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List of Abbreviations

- (i) AR: Assam Rifles.
- (ii) AFSPA: Armed Forces Special Powers Act, 1958.
- (iii) AOR: Area of Responsibility.
- (iv) CDO: Commando (Manipur Police).
- (v) COB: Company Operating Base.
- (vi) Coy: Company.
- (vii) IRB: India Reserve Battalion.
- (viii) KCP: Kangleipak Communist Party.
- (ix) KYKL: Kanglei Yawol Kanna Lup.
- (x) PULF: People's United Liberation Front.
- (xi) RIMS: Regional Institute of Medical Sciences, Imphal.
- (xii) SDPO: Sub Divisional Police Officer.
- (xiii) UAPA: Unlawful Activities (Prevention) Act, 1967.
- (xiv) UGs: Undergrounds.

REPORT OF THE SUPREME COURT APPOINTED COMMISSION

PART-I

PRELIMINARY

I. Background:

- 1.1 The Hon'ble Supreme Court of India by its order dated 4th January, 2013 appointed this Commission with a direction to the undersigned to make a thorough inquiry in the first six cases detailed in "Compilation-I" filed by the Writ Petitioners in W.P.(Crl.) No. 129 of 2012, with a further direction to the Commission to record a finding regarding the past antecedents of the victims and the circumstances in which they were killed.
- 1.2 The Hon'ble Apex Court has further directed the Commission to report regarding the functioning of the State Police and the Security Forces in the State of Manipur, and in case, the Commission finds that the actions of the police and/or of the security forces transgressed legal bounds, the Commission should make its recommendations for keeping the police and the security forces within the legal bounds without compromising the fight against insurgency.
- 1.3 The Hon'ble Apex Court has further stated in its order that the Commission will also address the larger question on the role of the State Police and the security forces in Manipur.

1.4 The above directions came to be made by the Hon'ble Supreme Court in the background of the allegations made in two writ petitions filed before it, namely,

W.P.(Crl.) No. 129 of 2012

(Extra Judicial Execution Victim Families Association(EEVFAM) & Anr. *Versus* Union of India & Ors.)

And

W.P.(C) No.445 of 2012

(Suresh Singh *Versus* Union of India & Anr.)

1.5 In the said writ petitions, the Petitioners have made some serious allegations as to the method adopted by the security forces (which includes Manipur police for the purpose of this report) in combating anti-national activities in some parts of the Manipur State. It is alleged that a large number of people have been eliminated by these security forces either separately or in alleged joint operations terming them as encounters. They have further stated that various organizations, which have inquired into such allegations of citizens of Manipur have opined that many of the deaths that have occurred in the so-called encounters between the security forces and the members of banned organizations are, in reality, killings of the people by the security forces. Various examples of such alleged elimination of people have been detailed in the writ petitions.

1.6 In the said background, in W.P.(Crl.) No.129 of 2012, the following prayers are made, amongst others, i.e.

- (i) to issue a writ of Mandamus or any appropriate writ, order or direction setting up a Special Investigation Team of police officers from outside the State of Manipur to investigate the instances of extra judicial executions set out in Annexures P-1 and P-2 to that writ petition. It is also further prayed that the persons so involved in the extra judicial executions be prosecuted in accordance with law;
- (ii) seeking a direction to the Respondents in the writ petition to conduct disciplinary proceedings in all cases referred to in Annexures P-1 and P-2 to the petition;
- (iii) declaring that sanction under Section 197 Cr.P.C., Section 6 of the Arms Forces Power Act, 1958 or any other similar provisions of law, is not necessary to be obtained in cases relating to fake encounters.

1.7 The order appointing the Commission states that before considering the prayers made in the writ petition, the Court would like to be fully satisfied about the truth of the allegations concerning the cases cited by the Writ Petitioners. It is in this background that this Commission consisting of the undersigned was constituted by the Hon'ble Supreme Court with specific directions referred to hereinabove.

- 1.8 The Hon'ble Supreme Court has also empowered this Commission to take the statement of witnesses in connection with the inquiry to be conducted by it and has also permitted the Commission to devise its own procedure for holding the inquiry. The Commission has been directed to furnish its report within 12 weeks from the date of the order, which is as mentioned above, 4th January, 2013.
- 1.9 While a number of instances alleging extra judicial killings have been cited by the Petitioners in the above said writ petitions, the Hon'ble Supreme Court has directed the Commission to make an inquiry into the first six cases only detailed in 'Compilation-I' filed by the Petitioners in W.P. (Crl.) No. 129 of 2012.

CASE NO.	NAME OF VICTIM	PARTICULARS OF VICTIM	DATE OF INCIDENT
1.	AZAD KHAN	Son of Md. Wahid Ali, Resident of Phoubakchao Makha Leikai, PS Mayang, Imphal, District Imphal West, Manipur.	4/3/2009
2.	KHUMBONGMAYUM ORSONJIT	Son of Imo, Resident of PO & PS Manipur District, Manipur West.	16/3/2010
3A.	NAMEIRAKPAM GOBIN MEITEI @ TAMO	Son of Romen, Resident of Bashikong Mamang Leikai,	4/4/2009

		PO & PS Irilbung, Imphal East District, Manipur.	
3B.	NAMEIRAKPAM NOBO MEITEI	Son of N. Basanta, Resident of Bashikong Mamang Leikai, PO & PS Irilbung, Imphal East District, Manipur.	4/4/2009
4.	ELANGBAM KIRANJIT SINGH	Son of Ibohal, Resident of Thoubal Haokha, Thoubal district, Manipur.	24/4/2009
5.	CHONGTHAM UMAKANTA @ MUNALTON	Son of Gunamani, Resident of Iroisemba Mamang Leikai, Imphal West District, Manipur.	5/5/2009
6.	AKOIJAM PRIYOBROTO @ BOCHOU	Son of Mongsangei Boroi Makhong, Imphal West, Manipur.	15/3/2009

2. Proceedings held by the Commission:

2.1 1st sitting: The Commission first met on 2nd February, 2013 at Bangalore and made an assessment of the logistical support that would be required by it. The Commission suggested the names of three lawyers to assist and represent the Commission in its proceedings. They are: (1) Mr. Dayan Krishnan, (2) Mr. Nikhil Nayyar and (3) Mr. Gautam Narayan. However, Mr. Dayan Krishnan pleaded his

inability to join the team of lawyers because of his prior commitments.

2.2 2nd Sitting: The second sitting of the Commission took place at New Delhi on 6.2.2013. In the said meeting, all the Counsel appearing for various parties in the above writ petitions before the Hon'ble Supreme Court were invited, as also the representatives of the Government of India-Ministry of Home Affairs, Assam Rifles, Home Department-Government of Manipur, Superintendent, Imphal West District, Manipur, Dy. I.G.- Range-I Manipur, Imphal, Dy. Secretary (Home) of Manipur. In the said meeting, it was decided that public notices be given in regard to the proceedings of the Commission intimating that the persons, who are interested in giving evidence, should file their affidavits before the Commission. It was also decided that the public notices should be issued in English as well as in Manipuri language newspapers having wide circulation in Imphal. The affidavits were directed to be filed at the Commission's temporary office at Manipur Bhawan, New Delhi. It was also decided in the said meeting that the witnesses likely to be examined by the Commission, who are working with the Government of Manipur will be served with notices through the Chief Secretary of the Government of Manipur, Imphal. A submission was made on behalf of Assam Rifles that the officers against whom allegations were made in the six cases are now posted out of Manipur, therefore, notices should be issued separately to them.

Taking into consideration the practical difficulty in issuing notices to those individual officers, a decision was taken by the Commission that notices to these officers be issued through the Home Secretary, Government of India or through the Defence Secretary, Ministry of Defence. In the said meeting, it was also decided to hold recording of evidence at Imphal to suit the convenience of the witnesses who are willing to depose before the Commission.

- 2.3 Documents received by the Commission: Pursuant to the order dated 6th February, 2013, the Government of Manipur by its letter dated 12th February, 2013, submitted to the Commission a list of officers/personnel, whose deposition may be necessary in each of the six cases. Thereafter, vide letter dated 16th February, 2013, the Home Department, Government of Manipur furnished its response to the questionnaire circulated by the Commission in respect of each of the six cases. Vide letter dated 18th February, 2013, the Ministry of Home Affairs (N.E. Division), Government of India, furnished their response to the above said questionnaire. On behalf of the complainants a response to the said questionnaire was sent under cover of a letter dated 19th February 2013. Thereafter, 7 affidavits dated 18th February, 2013 were filed on behalf of the Complainants with the office of the Commission in Delhi, in respect of each of the six cases. Thereafter, on 2nd & 3rd March 2013 further affidavits were filed in Imphal in respect of cases 1 to 4. The Manipur Police filed 33 affidavits dated 28th February 2013

with the Commission in Imphal. On 6th March 2013, 8 affidavits were filed by the Assam Rifles with the Commission in Imphal. Subsequently one further affidavit was filed by the Manipur Police with the Commission in Delhi on 14.3.2013, which was objected to by the Complainants, but was taken on record subject to the objection on admissibility.

2.4 The Commission held its public sittings from 3.3.2013 to 7.3.2013 at Imphal. In those sittings, the evidence of 27 witnesses, i.e. 13 on behalf of the Complainants and 14 on behalf of the Manipur Police was recorded. On behalf of the Assam Rifles, a request was made that since their witnesses were in different postings outside Manipur, their evidence may be recorded at Delhi. The Commission agreed to this request and fixed 13th March, 2013 as the date for commencement of proceedings at Delhi. 14 witnesses on behalf of Assam Rifles and Manipur Police were examined between the 13th and 16th of March, 2013. The Commission then adjourned the sitting to 19th March, 2013 to hear arguments of the learned Counsel for various parties on the terms of reference. The arguments concluded on 21st March 2013.

2.5 As desired by the Hon'ble Supreme Court, this report will now discuss the circumstances in which the victims in the said six cases died as also the past antecedents of the victims.

PART-II**THE SIX CASES****I. CASE 1 – Md. AZAD KHAN.****1.1. Case of the Complainant:**

1.1.1 According to the affidavit filed by Mohd. Wahid Ali (CW-1), father of the deceased i.e. Mohd. Azad Khan, the deceased was about 12 years old on the date of incident, i.e. 4.3.2009. The witness gave the date of birth of the deceased as 10.3.1997. According to this witness, the deceased was studying in Class VII in Phoubakchao High School. According to this witness, the deceased did not have any criminal antecedents.

1.1.2 However, there is material before the Commission to show that an FIR had been registered on 8.1.2009, about two months prior to the death of Md. Azad Khan, for offences under Sections 307, 326 & 34 IPC and Section 27 of the Arms Act. According to the security forces' evidence, the deceased was suspected to be a member of the Peoples United Liberation Front (PULF). As stated above, the Commission had circulated a Questionnaire to all the parties and as per the reply given to the Commission by the Joint Secretary (Home), Government of Manipur, this organization, namely, PULF is not a banned organization.

1.1.3 As per the further case of the family of the deceased, on 4.3.2009, the deceased and his friend, by name Kiyam Ananda Singh (CW 12) who was a neighbour and also studying in the same school, were reading a newspaper sitting in the verandah of deceased's house. It is stated that at that time, apart from the deceased, his father, mother, aunt and a cousin sister were also present in the verandah. It is further the case of the family of the deceased that about 11.50 am on that day, about 30 security personnel came to the house of the deceased and dragged him into the field on the northern side of the verandah for about 70 metres and beat him up severely, seeing this, both the father and mother of the deceased protested. At that time, the security personnel pushed the other members of the family including the friend of the deceased, viz. Kiyam Ananda Singh into a room in the house and the door was locked from outside. From the evidence of the father of the deceased, it could be seen that room in which the family was locked, had a window on the northern side through which the family could see the deceased being kicked and falling down. The father in his deposition further states that after the deceased fell down, he was shot at by the commandos and a pistol was thrown near his body.

Affidavits were also filed by Salim Khan (CW-9), Kiyam Ananda Singh (CW-12) and Hashim Ali (who was not examined), neighbors of the deceased who have supported

the version of Md. Wahid Ali (CW-1) the father of the deceased.

1.2 Case of Manipur Police:

1.2.1 While the case of the security forces as spoken by RW-I, Havildar Bronson Thanga (RW-1) in his affidavit, is that on 4.3.2009 at about 10.30 AM, Major Balhara (RW-15) of 21st Assam Rifles (AR) informed him that he had received information regarding the movement of underground cadres (UGs) of PULF in the general area of Phoubakchao, Sekmai jin with an intention to extort money from the general public and attack security forces. It is stated that Major Balhara, sought the assistance and cooperation of RW-1's team. Hence, he was asked to organize his team and join the AR team. It is necessary to mention here that CDO's (Commandos of Manipur Police) post and 21st Assam Rifles (ARs) are situated in the same location i.e. at Waikhong.

1.2.2 Bronson Thanga (RW-1) has further stated in his affidavit that two teams of CDOs consisting of 9 personnel, in two Maruti Gypsy vehicles proceeded along with the personnel of 21st AR, who were about 10-11 in number, in one 407 TATA truck. They reached Phoubakchao at about 11.50 AM and left their vehicles near the village and proceeded on foot to conduct a search operation.

1.6 According to Bronson Thanga, Major Balhara was leading the team. As they approached a house in the village, they saw

two youths fleeing from the rear of that house which was about 50 feet away from the security forces. While fleeing, they fired at the security forces. At one point, they changed directions and one started running towards a bamboo grove and the other ran towards the open field.

1.2.3 According to Bronson Thanga, some AR personnel, who were behind him fired at the youths in self-defence. He also stated that before starting fire, the security personnel had shouted at the youth to stop, but instead of stopping, the youths continuously fired at the security forces. In this situation, the security forces took their respective positions and fired in retaliation. Thus, an encounter ensued between the armed youths and the combined team of security forces, which according to this witness, lasted for about 4-5 minutes.

1.2.4 After the firing stopped, they found the dead body of the deceased. It is the case of the security forces that when they went near the dead body they found a 9 mm pistol of Smith & Wesson Trademark, one magazine loaded with three live rounds of ammunition and one misfired round of 9 mm ammunition near the dead body. RW-1 states that taking advantage of the bamboo bushes, the other youth escaped.

1.2.5 This witness further says that he informed the Mayang Imphal Police Station and waited for an hour and then decided to leave the place because a crowd started gathering, hence, he apprehended there might be a breach of peace.

Therefore, they took the dead body along with seized articles and handed over the same to the custody of the Mayang Imphal Police Station. On the basis of his complaint a FIR was registered in the said police station.

1.2.6 In regard to this very incident, on behalf of the Manipur Police, another Havildar by name P. Suresh Meetei (RW-2) has filed his affidavit and tendered his evidence before the Commission. He basically supports the version of Bronson Thanga. It is necessary to note that Bronson Thanga and P. Suresh Meetei have deposed that after the deceased was shot, they came to know of his identity from others who had gathered at the spot. In addition to the above, affidavits were also filed by K. Rama Singh (Rfn.), P.S. Sanjoy Anal (Rfn.) and M. Lukhoi Singh (Const.) who have supported the version of Bronson Thanga and Suresh Meetei but these persons were not examined by the Commission.

