

# People's Union for Civil Liberties – Karnataka

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## *PUCL Seeks Prosecution of Police & an independent investigation into the murder of Vikram Gowda*

*Encounters are murders in the understanding of the law  
and should be prosecuted, not lauded*

November 20, 2024

The PUCL condemns the murder of Naxalite' leader Vikram Gowda which is sought to be explained away by the police as an 'encounter'. The killing on 19<sup>th</sup> November, 2024 is nothing other than a violation of the guarantee of the right to life under Article 21 of the Constitution under the guise of an 'encounter'.

The police version as per the FIR is that during a combing operation by the Anti Naxal Force, they came upon 3-4 armed men who they came to know were Naxal leaders namely Vikram Gowda and others. The FIR claims that the police then told them to surrender, which alleged Naxal leaders refused to do. Instead they fired at the police with the intention of killing them. The police in self defence had to fire back and in the firing, Vikram Gowda was hit and fell down. The others escaped into the forest. A 9mm carbine was recovered from where Vikram Gowda had died. The police then proceeded to register an FIR with the accused being named as Vikram Gowda and others under the following sections of the Bharatiya Nyay Sanhita, 2024 (formerly the Indian Penal Code, 1860), Sec 111(organized crime), Sec 113(terrorist act), Sec 132( assault on public servant to prevent discharge of duty), Sec 61(1) (criminal conspiracy), Sec 62(punishment for attempt of offence punishable with life imprisonment), Sec 148 (conspiracy to wage war against state), Sec 3(5)(common intention), Arms Act and UAPA - Sections 10, (unlawful association); Sec 16(1) (terrorist act), Sec 20(member of terrorist gang) and Sec 38 (offence related to membership of terrorist gang).

The police case as per the FIR is that Vikram Gowda was killed, because he was firing on the police and the police had no option but return fire as an act of self defence. To corroborate their case the FIR mentions that the police recovered a 9mm carbine from the surroundings where Vikram Gowda had died.

It is clear that in this alleged encounter, the person who has lost his life is Vikram Gowda. As per the FIR, there is no injury as far as any police officer involved in the alleged encounter is concerned. It is strange and troubling, that the FIR is against the dead person, instead of registering a second FIR, mandating a criminal investigation as to the cause of the death of Vikram Gowda.

The IPC and the BNS do not recognise any exemption to the law of murder, under the heading of encounter. The legally recognised exception to murder is self-defence . However, the plea of self-defence has to be taken at the time of trial and it is up to the judicial process to determine whether the act of murder is entitled to be excused on the grounds that it was

committed as an act of self defence. This is a defence to be taken at the time of the trial and the law is clear that an FIR against those who killed Vikram Gowda has to be registered.

The unambiguous legal position as per the BNS and the IPC, is that the killing of Vikram Gowda should be treated as murder and an FIR should be registered against all police officers who were involved in the killing. This reading of the law is buttressed by the NHRC Guidelines as well as the Supreme Court.

The NHRC guidelines state that,

*Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognizable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall be investigated by State CBC ID or any other specialized investigation agency.*

The Supreme Court in *PUCL v State of Maharashtra* also mandates that:

*C. Whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognizable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the I.P.C. Such case shall be investigated by State CBCID or any other specialized investigation agency.*

Thus, the law clearly mandates that the police must register a separate FIR requiring investigation into the murder of Vikram Gowda.

The veracity or not of the FIR narrative must be investigated as per the law laid down by the Supreme Court in *PUCL v State of Maharashtra* as well as the guidelines put in place by the NHRC.

This is vital as the Supreme Court in *Omprakash v State of Jharkhand*, has observed that, ‘it is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger-happy police personnel, who liquidate criminals and project the incident as an encounter.’

Based on extensive documentation of how the constitutionally guaranteed right to life is rendered null and void due to the practice of encounters, the Supreme Court in *PUCL v State of Maharashtra* observed that, ‘We are of the view that it would be useful and effective to structure appropriate guidelines to restore faith of the people in police force. In a society governed by rule of law, it is imperative that extra-judicial killings are properly and independently investigated so that justice may be done.’

The Supreme Court guidelines also mandate an independent investigation.

*B. Where the police officers belonging to the same police station are members of the encounter party, whose action resulted in death, it is desirable that such cases are made over for investigation to some other independent investigation agency, such as State CBCID.*

For a society governed by the principles of rule of law, due process, no person based on their ideology or even assumed criminality by the State can be ‘encountered’ to subvert the due legal process. A constitutional state cannot resort to extra judicial executions.

PUCL demands that:

1. Registration of an FIR for culpable homicide against the police officers involved in the so-called encounter immediately.
2. The police officials involved in the encounters should be immediately transferred out of their districts to enable an unbiased investigation and to ensure that evidence is not tampered with.
3. In the pendency of the investigation, any kind of award or promotion issued to police personnel in respect to the encounters should not be given.
4. Independent investigation into the cause of death as per the Supreme Court guidelines.
5. Scrupulous adherence to the rules laid down by the Supreme Court in the case of encounters norms to be followed once the police have intimation of the presence of criminal movements as well as norms on Magisterial inquiry in accordance with law and victim compensation. (See Annexure A)

## **Annexure A**

### Guidelines laid down in PUCL v State of Maharashtra

(1) Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. If such intelligence or tip-off received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

(2) If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court under Section 157 of the Code without any delay. While forwarding the report under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.

(3) An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

- (a) To identify the victim; colour photographs of the victim should be taken;
- (b) To recover and preserve evidentiary material, including blood-stained earth, hair, fibers and threads, etc., related to the death;
- (c) To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;
- (d) To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;
- (e) It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

- (f) Post-mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be Incharge/ Head of the District Hospital. Post-mortem shall be videographed and preserved;
- (g) Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.
- (h) The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

(4) A Magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Code.

(5) The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.

(6) The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.

(7) It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned Court.

(8) After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the chargesheet submitted by the Investigating Officer, must be concluded expeditiously.

(9) In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.

(10) Six monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six-monthly statements reach to NHRC by 15th day of January and July, respectively. The statements may be sent in the following format along with post mortem, inquest and, wherever available, the inquiry reports:

- (i) Date and place of occurrence.
- (ii) Police Station, District.
- (iii) Circumstances leading to deaths:
  - (a) Self defence in encounter.
  - (b) In the course of dispersal of unlawful assembly.
  - (c) In the course of affecting arrest.
- (iv) Brief facts of the incident.
- (v) Criminal Case No.
- (vi) Investigating Agency.
- (vii) Findings of the Magisterial Inquiry/Inquiry by

Senior Officers:

- (a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and
- (b) whether use of force was justified and action taken was lawful.

(11) If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.

(12) As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.

(13) The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.

(14) An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer / counselling, same must be offered.

(15) No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/recommended only when the gallantry of the concerned officers is established beyond doubt.

(16) If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein.