police encounter, the scheme provided under Section 357 (A) of CrPC must be applied.

The NHRC had no other option but to file a Writ Petition on 12 December 2014 before the Supreme Court requesting its intervention to issue a writ of Mandamus directing the concerned governments and police authorities to continue to send the reports/information asked for by the NHRC and to abide by the guidelines issued by it in May 2010 with respect to the procedure to be adopted by the Police in cases of encounter killings and further not to construe the guidelines issued by the Supreme Court in the case of *People's Union for Civil Liberties & Anr v. State of Maharashtra & Ors* in such a manner so as to obstruct enquiries by NHRC in cases of encounter. The NHRC, contended that (1) under Section 12 of the PHRA, the NHRC has a statutory duty to look into all cases of violation of human rights which also includes right to life which is involved in the cases of death in encounter and that the power of NHRC to award compensation is independent of Section 357 (A) of CrPC. The NHRC further contended, “who and when will decide the issue of serious doubt about the independent and impartial investigation?” and the “what is the purpose of information to the NHRC if not actionable?”²⁹⁰

The judgement of the Supreme Court in *People's Union for Civil Liberties & Anr v. State of Maharashtra & Ors*²⁹¹ has direct bearing on the appeal filed by the *Andhra Pradesh Police Officers Association*²⁹² on 4 March 2009 in which the Supreme Court stayed the decision of the five-judge bench of the Andhra Pradesh High Court. The AP High Court in this case had directed that all encounters should be recorded and a first information report filed and investigated and that the police should have the onus of proving that the death took place while exercising self-defence. Further, a magistrate presiding over a case of an alleged fake encounter should have the power to reject a

290. NHRC files a Writ Petition in the Supreme Court in connection with its order in a case of PUCL on encounter deaths (12.12.2014), available at <http://www.nhrc.nic.in/dispatcharchive.asp?fno=13460>

291. *People's Union for Civil Liberties & Anr Vs State of Maharashtra & Ors*, 23.09.2014, available at: <http://supremecourtindia.nic.in/outtoday/ar12551999.pdf>

292. *A.P. Police Officers Association v. A.P. Civil Liberties Committee & Ors* [SLP(C) NO. 5933/2009]

police investigation exonerating those involved and conduct an independent investigation if required.²⁹³

The judgement of the Supreme Court judgement in *People's Union for Civil Liberties & Anr v. State of Maharashtra & Ors*²⁹⁴ is fallacious and the same stands exposed from the extrajudicial executions of 20 labourers, alleged to be red sander smugglers in the early hours of 7 April 2015 by a joint team of the Red Sanders Anti-Smuggling Task Force (RSASTF) of Andhra Pradesh Police and forest officials in an encounter inside Seshachalam forest in Chittoor district of Andhra Pradesh. The police claimed that the joint operation against the smugglers was launched in the Seshachalam forest after about 100 alleged smugglers were spotted inside the forest area. The police further claimed that the smugglers attacked the RSASTF and forest officials with stones and axes following which the joint team opened fire in self defence, killing at least 20 smugglers.²⁹⁵ To justify the killings, Andhra Pradesh Forest Minister B Gopala Krishna Reddy stated that there is evidence that the men killed were 'habitual offenders' in trading red sandalwood illegally.²⁹⁶

However, questions about the genuineness of the encounter have been raised by many, with an eyewitness claiming that at least seven of the 20 dead were taken off a bus and shot dead.²⁹⁷ Some of the bodies have burnt marks and others show bullet injuries in the chest and head, which further questioned the police claim of self-defence.²⁹⁸ Justice D Murugesan, Member of the NHRC stated that the opening of firing cannot be justified on the ground

293. The Telegraph, "CAUGHT IN THE DEATH ZONE", 8.6.2011, http://www.telegraphindia.com/1110608/jsp/opinion/story_14085381.jsp

294. *People's Union for Civil Liberties & Anr v. State of Maharashtra & Ors*, 23.09.2014, available at: <http://supremecourtindia.nic.in/outtoday/ar12551999.pdf>

295. See 'FIR against STF personnel for murder, abduction in Chittoor encounter: Police tells Andhra HC', CNN IBN, 15 April 2015, <http://ibnlive.in.com/news/fir-against-stf-personnel-for-murder-abduction-in-chittoor-encounter-police-tells-andhra-hc/539983-62-127.html>

296. See 'Chittoor Killings: 2 Witnesses Who Claim Encounter Was Fake, Meet Rights Body', NDTV, 13 April 2015, <http://www.ndtv.com/india-news/chittoor-killings-2-witnesses-who-claim-encounter-in-andhra-pradesh-was-fake-to-meet-rights-body-754436>

297. See 'Andhra encounter: File case of murder against cops, says High Court', India Today, 10 April 2015, <http://indiatoday.intoday.in/story/andhra-pradesh-red-sandalwood-smugglers-encounter-high-court/1/429501.html>

298. See 'Chittoor Killings: 2 Witnesses Who Claim Encounter Was Fake, Meet Rights Body', NDTV, 13 April 2015, <http://www.ndtv.com/india-news/chittoor-killings-2-witnesses-who-claim-encounter-in-andhra-pradesh-was-fake-to-meet-rights-body-754436>

of self defence as it resulted in the loss of lives of 20 persons.²⁹⁹ The deceased were reported to be labourers and not red sander smugglers. On 13 April 2015, the NHRC recorded statements of two witnesses who claimed that at least 12 of those shot dead were picked up from a bus by policemen and arrested hours before the encounter in the forests. They further claimed that they survived because they were not among the villagers taken away by the police that day.³⁰⁰

Considering the gravity of the case, on 10 April 2015, the Andhra Pradesh High Court ordered the State Government of Andhra Pradesh to register a case of murder.³⁰¹ On 15 April, the police informed the High Court that an FIR was registered for murder and abduction against Special Task Force policemen for killing 20 labourers dubbed as alleged red sander smugglers after a complaint was filed by one of the deceased's wife.³⁰² On 16-17 April 2015, the High Court also ordered fresh post-mortem examinations on six of the deceased after their relatives moved the court.³⁰³

Unless the Supreme Court wakes up to the realities of India, impunity shall prevail and violations of the right to life will be trampled at will.

The question is whether the Supreme Court will correct itself through its judgements in the petition filed by the NHRC seeking clarifications of its ruling given in *People's Union for Civil Liberties & Anr v. State of Maharashtra & Ors* as well as the pending appeal filed by the *Andhra Pradesh Police Officers Association*.

299. See 'NHRC issues notice to AP government, says smugglers' killing 'serious violation of human rights', Jagran Post, 7 April 2015, <http://post.jagran.com/NHRC-issues-notice-to-AP-government-says-smugglers-killing-serious-violation-of-human-rights-1428414932>

300. See 'Chittoor Killings: 2 Witnesses Who Claim Encounter Was Fake, Meet Rights Body', NDTV, 13 April 2015, <http://www.ndtv.com/india-news/chittoor-killings-2-witnesses-who-claim-encounter-in-andhra-pradesh-was-fake-to-meet-rights-body-754436>

301. See 'Andhra encounter: File case of murder against cops, says High Court', India Today, 10 April 2015, <http://indiatoday.intoday.in/story/andhra-pradesh-red-sandalwood-smugglers-encounter-high-court/1/429501.html>

302. See 'FIR against STF personnel for murder, abduction in Chittoor encounter: Police tells Andhra HC', CNN IBN, 15 April 2015, <http://ibnlive.in.com/news/fir-against-stf-personnel-for-murder-abduction-in-chittoor-encounter-police-tells-andhra-hc/539983-62-127.html>

303. See 'Chittoor killings: Hyderabad High Court orders fresh post-mortem of 5 victims', Deccan Chronicle, 17 April 2015, <http://www.deccanchronicle.com/150417/nation-current-affairs/article/chittoor-killings-high-court-orders-fresh-post-mortem-5>

National Campaign for Abolition of Death Penalty in India - a programme of the Asian Centre for Human Rights (ACHR) supported by the European Commission under the European Instrument for Human Rights and Democracy - conducts research, analysis and advocacy on issues relating to death penalty with the aim for its eventual abolition.

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- Arbitrary on all Counts: Consideration of mercy pleas by President of India, 10 December 2014
- Death Reserved for the Poor, November 2014
- Death penalty through self incrimination in India, October 2014
- India: Death Without the Right to Appeal, September 2014
- Award of enhanced punishment of death by the Supreme Court, 26 September 2014
- India: Death Penalty Has No Deterrence, August 2014
- India: Death Penalty Statistics, June 2014
- The Case for Abolition of Death Penalty in India - ACHR's submission to the Law Commission of India on Capital Punishment, May 2014
- Mercy on Trial in India, 22 October 2013
- The State of Death Penalty in India 2013, 14 February 2013

The following publications are expected:

- India: Not safe for extradition of those facing death sentences?
- The state of the mercy pleas
- Our Standards and their standards: India Vs the abolitionist countries
- Right to life in the context of death penalty: Death Penalty and the UN Human Rights Committee
- Death Penalty in India: Issues and contentions

All the reports are available at http://www.achrweb.org/death_penalty.html

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