1.3 Case of the Assam Rifles (AR):

1.3.1 From the affidavit and evidence of Major Vijay Singh Balhara (RW-15), who led the operation on 4.3.2009, in which Md. Azad Khan died, it appears that on 4.3.2009 at about 10.00 hours, he received an input from an Grade A-1 source that there were two or three armed terrorists in the general area of Phoubakchao, which according to this officer is notified as a disturbed area and these armed terrorists had come to that place with a motive to extort money. Hence, he ordered fall in of the company as Company Commander at about 10.15

hours. He briefed nine of his personnel and Bronson Thanga and thereafter proceeded towards Phoubakchao, with two teams of Manipur Police commandos.

- 1.3.2 It is to be noted that there is serious contradiction in the evidence of this witness and the other two witnesses referred to hereinabove about the mode of traveling of the team to the spot. While this witness insists that he was riding in a covered armoured Gypsy, RW-1 and RW-2 have stated that Major Balhara was traveling in a 407 TATA Mini Truck. The suggestions put in cross-examination in this regard have been denied by RW-15. He insisted that he was traveling in a Gypsy along with two masked guides and four personnel of his Unit. It is to be stated that the presence of two masked guides comes for the first time in his deposition.
- 1.3.3 This witness also says that he was told by members of his team that when they came near a particular house, two youths came out of the back yard of the house and started running in different directions. This led to suspicion among the security forces and they shouted at the youths to stop and identify themselves. According to this officer, this command was given in Hindi and local language. He was further told that his team started running toward the youths, who turned and fired, which resulted in the joint team taking cover immediately and opening retaliatory fire and in the cross fire, one youth fell down while the other managed to escape.

- 1.3.4 He also says that from the place where the dead body was lying, one 9 mm pistol was recovered with 3 live rounds and 2 fired rounds and one misfired round, all of 9 mm. He also says in his affidavit that the "police" seized the articles collected and took the body to hand over the same to Mayang Police Station, where on Bronson Thanga's complaint an FIR was registered.
- 1.3.5 This witness has stated in para 5 of his affidavit that the dead body was identified as Md. Azad Khan a member of PULF. He also says that according to the police personnel, there was a previous case registered against the deceased.
- 1.3.6 The other witness on behalf of the AR, who filed an affidavit before the Commission and whose deposition was recorded is Rifleman Md. Riyakat, (RW-16) who was traveling in the jeep of Major Balhara. According to him, on 4th March, 2009, he was traveling with Major Balhara in his jeep and at about 11.50 hours, the jeep stopped suddenly and he immediately dismounted from the left side of the vehicle to cover the security zone. At that time, he heard shouting and firing by the CDOs towards his right. He then ran towards the area of firing and when he came near a house, he entered the compound through a small gate and proceeded to the rear of the house, where he saw the commandos who were closing in and a boy was lying on the ground and another person running towards the PAT (marshy area).

- 1.3.7 This witness further says that after seeing the above, he ran back to the gypsy and informed his commanding officer (RW-15) of the happening. This witness says he had noticed one elderly person and two ladies in the house, who he later came to know, were the father, mother and sister of the deceased. He also speaks to the factum of the seizure of one 9 mm pistol and some rounds of used and unused ammunition from the place where the body was lying.
- 1.3.8 The point to be noted from the evidence of this witness is that he was traveling in the same vehicle as Major Balhara. He got out of the vehicle earlier than Major Balhara. He ran to the place of incident, saw a part of the incident, returned back and told Major Balhara what he had seen. From the evidence of this witness, it is seen that Major Balhara was still near the vehicle in which he was traveling by the time this witness Md. Riyakat returned from the place of incident.
- 1.3.9 The third witness of the AR who has filed an affidavit before the Commission and whose deposition was recorded is Rifleman Gopal Singh (RW-17). Though this witness belongs to AR, he was asked to drive the Gypsy belonging to the CDOs, as their driver was not available on that day. This witness says that at about 11.50 hours, the police commandos from his vehicle shot one youth, who came out of the back yard of a house and ran towards the adjoining built up area.

1.3.10 However, in the next paragraph, he says that 'these youth' ignored the warning that was given by the Commandos and continued to run away from his party and the Commandos started chasing 'the youths'. He further stated that "As they ran towards them, the youth running towards the Built Up Area turned & fired on them which resulted in the joint team taking cover immediately before opening retaliatory fire. The youth who was running facing us in his fire position in the Built Up Area appeared to be shot as he fell down". It is interesting to note that this witness has stated in his deposition before the Commission that,

"It is also correct to say that throughout the encounter I was sitting in the Gypsy".

1.4 From the above evidence, it is seen that nearly 20 armed personnel of Assam Rifles and Manipur Commandos proceeded towards a place called Phoubakchao around 10.30 AM in search of certain underground cadres of PULF. It is clear from their evidence that neither the Commander leading the two forces nor the personnel, be they of the Assam Rifles or Manipur Police commandos, knew the actual identity of the persons or were familiar with the face of the suspects.

1.4.1 The deposition of these witnesses show that there were two youths running away from a house. It is to be noted that it has come in the deposition that the house from which the youths starting running is the house of the deceased.

Therefore the fact that the deceased was in his house when the Commandos first saw him and was not involved in any extorting of money at that time is established.

1.4.2. In the instant case, it has come in evidence that PULF, of which the deceased allegedly was an active member, is not a banned organization. The deceased was in his house and not in the market area and there is nothing unusual about it. From the evidence of the security forces, it is clear that these forces knew exactly where the deceased was as they did not go to the market area and search for the suspects. Per contra, they went straight to the house of the deceased. All this indicates that the security forces were aware of the whereabouts of the deceased.

1.4.3 It is extremely difficult to believe that nearly 20 trained security personnel equipped with sophisticated weapons such as AK-47 and INSAS rifles, could not have overpowered/disabled the victim and were afraid of their security when admittedly he was running away from them and intermittently firing at them from his 9 mm pistol. It has further come in evidence that if the security forces go on operations like this, they wear bulletproof jackets and bulletproof patka (head gear). The number of used cartridges found at the place where the body was recovered from, is either one or two because different witnesses have spoken differently on this aspect, although the seizure memo drawn up by RW-1 Bronson Thanga records it as "2 empty

cases". Therefore, it is clear that the deceased and the other youth at the most fired 1 or 2 shots at the police. It has also come in evidence that the distance between the victim and the security forces was about 40-50 meters.

1.4.4 In these circumstances, it is extremely difficult to come to the conclusion that the security personnel could not have apprehended the deceased rather than killing him. Looking at the incident from another angle, if the security forces were unable to overpower the deceased physically, as they were trained personnel, they could have disabled him by aiming at non-vital parts of the body like his legs and immobilized him. Very surprisingly, the injuries suffered by the deceased show that no such attempt was made.

1.4.5 The postmortem report (**Ex RW-8/1- Volume-II, Part-1 @ Pg. 175-178**) shows that the deceased had suffered four bullet injuries, which entered the body from the rear of the body and exited from the front part of the body, two bullets which entered the body laterally injuring the arms, ribs and internal parts of the body. Dr. Memchoubi (RW-8) who conducted the postmortem has stated that wound No.1 (i) and wound 1 (ii) could not have been caused if the victim and the assailants were standing face to face. The nature of wounds as described in the postmortem report and the deposition of the doctor indicates that these wounds could not have been caused if the victim and the assailant were standing face to face. The doctor further states that two of

the wounds suffered by the victim, could have been caused by an assailant standing on the left side of the victim, *slightly behind*. The doctor's deposition establishes the victim was shot from behind from beyond a range of 2.5 ft.

1.4.6 Another aspect that has to be noted is the failure on the part of the security team to apprehend the second youth, who was allegedly with the deceased. The failure of the security forces to chase and apprehend the second person belies their version that such a person was in fact present at the spot with the deceased at the time of the incident, which in turn creates a suspicion about the veracity of the information allegedly received by Major Balhara. The fact that,

- the security forces had gone prepared for an encounter and were overwhelmingly very large in number as compared to the suspects,
- were better armed than the suspects,
- the place where the incident took place was not a jungle or hilly terrain, where it may become difficult to pursue a fleeing suspect,

creates a serious doubt in the mind of this Commission whether the version that there was another youth with the deceased is true at all. If true, it reflects on the competence of the highly trained security unit.

1.5 The investigation: Another factor to be noted in this particular case is the carelessness with which the procedures required under law have been ignored by the security forces and the investigating agencies. It is seen in this case that soon after the incident in question, Bronson Thanga had intimated Mayang Imphal Police Station about the incident. The incident, in question, had occurred around 11.30 am, but for one hour, nobody from the police station went to the spot though the police station is only about 10 kms away. The security forces, who were part of the operation, in their evidence have stated that they did not want to stay at the spot because of the fact that the crowd was becoming restless.

1.5.1 It may be noted here that the seizure panchnama was conducted by the personnel involved in the operation, which in our opinion, is highly improper because it gives an opportunity to the security forces to destroy/manipulate evidence.

1.5.2 It is also to be noted that the incident, in question, happened on 4.3.2009. The body was transported to the RIMS Morgue around 2.10 pm on the date of the incident itself. Very surprisingly, the inquest was conducted not at the place of incident but at the morgue.

1.5.3 The postmortem was conducted on 9.3.2009, nearly five days after the incident. The doctor who conducted the postmortem has stated in his deposition that no requisition

from the investigating agency was received to conduct the postmortem till 9.3.2009. There is absolutely no explanation why the requisition was not sent till 9.3.2009. The investigating agency had the necessary information about the identity of the deceased on the date of incident itself i.e. 4.3.2009 at 3.00 pm at least. Therefore, this unexplained delay gives room for serious doubt as to the version put forth by the security agency before this Commission.

1.5.4 From the above discussion, the Commission is of the considered opinion that the incident, in question, wherein the deceased Mohd. Azad Khan died, was not an encounter and no efforts were made by the security forces, either to capture or disable the suspect. Per contra, from the number of rounds fired by the security forces and wounds suffered by the deceased, mostly on vital parts of the body, and from the number of security personnel involved in the operation, it is clear that assuming what is being stated in regard to the sequences of events on behalf of the security forces is true, this incident cannot be termed as an exercise of the right of self-defence. The Hon'ble Supreme Court in the case of **Darshan Singh Vs. State of Punjab & Anr., (2010) 2 SCC 333**, while discussing the right of private defence under Sections 96 to 106 of the IPC; in para 58 has laid down certain principles to be noticed while considering cases where right of private defence is pleaded. In sub-para (vi), it is stated:

"In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property".

1.5.5 Keeping in mind the above principle enunciated by the Hon'ble Supreme Court and applying the same to the facts of this case, it is seen that,

- (1) Number of people involved in the incident, from the victim's side, were two out of whom one escaped. From the security forces side, admittedly, there were about 20 personnel.
- (2) The weapon carried by the deceased and the other youth was a 9mm pistol, as per the version of the security forces, out of which the discharged cartridge cases found at the place of incident is 1 to 2, whereas 65 rounds were fired by the security forces from heavy weapons like AK-47 and INSAS rifles.
- (3) The location of injuries are on vital parts of the body of the deceased, while none from the security forces was injured.
- (4) The incident took place in broad daylight.

The above factors indicate that the force used by the security forces was wholly disproportionate or much greater than necessary for their own protection.

1.6 Conclusion

1.6.1 For the reasons stated above, the Commission is of the opinion that the incident in which the deceased Mohd. Azad Khan was killed was not an encounter nor was he killed in exercise of the right of self defence.

II. CASE 2 - KHUMBONGMAYUM ORSONJIT.

2.1 Case of the Complainant:

2.1.1 The mother of the deceased Mrs. Khumbong Ongbi Lata Devi (CW-2), has filed an affidavit and has also deposed before the Commission, stating that her son had appeared for the Class 10 examination in the 2009. According to her the deceased would have been 20 years at the time of incident. She also stated that the deceased did not have any criminal antecedents nor was he a member of any banned organization. (This statement stands corroborated by the reply given by the Manipur Police to the questionnaire circulated by this Commission, wherein they have stated that the deceased did not have any criminal antecedents and was also not a member of any underground/banned organization.)

2.1.2 It is her further case that at the time of incident, which was on 16.3.2010, the deceased was working as an Oil Refiller for the Base Transmission towers of TATA Indicom. It is the case of the mother of the deceased that on 16.3.2010 her son left home to get his scooter repaired and she had to go to a place called Jiribam on official duty and that she had spoken to her son before leaving for Jiribam when he informed her that he was in the repair shop and would be returning after getting the scooter repaired. The mother further states that on reaching Jiribam, she received several phone calls asking her to return home as her son had been involved in an

accident and was in hospital. Since Jiribam is far away from Imphal West District, where she resides, she stayed there over night, then took an official vehicle from Jiribam to Silchar and flew from Silchar to Imphal by an Indigo flight, which brought her to Imphal at 10.30 or 11.00 AM.

2.1.3 She further stated that she was informed that her son was killed in an encounter, hence she went to the place where a dharna was taking place against fake encounters. She visited mortuary only on the third day of the incident. On reaching her house, she was told by her husband that her son was taken by Commandos from M.G. Avenue near O.K. Hotel on the date of incident and her daughter had gone to the police station to complain about the abduction and killing of her brother, but the police denied that her brother was arrested. The mother also states that ISTV, a news channel, showed the dead body of his son in one of its bulletins, as well as an evening daily reported about an incident in which a youth had died.

2.2. Case of Manipur Police:

2.1.1 The version of the incident given by Manipur Police is that one Laishram Premkumar Singh, Havildar of 6th Battalion, Manipur Rifles (RW-6) had received credible information from a reliable source on 16.3.2010 at about 2.50 pm that armed cadres were moving in an Activa scooter for committing unlawful activities in and around Tharoijam and Taothong Makha Leikai areas. Therefore, he and his team

consisting of 5 persons in all, rushed to Tharoljam side towards inter village road of Taothong Makha Leikai area and conducted intensive mobile patrolling.

2.1.2 Having not found anything amiss there they were returning towards Taothong via the same route. On the way, he saw an Activa scooter coming towards them. When the said Activa scooter was near his gypsy he tried to stop the rider. Instead of stopping his scooter, the rider tried to speed away and in the process, he lost his balance and fell by the road side. According to this witness, as soon as he and his team jumped down from his vehicle, the scooterist opened fire upon them. Immediately they took position and retaliated by firing towards the attacker and an encounter ensued between his team and the armed youth.

2.1.3 According to this witness the encounter lasted for about 2-3 minutes. He also said that after the encounter, he informed the Lamphel police station and after a while a team from Lamphel Police Station came and observed the legal formalities, when he handed over the seized articles to them (NB: The seizure memo has been signed by this witness. See Annexure R/2 @ Pg. 46 of the Supplementary Affidavit dated 4.12.2012 filed on behalf of the State of Manipur in W.P. (Crl.) No. 129 of 2012). This witness further stated that besides the spot inspection, an inquest over the dead body was conducted. (NB: As per the Inquest Report [**Volume-III, Sl.No.-4(iii)(a)(i)**] the same was done at the RIMS Morgue).

