

**Revised Guidelines/Procedures to be followed in dealing with deaths occurring in encounter deaths**

The guidelines issued by the Commission in respect of procedures to be followed by the State Govts. in dealing with deaths occurring in encounters with the police were circulated to all Chief Secretaries of States and Administrators of Union Territories on 29.3.1997.

Subsequently on 2.12.2003, revised guidelines of the Commission have been issued and it was emphasised that the States must send intimation to the Commission of all cases of deaths arising out of police encounters. The Commission also recommended the modified procedure to be followed by State Govts. in all cases of deaths, in the course of police action, and it was made clear that where the police officer belonging to the same police station are members of the encounter party, whose action resulted in deaths, such cases be handed over for investigation to some other independent investigating agency, such as State CBCID, and whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognisable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall invariably be investigated by the State CBCID. A Magisterial Inquiry must invariably be held in all cases of deaths which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry.

All the Chief Ministers and Administrators have been directed to send a six monthly statement of all cases of deaths in police action in the States/ UTs through the Director General of Police to the Commission by the 15th Day of January and July respectively in the proforma devised for the purpose.

**Justice A.S. Anand**  
**Chairperson**  
(Former Chief Justice of India)

2<sup>nd</sup> December, 2003

Dear Chief Minister,

Death during the course of a police action is always a cause of concern to a civil society. It attracts criticism from all quarters like Media, the general public and the NGO sector.

The police does not have a right to take away the life of a person. If, by his act, the policeman kills a person, he commits an offence of culpable homicide or not amounting to murder, unless it is established that such killing was not an offence under the law. Under the scheme of criminal law prevailing in India, it would not be an offence if the death is caused in exercise of right of private defence. Another provision under which the police officer can justify causing the death of a person, is section 46 of the Criminal Procedure Code. This provision authorizes the police to use reasonable force, even extending up to the causing of death, if found necessary to arrest the person accused of an offence punishable with death or imprisonment for life. Thus, it is evident that death caused in an encounter if not justified would amount to an offence of culpable homicide.

The Commission while dealing with complaint 234 (1 to 6)/ 93-94 and taking note of grave human rights issue involved in alleged encounter deaths, decided to recommend procedure to be followed in the cases of encounter death to all the states. Accordingly, Hon'ble Justice Shri M.N. Venkatachaliah, the then Chairperson NHRC, wrote a letter dated 29/3/1997 to all the Chief Ministers recommending the procedure to be followed by the states in "cases of encounter deaths" (copy enclosed for ready reference).

Experience of the Commission in the past six years in the matters of encounter deaths has not been encouraging. The Commission finds that most of the states are not following the guidelines issued by it in the true spirit. It is of the opinion that in order to bring in transparency and accountability of public servants, the existing guidelines require some modifications.

Though under the existing guidelines, it is implicit that the States must send intimation to the Commission of all cases of deaths arising out of police encounters, yet some States do not send intimation on the pretext that there is no such specific direction. As a result, authentic statistics of deaths occurring in various states as a result of police action are not readily available in the Commission. The Commission is of the view that these statistics are necessary for effective protection of human rights in exercise of the discharge of its duties.

On a careful consideration of the whole matter, the Commission recommends following modified procedure to be followed by the State Governments in all cases of deaths in the course of police action :-

- A. When the police officer in charge of a Police Station receives information about the deaths in an encounter between the Police party and others, he shall enter that information in the appropriate register.
- B. Where the police officers belonging to the same Police Station are members of the encounter party, whose action resulted in deaths, it is desirable that such cases are made over for investigation to some other independent investigating agency, such as State CBCID.
- C. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognisable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall invariably be investigated by State CBCID.
- D. A Magisterial Inquiry must invariably be held in all cases of death which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry.
- E. Prompt prosecution and disciplinary action must be initiated against all delinquent officers found guilty in the magisterial enquiry/ police investigation.
- F. Question of granting of compensation to the dependents of the deceased would depend upon the facts and circumstances of each case.
- G. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/ recommended only when the gallantry of the concerned officer is established beyond doubt.
- H. A six monthly statement of all cases of deaths in police action in the State shall be sent by the Director General of Police to the Commission, so as to reach its office by the 15th day of January and July respectively. The statement may be sent in the following format along with post-mortem reports and inquest reports, wherever available and also the inquiry reports:-
  - 1. Date and place of occurrence
  - 2. Police Station, District.
  - 3. Circumstances leading to deaths:

- i. Self defence in encounter
  - ii. In the course of dispersal of unlawful assembly
  - iii. In the course of effecting arrest.
4. Brief facts of the incident
5. Criminal Case No.
6. Investigating Agency
7. Findings of the magisterial Inquiry/enquiry by Senior Officers:
  - a. disclosing in particular names and designation of police officials, if found responsible for the death; and
  - b. whether use of force was justified and action taken was lawful.

It is requested that the concerned authorities of the State are given appropriate instructions in this regard so that these guidelines are adhered to both in letter and in spirit.

With regards,

Yours sincerely,

Sd/-  
(A.S. Anand)

To  
All Chief Ministers of States/UTs