

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CRL) NO. OF 2012

IN THE MATTER OF:

1. Extra Judicial Execution Victim

Families Association (EEVFAM)

And Anr.

...Petitioners

VERSUS

1. Union of India and Anr.

...Respondents

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONER: JYOTI MENDIRATTA

I N D E X

Sr. No.	Particulars.	Page. No.
1.	Listing Pro forma	
2.	Synopsis and List of Dates	
3.	Writ Petition with Affidavit	
4.	ANNEXURE P-1 True copy of the report titled "A Memorandum on Extrajudicial, Arbitrary or Summary Executions" submitted by Civil Society Coalition on Human Rights in Manipur and the UN to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions.	
5.	ANNEXURE P-2 True copy of the list of 62 cases of extrajudicial killings by the police and the security forces in the State of Manipur.	
6.	ANNEXURE P-3 True copy of the report titled "Operation Blue Bird : A case study of torture and extrajudicial killing in the State of Manipur" by Amnesty International dated 10.10.90	

7. **ANNEXURE P-4**

True copy of the report titled "These Fellows Must be Eliminated : Relentless Violence and Impunity in Manipur" by Human Rights Watch dated 2008

8. **ANNEXURE P-5**

True copy of the report titled "Democracy Encountered : Rights Violations In Manipur" by Independent Citizens' Fact Finding dated November 2009

SYNOPSIS

1. This petition is being filed by the Extra Judicial Execution Victim Families Association, Manipur, and other fraternal organisations. The petitioner no. 1 has, as its members, the wives and mothers of persons extra judicially executed by the police and the security forces in the barracks of the security forces, in the lockups and in isolated places.
2. In *Naga Peoples' Movement for Human Rights v. UOI*, (1998) 2 SCC 109) the Supreme Court upheld the constitutional validity of the Armed Forces (Special Powers) Act, 1958. While doing so, however, the Supreme Court read into the Act a series of "do's and don'ts" to be scrupulously followed by the Armed Forces while dealing with civilians. These guidelines were issued, and declared to be binding in law, because there were hundreds of cases reported of torture, extra judicial executions and enforced disappearances caused by the Manipur police and the armed forces of the Central Government. That was 15 years ago.
3. Fifteen years have passed and the story still has not changed. The petitioner has documented 1528 extra judicial executions carried out by the police and the security forces in Manipur and the large majority of these are killings in custody and in cold blood after torturing the persons in custody. This is a

frightening situation that should shock the conscience of the entire nation. This report titled "A memorandum on Extrajudicial, Arbitrary or Summary Executions" is at Annexure P-1.

4. A more elaborate presentation of 62 cases which are part of the 1528 extra judicial executions, has been annexed by the petitioner at Annexure P-2. By way of example, petitioner gives hereinafter the salient features of 10 cases where eyewitnesses exist and nevertheless the killings had been justified as encounters with militants.
5. The first case relates to Khumbongmayum Orsonjit, aged 19 years s/o Imo, r/o P.O. and P.S. Manipur District, Manipur West. On the morning of 16 March 2010, at around 8:30 a.m. Orsonjit rode out a scooter bearing registration No. 8382 informing his mother that he would be going to get his scooter repaired. At around 10:20 a.m. his mother called him up over mobile phone asking him to return home and have lunch with his father. Orsonjit told his mother that he was in the scooter repairing shop and would be returning home soon after the scooter got repaired. At around 11:30 a.m. one of the local boys informed Orsonjit's family that Orsonjit was arrested by a team of police commandos from M.G. Avenue near OK Hotel. On receiving the information, Orsonjit's family went to Imphal

Police Station and made a verbal submission. The police officer on duty denied any report of arrest but he recorded the verbal submission. Thereafter, the family also went to Porompat Police Station and then to Police Commandos Complex at Minuthong. But they also denied any report of arrest. In the evening, Orsonjit's dead body was shown on the local news bulletin ISTV while his families were watching the news. The next day, the family went to the morgue of Regional Institute of Medical Sciences (RIMS) at Lamphel and confirmed the death. The family also found signs of torture on the body. Orsonjit's left fingers were badly broken and his right hand was also found fracture.

6. The second case is Yumnam Kumarjit (18 yrs) s/o, Y. Nupamacha of Irom Meijrao Makha Leikai, Imphal West District. Kumarjit had been staying at the residence of his aunt, Yengkhom Abem Devi at Japhou Bazaar, Chandel District since June 2009. There he used to work as mason labour. On 11 August 2009, Kumarjit received a phone call from his elder brother, Premjit asking him to come back to his permanent house. On 12 August 2009, Kumarjit left his aunt's house for his permanent residence in a passenger bus. Kumarjit failed to return home. It was reported that District Magistrate of Imphal West imposed curfew from 2.00 p.m. on that day. His family tried to search Kumarjit through friends

and relatives. But the family could not trace him out. On 25 August 2009, the family came to know that an unknown individual was killed in an encounter by a combined team of Manipur Police Commando and 4/8 Gurkha Rifles at Moirangkhong Pat and the dead body of the individual was deposited in the morgue of Regional Institute of Medical Sciences (RIMS), Lamphel for identification. The family went to the morgue of RIMS and found the dead body of Kumarjit. The family has every reason to believe that Kumarjit was arrested while he was on the way to home from Chandel and killed in an extrajudicial manner. Several bullet injuries and marks of abrasions were found all over his body.

7. The third case is of Chongtham Umakanta @ Mamunaton (24 yrs) s/o, Gunamani of Iroisemba Mamang Leikai, Imphal West District, Manipur. On the evening of 4 May 2009, at around 9.20 p.m., Umakanta went out of his house soon after receiving a phone call from someone. After a while, he came back home along with two other unknown men. Thereafter, he informed his family that they were going to meet Mr. Chanam Nanao, a local man. It was reported that they had dinner in Nanao's house. While, they were in Nanao's house, a team police commando came and took the entire male folk out of the house. The police commando team tried to take away Nanao. But Mrs. Gyaneshori, mother of Nanao identified

Nanao as her son and tried to stop. Thereafter, police commando team started beating all the male folk and whisked Umakanta away without issuing arrest memo. The next morning, the family of Umakanta came to know through local newspapers that Umakanta was shot dead at Seilen Chingkhong near Seijang Village under Lamlai Police Station of Imphal East District and his dead body was kept in the morgue of Regional Institute of Medical Sciences (RIMS).