It is the further case of this witness that during the inspection, one .32 pistol loaded with two live rounds and one empty case was found along with one Nokia mobile phone, one Aactiva scooter were seized.

2.2 There are certain notable discrepancies in the versions given by this witness in his affidavit filed before the Commission and his deposition before the Commission. It is stated by this witness that when he noticed the scooter Aactiva, he tried to stop the rider and instead of stopping, the scooterist tried to ride away, whereas in his deposition made before the Commission, he tried to explain the said statement in the following words, "*what I stated in Para 4 of my affidavit is that when I tried to stop the person on the Aactiva scooter, one of the Jawans in the Gypsy signaled and shouted at the rider to stop from the hatch in the roof of the Gypsy*" meaning thereby that he did not shout at the scooterist to stop. When questioned as to why he tried to stop the rider of the scooter, he stated that, "*We tried to stop the rider of scooter because of the way he was riding the scooter.*"

2.2.1 He also stated in his deposition that the distance between the spot where the scooter had fallen and where his Gypsy had stopped was about 25-30 meters. He further stated that after getting down from the jeep, when he started moving towards the fallen scooter, he saw the rider trying to run away. Later on, he corrects himself by saying that when he got down from the jeep, the rider started firing. It is very

surprising that five armed commandos could not overpower one scooterist, who had fallen down or prevented the said scooterist from running away.

- 2.2.2 The location of the incident is also important to be noticed inasmuch as this witness has stated that there were paddy fields on either side of the road, thus there was no place for the suspect to get into the cover and escape. This witness has stated that they found a .32 pistol loaded with two live rounds and one empty case. If only one empty case was recovered, the version of this witness that the suspect continued to fire at the police cannot be accepted.
- 2.2.3 The single cartridge recovered near the body of the victim was not even sent for forensic examination, that apart, in comparison with the single shot that was allegedly fired by the victim from his revolver, if we notice the injuries on the body of the deceased, it is seen that there are ten bullet injuries. Dr. Pradip Kumar (RW-9), who conducted the postmortem, has in his evidence before the Commission stated *"I found 5 entrance wound in the back of the chest within an area of 10x15 cm therefore, it is difficult to explain each entries (sic). Therefore I mentioned the existence of multiple entry wounds."* To a question from the Counsel for the Complainant in his cross-examination, the doctor has said that the nature of the wounds noticed at Serial Nos. 3 to 7, indicates that the firing took place from the back of the victim. It has also been pointed out to the doctor, who

conducted the postmortem, that in the magisterial inquiry he had stated that the firearms were used from a distance of 2 to 2.5 feet from the deceased. The doctor has opined that the wounds suffered by the deceased were caused by a burst of an automatic fire arm and a single burst was sufficient to kill the victim.

2.2.4 Looking at the number of injuries suffered by the victim and nature of injuries as explained by the doctor, it is clear that the victim was shot at from a close distance. Assuming that the recovery of a single used empty case from near the body of the deceased is true, it would only indicate that the deceased had fired once from the pistol. Taking into consideration the fact that if at all one bullet was fired from the pistol, and none of the commandos having been injured and the commandos being five in number equipped with sophisticated weapons, having fired 41 rounds, out of which they caused 10 bullet injuries on the deceased, by no stretch of the imagination can we conclude that there was an incident which required the commandos to fire so many rounds from such a close range so as to call the incident an encounter.

2.2.5 The description of the injuries by the doctor who conducted the post mortem clearly indicates that there was an intention to kill the victim. It is necessary to note at this stage that on behalf of the complainant photographs showing the injuries suffered by the victim on his left hand were produced, which

we were informed form part of the record of the Hon'ble Supreme Court in W.P. (Cri.) No. 129 of 2012. These injuries have been explained in the postmortem report (Ex. RW 9/1-**Volume-II, Part-2 @ Pg. 222-225**) as,

"Compound fracture of the left humerus, left 2nd -4th distal phalanges"

If one sees these photographs in the background of the post mortem report, it is difficult to conclude that these injuries could have been caused because of the fall from the scooter. On the contrary it is more probable that these injuries were caused by blows from a hard/blunt object.

In this background, even if one ignores the complainant's case that the deceased was picked up by the police, the evidence from the security forces itself indicates that the deceased died in an incident which cannot be termed as an encounter.

2.2.6 There is no explanation whatsoever why the postmortem was not conducted for three days after the incident. It is also to be noted that the postmortem transit register which shows the date and time of deposit of the dead body at the hospital was summoned by the Commission but the Commission was informed that there was no entry in the said register in respect of receipt of the dead body in this case. This is the second case where we have to observe that the inquest was conducted in the morgue and not at the place where the dead body was recovered.

2.3 Conclusion

2.3.1 For the reasons mentioned hereinabove, the Commission is of the considered opinion that the incident in which Khumbongmayum Orsonjit died is not an encounter nor can the security forces plead that it was in the exercise of their right of private defence.

III. CASE 3 - NAMEIRAKPAM GOBIND MEITEI & NAMEIRAKPAM NOBO MEITEI

3.1 Case of the Complainant:

3.1.1 The incident in this case took place on 4.4.2009 when the victims were about 25 and 27 years old. The father of each of the deceased persons have filed affidavits and have also appeared and deposed before the Commission. The father of the deceased Gobind (i.e. Nameirakpam Rome Meitei- CW-4) stated that his son had appeared in Class 12 examination and was employed under the Mahatma Gandhi Rural Employment Scheme. He had stated that his deceased son was married and had a 1 ½ year old daughter at the time of his death. He had also stated that his son did not have any criminal antecedents, which fact has been admitted in the reply given by the Manipur police by way of an answer to the questionnaire issued by this Commission. It is the case of the father of the deceased that his son along with his cousin by name Nobo Meitei had left the house around 5.30 pm on a bicycle, to have tea, but did not return home for quite some time.

3.1.2 It has also been stated that on that day AIR Manipur in the bulletin at 7.30 pm stated that two youths had been killed by a combined force between the Election Office and the national Games Village. It is stated that on 5.4.2009, the family learnt that two unidentified bodies were lying in the mortuary of RIMS and brother of the deceased named

Naobicha Meitei along with some friends of his identified the two bodies as being Gobind Meitei and Nobo Meitei.

3.1.3 It has also come in evidence that the family learnt that a report had been submitted by S.I., Imphal West Police CDO to the Officer-in-Charge of Lamphel Police Station to the effect that upon receiving reliable information about the presence of a valley based terrorist organization at the Games village a combined team of police commandos and 39 Assam Rifles rushed to the area and on seeing their vehicle, the armed militants started firing at them and in the retaliatory fire, two of the suspects were killed while others managed to escape. A copy of the FIR in this case is found in the papers sent by the Hon'ble Supreme Court to this Commission. An affidavit was also filed by Nameirakpam Basanta Meitei (CW-5) the father of the other deceased in this case, namely Nameirakpam Nobo Meitei.

3.1.4 It is on record that ADM, Imphal West District conducted a Magisterial inquiry into the incident, but the magisterial inquiry exonerated the security personnel involved in the incident.

3.2 Case of the security forces:

3.2.1 In the evidence tendered by S.I. Huidrom Sukumar Singh (RW-10), who was the leader of the CDO team, which participated in the incident in question, it is stated that on 4.4.2009 he was the Night Duty officer and his duty started

from the morning of 4.4.2009 till the morning of 5.4.2009. He also states that on 4.4.2009 at about 9.00 pm, he received reliable input about persons suspected to be members of a valley based terrorist organization at Games Village, Langol area. Acting on that reliable intelligent input, his team along with a team of Mike 48 lead by SI T. Khogen Singh assisted by a team of 39 Assam Rifles immediately rushed towards the said area and while the combined team was patrolling near the Games Village and on seeing their vehicles, 4-5 armed militant started firing. The witness says that he along with S.I. T. Khogen and Lenin Singh jumped out from the running vehicle to escape from being hurt. Thereafter, they immediately retaliated by firing at the suspects. According to his statement heavy gun fire came from attackers by using sophisticated weapons. He says his commandos without caring for personal safety responded and retaliated resulting in a heavy gun fight. During the gun fight they were able to shoot two of the armed militants while two others escaped by taking advantage of the darkness. The encounter took place at 9.45 pm and lasted about 7 minutes. He also says that from the place where the bodies of the deceased were found, one 9 mm pistol China make, a magazine and one Chinese hand grenade along with detonator, one lever, one pin, four live rounds of 9 mm ammunition, four empty cases of 9 mm ammunition and three cases of AK ammunition were seized by him. The seizure document was signed by his colleague commando.

3.2.2 In his evidence, this witness has stated that, "we had two vehicles and two teams of five members each and left around 5.40 PM". When the witness was confronted with the statement made in his affidavit in para 6 wherein he had stated that the information was received at 9.00 pm, the witness changed his version regarding the time of receipt of information by saying that the information was received in two stages - one at 7.30 pm on 4.4.2009 and the other, a more specific information, at 9.00 pm. According to him, the information received at 7.30 pm was only that underground movement was going on in the Lamphel, Langol area. From the above evidence of the officer, it is clear assuming that what he has stated is true about that two sets of information, the CDOs straightway started their movement relying on an information which was not specific which creates enough suspicion as to the receipt of the information itself.

3.2.3 The process of the combing operation deserves to be noticed here. According to this witness, they first went to the Lamphel area and their first stop was at Lamphel Sanakelthel which is about 1.5 kms from the HQs and there they started frisking the people who were moving in that area. The witness then stated that he cannot exactly recollect where he and his team went after Lamphel Sanakeithel, but they were moving here and there. Then without reference to meeting another team, he says both the teams were doing the combing and frisking operation. He then says that they moved towards a place where the actual

operation took place, which was about 4 kms from the place there they were doing the combing operation.

3.2.4 As per his statement, he reached Lamphel Police Station at about 9.00 pm and he says that the distance between the Lamphel Police Station and the place of operation is about 4 kms. He admits that he did not enter Lamphel Police Station. To a suggestion made to the witness that Lamphel Police Station comes between Sanakeithel and the place of encounter, and the distance between Lamphel Police Station to Sanakeithel is about $\frac{1}{2}$ km while the distance between Lamphel Police Station to the place of encounter is 1 km, the witness admits the suggestion that Lamphel Police Station comes between Sanakeithel and the place of encounter and the distance between Lamphel Police Station to Sanakeithel is about $\frac{1}{2}$ km, but he denied the suggestion that the distance between Lamphel Police Station to the place of encounter is 1 km and reiterates that it is about 4 kms.

3.2.5 This witness stated before this Commission that the second information he got at 9.00 pm informed him of the movement of the undergrounds in Lamphel, Langol area. If one compares what he stated about the information received at 7.30 pm with the information he got at 9.00 pm which he has stated to be more specific, hardly any difference could be seen. Obviously the theory of two sets of information has been put forth belatedly to account for the time lapse. The witness says that apart from his team, there were two other

teams - a team lead by MIKE-48 and a team of 39 Assam Rifles led by Major Sreeram. He stated that, *"The team of Assam Rifles joined our team soon after we crossed Lamphel Police Station. I never requested the Assam Rifles team to join the operation. The Assam Rifles team came on the basis of their own source. I cannot say at what time the Assam Rifles team joined us."*

3.2.6 He also says that he does not remember whether the Assam Rifles team joined them before he got the specific information or thereafter. To a question posed by the Commission, he answered that the meeting of the Assam Rifles team and his team was by coincidence and he says that when they met near Lamphel Police Station, because of the conversation between them, he came to know that the Assam Rifles team had also come for the same operation.

3.2.7 It is in this background, that we will have to examine the evidence of this witness in regard to what has actually been happened during the operation. This witness stated that, when they saw the suspects and asked them to stop, they did not stop, instead they started firing at them that is when they suspected them. According to this witness the distance between the suspects and their Gypsy when it stopped was about 17-22 feet. He said that there was heavy firing from the militant's side on them. He identified that the militants were firing from sophisticated weapons because of the sounds he heard at the time of firing. Security forces were

wearing bullet-proof vests. He admits that in spite of heavy firing there was no damage caused to any of their vehicles.

3.2.8 He admits that they did recover the pin of the grenade and further states that normally grenades explode when the pin is pulled out. He further states that sometimes grenades do not explode even when the pin is pulled out. He says that a grenade was thrown at them, but it did not explode. Again he says that since it was dark, he did not know whether the grenade was thrown at them or not. He admits that none of the security personnel were injured in the firing. He also says that after the firing started from the suspects, the lights of the Gypsies were switched off and because of switching off the lights, there was no visibility. He also said that he could not identify any of the four suspects.

3.2.9 According to this witness, from their side 15 rounds of 9 mm pistol and 29 rounds of AK-47 were used, thus, totally 44 rounds were used in the operation by his team. It has come in the evidence of certain other witnesses that the Assam Rifles team had fired 45 rounds (See Major D. Sreeram Kumar's evidence). RW-10 then says that he went to Lamphel Police Station and came back to the spot with the I.O. and thereafter handed over the bodies to the I.O. During the cross-examination, when it was pointed out that the State FSL report had stated that three of the cases (C1 to C3) of 9 mm pistol, were not fired from the 9 mm pistol recovered from the victims, but were fired from some other

weapon, the witness answered by saying that he is not sure whether the cases were of the bullets used by him in his weapon or not.

3.3 The postmortem report (Ex RW 8/2- Volume-II, Part-3 @ Pg. 345-348) in regard to the injuries suffered by Nameirakpam Gobind Meitei shows that 16 gunshot injuries were found on his body. Dr. Memchoubi Phanjoubam (RW-8), the doctor, who conducted the postmortem on the body of Nameirakpam Gobind Meitei has stated that none of the 16 injuries were similar to each other. She also stated that she did not find any bullet inside the body of Nameirakpam Gobind Meitei, which indicates that the bullets have passed through the body, which is normally possible if firing has taken place from a close range. According to her evidence, there were 5 entry wounds from front, 4 entry wounds from back and remaining were from the side of the body. She has opined that most of the injuries singularly were fatal by themselves and were fired in quick succession. It is seen from the evidence of Huidrom Sukumar Singh (RW-10) and Major D. Sreeram Kumar (RW-18) who led the teams of Manipur Police and Assam Rifles respectively, that in all 89 rounds were fired at the victims out of which as stated above 16 wounds were caused on the body of Nameirakpam Gobind Meitei.

3.3.1 The postmortem report (Ex RW 8/3- Volume-II, Part-3 @ Pg. 349-52) and the evidence of doctor who conducted the

postmortem on the body of Nameirakpam Nobo Meitei show that there were 5 bullet injuries and all the said injuries were caused by the bullet entering the body from the back of the deceased. The doctor has also stated in this case also that each and every wound mentioned above singularly could be fatal, meaning thereby that soon after the first wound, the victim could have fallen down. In our opinion, the medical evidence clearly indicates that the intention of the security forces was not to disable and arrest the suspects, but was to eliminate the suspects.

