

People's Union for Democratic Rights

newsletter

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This newsletter is the third in a new initiative by PUDR to keep those interested in the organisation's work and issues of civil liberties and democratic rights informed of some of the issues that we are working on. A more comprehensive account of the issues and organisation's work can be found on <https://www.pudr.org/>.

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For an ordinary citizen the first point of contact with the apparatus of law is most often the police force. Whether accosted as an accused or seeking redress for a crime, it is police that the citizen has to deal with. But what happens when a citizen is seeking redress from the excesses of the police force itself? November 2021 saw the release of *Jai Bhim*, a feature film which depicted custodial torture and death, based on a real case, drawing accolades for its portrayal of grim realities. In recognition of the enormous powers of the police, especially at the stage of police custody, stringent guidelines have been laid down by the judiciary over the years to strengthen existing laws, reduce the discretionary power of the police and provide adequate checks and balances, including through judicial oversight. However flouting of established guidelines, the law, and even specific judicial orders is widely prevalent when it is the citizen arrayed against the might of the state's law and order machinery as is evident from the need to institute Special Investigative teams (SITs) and Commissions of Inquiry. We look at a few recent case studies that demonstrate how this takes place.

Even death does not yield an FIR

The violation of the law often begins even before the citizen can initiate the first steps, at the stage of registration of an FIR, (First Information Report). An FIR is a right enshrined in the CrPC and asserted and amplified by judgements of the highest court including a Constitutional bench which ruled that registration of an FIR was mandatory under Section 154 of the CrPC in the case of complaint of a serious offence. In the constitutional bench judgement the court said registering an FIR was neither optional nor discretionary. It referred to the dangers of discretion in this first very important step pointing out that it could have serious consequences on the public order situation as well as the fundamental right to equality. Subsequent judgements have reinforced this.



However even this first step is hard to access as is evident from the number of times citizens have had to approach the court for this right. It becomes even more difficult where it is the police which is being accused by a citizen. In October this year the Kerala High Court expressed shock when a Dalit man was chained to the handrail of the police station at Thenmala in Kollam, because he had the temerity to ask for a receipt of a complaint he had filed before the Police Complaints Authority. In the case of the teenager Deepak Sunder, even death was not considered sufficiently serious to warrant an FIR.

Shyam Sunder, whose son died in police custody on January 16, 2018 in Karawal Nagar police station in Delhi, had alleged foul play but no FIR has been registered despite attempts to do so for more than three years. PUDR has been assisting legally in this case whose tortuous path gives a glimpse into the difficulties an ordinary citizen faces. The police have argued that no FIR should be filed because the magisterial inquiry into the death had ruled it a suicide and exonerated the police officers (PUDR's own investigations raised basic questions about that inquiry and the evidence). When this argument of the police was not accepted by the court, they subsequently argued that the case was one of corruption and not custodial death as a policeman had been accused of asking for a bribe, even though it was the alleged failure to fulfil the demand for money that had led to the murder according to Shyam Sunder.

Despite the orders of the sessions court which were subsequently upheld in the High Court, no FIR has been registered nearly four years after the death suggesting that the police feel emboldened to disregard the court's orders. The next hearings on the case are listed for December 2021 and January 2022.

No eyes on the law


It is recognition of the abuse of the coercive power of the state during police custody which had resulted in a far-reaching judgement of the Supreme Court. In December 2020 the court had ruled that victims of human rights violations by police and other investigating agencies had the right to access CCTV footage of their incarceration and directed all police stations and offices of investigative agencies to install CCTV cameras. What followed is a story of evasions and excuses to circumvent having to follow the court's orders. Following the December 2020 order, the Supreme Court issued directions in January 2021 directing the Centre and all state and union territory governments to provide timelines and budgetary allocations. The court repeated its directions in March 2021 rejecting the government's request for an adjournment. In April 2021 the Court issued directions to the government to make allocations and to ensure the installation of CCTV cameras within six months. But six months since then and nearly a year since the original judgement, the hearing on the affidavits filed by the government is still awaited.

According to data from the National Crime Records Bureau (NCRB) over 20 years (2001-2020), 1,888 custodial deaths were reported across the country, 893 cases registered against police personnel and 358 personnel charge-sheeted. But only 26 policemen were convicted in this period, official records show.

In November 2021 a young Muslim labourer, Altaf, died in police custody in the Kasganj police station in Uttar Pradesh. There were no CCTV cameras to record what happened.

Blatant Encounter

There was no CCTV available in either the guest house or police station Shad Nagar in Hyderabad where four men accused in the gangrape and murder of a young doctor were being held. They



were taken into custody on December 3 following the November 28, 2019 rape and murder of a young woman doctor (her body was burnt so rape could not be medically confirmed). Three days later all four were dead. In the immediate aftermath of the deaths there was widespread social acclaim for the killings which were celebrated as an instance of summary justice meted out to the culprits. While the official police version stuck to the account that the men were killed in police firing while trying to escape – the standard narrative in all encounter killings – there was little attempt to disabuse the public celebrating the deaths as an instance of summary justice in blatant violation of rule of law.