8. The fourth case is of Mr. Elangbam Kiranjit aged 22 yrs s/o, Ibohal of Thoubal Haokha, Thoubal District, Manipur. On April 23, 2009 at around 3.30 pm, Mr. Kiranjit went out from home, riding his red color bicycle along with a rope and mobile phone (sim card no. 98564083346) to search for a missing cow at Thoubal Khunou Chingya, Heibiyai. But he did not return home. Subsequently the family was searching for him at the locality and within his friends circle. It was reported that he was picked up by the Thoubal Police Commandos near Thoubal Khunou Chingya, Heibiyai. On the following day, father of the victim went to the Thoubal Police station and inquired whereabouts of his son. But he was responded negatively. Later, they came to know from locality that he was shot dead at Laikotching area under Lamlai Police station.

9. The fifth case relates to Mr. Nameirakpam Gobind @ Dhopa (25 yrs) s/o, Romen of Bashikhong Mamang Leikai, P.O. & P.S. Irilbung, Imphal East District and his cousin Mr. Nameirakpam Nobo (27 yrs) s/o, N. Basanta of Bashikhong Mamang Leikai, P.O. & P.S. Irilbung, Imphal East District, Manipur. On the evening of 4 April 2009, at about 6.00 p.m. Gobind and his cousin Nobo roamed out together for evening stroll. They reportedly, had tea and snacks in a café known as Soro Hotel at the Bashikhong crossing. They did not return till in the late evening. Their family thought that they might have been participating in Thabal Chongba (community dance programme held in the Manipuri New Year). But they did not return home. Next day, the family tried to search them through friends and relatives. Later in the morning, the family came to know through local news bulletin ISTV that they were killed in an alleged encounter by Imphal West Police Commandos in a place nearby the Election Office along the road of D.C. Lamphel.

10. The sixth case is of Mr. Thoudam Shantikumar (23 yrs) of Kakwa Lamdaibung, Imphal west District. On 24 March 2009 Mr. Thoudem Shantikumar went to witness a function at the Manipur University. On his way to the University he went to meet a friend at Naorem Leikai. But the friend was out of home. While returning from his friend's place, when he

reached Naorem Leikai Laishumang, a place between the Community Hall and Transformer round about 11.30 am he was picked up by the police commandos. The same evening around 9.00 pm, the dead body of Shantikumar was shown on ISTV new. It was informed to the family that the Police Commandos team with the Lamshang Police went towards Phayeng side then to Khunjao. On seeing a youth in the Police vehicle, the womenfolk of Tairenpokpi tried to stop the police team in order to save the live of the youth. But the police team forcibly rushed through. Thereafter, the police team took Santikumar down from their vehicle to the place where the police claimed to have encounter. There, he was dragged out and beat him up under a tree. Thereafter, he was shot two times at the thigh and killed.

11. The seventh case relates to Md. Juma Khan @ Boy (22 yrs) s/o, (L) Md. Samuwar Ali of Lilong Bazar, Thoubal District, Manipur. On the morning of 23 March 2009, at around 10:00am, Juma took a sum of rupees 300/- in cash from his sister, Shamshed and went to buy some second hand cloths. But he did not return that day. Shamshed thought that he might be staying at his brother's place at Lilong. The next day, Juma's dead body appeared in the local newspapers. It was alleged that Juma was killed in an encounter by police commandos. Thereafter, Juma's uncle Md. Tomba went to

morgue of Regional Institute of Medical Sciences (RIMS) at Lamphel and confirmed the death.

12. The eighth case is of Mr. Akoijam Priyobrata alias Bochou aged 25 yrs s/o Akoijam Rajen Singh of Mongsangei Boro Makhong, Imphal West, Manipur, India. On the afternoon of 15 March 2009 at around 3:00 p.m. Priyobrata left home riding his motor bike bringing a sum of rupees 7000/- approximately in his pocket. He informed his wife that he would be going to buy polythene packets used in packing pickle. He failed to return till in the late evening, his family called him up over his mobile phone but not avail. The next morning, the family tried to call up him several time on his mobile phone but in vain. Thereafter, the family checked with the police stations of Singjamei, Imphal and Lamphel. Later in the morning, Lamphel Police Station informed the family that they had information of encounter killing at Langol and asked the family to check the dead body in morgue. Thereafter, the family went to the morgue of the Regional Institute of Medical Sciences (RIMS) and found the dead body of Priyobrata.
13. The ninth case is of Md. Azad Khan, aged 14 yrs s/o Md. Wahid Ali of Phoubakchao Makha Leikai, P.S. Mayang Imphal, District Imphal West, Manipur. On the morning of 4 March, 2009 around 11:45 a.m Azad and his local friend Mr. Anand were reading newspaper in his house. Suddenly, some

personnel of police commandos who came in three vehicles rushed towards Azad and started asking about his identity. Thereafter, the police commandos dragged Azad towards nearby paddy field. The family members of Azad tried to stop the police commandos from taking Azad. But, all of them including Anand were made to enter the house and locked them from outside. The family saw Azad being dragged through window towards nearby fields which is around 50-70 metre away from his house. Thereafter, the commando personnel directed Azad to run. The family shouted Azad not to run. As Azad refused to comply, one of the police commando personnel shot him down. Then the police commandos took away the dead body of Azad.