3.4 It is relevant to mention herein that Nameirakpam Gobind Meitei had no established criminal antecedents except that he was suspected to be KCP UG Activist while Nameirakpam Nobo Meitei, had a case registered against him under Section 13 of the Unlawful Activities (Prevention) Act as far back as in 2001, which also came to be closed based on the final report filed by the investigating agency as far back as in 2002. This final report was accepted by the Ld. Addl. CJM, Imphal, West District on 20.5.2003. Therefore, it is highly improbable that these two victims were people who were involved in any unlawful activities at the time when the incident had taken place.

3.5 It is also relevant to mention here that RW-18, Major D. Sreeram Kumar, in his evidence has stated: *"My understanding of the terminology of the hardcore terrorist is that when a person is warned by the security forces and if he*

reacts by firing, such a person is a hardcore terrorist". He also admitted that at the time of the operation he did not know that the deceased were members of the KCP. This witness has also stated that Company Operating Base (COB), to which he belongs, normally maintains a list of members of KCP, which may not contain name of all the members of KCP and on the date of encounter, names of Nameirakpam Nobo Meitei and Nameirakpam Gobind Meitei were not in the list maintained by his COB. This also indicates the lack of information with the security forces when they proceed on counter insurgency operations.

3.6 Conclusion

3.6.1 In our considered opinion, 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 the victims was caused knowingly.

CASE 4 – ELANGBAM KIRANJIT SINGH.**4.1 Case of the Complainant:**

4.1.1 This case relates to the death of Elangbam Kiranjit Singh. In this case, father of the deceased Elangbam Ibohal Singh (CW-5) has filed an affidavit before this Commission. In the said affidavit, it is stated that his son had studied up to Class 8, in Modern Child Care Centre and had passed the Secondary School Examination in June 2004. It is further stated that the deceased was searching for a job. For this reason, he had registered himself in the Employment Exchange of Thoubal. The father of the deceased further states that his son was a sportsman, a body builder and a marathon runner. According to the father of the deceased, the deceased did not have any criminal antecedents. This statement of the father of the deceased is supported by the reply given by the Manipur Police to the questionnaire circulated by this Commission, wherein it is stated that the deceased did not have any registered criminal cases, but was suspected to be a member of the KCP-MC organization, which is a banned organization. It is to be noticed here that this suspicion of the State is based on the statement found in the complaint in this very case in which the victim had died.

4.1.2 The father of the deceased further states that under his direction on 23.4.2009 at about 3.00 pm, his son had left home on a bicycle to trace one of the cows of the family, which had gone missing and had been spotted by some

villagers in the Thoubal Khunou Heibiyai Chingkhong area. He has further stated that his son did not return till late night and his mobile phone was also switched off and he thought that he might have gone to a neighbouring village to participate in the Khongjom Day Celebration. It is the further statement of the father of the deceased that on 24.4.2009, he went to the Police Station to enquire whether any arrests had been made on the previous night and was informed that no one had been arrested. Subsequently, the father of the deceased came to know that a body of a youth was lying in the morgue of the Regional Institute of Medical Sciences (RIMS), Lamphelpat, Imphal, which was identified by some relatives of his as the body of his son. He further says that his family later came to know that his son had been killed in an encounter with the police commandos and Assam Rifles in the Lamlai area.

4.1.3 He further states that he came to know that that on 24.4.2009, one Hollal Haokip, Jamadar attached to CDO, Thoubal lodged a false report with the Officer-in-Charge, Lamlai Police Station stating that a combined team of CDO - Thoubal and Assam Rifles had laid an ambush in a place between Shabungkhok and Laikot villages at about 5.00 AM and that about 6.00 AM they had spotted two persons moving towards them in a suspicious manner and on being challenged, the said persons opened fire at them. In the retaliatory firing by the security forces, which lasted about 10-15 minutes, one of the suspected UG's was shot while the

other escaped. The report given to the Lamlai Police Station also stated that the security forces had recovered one 9 mm pistol, 3 fired cases, 2 live rounds and they also found one live bullet in the chamber of the pistol seized at the encounter site.

4.1.4 The father of the deceased submitted a report to the Director General of Police Manipur that action be taken against the persons who had killed his son, but there was no action from the side of the DGP Manipur. Hence, he filed W.P. (Crl.) No. 113/2008 before the Guwahati High Court, which in its order in the said writ petition, directed the District Judge, Manipur West to conduct a judicial enquiry into the circumstances leading to his son's death. The deceased's father also stated that one Smt. Moirangthem Muktarei Devi, who had witnessed the abduction of his son had deposed before the Judicial Commission and the said Judicial Commission had come to the conclusion that his son had been killed in a fake encounter.

4.1.5 From the postmortem report, it is noticed that the deceased had died owing to firearm injuries caused to his chest and abdomen. It is to be noted here that a magisterial enquiry was also ordered in respect of this incident. In the said enquiry, no finding was given with regard to the circumstances of the death, presumably because none from the victim's side or security forces side had given any evidence.

4.1.6 Apart from the father of the deceased, one N.K. Singh, CW-10, (Ningthoujam Kunje Singh), had also filed an affidavit and also deposed before this Commission, wherein he had stated that his daughter was given a cycle by the commandos and later he came to know through an announcement made on a public address system that the cycle of the deceased was missing and, therefore, he informed the father of the deceased about the concerned cycle being in his house.

4.1.7 The 3rd witness examined on behalf of the Complaint was CW-13, Mrs. Chanam Gyaneswari Devi. She stated that on the date of the incident, she saw a cycle leaning along with hill side of the road and a young man being pushed into a vehicle by the police and being whisked away.

4.2 The case of the Security forces:

4.2.1 On behalf of the security forces, RW-12, Jamadar Hollal Haokip gave evidence before this Commission to the effect that on 24.4.2009, he had received reliable information from 23rd Assam Rifles regarding movement of UGs between Seijang and Silent villages. This witness says that on receipt of the said information, he assembled his team and proceeded from his Kakching post and reached the destination at 4.00 AM. He further states that the security forces decided to lay an ambush at a spot between Seijang and Silent villages. This was done around 5.00 AM. He further stated that at 6.00 AM in the morning, they saw two persons coming down from the hill side towards the place

where the security forces had laid the ambush. These persons were warned by the security forces to stop. The witness states that at this point the two persons started firing at the security forces, who then retaliated and in the process, one of them died and the other escaped. This witness then says that the deceased was identified as Elangbam Kiranjit Singh.

4.2.2 The evidence of this witness is supported by the evidence of the Commander of the team Major Asuman Badoni, RW-20, of the Assam Rifles, who had stated that on 23.4.2009, he received a confirmed input from a Grade A-1 source about the movement of UGs between Seijang and Silent villages and that such movement would take place sometime in the early hours of next morning. He also states that he informed his superiors and on their instructions he informed the police commandos of Thoubal police station about this information and sought their help for a joint operation. In his deposition, he has stated that even though Imphal CDO was the jurisdictional CDO and closer to the place of his post, he had not contacted them for additional help, but he choose to contact Thoubal CDO even though he knew that the place of operation did not come within the jurisdiction of Thoubal. The explanation for this particular choice is that he had the phone number of Hollal Haokip sounds rather strange. This witness further states that he chose to contact Hollal Haokip because he knew that Haokip had information about this operation and was participating in the operation. The

statement of this witness runs contrary to the statement of Hollal Haokip, who has stated that he has come to know about this operation only from Major Badoni, RW-20 (referred to hereinabove). He further states that the Thoubal commandos headed by Hollal Haokip arrived at his post around 4.00 A.M. and together they moved towards the place where the informant had told him that the UGs were likely to be seen. After reaching the place, he also stated that they made a formation for an ambush and waited for the UGs, whom they had sighted around 6.00 AM and the incident, in question, took place.

4.3 As stated above, according to the father of the deceased, on 23.4.2009, the deceased had left the house in search of a missing cow from his place of residence. The question that arises, for our consideration, is that if the deceased had left the house in search of a missing cow, how was his dead body recovered from a place which is nearly 48 kms away from his house?

4.3.1 In support of the case of the father of the deceased, witness CW-13, Smt. Gyaneshwori Devi was examined, who in her evidence stated that on 23.4.2009, she had seen an unidentified person being forcibly pushed into a police jeep, which she came to know later, was the deceased in this case. Her deposition indicates that she had seen a person being pushed into a police vehicle beyond that her deposition cannot be used to conclude that the deceased was the person

who was pushed into the jeep because she had not seen the dead body.

4.3.2 The learned Counsel appearing for the complainant pointed out that there are major contradictions in the evidence of Hollal Haokip (RW-10). It was pointed out that this witness had put forward two different versions in regard to his receiving the information. Firstly it should be noticed that the said witness had stated that he received the information at 12.30 hours from a reliable source and in the second version, he says that he received the information from Major Badoni, RW-20 at 3 am. The next contradiction pointed out by the learned Counsel for the Complainant is about timing of departure from his CDO post. In the affidavit filed in the Judicial Enquiry proceedings (Ex- RW-12/1) this witness had stated that he had left the post at 12.45 am. However in the affidavit filed before this Commission he changed his stand and stated that he had left the post at 3.00 am. In his deposition before this Commission he initially asserted that the time mentioned in the affidavit filed before this Commission, namely that he left at 3 am was the correct version, however when he was confronted with the affidavit filed before the Judicial Enquiry he retracted from this stand and stated that he had left at 12.45 am.

4.3.3 We have perused the order of the Judicial Enquiry in this very case, which has held that the incident, in question, is not a genuine encounter, but is a fake encounter. We have also

noticed the order in the Magisterial Enquiry, which did not record any finding as to the nature of this incident.

4.3.4 The fact that Kiranjit Singh died on 24.4.2009 of bullet injuries cannot be disputed. While the father of the deceased contends that his son was killed by the security forces, the security forces contend that he died in an encounter with them. Therefore, it becomes necessary for this Commission to enquire whether the incident in which the deceased died was an encounter or not.

4.3.5 The witnesses who deposed before the Commission have admitted that an incident took place on 24.4.2009 at about 6.00 am at a place between Shabungkhok and Laikot villages, in which the deceased Kiranjit Singh died. It is the case of security forces that on the information received by them that the UGs would be passing through a particular area, they laid an ambush. It has also come in evidence that the security forces were placed on either side of the road which the UGs were expected to use. It is the further case of the security forces that when they sighted the two UGs they directed them to halt but instead of doing so the UGs started firing at them, forcing the team to retaliate in self-defence. It is in this cross fire that one UG died while the other escaped.

4.3.6 It is the case of the security forces that from the near the dead body they had one 9 mm pistol, one magazine loaded with 2 live rounds one live round in the chamber of the pistol seized and 3 fired cases. According to the records produced

before the Commission the seized articles were sent for FSL examination and it has been opined by the FSL (**Volume-III, Sl.No.4(iii)(b)(i)**) that out of the 3 empty cases, 2 were not fired from the 9 mm pistol allegedly seized from the spot while in respect of the remaining empty case the FSL could not give any definite conclusion because of "*insufficient data*". From this it is doubtful whether the deceased had opened fire at the security forces at all, giving room for apprehension on their part to retaliate.

4.3.7 Be that as it may one of the arguments addressed before the Commission on behalf of the security forces is that the firing by them was in exercise of their right of private defence.

4.3.8 If we peruse the postmortem report (**Ex RW-8/4, Volume-II, Part-4 & Pg. 481-484**) we notice that the victim had suffered 10 wounds, out of which 9 were fire arm injuries. Out of these 9 fire arm injuries, one was on the chest, one was in the left arm, two were on the right thigh and two were on the back of the deceased and two on the left thigh. The deceased had also suffered one lacerated wound on the left side of the neck and one bruise on the front of the right leg. The injuries suffered by the victim were on all sides of the body which indicates that firing had taken place from all sides. It is also to be noted at this stage that the security forces were about 30 in number as against 2 UGs. As stated above the number of rounds fired by the UGs was 3 even if one were to believe the seizures, whereas the AR alone had

fired about 60-70 rounds (there is no information regarding the number of rounds fired by the Manipur Police CDOs).

4.3.9 In the above background, assuming what is stated by the side of the security forces that it was an ambush, the fact remains whether the injuries caused were necessary to be caused to disable a suspected UG. In our opinion, the injuries were far in excess of the right of private defence. The Hon'ble Supreme Court in the case of **Darshan Singh Vs. State of Punjab, (Supra)**, has held that a person exercising the right of private defence cannot use wholly disproportionate force or use force which is greater than necessary for protection of his person. Following the above dictum of the Hon'ble Supreme Court we are of the opinion that assuming the firing was necessitated owing to the fact that the deceased had started firing first and the security forces only retaliated, in our opinion, the security forces have used force far in excess of what was required to disable a suspect.

4.4 Conclusion

4.4.1 For the reasons stated above, 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. Therefore, this Commission is of the opinion that the incident, in question, cannot be justified on the ground of self-defence.

Case 5 - Chongtham Umakanta.

5.1 The case of the complaint:

5.1.1 The mother of the deceased Chongtham Ibengushi Devi (CW-6) has stated that her son was married and had a son and that he was working as a cable man for ISTV network. It is further stated that on 4.5.2009, he left home at 9.20 pm after dinner, to visit his friend Nanao and she later came to know that the police commandos arrested the deceased from the house of Nanao, which was told to her by the mother of the friend of the deceased.

5.1.2 According to Gyaneshwori Devi (CW-11), who is the mother of Nanao, when the deceased came to meet her son, he was accompanied by two other persons, who were armed. It is stated by this witness that she had offered to share her meal with them, which they did and sometime later she heard sounds of vehicles coming and two persons, one of them in security uniform and the other in civilian dress, came inside and asked her son and others to come out of the house. She also said that they had dragged Chongtham Umakanta out of the house and other two persons, who had come with Umakanta also went out. This witness says that when the said persons tried to drag her son, she resisted them and was assaulted with a stick, even then, she was able to save her son from being taken. She further states that she informed Chongtham Umakanta's mother about the arrest her son, who became angry with this witness for not saving her son

from being taken away. She further states that she came to know on 5.5.2009, i.e., the next day at about 10.00 AM that the dead body of Chongtham Umakanta was found lying in the mortuary of RIMS Imphal.

5.3 The case of the security forces:

5.3.1 Jemadar Hollal Haokip(RW-25), has stated that on 5.5.2009 at about 3.00am, when he was serving at Thoubal CDO post, he received information from the 23rd Assam Rifles to the effect that some KYKL underground elements were taking shelter in between Seijang and Sailen villages with a motive to abduct for ransom and ambush the security forces. The said informant requested the commando team to come for a joint operation. Soon thereafter, this witness along with his team rushed to the camp of 23rd Assam Rifles and they jointly proceeded to the Yaingangpokpi COB at about 3.40 am. ON reaching the said COB, they rushed to the area of Seijang and Sailen villages and reached that area about 3.50 AM. This witness further says that he saw suspicious movement of two individuals, and on challenge, they opened fire towards the security forces, who thereafter took positions and retaliated. He said that the firing last about 5 minutes. He further stated that during the encounter, an unknown youth was killed at the spot and the other escaped from the site into the jungle in dim light. This witness further states that one 9 mm pistol with a magazine having two live rounds i.e. one round in the chamber and other one in the magazine and

three empty cases were recovered from near the dead body. This witness says that he prepared a seizure memo, which was signed by one of his team members. (It is pertinent to point out that RW-25 clearly admitted that the seizure memo produced in this case by the State before the Hon'ble Supreme Court is not the seizure memo prepared by him in this case and there is no explanation whatsoever how this error has occurred.) RW-25 further says that the Officer-Incharge, Lamlai P.S. came to the spot at about 6.40 AM and the seized articles. The said articles and the dead body were handed over to the said Officer-Incharge of Lamlai P.S.