The lack of respect for law and the consequent weakening of it is nowhere more evident than in encounter killings, a pattern of summary execution that replaces the process of criminal jurisprudence and has been well-documented by PUDR over the years. What is unusual in the Hyderabad encounters is the ongoing Commission of Inquiry that gives remarkable insight into the practice of encounter killings and the subsequent cover-up including how far up the chain the culpability lies.

The social approbation and impunity accorded to similar encounters in the past also resulted in the police treating even the official *version* of facts in cavalier fashion as was evident during the hearings of the commission of inquiry, when the Police Commissioner of Cyberabad provided an alternative version of facts from what he had provided during a press conference.

During the course of the hearings, the conduct of which the police attempted to challenge unsuccessfully in the High Court, the failure of the police and the subsequent magisterial inquiry to follow due process has come to the fore. Multiple discrepancies have been revealed relating to the nature of police injuries in the encounter;

the site of the encounter and eye witness accounts. There has been a demonstrable failure to collect and corroborate basic evidence including data records, verification of woman victim's clothes and finger prints of deceased accused on pistols allegedly snatched.

The hearing has also drawn attention to the holes in the narrative of the chain of command with the CP blaming the DCP for discrepancies in his account and the DCP abjuring responsibility for the constitution of a special operations team (which is usually charged with responsibility for organised crimes.) The police have even accused the NHRC of threatening them.

Impunity is the flavour of the day

How widespread the phenomenon of encounters is, is captured in a recently published report on a single state. Between March 2017 and August 2021, the Uttar Pradesh police have shot and injured 3302 alleged criminals in 8472 encounters. The total death toll is 146. The unofficial code name for these encounters: operation Langda (Lame). Most of these encounters have taken place in Meerut district (2839 encounters; 5288 arrests; 61 deaths and 1547 injured) followed by Agra (1884; 4878; 18; 218). In January 2019, the Supreme Court had held that the encounter killings required "serious consideration" and had issued a notice to the state government based on a PIL seeking a court monitored SIT or CBI into these encounter killings.

Documenting the fate of 17 cases in which inquiries were ordered by the NHRC in 2018, and in which the NHRC had conceded *only one case* fake encounter, the report, *Extinguishing Law in Life* (2021), published by Youth for Human Rights Documentation (YHRD) contests the NHRC's inquiries by providing some important findings. The report states that no FIRs were filed against policemen *in any case*; that each of the cases has an *identical sequence of events*;

that in most, the laid down guidelines (by NHRC and 2014 PUCL judgment) were flouted; that 'independent' police investigations is an eye wash as those which were investigated by policemen of different thanas, the existing police version was confirmed; and that the independence of the judicial authorities is questionable as Judicial Magistrates routinely accept the closure report filed by the police.

Even where the dogged perseverance of citizens results in a finding of culpability, as in the case of the 2002 Bulandshahr encounter killings, where the father of a man killed in an 'encounter' pursued justice for 19 years, the state drags its feet on taking action. In November this year the Supreme Court reprimanded the U.P. government for its laxity in taking action against guilty policemen in which 9 policemen were guilty of inaction and delay.

The lack of compliance with due process is also emerging in an environment where figures in positions of high authority have had no compunction even in urging citizens to take the law into their own hands. Most recently it was the Chief of Defence Staff General Bipin Rawat who argued that there was nothing wrong with locals in Kashmir lynching a terrorist, and their desire to do so a positive trend. He did not address the issues of how anyone could be proven a terrorist without due process, nor how members of the public could determine this, or be sanctioned to carry out killings.

The Assam Chief Minister Himanta Sarma had earlier this year said shooting should be the norm if criminals tried to escape. This statement came even as there has been an increasing number of 'encounters' in Assam. Between May 10 and October 6, 2021, there have been 41 encounters in which 22 deaths occurred and over 30 injuries. Taking note of a PIL filed by an advocate in July into these

encounters, the NHRC sought an ATR from the state government in mid-September and gave four months' time for the state to file its report.

These incidents are also taking place at a time when the repression of civil liberties continues to escalate, with the government at the centre and several state governments initiating cases against an ever-widening cross-section of activists, journalists and writers.

In a recent speech the National Security Advisor Ajit Doval identified civil society as the frontier of the fourth generation war. While Doval spoke of the need to strengthen rule of law he said while wars had become too expensive, "it is the civil society that can be subverted, suborned, divided, manipulated to hurt the interests of a nation".

Fasslan de Faisle (Farm laws)

After a protest movement of nearly a year the farmers' movement won a victory when the government conceded to its demands and rolled back the three farm laws that it had introduced through ordinance. While the farmer's are still protesting for a fuller acceptance of their demands, it is worth pointing out that the same protestors who are being described as brothers and companions were being reviled as being anti-national, terrorists and accused of being manipulated and misled. During this year 700 farmers lost their lives in the protest, and hundreds of cases have been registered against the protestors including under the draconian UAPA.

The spirit of the farmer's movement is captured eloquently in this song: Fasslan de Faisle.

*Ring the bells that still can ring,
Forget your perfect offering
There is a crack, a crack in everything
That's how the light gets in
- Leonard Cohen*