14. The tenth case is of Naorem Robindro (27 yrs) s/o. Naorem Shyamkishor Singh of Wangjing Hodamba Canteen Leirak, P.S. Thoubal, District Thoubal, Manipur, India. On the morning of 14 January 2009, Robindro left his rented house taking a sum of rupees 35,000/- in cash from the owner of his workshop to deposit it for renting a new shop to be used as their workshop at Khuman Lampak. He did not return to his rented house. Next morning, his family was informed that Robindro was killed by security forces in an encounter at Longa Koireng. Thereafter, his family went to the morgue of Regional Institute of Medical Sciences (RIMS) and confirmed the news.

His family also alleged that Robindor's gold ring, gold chain and newly bought second hand Maruti car 800 were also found missing.

15. In almost all cases young boys attending to their daily chores were picked up randomly by security forces and killed in cold blood. In several of these cases eye witnesses, parents and neighbours were present who have narrated the cold established practice of picking up innocent young men and women by members of Assam Rifles and Manipur Police and gunning them down in the most condemnable manner.

16. What is even more frightening is the breakdown of the criminal justice system and the complete denial of the protection accorded to citizens under Article 21 – the right to life – where in not a single instance were the perpetrators of this heinous crime of torturing and killing persons in cold blood, have been brought to justice. In hardly any case was an FIR filed even though hundreds of complaints were made against the police and the security forces. Not a single criminal prosecution began. Out of 1528 killings approximately 20 cases were taken to the High Court where they are pending till this day. The cries of anguish of the families fell on deaf ears. The suffering of the families of those executed is so severe today that when Manorma was raped and killed in 2004, the women of Manipur stripped before the gates of the barracks

of the Assam Rifles and asked to be shot. Such kinds of unprecedented protests are only the results of a complete lack of legal redressal.

17. Not only were there no criminal investigations and prosecutions of the guilty, even departmental enquiries were not conducted and no policemen or personnel of the security forces were punished departmentally for their actions. The magisterial enquiries that sometimes took place were conducted by executive magistrates under the cover of secrecy and most often without intimation to the eyewitnesses and the members of the families. They were conducted as an eyewash. All cases resulted in exoneration, over the years a feeling of absolute immunity developed and hardened among the security forces reinforcing their belief that they can torture and kill members of the public at will. Such an attitude has become so entrenched that it has become almost impossible to correct the situation. This has wide ranging implications and consequences not only for the people of Manipur but for the nation as a whole.
18. In the documented cases annexed with this petition there are hundreds of eyewitnesses who have seen their near and dear ones being taken either from their homes or from public places by the security forces and then "disappeared" for long periods of time, only to learn from the newspapers the

incredible story put forth by the security forces that their loved ones were killed in an encounter in some remote place. In any functioning democracy where the rule of law exists, the evidence of these eyewitnesses would have been taken immediately as a basis for the institution of criminal proceedings against the security forces. In Manipur, however, such FIRs are not accepted at the police station, no investigation is done against the security forces and disciplinary action is never taken.

19. The large scale killings in the state of Manipur and the widespread anguish of its people is comparable to the killings of the civilian population by the Generals in Argentina during late seventies early eighties, where the security forces in Argentina started using 'death squads' killing more than 1500 people and causing disappearances and secret murders of several thousands of civilian population. It is also comparable to the torture and executions that took place in Chile during the Pinochet regime of the same period. These killings are now being investigated by the democratic governments that have come to power in these countries after many decades of military rule.
20. Over the last decade, the torture and killings in Manipur of innocent civilians with no criminal records whatsoever, who are later on conveniently labeled as "militants" has been

widely covered in the print media and on television. Of the over 100 articles and reports and an equal number of television reports, petitioner has put on record at this stage a small selection of the most comprehensive reports. These are:

- i. "India: Official Sanction for killings in Manipur", Report by Amnesty International.
- ii. "These Fellows Must be Eliminated : Relentless Violence and Impunity in Manipur" by Human Rights Watch.
- iii. "Democracy Encountered : Rights Violations In Manipur" by Independent Citizens' Fact Finding.

These reports are annexed at Annexures P-3 to P-5 respectively.

21. The National Human Rights Commission which is a statutory body established in accordance with the provisions of the Protection of Human Rights Act, 1992, and which was mandated to investigate human rights abuses and recommend the punishment of the guilty, has turned out to be a toothless tiger in letter and spirit. In letter, because the Act does not seem to give the NHRC very extensive powers. In spirit, because even these limited powers are rarely used. The NHRC appears to be content with certain formal and routine reactions when even the most horrendous instances of torture

and killings are reported. As a result, the people of Manipur have, by and large, lost faith in this institution. The Manipur State Human Rights Commission is defunct due to the non appointment of members and allocations of resources despite an order of the Gauhati High Court Bench at Manipur made in P.I.L W.P. No. 15 of 2011 In this way it would appear to the people of Manipur that the Constitution of India and the Criminal Codes have ceased to operate within the boundaries of this state.

22. The petitioners seek orders from this Hon'ble Court for the setting up of a special investigation team comprised of police officers of integrity from outside the state of Manipur to investigate all the killings set out in the report at Annexure P - 1 and thereafter to prosecute the guilty in accordance with law.
23. There is a second issue which arises in this petition though not directly. This is whether sanction under section 197 Cr.P.C. is necessary for the prosecution of police personnel and members of the paramilitary forces in cases of custodial killings. In this regard there is a recent decision of a 2-Judge Bench of the Supreme Court in General Officer Commanding Vs. CBI (AIR 2012 SC 1890) where this Court has held that sanction is necessary even in cases of fake encounters. This decision appears to be wrong and contrary to several

decisions of this Court and decisions of 3-Judge benches and 2 decisions of Constitution Benches to the effect that no sanction is necessary under section 6 of the Armed Forces (Special Powers) Act, 1958 for the commission of a criminal offence. It was so held by a 2-Judge Bench in the case of S.K. Zutshi Vs. Bimal Debnath (2004 8 SCC 31). In Nagraj Vs. State of Mysore (AIR 1964 SC 269) it was held by a 3-Judge Bench that for beating a person sanction is not required. This was a judgment binding on the 2-Judge Bench that delivered its decision in the case of General Officer Commanding Vs. CBI abovementioned. Similarly a 2-Judge Bench in the case of Pukhraj vs. State of Rajasthan (1974 1 SCR 559) held that for assault the question of sanction does not arise. Similarly in P.P. Unnikrishnan vs. Puttiyottil Alikutty (2000 8 SCC 131) a 2-Judge Bench of this Court held that for assault in a police station, no sanction is necessary. To the contrary, the recent decision in the General Officer Commanding case seem to suggest that even for killing in the police station which is later on paraded as a fake encounter case, would need sanction. A constitution Bench of this Court in Matajog Dobey Vs. H.C. Bhari (1995 2 SCR 925) in the case of an assault while conducting a search, held that sanction was not necessary and that the complaint against the police alone has to be seen in deciding the question of sanction. A constitution Bench of this Court in K. Satwant Singh Vs. State of Punjab (1960 2 SCR 89)

held that "some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty". It is submitted that killing a person in cold blood and then showing the person as having been killed in a fake encounter is an abhorrent crime, which by its very nature cannot be said to have any connection with the discharge of official duty and therefore such fake encounters can never be said to require sanction. Therefore the cryptic conclusion in the General Officer Commanding case abovementioned to the effect that even in fake encounter cases sanction is required to be obtained is wrong, does substantial injustice and is contrary to various judgments of this Court itself.

24. For this reason petitioner prays that this petition may be placed before a 3-Judge Bench of this Court.
25. This issue above stated does not arise at first instance. It will arise for consideration only if this Court is inclined to consider the prayer of the petitioner as stated in this petition. It is only when the investigation is completed and the charge-sheet is filed that the question of sanction will arise. However, the 2 issues are intrinsically connected as the petitioner is seeking the speedy investigation, prosecution and punishment of the guilty.

LIST OF DATES AND EVENTS

DATE	EVENT
1958	The Centre enacts the Armed Forces Special Powers Act to enable certain special powers to be conferred on the members of the armed forces in the disturbed areas in the State of Assam and the then Union Territory of Manipur.
2008	Human Rights Watch, a noted international human rights organisation presents an elaborate picture on human rights violation by Government Forces in the State of Manipur in its report titled "These fellows must be eliminated : Relentless violence and impunity in Manipur". It also gives detailed studies on the impact of the Armed Forces Special Powers Act in the State of Manipur and abuse of power by the members of the security forces.
November 2009	Independent Citizens' Fact-Finding Report to the Nation publishes its report "Democracy Encountered : Rights violations in Manipur" documenting individual cases of 'fake

encounters'. The report also notes that even after the 2006 amendment of the CrPC requiring judicial magistrates to investigate into every case of custodial death, the practice followed in Manipur was that all the cases of custodial deaths and extrajudicial executions were being looked by Executive Magistrates and not Judicial Magistrates.

2009-2012 Petitioner No. 2 documents 62 cases of extrajudicial killings in Manipur by the police and members of security forces.

March 2012 Petitioner No. 2 documents 1528 extra judicial executions carried out by the police and the security forces in Manipur in its report "A Memorandum on Extrajudicial, Arbitrary or Summary Executions" submitted by Civil Society Coalition on Human Rights in Manipur and the UN to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions. The report also notes that the large majority of these are killings in custody and in cold blood after torturing the persons in custody. The detailed documentations by various human rights

organizations have clearly shown that despite numerous decisions and directions from this Hon'ble Court on the functioning of security forces in Manipur, the situation in the State remains grim.

Hence this Writ Petition

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRL) NO. OF 2012

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

1. Extra Judicial Execution Victim

Families Association (EEVFAM)

Through its Secretary, Ms. Neena N.,

Having its office at Kwakeithel Paite

Veng (Ningthemkol),

Imphal West District PIN: 795001

...Petitioner No. 1

2. Human Rights Alert (HRA),

Through its Executive Director, Mr. Babloo Loitongbam

Having its office at Kwakeithel

Thiyam Leikai, Imphal West,

Manipur PIN: 795001

...Petitioner No. 2

VERSUS

1. Union of India,

Through its Chief Secretary,

Ministry of Home Affairs,

North Block, Central Secretariat,

New Delhi – 1100 01

...Respondent No. 1

2. State of Manipur

Through its Chief Secretary,

Secreteriat, South Block,

Imphal -7950 01, Manipur

...Respondent No.2

MOST RESPECTFULLY SHEWETH:

1. The present petition is filed in the nature of a Public Interest Litigation praying inter alia for setting up of a Special Investigation Team (SIT) comprising of officials outside the State of Manipur to investigate the incidents of extra-judicial killings and torture by the police and members of the security forces.

1 A. The Petitioners have filed complaint letters before the DGP, Manipur Police, the National Human Rights Commission, the SDM as well as the Chief Minister as mentioned in Annexure P-1 to the Petition, however no relief has been granted.

2. This petition is being filed by the Extra Judicial Execution Victim Families Association, Manipur, and other fraternal organisations. Petitioner No. 1 is a registered trust having as its members, the wives and mothers of persons extra judicially executed by the police and the security forces in the barracks of the security forces and in the lockups. Petitioner No.1 has its registered office at Kwakeithel Paite

Veng (Ningthemkol), Imphal West District PIN: 795001. The registration number of the Petitioner Organisation is 1309. The copy of the registration certificate of the Petitioner Organisation and the authorization letter in favour of Ms. Neena N., Secretary of the Petitioner Organisation is attached with the vakalatnama.

3. Petitioner No. 2 is Human Rights Alert, a registered trust, having its registered office at Kwakeithel Thiyam Leikai, Imphal West District, Manipur. The registration no. of the petitioner organisation is 1882. The copy of the registration certificate of the Petitioner Organisation and the authorization letter in favour of Mr. Babloo Loitongbam, Executive Director of the Petitioner Organisation is attached with the vakalatnama.

4. Petitioner No. 2 has documented 1528 extra judicial executions carried out by the police and the security forces in Manipur and the large majority of these are killings in custody and in cold blood after torturing the persons in custody. This is a frightening situation that should shock the conscience of the entire nation. This report titled "A Memorandum on Extrajudicial, Arbitrary or Summary Executions" submitted by Civil Society Coalition on Human Rights in Manipur and the UN to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions is annexed herewith and marked as ANNEXURE P-1.

5. Out of the 1528 cases of extrajudicial executions documented in the report abovementioned, the petitioner has also documented a more elaborate presentation of 62 cases which are part of the 1528 extra judicial killings. True copy of the list of 62 cases of extrajudicial killings by the police and the security forces in the State of Manipur is annexed herewith and marked as ANNEXURE P-2.
6. By way of example, petitioner gives hereinafter the salient features of 10 cases where eyewitnesses exist and nevertheless the killings had been justified as encounters with militants.
7. The first case relates to Khumbongmayum Orsonjit, aged 19 years s/o Imo, r/o P.O. and P.S. Manipur District, Manipur West. On the morning of 16 March 2010, at around 8:30 a.m. Orsonjit rode out a scooter bearing registration No. 8382 informing his mother that he would be going to get his scooter repaired. At around 10:20 a.m. his mother called up him over mobile phone asking him to return home and have lunch with his father. Orsonjit told his mother that he was in the scooter repairing shop and would be returning home soon after the scooter got repaired. At around 11:30 a.m. one of the local boys informed Orsonjit's family that Orsonjit was arrested by a team of police commandos from M.G. Avenue near OK Hotel. On receiving the information, Orsonjit's family went to Imphal Police Station and

made a verbal submission. The police officer on duty denied any report of arrest but he recorded the verbal submission. Thereafter, the family also went to Porompat Police Station and then to Police Commandos Complex at Minuthong. But they also denied any report of arrest. In the evening, Orsonjit's dead body was shown on the local news bulletin ISTV while his families were watching the news. The next day, the family went to the morgue of Regional Institute of Medical Sciences (RIMS) at Lamphel and confirmed the death. The family also found signs of torture on the body. Orsonjit's left fingers were badly broken and his right hand was also found fracture.

8. The second case is Yumnam Kumarjit (18 yrs) s/o, Y. Nupamacha of Irom Meijrao Makha Leikai, Imphal West District. Kumarjit had been staying at the residence of his aunt, Yengkhom Abem Devi at Japhou Bazaar, Chandel District since June 2009. There he used to work as mason labour. On 11 August 2009, Kumarjit received a phone call from his elder brother, Premjit asking him to come back his permanent house. On 12 August 2009, Kumarjit left his aunt's house for his permanent residence in a passenger bus. Kumarjit failed to return home. It was reported that District Magistrate of Imphal West imposed curfew from 2.00 p.m. on that day. His family tried to search Kumarjit through friends and relatives. But the family could not trace him out. On 25 August 2009, the family came to know that an unknown individual was

killed killed in an encounter by a combined team of Manipur Police Commando and 4/8 GR at Moirangkhong Pat and the dead body of the individual was deposited in the morgue of Regional Institute of Medical Sciences (RIMS), Lamphel for identification. The family went to the morgue of RIMS and found the dead body of Kumarjit. The family has every reason to believe that Kumarjit was arrested while he was on the way to home from Chandel and killed in an extrajudicial manner. Several bullet injuries and marks of abrasions were found all over his body.

9. The third case is of Chongtham Umakanta @ Mamunaton (24 yrs) s/o, Gunamani of Iroisemba Mamang Leikai, Imphal West District, Manipur. On the evening of 4 May 2009, at around 9.20 p.m., Umakanta went out of his house soon after receiving a phone call from someone. After a while, he came back home along with two other unknown men. Thereafter, he informed his family that they were going to meet Mr. Chanam Nanao, a local man. It was reported that they had dinner in Nanao's house. While, they were in Nanao's house, a team police commando came and took the entire male folk out of the house. The police commando team tried to take away Nanao. But Mrs. Gyaneshori, mother of Nanao identified Nanao as her son and tried to stop. Thereafter, police commando team started beating all the male folk and whisked Umakanta away without issuing arrest memo. The next morning, the family of Umakanta came to know

through local newspapers that Umakanta was shot dead at Seilen Chingkhong near Seijang Village under Lamlai Police Station of Imphal East District and his dead body was kept in the morgue of Regional Institute of Medical Sciences (RIMS).

10. The fourth case is of Mr. Elangbam Kiranjit aged 22 yrs s/o, Ibohal of Thoubal Haokha, Thoubal District, Manipur. On April 23, 2009 at around 3.30 pm, Mr. Kiranjit went out from home, riding his red color bicycle along with a rope and mobile phone (sim card no. 98564083346) to search for a missing cow at Thoubal Khunou Chingya, Heibiyai. But he did not return home. Subsequently the family was searching for him at the locality and within his friends circle. It was reported that he was picked up by the Thoubal Police Commandos near Thoubal Khunou Chingya, Heibiyai. On the following day, father of the victim went to the Thoubal Police station and inquired whereabouts of his son. But he was responded negatively. Later, they came to know from locality that he was shot dead at Laikotching area under Lamlai Police station.

11. The fifth case relates to Mr. Nameirakpam Gobind @ Dhopa (25 yrs) s/o, Romen of Bashikhong Mamang Leikai, P.O. & P.S. Irilbung, Imphal East District and his cousin Mr. Nameirakpam Nobo (27 yrs) s/o, N. Basanta of Bashikhong Mamang Leikai, P.O. & P.S. Irilbung, Imphal East District, Manipur. On the evening of 4 April 2009, at about 6.00 p.m. Gobind and his

cousin Nobo roamed out together for evening stroll. They reportedly, had tea and snacks in a café known as Soro Hotel at the Bashikhong crossing. They did not return till in the late evening. Their family thought that they might have been participating in Thabal Chongba (community dance programme held in the Manipuri New Year). But they did not return home. Next day, the family tried to search them through friends and relatives. Later in the morning, the family came to know through local news bulletin ISTV that they were killed in an alleged encounter by Imphal West Police Commandos in a place nearby the Election Office along the road of D.C. Lamphel.