5.3.2 The postmortem conducted on the dead body of the deceased shows that the body had 13 wounds, out of which 7 wounds were gunshot wounds and 6 were lacerated wounds. RW-8, Dr. Memchoubi Phanjoubam, who conducted the postmortem deposed before this Commission that the entry of wounds mentioned in Item Nos.1 to 5 were from the back side of the body, item No.6 wound was from the right side of the right flank and item No.7 wound was from the back of the right thumb. The doctor also stated that looking at the size of the wound, the bullet used in this case, was definitely larger than 6 mm. She opined that wounds 1, 2, 3 and 5 are fatal in nature.

5.4 The contention of the learned Counsel appearing for the Complainant in this case is that from the manner in which the deceased was taken from the house of Gyaneswori Devi

(CW-11), it is clear that the security personnel picked up the deceased forcibly and took him away and staged an encounter to deliberately kill him. It was also contended that the nature of injuries suffered by the deceased, as explained by the doctor who conducted the postmortem, shows if not all, at least five entry wounds are on the back of the deceased, which indicates that he was not facing the security forces and could not have been firing at them. The learned Counsel further submitted that the absence of any injury on non-vital parts of the body, like the thighs or legs, also indicates that the security personnel did not try to disable the deceased, i.e. assuming that the deceased had a weapon, which was posing danger to the security personnel.

- 5.5 The learned Counsel appearing for the Complainant further contended that professional history of RW-25, as admitted by him, indicates that he is a person regularly used by the Assam Rifles, for such like operations where suspects were picked up and taken to a deserted place with an intention to eliminate them. He had elicited from the evidence of RW-25 certain admissions in regard to his participation in number of operations and also the fact that he was suspended for not following the rules in another operation. He also pointed out from the evidence of RW-25 that there were material contradictions in his evidence as to the departure time after receiving information and reaching the place of incident, which creates serious doubt regarding the case put forth by RW-25.

- 5.6 It is true that the contradictions as pointed out by the learned Counsel create serious doubt as to the manner in which the incident has taken place, especially in light of the admitted position that CDO Post of RW-25 fell in a different district all together and there were admittedly 2 other CDO posts, namely that of Imphal East and Imphal West which were nearer to the Yaingangpokpi (YKPI) COB, to which RW-25 was summoned by RW 22, Major Kaushalendra Singh of the 23rd Assam Rifles.
- 5.7 The learned Counsels who appeared for the security forces and Government, strongly rebutted the submissions advanced by the learned Counsel for the Complainant. They pointed out that the evidence of CW-11 from whose house the deceased was picked up clearly shows that it is not the police who picked up the deceased, but certain persons who were known to the deceased and were armed and the deceased had voluntarily gone out with them. He also pointed out that according to CW-6, mother of the deceased, the deceased was arrested once in 2007 for being a member of a banned organization and again on 11.11.2008. It is also pointed out that in spite of the fact that the mother of the deceased knew that her son was allegedly taken away on 4.5.2009, she did not lodge a police complaint immediately. The said counsels also contended that even if RW-25 was suspended in another case, it has no direct relevance to the facts of the present case. It was submitted that even the discrepancy in regard to the travel of the security forces

from Kakching to Yaingangpokpi has been explained by the witness concerned.

- 5.8 We have carefully perused the documents produced and considered the arguments advanced on behalf of the parties. From the evidence of the mother of the deceased, as also from the I.O.'s evidence, it appears that even though the deceased was not convicted in any case, he was twice arrested for offences under the Unlawful Activities (Prevention) Act. So, we conclude that that his antecedents show that he is a member of KYKL which is a banned organization. This however will not prevent us from looking into the manner in which he was killed. It is true that there is some confusion in the evidence of CW-11 as to the manner in which the deceased was picked up by the security forces. It is an admitted fact that Umakanta was killed in an incident involving the security forces.
- 5.9 According to us, the number and nature of the injuries suffered by the deceased are sufficient to discount the theory of private defence that is out forth on behalf of the security forces.
- 5.10 The evidence of RW-8 clearly indicates that the deceased suffered seven gunshot injuries out of which five were on the back side of his body and one was from the right side of the right flank. As contended by the learned Counsel for the complainant, these injuries could not have been inflicted if the deceased was facing the security forces. The position of

entry of wounds on the back of the body of the deceased also indicates that the fire arms were aimed at the vital parts of the body, which does not fit into the theory of self-defence put forth by the learned Counsel for the security forces. The wounds mentioned in the postmortem report as well as in the deposition of RW-8 before this Commission, clearly show that they were sufficient to cause death. (Ex RW-8/5-Volume-II, Part-5 @ Pg. 574-577)

5.11 Conclusion

5.11.1 Looking at it from all angles, this incident in which Umakanta died has compelled us to come to the conclusion that though the manner in which he was picked up, as stated by the complainant, cannot be accepted. The manner in which he died definitely indicates that this could not have been an encounter. For the reasons stated above, we are of the considered opinion that the case put forth on behalf of the security forces that the incident was an encounter and that Umakanta was killed in an encounter or in self-defence cannot be accepted.

Case 6 – Akoijam Priyobrata @ Bochou Singh.

6.1 Case of the Complainant:

6.1.1 The deceased in this case is Akoijam Priyobrata @ Bochou Singh. The deceased's mother Akoijam Chandrakala Devi (CW-7) has filed an affidavit before this Commission alleging that her son was killed by Imphal West Police Commandos on 15th March, 2009 at Langol Second Sangai home under Lamphel Police Station in a fake encounter. She states that her son had no criminal record and he had never been involved in any kind of criminal activities. She also stated that he had studied up to 11th Standard and attempted to join Service Selection Board. She has further stated that her son was married and had a minor son at the time of his death. He also used to work as cameraman in weddings. She further stated that on the afternoon of 15th March, 2009 at around 3.00 P.M., her son left home riding his Pulsar motor bicycle with a sum of Rs.8,000/- approximately. He had informed his wife that he was going to buy polythene packets used for packing pickle, but he never came back. When she tried to contact him over the mobile phone, it was found to be in switched off mode. Thereafter, she started enquiring about her son's whereabouts by contacting his local friends. She further stated that next morning she contacted police stations of Sekmajin, Imphal and Lamphel and later in the morning Lamphel police station informed her that they had information about an encounter wherein a person had died.

They advised her to check the body in the mortuary of RIMS. She said that when she visited the RIMS, she found the body of her son. According to her, her son was killed in a fake encounter after he was arrested by the police commandos.

6.2 The case of the security forces:

6.2.1 M. Goberdhon Singh (RW-24) who was leading the team involved in this incident stated in his affidavit and in his deposition before this Commission, that on 15.3.2009 at about 7.30 pm he received credible information from the 16th Assam Rifles that some members of outlawed terrorist organization called "Kangleipak Communist Party" (KCP) were loitering in Iroisemba area with an intention of committing prejudicial activities. He further stated that he along with his team consisting of 3 PCs and 1 driver, Mike 54 and Mike 56, rushed to the area and started frisking people in the area. He further states that after sometime, his team proceeded towards Langol 2nd Sangai Home area while continuing to frisk and check people found in that area. His further case is that while doing so, 2-3 unknown youths were seen coming in a very suspicious manner from the opposite direction, i.e., Langol Housing Complex side. His team shouted at them to stop, but instead of stopping, they started firing at the police party and the police team retaliated. The cross firing lasted for about 5 minutes and thereafter at about 8.10 p.m., they found the dead body of an unknown youth on the road near Sangai Second Home while the other

escaped under the cover of darkness towards Govt. quarters located nearby. He also stated that from the scene one 9 mm pistol with 5 rounds was recovered from near the dead body. During further search of the area, 2 empty cases of 9 mm ammunition were also found. According to this witness, he seized the said articles and prepared a seizure list in the presence of police witnesses as no civilian could be found at that time on the spot. He reported the matter at 8.55 p.m. to the OC, Lamphel police station in writing and handed over the seized ammunition along with seizure memo. He had left the dead body on the spot under the observation of S.I. H. Sukumar Singh.

6.2.2 In his deposition before this Commission, RW-24 stated that he received information orally from an informant who claimed himself to be from 16th Assam Rifles. He stated that he did not write down the information anywhere. It is to be noted here that from the above statement, the witness has admitted that he did not know the informant nor had he verified the correctness of the information. He also stated that he did not know the identity of the deceased even after he was killed and came to know the name of the deceased after the same was published in a newspaper. Very curiously when he was questioned about how he knew that the deceased was a member of the KCP, his answer was as follows:-

"Even if I had not made any enquiry I knew that he was a member of KCP".

He further clarified by saying that since the locality where the deceased was found is a locality where the leaders and members of KCP reside, therefore, he came to the conclusion that the deceased was a member of KCP.

6.2.4 This witness stated that he has participated in 3-4 encounters, but he does not remember how many people died in those encounters. He further states that when his team went for operation, there were two other teams of commandos including the second officer in-charge of the CDOs. He stated that they went in three vehicles. According to him, there were about 13-15 personnel in the team. All were wearing uniform and were carrying weapons. At the place where the incident took place, they stopped the vehicle about 100 meters away and the CDOs got down from the vehicle and started frisking people around. He first spotted the 2-3 suspects, when they were about 30-40 feet away from him. He states that it was dark and the lights of the vehicle were not on. He stated that he did not know whether the suspects could see the security personnel. He did not see weapons in their hand because it was dark. When further questioned, this witness stated,

"When I asked the suspects to stop, they took one or two steps backwards and I again shouted at them to stop, at that time they started firing".

According to him the distance between them and the suspects when the firing started was about 30-40 feet. He is unable to say how long the suspects fired, but he stated that

the firing continued for about 5 minutes intermittently. He further says that because of the darkness, he could not see whether the deceased had fired. He says, that he fired 6 rounds from his 9 mm pistol i.e. 3 bullets in retaliation and another 3 bullets by way of cover fire. He also admitted that his team did not search for the empty cases because the area was hilly with bushes. He admits that none of the security personnel were injured or their vehicles damaged in the firing.

6.2.5 He has admitted that he is required to verify the information, but he has, in reality, not verified the information got by him. To a question from the Counsel for the Commission, he stated that he was at the Commando HQ when he received the credible information. He is not very sure about where Mike 56 and Mike 54 were at the time of his receiving the information.

6.3 A perusal of the postmortem report shows that the deceased has suffered 4 fire arm injuries, 1 contusion on the face and another abrasion on the outer aspect of the left elbow. Assuming that the deceased was a member of an outlawed organization, we find the force used by a large body of trained commandos causing multiple fatal injuries disproportionate to the need of the situation. In our opinion, this in itself is an indication of the fact that the object of the security forces was not to disable the victim, but to eliminate him.

6.3.1 In the instant case, the victim suffered four bullet injuries on the vital parts of his body, each of which according to the doctor could have been fatal. Another factor that requires consideration is that the deceased had suffered severe contusions on his face, which could have been caused by some blunt weapon. (Ex RW-8/6- Volume-II, Part-6 @ Pg.617-620). There is no satisfactory answer on the part of RW-24, who was the team leader, regarding how such contusions were caused. In reply to a question by the amicus curiae, RW-28 has stated that, "*Contusions are caused normally when the deceased is attacked with a blunt object.*" However, a suggestion was made that the dead body which was sent to the morgue was kept in the open for three days, hence, the said facial injuries might have been caused post mortem by somebody at the hospital. In our opinion, this suggestion has no basis because the doctor who conducted the postmortem opined that these injuries were also ante-mortem. This clearly indicates that the incident, in which the deceased died, is not an encounter, but an incident in which the security forces had enough opportunity to cause facial injuries by blunt weapons before the deceased died.

6.4 Conclusion

6.4.1 **For the reasons stated above, the Commission is of the opinion that the deceased did not die in an encounter.**

PART-III

ANTECEDENTS OF THE DECEASED PERSONS IN THE 6 CASES

1. The Hon'ble Supreme Court has also directed this Commission to examine and report to the Hon'ble Court in regard to the past antecedents of the deceased persons and the circumstances in which they were killed. Following is the finding of the Commission in this regard.

1.1 CASE 1 – MD. AZAD KHAN.

1.1.1 As stated earlier, this Commission had circulated a questionnaire seeking certain information from all parties regarding the persons involved in each of the 6 cases. In reply to the above questionnaire, in regard to Mohd. Azad Khan, it was stated by the State of Manipur that the deceased was suspected to be a member of the Peoples United Liberation Front (PULF) which is not a banned organization according to the said reply. (Letter No.20/4(106)/2012-H(LC)(Pt) dated 12.02.2013 – **Appendix III**).

1.1.2 It is to be noted here that in the very same reply given by the Manipur Police it is also mentioned that the basis of the said suspicion is the averment made in the complaint given by Complainant (RW-1) in this case who is one of the officers who participated in the operation in which Mohd. Azad Khan was killed. This apprehension was not recorded prior to this incident in which Md. Azad Khan died. Therefore there was

no material available with RW-1 prior to this incident that the deceased was a member of the PULF. Even the Investigating Officer (RW-3) has deposed that PULF is not a banned/UG organization and he has not made any inquiry about the activities of the said organization and that he had no information about the deceased being a UG activist of the said organization.

1.1.3 It is also stated in the said reply submitted by the State of Manipur to this Commission that an FIR under Sections 307/326/34 IPC read with Section 27 of the Arms Act was registered against the said deceased on 8.1.2009 i.e. about 3 months prior to the incident. The copy of the FIR submitted to the Commission does not show the name of the deceased as an accused. As a matter of fact, the Complainant in that case has stated that 3-4 persons along with one Mohd. Asraf Ali had fired at him. It is also noteworthy that though the offences alleged in the said complaint were of a serious nature, the deceased was not arrested even for a day by the investigating agency.

1.1.4 In this background, this Commission is of the opinion that there is no evidence to conclude that the deceased was an activist of any unlawful organization or was involved in any criminal activities.

1.2 CASE 2 - ORSONJIT SINGH

1.2.1 The State of Manipur in response to the questionnaire circulated by the Commission has specifically stated that the deceased person did not belong to any banned, overground/underground organization. (Letter No.20/4(106)/2012-H(LC)(Pt) dated 12.02.2013 - **Appendix III**). There is no other evidence that has come on record indicating that the deceased belonged to any banned organization or had any criminal record except the so-called information received by RW-6, L. Premkumar Singh, who states that,

"The message said that there was some movement of underground (UG) cadres. The information was not very detailed about the identity of the UG cadres".

The Commission therefore concludes that the deceased in this case did not have any adverse criminal antecedents.

1.3 CASE 3 - NAMEIRAKPAM GOBIN MEITEI & NAMEIRAKPAM NOBO MEITEI.

1.3.1 In this case there are two victims. In regard to first of them, Gobind Meitei, the reply submitted by the State of Manipur to the questionnaire circulated by the Commission has stated that according to the Complainant and his party the said deceased was suspected to be member of the KCP which is an underground organization. (Letter No.20/4(106)/2012-H(LC)(Pt) dated 12.02.2013 - **Appendix III**). The reply also

states that KCP was declared as a banned organization on 26th October, 1981. As could be seen from the above, the reply of the State of Manipur is based on the contents of the complaint filed pursuant to the incident that took place in which Gobind Meitei was killed. That complaint does not contain any specific fact, which establishes that the deceased was a member of the KCP. On the contrary, the Complainant, H. Sukumar Singh (RW-10) in his evidence before this Commission, has stated as follows:

"The information received was about the movement of UGs in the Langol area....No names were mentioned by the informer".

A specific question was put to the witness,

"Did the information received by you indicate any description to identify the UGs?"

The witness answered as follows:-

"I do not want to answer this question since it pertains to my source".

The above deposition clearly indicates that there is absolutely no basis for the Complainant to mention in his complaint that the deceased Gobind Meitei belonged to any banned organization and there was also no material to show that he had any other criminal antecedents.

1.3.2 In regard to the second deceased in this case, namely, Nameirakpam Nobo Meitei, the State of Manipur in its reply

has stated that an FIR under Section 13 of the Unlawful Activities (Prevention) Act had been registered against him, but in the very same reply it is stated that a final report was filed in that case by the investigating agency on 3.5.2002 seeking closure of the case and that report was accepted by the Hon'ble Addl. CJM, Imphal West District.

1.3.3 From the above, the Commission is of the opinion that the deceased did not have any criminal antecedents.

1.4 Case 4 - Elangbam Kiranjit Singh

1.4.1 The reply of the State of Manipur in response to the questionnaire circulated by the Commission states that this deceased was suspected to be a member of the KCP-MC UG organization as per the Complainant and his party and that the KCP-MC was declared as a banned organization on 26th October, 1981. (Letter No.20/4(106)/2012-H(LC)(Pt) dated 12.02.2013 - **Appendix III**). The suspicion of the State of Manipur is based on the information provided by the team which conducted the operation in which Kiranjit Singh died. The complainant on whose complaint the State relied upon to give the above information to the Commission was examined before the Commission as RW-12. He in his evidence has stated in regard to this aspect of the query thus,

"I was not told the name of the person who was to be encountered in the information given by Major Badoni".

1.4.2 From this, it is not possible for anybody to infer that the deceased was a suspected member of KCP as stated in the reply to the questionnaire of the Commission. Apart from this witness, Major Badoni, who was also examined before this Commission as RW-20, has stated,

"The information received by me indicated that some Underground Cadres were moving between Laikot and Shabungkok....."

1.4.3 Neither of these witness have stated that the deceased in this case was a member of the KCP as per the informant or that they had derived an inference that the deceased was a member of the said organization from the information received because the information was not person specific but was general in nature. The name of the deceased was not known to either of these witnesses. **Therefore, the reply given by the Government of Manipur cannot be considered as meaning that it had information that the deceased in this case was a member of the KCP and there being no other material, either in regard to the membership of the deceased with any banned organization or there being any criminal case against the deceased, the Commission finds that there is no adverse antecedents against the deceased.**

1.5 Case 5 - Chongtham Umakanta @ Munalton.

1.5.1 In regard to this deceased, the State of Manipur in reply to the questionnaire, stated that he was suspected to be an

active cadre of KYKL, a banned organization. (Letter No.20/4(106)/2012-H(LC)(Pt) dated 12.02.2013 - **Appendix III**). In support of this statement, the State has relied upon an FIR registered by Lamphel Police Station under Section 20 of the Unlawful Activities (Prevention) Act dated 28.9.2007. In the said case, as per the information given by the State the deceased was arrested on 27.09.2007 and was released on bail on 30.10.2007. There was another case registered against him in FIR No.145 (11) 08 by the Lamphel Police Station under Sections 17/20 of the Unlawful Activities (Prevention) Act. This complaint was registered on 11.11.2008, but he was not sent to jail and the information given by the State shows that he was released on bail by the police itself. In regard to the information relating to the unlawful activities of this deceased, the Investigating Officer, L. Birababu Singh, has stated as follows:

"The opinion expressed by me that the deceased was an active member of KYKL is based on the fact that the deceased was twice arrested, once by AR and another time by CDOs for unlawful activities and two FIRs were registered against the deceased in respect of these cases."

1.5.2 This witness further states that he formed his opinion that the deceased was an active member of KYKL on the basis of the material referred to by him in para 9 of his affidavit filed before this Commission wherein he has stated inter alia as under,

"...and it is established that the deceased Chongtham Umakanta @ Munalton was an active member of the outlawed KYKL organization. He joined KYKL in September 2006 and had got basic military training in March for about 3 (three) months along with Chanam Nanao Singh, son of Ch. Inaocha Singh of Irroisemba Mamang Leikei. He was arrested by 4th Assam Rifles in the month of September and handed over to Lamlai Police Station on 27/9/2007 and registered an FIR under Section 121(9)07 LPS U/S 20 UA(P)A Act. He was again arrested by Imphal West District CDO on 11/11/2008 and an FIR case under No.145(11)08 LPS U/s 17/20 UA(P)A Act was again registered against him."

1.5.3 It is true that there were two cases registered against the deceased under the provisions of the UAP Act. In the first case, he was released on bail by the Court within about 35 days and in second case, the very police which registered the case had released him on the same day.

1.5.4 From the above, the Commission comes to the conclusion that although there were allegations against the deceased, the veracity of the said allegations was not established.

1.6 Case 6 - Akoijam Priyobrata @ Bochau

1.6.1 In regard to this deceased, the State in reply to the query of the Commission, stated that he was suspected to be an active member of the banned KCP organization. (Letter No.20/4(106)/2012-H(LC)(Pt) dated 12.02.2013 - **Appendix III**). The basis of this information was the statement made by the

Complainant in the very case in which the deceased was killed and some civilian witnesses. The Complainant has been examined before the Commission as RW-24. Before the Commission this witness stated inter alia as under,

"I did get on 15.3.2009 at about 7.30 p.m. certain information from 16th AR that some members of outlawed terrorist organization "Kangleipak Communist Party" (KCP) were loitering in Irroisemba area. I received the above information orally from an informant who claimed himself to be from 16th AR. I did not write down that information anywhere."

It is to be noted here that the witness has not stated that he was told that the deceased was one of persons who was a member of the KCP. This witness further states,

"Even if I had not made any enquiry I knew that he was a member of KCP".

1.6.2 The witness further says that since the locality where the deceased was found is a locality where the leaders and members of KCP reside, therefore he came to the conclusion that the deceased was a member of KCP.

1.6.3 At this stage, it is necessary to notice another part of the evidence of this witness, wherein he stated,

"I did not know the identity of the deceased even after he was killed. I came to know the name of the deceased after the same was published in a newspaper".

1.6.4 The Commission is of the opinion that from the above statements of the witness, it is not possible to come to the conclusion that this witness had information about the deceased that he was a member of the KCP. Hence, the Commission is of the opinion that there is no acceptable material to come to the conclusion that the deceased had any adverse antecedents.

PART-IV**ROLE AND FUNCTIONING OF THE STATE POLICE AND SECURITY FORCES IN MANIPUR**

1. In the light of the enquiries made by it in the 6 cases, the Commission is also required to report on:

1.1 The role of the State Police and Security Forces in Manipur.

1.2 The functioning of the State Police and Security Forces in Manipur and in case the Commission finds the actions of the Police and/or Security Forces transgress legal bounds, to recommend measures for keeping the Police and/or the Security Forces within legal bounds without compromising the fight against insurgency.

In this regard, apart from the evidence in the six cases, the Commission heard the presentations of the Assam Rifles ("AR"), Manipur Police and the Complainants.

2. **ROLE OF THE STATE POLICE AND SECURITY FORCES IN MANIPUR.**

2.1 As elsewhere in India, the State Police in Manipur enforces the laws of the land. Except that in Manipur, the Armed Forces (Special Powers) Act, 1958 ("AFSPA") is in force, which means that under Section 3 of the Act, the Governor of Manipur has declared the whole State, excluding the Municipal area of Imphal, a "disturbed area". The declaration authorizes the use of Armed Forces in aid of civil power and

confers the special powers enumerated in Section 4 of AFSPA to such Armed Forces. The Assam Rifles is deployed in Manipur in aid of civil authority under the provisions of AFSPA. Section 6 of the said Act protects the members of the Armed Forces from any prosecution, suit or other legal proceeding by requiring the previous sanction of the Central Government for such prosecution etc.

2.2 The Hon'ble Supreme Court in its judgment in **Naga People's Movement for Human Rights Vs Union of India (1998) 2 SCC 109**, while upholding the validity of the AFSPA, has held that Section 4 of AFSPA is not a *carte blanche* for the exercise of unlimited power. The Hon'ble Supreme Court has set several conditions on the use of these powers. Some of the important conditions laid down by the Hon'ble Supreme Court are:

- i. Powers under Section 4 are to be exercised only with the cooperation of the State Govt.
- ii. Powers under Section 4(a) can be used against a person only if
 - (a) he is acting in contravention of an order for the time being in force in the disturbed area prohibiting the assembly of 5 or more persons or carrying of weapons etc.

- (b) the officer exercising those powers forms the opinion that it is necessary for the maintenance of public order, to take action against the person/persons acting in contravention of such prohibitory order.
 - (c) due warning as the officer considers necessary is given before taking action.
- iii. Minimal force for effective action is to be used.
- iv. The Do's and Don'ts issued by Army HQrs in this regard have to be strictly followed. They "are binding and disregard to the said instructions would entail suitable action under the Army Act, 1950".
- v. A complaint containing an allegation about misuse or abuse of the powers conferred under AFSPA shall be thoroughly enquired into and, if it is found that the allegations are correct, the victim has to be suitably compensated and the necessary sanction for institution of prosecution and/or a suit or other proceeding granted under Section 6 of the Act.
- vi. The provisions of CrPC in essence will be applicable in search and seizure under AFSPA.
- vii. The grant or refusal to grant sanction under Section 6 for prosecution is subject to judicial review. The

Central Government shall pass a written order giving reasons.

- 2.3 The declaration under Section 3 of AFSPA, according to the said ruling of the Hon'ble Supreme Court, has to be for a **limited duration** and must be **reviewed** every six months to decide whether or not it should be continued for the purpose for which it was first promulgated. The declaration of disturbed area under Section 3 "cannot be a declaration which will operate indefinitely" (at para 37).
- 2.4 The declaration under Section 3 of AFSPA for certain areas in Manipur was first made in 1970. The whole of the State was declared a disturbed area in 1980. In 2004 the Municipal area of Imphal was de-notified. This is the position till date. Similarly, the prohibitory order required by Section 4(a) of the AFSPA, which is made under Section 144 CrPC has been continuously in force since the declaration under Section 3 of AFSPA except for brief intervals for some specific occasions. An order under Section 144 CrPC can initially be made for two months, to be subsequently extended by the jurisdictional Executive Magistrate, if need be.
- 2.5 The Assam Rifles have been conducting operations along with Manipur Commandos, a special force of Manipur Police for counter-insurgency operations and not involved in the usual police duties. Normally the AR operations are in the notified areas only where they are authorized to conduct

such operations. The Manipur Commandos called CDOs have been conducting operations on their own.

2.6 From the material submitted before this Commission by the Manipur Police it would appear that for counter-insurgency operations a small force of one platoon of CDOs was first raised sometime in 1981-1982 from among the personnel of the Manipur Rifles which is the armed police wing of the Manipur Police Department. They were given special training in weapons and tactics, unarmed combat, ambush, cordon and search etc. by the 61 Infantry Brigade Leimakhong. Then the Police department was sanctioned 210 CDOs by the State government vide their letter No.9/12(95)/94-H dated 19th Jan, 1994. (Appendix-XIX) The strength of the CDOs has been increased by Government orders from time to time, and presently the sanctioned strength is 1600 inclusive of all ranks.

2.7 There is no separate recruitment for the CDOs. They are selected from the Manipur Police by a Committee under the Chairmanship of a DIG. It was noticed during the enquiry that most of the CDOs belong to India Reserve Battalion raised by the State of Manipur with the financial assistance of the Central Government (as most of the other States have done). The IRB are part of the armed police wing of the Manipur Police department which can be used by the Central Government outside Manipur State.

2.8 Order No.XI/23/94-Ops, Government of Manipur, Police Department dated 10th January 1997 (**Appendix-XIX**) issued by the DGP of Manipur has tentatively positioned CDO Units at 9 places which are in the valley districts of the State. The order says that "Detailed instructions about the functioning of the Commando Force shall be issued through a Standing order". No Standing Order subsequent to this date was submitted to the Commission. An earlier Standing Order namely S.O. No.150 dated 22nd April, 1996 (**Appendix-XIX**) of the DGP however clarifies that the CDOs are to be used only to fight against extremists. They are placed at the disposal of the District Superintendents of Police concerned (i.e. SPs where the CDO units are positioned) but from oral submissions before the Commission it appears that the CDOs have no jurisdictional limitation within the state. As an internal arrangement, the Commando unit of a district informs the Control Room of another district while operating in that area. Each CDO unit is headed by an officer of the rank of Inspector of Police. (See brief write up submitted to the Commission on behalf of the Manipur Police- **Appendix XIX**. It may be noted that although this is an unsigned document, it was submitted vide letter dated 16th March 2013 which is signed by IGP (L&O-I). The State of Manipur has subsequent to submitting this note and the accompanying documents claimed confidentiality in respect of the same. [**See Appendix XXV**] The Commission has perused these documents and does not find any material, the publication of which would prejudice the State of Manipur, but it is

necessary for the Commission to refer to the contents of these documents in its report. The request of the Government is, therefore, rejected).

2.9 The local police are performing normal police duties including investigation of the cases involving CDO operations with or without Assam Rifles. They are not excluded from counter insurgency work on their own.

3. **THE FUNCTIONING OF THE STATE POLICE AND SECURITY FORCES IN MANIPUR.**

3.1 In 4 of the 6 cases in Compilation 1 referred to this Commission, Assam Rifles is involved. In these cases the Assam Rifles and State Commandos have carried out joint operations. Information on anticipated underground activities originates from Assam Rifles, who have their sources. The sources are graded and information from an A-1 source need not be verified. The Assam Rifles personnel deposing before this Commission have said that such information can be acted upon straightaway. But in the depositions it was clearly shown that the information received was vague and of very general nature. No efforts were made to cross-check with the civil authorities as required by the Do's and Don'ts issued by Army Hqrs.