12. The sixth case is of Mr. Thoudam Shantikumar (23 yrs) of Kakwa Lamdaibung, Imphal west District. On 24 March 2009 Mr. Thoudem Shantikumar went to witness a function at the Manipur University. On his way to the University he went to meet a friend at Naorem Leikai. But the friend was out of home. While returning from his friend's place, when he reached Naorem Leikai Laishumang, a place between the Community Hall and Transformer round about 11.30 am he was picked up by the police commandos. The same evening around 9.00 pm, the dead body of Shantikumar was shown on ISTV new. It was informed to the family that the Police Commandos team with the Lamshang Police went towards Phayeng side then to Khunjao. On seeing a youth in the Police vehicle, the womenfolk of

Tairenpokpi tried to stop the police team in order to save the live of the youth. But the police team forcibly rushed through. Thereafter, the police team took Santikumar down from their vehicle to the place where the police claimed to have encounter. There, he was dragged out and beat him up under a tree. Thereafter, he was shot two times at the thigh and killed.

13. The seventh case relates to Md. Juma Khan @ Boy (22 yrs) s/o, (L) Md. Samuwar Ali of Lilong Bazar, Thoubal District, Manipur. On the morning of 23 March 2009, at around 10:00am, Juma took a sum of rupees 300/- in cash from his sister, Shamshed and went to buy some second hand cloths. But he did not return that day. Shamshed thought that he might be staying at his brother's place at Lilong. The next day, Juma's dead body appeared in the local newspapers. It was alleged that Juma was killed in an encounter by police commandos. Thereafter, Juma's uncle Md. Tomba went to morgue of Regional Institute of Medical Sciences (RIMS) at Lamphel and confirmed the death.

14. The eighth case is of Mr. Akoijam Priyobrata alias Bochou aged 25 yrs s/o Akoijam Rajen Singh of Mongsangei Boro Makhong, Imphal West, Manipur, India. On the afternoon of 15 March 2009 at around 3:00 p.m. Priyobrata left home riding his motor bike bringing a sum of rupees 7000/- approximately in his pocket. He informed his wife that he would be going to buy polythene packets used in packing pickle. He failed to return till

in the late evening, his family called him up over his mobile phone but not avail. The next morning, the family tried to call up him several time on his mobile phone but in vain. Thereafter, the family checked with the police stations of Singjamei, Imphal and Lamphel. Later in the morning, Lamphel Police Station informed the family that they had information of encounter killing at Langol and asked the family to check the dead body in morgue. Thereafter, the family went to the morgue of the Regional Institute of Medical Sciences (RIMS) and found the dead body of Priyobrata.

15. The ninth case is of Md. Azad Khan, aged 14 yrs s/o Md. Wahid Ali of Phoubakchao Makha Leikai, P.S. Mayang Imphal, District Imphal West, Manipur. On the morning of 4 March, 2009 around 11:45 a.m Azad and his local friend Mr. Anand were reading newspaper in his house. Suddenly, some personnel of police commandos who came in three vehicles rushed towards Azad and started asking about his identity. Thereafter, the police commandos dragged Azad towards nearby paddy field. The family members of Azad tried to the police commandos from taking Azad. But, all of them including Anand were made to enter the house and locked them from outside. The family saw Azad being dragged through window towards nearby fields which is around 50-70 metre away from his house. Thereafter, the commando personnel directed Azad to run. The family shouted

Azad not to run. As Azad refused to comply, one of the police commando personnel shot him down. Then the police commandos took away the dead body of Azad.

16. The tenth case is of Naorem Robindro (27 yrs) s/o. Naorem Shyamkishor Singh of Wangjing Hodamba Canteen Leirak, P.S. Thoubal, District Thoubal, Manipur, India. On the morning of 14 January 2009, Robindro left his rented house taking a sum of rupees 35,000/- in cash from the owner of his workshop to deposit it for renting a new shop to be used as their workshop at Khuman Lampak. He did not return to his rented house. Next morning, his family was informed that Robindro was killed by security forces in an encounter at Longa Koireng. Thereafter, his family went to the morgue of Regional Institute of Medical Sciences (RIMS) and confirmed the news. His family also alleged that Robindro's gold ring, gold chain and newly bought second hand Maruti car 800 were also found missing.

17. In almost all cases young boys attending to their daily chores were picked up randomly by security forces and killed in cold blood. In several of these cases eye witnesses, parents and neighbours were present who have narrated the cold established practice of picking up innocent young men and women by members of Assam Rifles and Manipur Police and gunning them down in the most condemnable manner.

18. In not a single instance were the perpetrators of this heinous crime of torturing and killing persons in cold blood, brought to justice. In not a single case was an FIR filed even though hundreds of complaints were made against the police and the security forces. Not a single criminal prosecution began. Out of 1528 killings approximately 10 cases were taken to the High Court where they are pending till this day. The cries of anguish of the families fell on deaf ears. The suffering of the families of those executed is so severe today that when Manorma was raped and killed in 2004, the women of Manipur stripped before the gates of the barracks of the Assam Rifles and asked to be shot. Such kinds of unprecedented protests are only the results of a complete lack of legal redressal.

19. In the documented cases annexed with this petition there are hundreds of eyewitnesses who have seen their near and dear ones being taken either from their homes or from public places by the security forces and then "disappeared" for long periods of time, only to learn from the newspapers the incredible story put forth by the security forces that their loved ones were killed in an encounter in some remote place. In any functioning democracy where the rule of law exists, the evidence of these eyewitnesses would have been taken immediately as a basis for the institution of criminal proceedings against the security forces. In Manipur, however, such FIRs are not accepted at the police station, no

investigation is done against the security forces and disciplinary action is never taken.