3.2 The Assam Rifles Coy Commanders secure the cooperation of State Police Commandos (CDOs) for the joint operations. Though not mentioned in any of the affidavits of the AR

personnel, some of them introduced the element of "guide" very late in their deposition before the Commission. These "guides" are supposed to take the AR team to the scene of suspected illegal activities. The same element of "guide", was introduced by some of the CDOs in their depositions before the Commission. But it appeared during the enquiry in one case that the so-called "guides" kept on sitting in the first vehicle of the convoy used by the AR Major who was supposed to be leading the operation, while the Manipur CDOs travelling in the second and third vehicle of the convoy conducted the whole operation resulting in the death of one suspect. In another case the "guide" of the CDOs also does not appear to have played any role in identifying the place or the suspect during the operation resulting again in the death of a suspect.

3.3 Only a few of the empty cases of the bullets fired by the CDOs are shown as recovered after each operation. The AR personnel have deposed that they have no system of recovery of empty cases of bullets fired by them in such operations. But they were in a position to tell the number of bullets fired by the AR personnel. There is nothing to show that sincere efforts were made either by the CDOs or the AR or the local police to trace the empties after the operation.

3.4 The operational scene resulting in the death of the suspect/suspects in the firing by the AR and/or CDOs is not left undisturbed as required for the purpose of investigation.

The seizure of arms and ammunition etc. is made by the CDOs who took part in the operations and the items seized are handed over to the local police station by them. The seizure report is signed only by the fellow CDOs as witnesses. The dead body/bodies are often removed from the scene of occurrence by the CDOs who conducted the operation even before the inquest is conducted.

3.5. No one wears any gloves to preserve finger prints and seized items are not sealed against tampering and for proper custody in the police station. This practice creates an opportunity for the Commandos or the local police to plant arms and ammunition on the person killed or change the original ones if there were any. All this is in violation of the provisions of CrPC, which, in essence are applicable to "encounter" deaths as per the judgment of the Hon'ble Supreme Court in **Naga Peoples Movement for Human Rights** (*supra*).

3.6 The stories in the 4 cases follow the same refrain. The CDOs and the Assam Rifles party approach an area of suspected movement of "UGs" (underground cadres), they see some persons, order them to halt, the persons fire at them while running away; the CDOs and the AR retaliate and a suspect/suspects drops/drop dead. From the depositions of the AR and Manipur CDOs personnel it was clear that no efforts were made to apprehend the escaping suspects. There is nothing to show that in these cases the situation

was such as no search for the suspect could be made, granting that caution has to be exercised while launching any search immediately after such operations.

- 3.7 From the affidavits and depositions of the AR personnel and Manipur CDOs, it would appear that they are quick to open fire but reluctant to own responsibility for the killing, indirectly making it appear that the other formation was responsible.
- 3.8 The enquiry has concluded that the six cases before this Commission were not cases of genuine encounters. It would appear that the security forces believed *a priori* that the suspects involved in the encounters had to be eliminated and the forces acted accordingly.
- 3.9 The knowledge and understanding of the law and procedures of both the AR and CDOs are very poor, though they are undertaking operations often resulting in death. It is difficult to accept the argument of the Learned Counsel for the AR and Manipur Police that as per the provisions of Section 102 CrPC and Section 174 CrPC, the complainant CDO who participated in the operation resulting in the death of the suspect, as a matter of right can seize the arms and ammunition from the scene of occurrence and conduct an inquest on the dead body and remove it from the scene of occurrence before the arrival of the IO. It is true that sometimes the dead body has to be removed to avoid further

law and order problem. However, this can and should not be done as a matter of routine.

3.10 The learned counsel for the Union of India had placed reliance on Rule 229 of the Assam Police Manual (which is applicable to the State of Manipur) in support of his contention that the havildar of the CDOs who participated in the operation resulting in the death of the suspects is empowered to effect the seizure from the spot. Rule 229 of the Assam Police Manual. The Commission has noticed Rule 229 of the Assam Police Manual, which reads thus:

"229. Enquiries into unnatural and suspicious deaths- (a) xxxx

(f) All police officers not below the rank of head constable are empowered to act under Section 174 (1), Criminal Procedure Code. Assistant Sub-Inspectors and head constables should not however be so employed when a sub-inspector is available nor should they make enquiries in any case in which the information or circumstances indicate the possibility of the death being the result of foul play.

A constable cannot make an enquiry, but when no other officer is present at the station the senior constable should proceed to the spot, take charge of the body, note its state (if literate), and make all preliminary arrangements for its dispatch, in case the enquiring officer desires to send it for an autopsy."

The Commission is of the opinion that Rule does not empower a member of the raiding party to seize arms, ammunition and any other articles or remove the same from the scene of occurrence.

3.11 Assam Rifles providing the information and conducting joint operations with CDOs is a convenient arrangement. CDOs have the freedom to operate anywhere in the State virtually having the same protection as AR under AFSPA for the joint operations. And AR can claim joint-operations with the civil authority in the non-notified as well as notified areas in the context of Section 3 of the AFSPA.

3.12 In the 2 cases which are operations by the CDOs themselves, information in one case has originated with the Assam Rifles and in the other case, from their own source. These two operations follow the same pattern. These are also not genuine encounters.

4. **TRANSGRESSION OF LEGAL BOUNDS BY POLICE AND SECURITY FORCES**

4.1 In the light of the enquiries made by it, this Commission would categorically like to state that the CDOs and AR personnel have been transgressing the legal bounds for their counter-insurgency operations in the State of Manipur. In the **Naga Peoples Movement for Human Rights** judgment (*supra*) the Hon'ble Supreme Court had upheld the validity of AFSPA mainly on the following grounds:-

- (a) The power of the Governor to declare disturbed area is not arbitrary.
- (b) The powers under Section 4 of the AFSPA are not unlimited powers. They can be used only under certain conditions mentioned therein for the maintenance of public order against a person who is acting in contravention of any law or order for the time being in force in the disturbed area.
- (c) The protection against prosecution etc. under Section 6 of AFSPA is not a *carte blanche*. It is not that no action can be taken at all. Action can be taken but with prior sanction of the Central Government.
- (d) The provisions of CrPC with reference to search and seizure will in essence be applicable during the operations under the AFSPA.
- (e) The principle of use of minimum force should always be followed.
- (f) The Do's and Don'ts issued by Army HQrs for such operations will be binding and action should be taken against the security personnel under the provisions of the Army Act for violations of the Do's and Don'ts.

4.2 During the enquiry, as revealed in the evaluation of the evidence in the 6 cases and the reading of the above

mentioned paragraphs, it is found that the important conditions laid down by the Hon'ble Supreme Court and the Do's and Don'ts issued by the Army Hqrs have remained largely on paper only. They are mostly followed in violation.

- 4.3 For example, one of the guidelines laid down by the Hon'ble Supreme Court as well as the Do's and Don'ts of Army HQrs. prescribes only the minimum force to be used for effective action. During its enquiry this Commission saw how one or two suspects were fired at by 20-30 Assam Rifles personnel and Manipur Commandos with automatic weapons. In some cases up to 89 bullets have been fired by them with various weapons. In one case the deceased had received 16 bullet wounds. All the bullets have passed through his body on the upper part. At the same time in none of the six cases enquired by the Commission, was any AR or Manipur CDOs hit or injured by bullets fired or by any other projectile used by the alleged UGs. In none of the cases has any of the vehicles of the security forces ever been hit by bullets fired by the UGs. By no stretch of the imagination can this be called minimum force used by the security forces to secure their objective. On the contrary the maximum force is visible in all the six cases. This is in violation of the Do's and Don'ts of Army HQrs. which mandate that the members of the forces should "aim low and shoot for effect" in their operations.

- 4.4 Though the words used by the CDOs and AR for firing by the suspects are "heavy", "continuous", "sustained", "with sophisticated weapons" etc., what is recovered from the scene of occurrence, is a 9mm pistol said to be belonging to the deceased suspect, 3-4 live rounds and 3-4 empty cases. In one case 3 empty cases of AK-47 are also allegedly found.
- 4.5 The **Naga Peoples Movement for Human Rights** judgment (*supra*) has clearly mentioned (sub para (21) of para 74 of the judgment) that "*....if on enquiry it is found that the allegations are correct, the victim should be suitably compensated and the necessary sanction for institution of prosecution and/or a suit or other proceeding should be granted under Section 6*" of the AFSPA. Under the direction of the High Court of Guwahati, judicial enquiry was conducted in two of the alleged encounters which are before this Commission. The judicial enquiry held that the so called encounters were fake. Compensation was directed to be paid to the families of the victims. The Commission was not informed whether in the two judicial enquiry cases, at least departmental proceedings have been initiated against the personnel involved.
- 4.6 It may be pertinent to point out here that though Section 176 CrPC contemplates Magisterial Enquiry into all cases of death in police custody or police action, in the cases before this Commission Magisterial Enquiries were ordered after a

lapse of couple of years. Same is true of the judicial enquiries in the two cases.

- 4.7 The senior officers of AR of the rank of Major deposed before this Commission that they were just "generally aware of" the Do's and Don'ts issued by Army Hqrs. In fact, some of them appeared surprised when some of the guidelines were read out to them. The CDOs and AR personnel did not appear to have any idea about the guidelines laid down in the **Naga Peoples Movement for Human Rights** judgment (*supra*).
- 4.8 In 5 out of the 6 cases at least one unknown suspect has been shown to have escaped during the operation. All these cases are still under investigation even after more than 3 years. This leaves open the possibility of implicating more persons in the future. In one case the only accused involved had died on the spot. Yet the case is still under investigation.
- 4.9 The NHRC guidelines about search, seizure, inquest etc. in case of police action resulting in death are not being followed.
- 4.10 It would appear that the decision whether a case should be finalized after a reasonable time of investigation or kept alive under investigation indefinitely, depends solely on the whim of the investigating officer. It was argued before this Commission by the Learned Counsel for the Union of India and the Manipur Police that no law or rule required the IO to

take anybody's permission to continue the investigation for as long as he/she wants.

4.11 The continuous imposition of prohibitory orders under Section 144 CrPC throughout the State for decades makes a mockery of the law. The same is true of continuation of operation of the AFSPA.

4.12 Though the Act gives sweeping powers to the security forces even to the extent of killing a suspect with protection against prosecution etc., the Act does not provide any protection to the citizens against possible misuse of these extraordinary powers. Despite repeated questions posed by the Commission, we have not been informed of any monitoring system to review the use/abuse/misuse of these powers by the Security Forces as claimed by the Central Government in their affidavit before the Hon'ble Supreme Court in Writ Petition (Criminal) No.129 of 2012. The Commission had asked the AR, the Manipur Government, and MHA to furnish it with the following information for the last 10 years:-

(i) Number of civilians killed and injured (separately) by

- a) Manipur Police
- b) Assam Rifles
- c) Any other special force

(ii) No. of persons killed, injured in inter-Tribal rivalry.

The Commission has been informed that there was no official record of the information under (i) above and that persons

were killed in the inter-tribal rivalry {(ii) above} between 1993 and 1997 only.

4.13 Normally, the greater the power, the greater the restraint and stricter the mechanism to prevent its misuse or abuse. But here in case of the AFSPA in Manipur this principle appears to have been reversed. We should not forget that power corrupts and absolute power corrupts absolutely.

4.14 During its enquiry the Commission has been told that no action has been taken in the last five years against any Assam Rifles personnel for violating Dos and Don'ts issued by the Army Hqrs. (**Appendix-XX**) The information given regarding action for violation of Human Rights is rather confusing. However, it would appear that in the last five years 66 complaints were received against the Assam Rifles personnel and only 3 have been disposed of. It is not known what action was taken in those 3 cases. Only 2 cases of action against Assam Rifles personnel under the provisions of the Army Act in the last five years have been brought to the notice of the Commission by Assam Rifles. These cases pertain to trespass and damage to private properties by the Assam Rifles personnel. The Assam Rifles have informed the Commission that in the last five years only in one case the Manipur Government sought permission to prosecute an Assam Rifles officer for alleged abuse of powers under the AFSPA. (**Appendix XXI**) The permission was refused by the Central Government. It is learnt from the records provided

by the Assam Rifles that in the last five years there have been 17 Writ Petitions against them. 10 of them pertain to allege custodial deaths, 4 for missing persons and 1 is a case of torture. No information is available about action taken against CDOs on the above mentioned grounds.

PART- V**RECOMMENDATIONS**

- 5.1 There is no doubt that insurgency in Manipur State is a reality. But the continuous use of the AFSPA for decades in Manipur has evidently had little or no effect on the situation. On the other hand, the 6 cases, which have been shown to be not real encounters, are egregious examples of the AFSPA's gross abuse.
- 5.2 Terrorism in India today is much more about unemployment than ideology though militancy tends to take on an ideological colour. But modern technology reduces rather than increases over-all employment and the market exacerbates inequalities. By contrast, terrorism creates much employment both in the underground groups and the police, CDO and other formations set up to combat these groups. With a burgeoning, restive, youthful population only proactively inclusive governance can hope for some social stability. Tripura has realized this to its considerable advantage. Manipur should be given the best chance to do the same.
- 5.3 The Jeevan Reddy Committee to Review the Armed Forces (Spl) Powers Act, after its own hearings, found that AFSPA had become "a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness". The Commission has carefully gone through the said Report and is in respectful agreement with the same.

5.4 AFSPA or UAPA apart, it is necessary for Manipur to come back to normalcy as soon as possible. There are strong indications that people by and large have had more than enough of strife and violence. Civil Society in the State not only has a palpable presence but has raised the level of social consciousness well above the average in the country. It is time therefore to progressively de-notify more areas of the State under Section 3 of AFSPA. The progressive withdrawal of Section 144 CrPC will accompany the de-notification. If at any stage of the de-notification there is a serious and continued regression in the law and order situation, it should be open to the appropriate Government to reconsider the options available to it. Any extension of the provisions of AFSPA should necessarily be placed before the State legislature, drawing an analogy from Article 356(3) of the Constitution.

5.5 The Hon'ble Supreme Court in **Naga Peoples Movement for Human Rights** (*supra*) had laid down that the Do's and Don'ts of the Army HQrs are binding and any disregard of the same will be punishable under the Army Act. However, the same may be given statutory status.

5.6 The Manipur administration has to be made more sensitive, proactive and responsive. The police and policing have to be made more people-friendly. A sensitive, proactive and responsive administration including people-friendly policing would go a long way in normalizing the situation and

winning the confidence of the people. There is nothing to show that these efforts have been made in right earnest. On the other hand it is brought to our notice that the IAS and IPS officers are disconnected with the people.

- 5.7 CDOs cannot be allowed to terrorize people at will as they appear to be doing presently. There is a need to clearly define the role, duties and responsibilities of the CDOs. There has to be a clear command-and-control structure and their functioning has to be closely monitored by the Superintendent of the district and higher Ups in the hierarchy of the police department. There is nothing to show that any such thing is happening at present.
- 5.8 It is brought to the notice of the Commission that pursuant to the judgment of the Hon'ble Supreme Court in **Prakash Singh Vs. Union of India (2006) 8 SCC 1**, the Government of Manipur in 2007 constituted a District Police Complaints Authority in many districts of Manipur State. (Letter No. 20/4(106) 2012-H(LC)(Pt-I) dated 15th March, 2013 **Appendix-XV**). It is recommended that such a District Police Complaints Authority with at least one representative from civil society be constituted in all the districts. This Authority should be activated forthwith. Wide publicity must be given to the creation and functioning of the Authority. At present the Authority is meant to look into the complaints of misbehavior, non-registration of cases etc. by the police. It is recommended that the District Police Complaints Authority

be also authorized to look into public grievances against police, AR and other para-military forces deployed in Manipur regarding disappearance of persons. If the authority finds any truth in any of the complaints made to it, it shall communicate the same to the SP of the district concerned or the Commandant of the armed force of the Union of India for necessary legal action against the concerned. A copy of such report of the Authority shall be given to the complainant. All the concerned should be asked through a government order to co-operate with the Authority in its enquiries.

5.8.1 To avoid overlapping/duplication of work no separate grievance cell is recommended for this purpose.

5.8.2 The State level police complaint authorities should also have at least 1 member from the civil society and must review the functioning of the District Level Police Complaint Authority on a quarterly basis.

5.9 During the enquiry it is seen that all the cases of encounter invariably have a Section or two of the Unlawful Activities (Prevention) Act, 1967 included in the FIR. Therefore, these cases are to be investigated by police officers not below the rank of Dy. SP (SDPO in the State of Manipur). The SDPOs deposing before the Commission submitted that they were investigating more than 500-600 cases under UAPA apart from attending to all other normal police duties. They were not in a position to give any priority to even the encounter cases. The six cases being enquired into by the Commission

have been under investigation for years. In one case the present IO is the sixth in the series.

5.10 Out of the 2713 cases registered in Manipur in the last five years attracting the provision of the UAPA, only 13 have been charge sheeted. The remaining 2700 cases are still under investigation. The number of cases under UAPA in Manipur as mentioned above indicates that the provisions of the said Act are being applied in a routine manner.

(Appendix-XXIV)

5.11 The Commission recommends that all cases of encounter resulting in death be investigated by the CID, by officers not below the rank of Dy.SP/ASP. For this purpose the CID Manipur has to be suitably strengthened within a stipulated time of six months. That is, the sanctioning and filling of posts, the provision of office accommodation, vehicles etc. have to be accomplished in 6 months. The CID also has to be provided with other necessary infrastructure and funds to discharge its duties effectively and efficiently.

5.12 Special investigation teams should be formed to investigate all cases of UAPA. The Commission also recommends that in the District and the State Police Control Rooms, a separate cell be opened with a separate phone and computer for receiving complaints/information over phone/e-mail about extortion etc. A record should be made of all the complaints/information received and action should be taken

immediately. Wide publicity should be given to this phone number and this facility.

- 5.13 The investigation of the cases of encounter being handled by the CID shall be reviewed every month by an officer not below the rank of DIG of CID. After the first 3 months reasons shall be recorded in writing by the IO seeking permission to continue with investigation. The reviewing DIG mentioned above shall take a decision and pass a speaking order permitting or refusing continuation of investigation.
- 5.14 The DGP Manipur may also be directed to issue remedial detailed instructions to prevent the kind of irregularities illustrated in paras 3.3 to 3.5 of this Part-V and to introduce modern methods of investigation in his Police force.
- 5.15 It is proposed that all cases of encounter resulting in death be reviewed once in three months by a Committee chaired by the Head of the State Human Rights Commission with Principal Secretary Home and DG of the State as members. This review will be confined to seeing if there are valid grounds to continue the investigation.
- 5.16 The Commission proposes that cases of encounters resulting in death be tried by a Special Court constituted for this purpose. The number of such Courts can be decided by the State Government and the High Court of the State depending on the number of cases pending. This will ensure quick disposal of the cases.

5.17 During the enquiry, the Commission has noticed some serious lapses on the part of police during their operations and the investigation. The Commission, therefore, recommends the following measures:-

- i) It is seen that there is a vast difference between the bullets fired by the police and the empty cases recovered by them from the scene of crime. There are Standing Orders issued by the DG of Police, Manipur regarding issue, use and accounting of the ammunition. It is obvious that these instructions are not followed (S.O. No. 96 dated 30th March 1987, & Para 166, Part III, Assam Police Manual- **Appendix-XIX**). This can give rise to serious malpractices.
- ii) It is seen that required efforts are not made by police to search the scene of occurrence for the empty cases after the operation. This can lead to mistakes in the line of investigation.
- iii) In many cases, the postmortem is conducted many days after the incident. This can result in loss of vital clues owing to the physiological changes in the dead body. The postmortem in encounter cases should be conducted as quickly as possible after the incident.
- iv) The postmortem in encounter cases should invariably be videographed.

- v) During the postmortem, the hand wash of the deceased must be taken and sent for forensic analysis. This is necessary because in many cases it is contended by the security forces that the deceased had fired at them.
- vi) During the Inquest, fingerprints of the deceased should be taken for proper identification as well as comparison with the fingerprints found on the weapon allegedly used by the deceased.
- vii) It is seen that the seized articles are sent to the FSL after considerable delay, sometimes, after years. The seized articles should be sent to FSL within a week from the seizure. The FSL examination should also be done expeditiously and reports sent to the IO.

5.18 The Hon'ble Supreme Court in the judgment in **Naga Peoples' Movement for Human Rights** (supra) in Paras 24, 25 and 26 has laid down certain guidelines for deployment of armed forces in aid of civil authority. These guidelines should be scrupulously adhered to in letter and spirit by the security forces.

5.19 It is clear to the Commission that the Manipur State police on its own is grossly inadequate to face the challenges before it. Therefore, it is strongly recommended that the Manipur Government draw up and implement a five year plan for

strengthening, equipping and training of the civil police in the State so as to altogether do away with the deployment of Union armed forces in aid of the civil power. The Central Government must generously contribute to the means and expertise necessary for this endeavour. Nothing would sooner normalize Manipur than confining Union armed forces to combating foreign enemies.

5.20 Presently the following is the deployment of various Armed Forces of the Union in Manipur:

- a. The Assam Rifles-60 Coys
- b. CRPF-37 Coys
- c. BSF-12 Coys

It is learnt that the CRPF and BSF rarely conduct any counter insurgency operations.

5.21 During the enquiry, the Learned Counsel for MoD cited a judgment of the Hon'ble Supreme Court to the effect that no charge sheet can be filed against the AR personnel without prior approval of the Central Government under Section 6 of AFSPA. He clarified that if the case and the circumstances demanded there was no bar to the drawing up of an FIR and an investigation against them by the local police against specific complaints. These provisions must be made known to AR personnel, the Manipur Police and people of the State to reduce the possibility of misuse of authority under the false cover of Section 6 of AFSPA.

5.22 The Commission recommends that the Central Government be given a reasonable time limit to pass order under Section 6 of the AFSPA, preferably within three months from the date of its receipt of the request of the prosecution, failing which its sanction shall be presumed.

**[JUSTICE N. SANTOSH HEGDE (Retd.)]
CHAIRMAN**

**(MR. J.M. LYNGDOH)
MEMBER**

**(DR. AJAI KUMAR SINGH)
MEMBER**

March 30, 2013

PART- VI

NOTE BY Dr. AJAI KUMAR SINGH, MEMBER

1. I would like to bring to the notice of the Hon'ble Supreme Court of India certain points that have emerged out of my interaction with knowledgeable people, people in responsible positions and my own studies on the subject and which, keeping in mind the terms and reference of the Commission cannot find place in the report itself. It is hoped that the report and some of these points will lead to a debate which may throw up some workable ideas towards improving the situation in Manipur.

I thank the Chairperson and the other Hon'ble member of the Commission for permitting me to append the note to the report.

2. There is no doubt that the situation prevailing in Manipur is rather complex. It has its roots in historical, ethnic and socio-economic issues. It would appear that successive Governments at Centre as well as State have treated the problem mainly as an issue of public order to be controlled by force through harsh provisions of laws like the AFSPA. If there are prohibitory orders under section 144 CrPC for decades at a stretch with the AFSPA in force, how are people supposed to carry out their daily activities with a sense of security and peace? There is an overwhelming sense of discrimination in the mind of people and lack of faith in the honesty of intentions of Central and State Governments.

3. Though apt as a principle of administration anywhere, the situation in Manipur at this juncture requires application of policy of "*vajradapi kathorani, mriduni kusumadapi*". Which means that action should be taken as per law and procedure lay down against criminals and anti-social elements without any fear and favour. No influence or interference should be tolerated under any circumstances. This is being hard like diamond, "*vajradapi kathorani*". On the other hand the Government and its administration should go out of the way to empathize with law abiding people, particularly those who are in difficulty and who are suffering and do their sincere best to help them. To such people their heart should be softer than the petals of a flower, "*mriduni kusumadapi*".
4. It is foolish and impractical on the part of extremists to expect that any Govt. of India is ever likely to concede their demand of separation from Indian nation. Solutions have to be found within the Constitution of India and within the frame work of law keeping, of course, in mind the special needs of the area and the people of Manipur. Violence will not lead them to "success". It is likely to be met with more violence and harsher laws, helping nobody but inflicting deep physical and psychological wounds, difficult to heal.
5. Sincere and honest implementation of the schemes provided for under Article 46 of the Constitution can help. It is not that the Government have done nothing or are not doing

anything. There are many schemes and much funds available. But gross and rampant corruption in the implementation of these schemes has eroded the credibility of political leaders and the bureaucracy. Monitoring Systems have proved totally ineffective. The schemes should be prepared in consultation with the grass root level people. There should be a strict and transparent monitoring system which should be available in the public domain. Presently there is an impression that the Govt. themselves are not serious about proper implementation of these schemes and allow corruption. Activities of the extremists only hamper whatever implementation is attempted.

6. The ownership of land in Manipur is an irritating issue. Maiteis of the valley who form about 70 per cent of the population and have always been in the ruling positions own only 30 per cent of the land. They cannot buy land in the hills whereas people from the hills can purchase land in the valley. Maiteis being in ruling position expect others to be subservient to them. Other tribes who are proud of their culture and tradition resent it.
7. The extremists have succeeded in creating an impression that the Central and State Governments are not serious about solving the problems of the people and want to operate only through brutal force of Army, Para-Military and Police. They (the extremists) then use violence as "the language of the oppressed". Tribal insurgents are perceived

as defender of the ethnic identities. People find it next to impossible to communicate with the Armed Forces or Police about disappearances of their kith and kin. The encounters enquired into by this Commission support the perception of the people about brutality of the Police and Security Forces. Extremism is often the outcome of perception (whether true or not) of injustice, oppression and discrimination.

8. Apart from alleging continued discriminatory treatment on the part of the Central Government, people also complain that even employment opportunities due to them are deliberately not given to the hill tribes by the State Government.
9. On the basis of my personal interrogations and study of interrogation reports of dozens of terrorists and suspects from all over India including those trained in Pakistan, I would like to say this about the so called encounters: if one innocent person is killed by police or other security forces in a fake encounter, it creates tremendous upsurge of hatred and ten volunteers offer themselves for retaliatory action risking their lives. And, I must say this that people always accurately know who was innocent. People even know whether an innocent person was killed by mistake or deliberately. The police and security forces should always keep this in mind during their operations.
10. There are two glaring examples of the attitude of the Forces deployed in Manipur under the AFSPA. The Hqrs of AR in

Imphal is Imphal Royal Fort which is the traditional symbol of seat of power and authority. The other example is permanent establishment of Assam Rifles on the hillock, the highest point in the campus of University of Imphal. For decades there has not been any incident or any kind of violence either in the University or emanating from the University. The question asked is if permanent deployment of AR in the Imphal University is justified, why no deployment of Armed Forces of the Union in the Osmania University which has been the hot-bed of violence for years in the Telengana movement? The question is also asked that if permanent enforcement of AFSPA in Manipur is justified, why the same law has not been used in other parts of the country which have been reeling under Naxal violence for decades and the Prime Minister himself has been addressing the Nation that the naxal problem is the number one problem facing the country.

The AR have been promising for years to vacate these premises.

11. Youth is the future. Youth exchange programmes between Manipur and other States of India with the help of Universities, State Governments, NGOs, Industry Houses can help. These groups should, as far as possible, stay in the home-stays and not in Government guest houses, hostels or hotels. The scheme can be formulated more clearly.

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12. There is a perception in the minds of the people that Manipur is low priority area for the Central Government to ensure better result of the peace process. After all Manipur elects only two Members of Parliament. There are many, including those in position of authority who firmly believe that if the AFSPA is withdrawn from Manipur, nothing more serious is likely to happen. The Armed Forces of the Union are always available to help the civil administration in case of need. The AFSPA is an impediment in the process of achieving peace. The Act diminishes the identity of the local people as Indians. Perhaps, the AFSPA is preventing the Governments and administration from thinking innovatively to solve the problems. It is said that for a man with a hammer every problem is a nail to be hit on the head with the hammer.

9

The least the Government can do immediately is to put some effective monitoring system in place and make the Dos and Don'ts issued by the Army Hqrs and the guidelines of the Supreme Court in the judgment of 1998 (Supra) part of the AFSPA itself.

13. People now want peace. They are ready for some give and take. Things can improve if there is an independent and credible peace initiative. But people have lost faith in the seriousness of the Centre and State Governments about their peace initiative. The Governments have to restore people's faith as quickly as possible.

Without people's faith in the Government, no governance can take place. To give a sense of belonging to the people of Manipur, may be, the Union Ministers holding important portfolios should visit Manipur once in a year to review the implementation of schemes pertaining to their Ministry and hold public hearings.

14. In their write-ups about themselves, Assam Rifles claim to be "Friends of the Hill People". They also claim to undertake "People centric projects and schemes". There was nothing in their presentation etc. that would support these claims. The thoroughly unsatisfactory functioning of the State police has been brought out in the report itself. The required police reforms cannot wait any longer without compromising the security and integrity of the State.

Dr. Ajai Kumar Singh
Former DGP, Karnataka State
Member of the Commission

March 30, 2013.

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The Commission having so busily existed for the last twelve weeks, its acknowledgments of its sundry debts of gratitude all the way to the accomplishment of the writing of this report can only be selective.

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The Karnataka Government has without reservation put the suites and staff, both in Karnataka Bhawan, New Delhi and Kumara Krupa Guest House in Bengaluru at the disposal of the Commission, even though the enquiry is unrelated to the State.

The two Counsels of the Commission, Shri Nikhil Nayyar and Shri Gautam Narayan, who have throughout lost much sleep over this report, have also been gracious enough to decline any payment in what they consider to be the performance of a public duty.

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And finally, Shri H. Kujur, Section Officer, MHA and S/Shri Rajneesh Godara, P.S.N. Swamy and K. Sahu, officials deputed from CRPF and Shri Manjit Singh have unstintingly worked long hours without a thought for family or holidays.