20. The large scale killings in the state of Manipur and the widespread anguish of its people is comparable to the killings of the civilian population the killings of the civilian population by the Generals in Argentina during late seventies early eighties, where the security forces in Argentina started using 'death squads' killing more than 1500 people and causing disappearances and secret murders of several thousands of civilian population. It is also comparable to the torture and executions that took place in Chile during the Pinochet regime of the same period. These killings are now being investigated by the democratic governments that have come to power in these countries after many decades of military rule.

21. Over the last decade, the torture and killings in Manipur of innocent civilians with no criminal records whatsoever, who are later on conveniently labeled as "militants" has been widely covered in the print media and on television. Of the over 100 articles and reports and an equal number of television reports, petitioner has put on record at this stage a small selection of the most recent reports. These are:

- i. "India: Official Sanction for killings in Manipur", Report by Amnesty International

- ii. "These Fellows Must be Eliminated : Relentless Violence and Impunity in Manipur" by Human Rights Watch
- iii. "Democracy Encountered : Rights Violations In Manipur" by Independent Citizens' Fact Finding.

True copy of the report titled "India: Official Sanction for killings in Manipur" by Amnesty International is annexed herewith and marked as ANNEXURE P-3.

True copy of the report titled "These Fellows Must be Eliminated : Relentless Violence and Impunity in Manipur" by Human Rights Watch is annexed herewith and marked as ANNEXURE P-4.

True copy of the report titled "Democracy Encountered : Rights Violations In Manipur" by Independent Citizens' Fact Finding is annexed herewith and marked as ANNEXURE P- 5.

22. The National Human Rights Commission which is a statutory body established in accordance with the provisions of the Protection of Human Rights Act, 1992, and which was mandated to investigate human rights abuses and recommend the punishment of the guilty, has turned out to be a toothless tiger in letter and spirit. In letter, because the Act does not seem to give the NHRC very extensive powers. In spirit, because even these

limited powers are rarely used. The NHRC appears to be content with certain formal and routine reactions when even the most horrendous instances of torture and killings are reported. As a result, the people of Manipur have, by and large, lost faith in this institution. The Manipur State Human Rights Commission is defunct due to the non appointment of members and allocations of resources despite an order of the Gauhati High Court Bench at Manipur made in P.I.L W.P. No. 15 of 2011 . In this way it would appear to the people of Manipur that the Constitution of India and the Criminal Codes have ceased to operate within the boundaries of this state.

23. The petitioners seek orders from this Hon'ble Court for the setting up of a special investigation team comprised of police officers from outside the state of Manipur to investigate all the killings set out in the report at Annexure P - 1 and thereafter to prosecute the guilty in accordance with law.

24. There is a second issue which arises in this petition though not directly. This is whether sanction under section 197 Cr.P.C. is necessary for the prosecution of police personnel and members of the paramilitary forces in cases of custodial killings. In this regard there is a recent decision of a 2-Judge Bench of the Supreme Court in General Officer Commanding Vs. CBI (AIR 2012 SC 1890) where this Court has held that sanction is necessary even in cases of fake encounters. This decision

appears to be wrong and contrary to several decisions of this Court and decisions of 3-Judge benches and 2 decisions of Constitution Benches to the effect that no sanction is necessary under section 6 of the Armed Forces (Special Powers) Act, 1958 for the commission of a criminal offence. It was so held by a 2-Judge Bench in the case of S.K. Zutshi Vs. Bimal Debnath (2004 8 SCC 31). In Nagraj Vs. State of Mysore (AIR 1964 SC 269) it was held by a 3-Judge Bench that for beating a person sanction is not required. This was a judgment binding on the 2-Judge Bench that delivered its decision in the case of General Officer Commanding Vs. CBI abovementioned. Similarly a 2-Judge Bench in the case of Pukhraj vs. State of Rajasthan (1974 1 SCR 559) held that for assault the question of sanction does not arise. Similarly in P.P. Unnikrishnan vs. Puttiyottil Alikutty (2000 8 SCC 131) a 2-Judge Bench of this Court held that for assault in a police station, no sanction is necessary. To the contrary, the recent decision in the General Officer Commanding case seem to suggest that even for killing in the police station which is later on paraded as a fake encounter case, would need sanction. A constitution Bench of this Court in Matajog Dobey Vs. H.C. Bhari (1995 2 SCR 925) in the case of an assault while conducting a search, held that sanction was not necessary and that the complaint against the police alone has to be seen in deciding the question of sanction. A constitution Bench of this Court in K. Satwant Singh Vs. State of Punjab (1960 2 SCR 89) held that

“some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty”. It is submitted that killing a person in cold blood and then showing the person as having been killed in a fake encounter is an abhorrent crime, which by its very nature cannot be said to have any connection with the discharge of official duty and therefore such fake encounters can never be said to require sanction. Therefore the cryptic conclusion in the General Officer Commanding case abovementioned to the effect that even in fake encounter cases sanction is required to be obtained is wrong, does substantial injustice and is contrary to various judgments of this Court itself.

25. For this reason petitioner prays that this petition may be placed before a 3-Judge Bench of this Court.

26. This issue above stated does not arise at first instance. It will arise for consideration only if this Court is inclined to consider the prayer of the petitioner as stated in this petition. It is only when the investigation is completed and the charge-sheet is filed that the question of sanction will arise. However, the 2 issues are intrinsically connected as the petitioner is seeking the speedy investigation, prosecution and punishment of the guilty.

GROUNDNS

A. Because in *Naga Peoples' Movement v. UOI*, 1998 (2) SCC 109, although the Supreme Court upheld the constitutional validity of the Armed Forces (Special Powers) Act, 1958, it read into the Act a series of "do's and don'ts" to be scrupulously followed by the Armed Forces while dealing with civilians. These guidelines were issued, and declared to be binding in law, because there were hundreds of cases reported of torture, extra judicial executions and enforced disappearances caused by the Manipur police and the paramilitary forces of the Central Government. The Court also observed that in order to prevent and check abuse of power by the members of the security forces, the list of "do's" and "don'ts" to be followed by the armed forces should be suitably amended from time to time to bring them in conformity with the guidelines contained in the decisions of this Hon'ble Court in this regard.

The Court also held as under:

"In order that the people may feel assured that there is an effective check against misuse or abuse of powers by the members of the armed forces it is necessary that a complaint containing an allegation about misuse or abuse of the powers conferred under the Central Act should be thoroughly inquired into and, if it is found that there is substance in the allegation, the victim should be suitably compensated by the state and the requisite

sanction under Section 6 of the Central Act should be granted for institution of prosecution and/or a civil suit or other proceeding against the person/persons responsible for such violation.”

B. Because there is a clear breakdown of the criminal justice system and the complete denial of the protection accorded to citizens under Article 21 – the right to life – where in not a single instance the perpetrators of this heinous crime of torturing and killing persons in cold blood, have been brought to justice. In not a single case was an FIR filed even though hundreds of complaints were made against the police and the security forces. Not a single criminal prosecution began.

C. Because not only were there no criminal investigations and prosecutions of the guilty, even departmental enquiries were not conducted and no policemen or personnel of the security forces were punished departmentally for their actions. The magisterial enquiries that sometimes took place were conducted by executive magistrates under the cover of secrecy and most often without intimation to the eyewitnesses and the members of the families. They were conducted as an eyewash. All cases resulted in exoneration, over the years a feeling of absolute immunity developed and hardened among the security forces reinforcing their belief that they can torture and kill members of the public at

will. Such an attitude has become so entrenched that it has become almost impossible to correct the situation.

D. Because despite the fact that the Constitution and 3-Judge Bench of this Hon'ble Court has laid down the law that in cases of extra judicial killings sanction under section 197 CrPC is not necessary for prosecution of guilty officials and personnel, there has been no prosecution of the guilty on the ground of absence of sanction from the government. The 2-Judge Bench decision of the Supreme Court in General Officer Commanding Vs. CBI (AIR 2012 SC 1890) where this Court has held that sanction is necessary even in cases of fake encounters appears to be wrong and contrary several decisions of this Hon'ble Court including the decisions of the 3-Judge benches and 2 decisions of Constitution Benches of this Hon'ble Court to the effect that no sanction is necessary under section 6 of the Armed Forces (Special Powers) Act, 1958 for prosecution for the commission of a criminal offence.

E. This was also held by a 2-Judge Bench in the case of S.K. Zutshi Vs. Bimal Debnath [2004 (8) SCC 31]. In Nagraj Vs. State of Mysore (AIR 1964 SC 269) it was held by a 3-Judge Bench that for beating a person sanction is not required. This was a judgment binding on the 2-Judge Bench that delivered its decision in the case of General Officer Commanding Vs. CBI abovementioned. Similarly a 2-Judge Bench in the case of

Pukhraj vs. State of Rajasthan [1974 (1) SCR 559] held that for assault the question of sanction does not arise. Similarly in P.P. Unnikrishnan vs. Puttiyottil Alikutty [2000 (8) SCC 131] a 2-Judge Bench of this Court held that for assault in a police station, no sanction is necessary. To the contrary, the recent decision in the General Officer Commanding case seem to suggest that even for killing in the police station which is later on paraded as a fake encounter case, would need sanction. A Constitution Bench of this Court in Matajog Dobey Vs. H.C. Bhari [1995 (2) SCR 925] in the case of an assault while conducting a search, held that sanction was not necessary and that the complaint against the police alone has to be seen in deciding the question of sanction. A Constitution Bench of this Court in K. Satwant Singh Vs. State of Punjab [1960 (2) SCR 89] held that "some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty".

F. Because killing a person in cold blood and then showing the person as having been killed in a fake encounter is an abhorrent crime, which by its very nature cannot be said to have any connection with the discharge of official duty and therefore such fake encounters can never be said to require sanction. Therefore the cryptic conclusion in the General Officer Commanding case abovementioned to the effect that even in fake encounter cases

sanction is required to be obtained is wrong, does substantial injustice and is contrary to various judgments of this Court itself.

G. Because over the last decade, the torture and killings in Manipur of innocent civilians with no criminal records whatsoever, who were later on conveniently labelled as "militants" has been widely covered in the print media and on television. Some significant reports documenting extensively the killings and torture in Manipur are those by Amnesty, report by Human Rights Watch titled 'These Fellows Must be Eliminated : Relentless violence and Impunity in Manipur' and the report titled "Democracy Encountered : Rights Violations in Manipur" by Independent Citizens' Fact Finding Mission.

PRAYER

In the light of the facts and circumstances mentioned hereinabove, the petitioners most humbly prays:

- A. For a writ of mandamus or any other 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 at Annexure A & B to this Writ Petition and thereafter to prosecute the offenders in accordance with law.
- B. For an order directing the respondents to conduct disciplinary proceedings in all cases referred to in Annexure A & B to this

Writ Petition and in doing so to facilitate the giving of evidence by the family members and other eyewitnesses and thereafter to punish the guilty in accordance with law.

- C. For an order directing the respondents to pay compensation to the families of the victims as deemed fit by this Hon'ble Court.
- D. For an order declaring that sanction under section 197 Cr.PC, section 6 of the Armed Forces (Special Powers) Act, 1958 or any other similar provision in any other law is not necessary to be obtained in cases relating to fake encounters.
- E. Any other Order as this Hon'ble Court may deem fit and appropriate in the light of the facts and circumstances mentioned hereinabove.

AND FOR THIS ACT OF KINDNESS THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

DATE:

PLACE:

DRAWN BY: SVETLANA S. CORREYA

FILED BY:

JYOTI MENDIRATTA

(ADVOCATE FOR THE PETITIONERS)

