

India, People's Union for Civil Liberties v. Union of India

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: The Report of the JAG seminar, People's Union for Civil Liberties, Petitioner v. Union of India, S.C. 1203-1208, 1997.]

AIR 1997 SUPREME COURT 1203B.P. JEEVAN REDDY ANDSUHAS C. SEN.JJ.

Writ. Petn. (Cri) No. 612 of 1992. D/- 5-2-1997.

People's Union for Civil Liberties, Petitioner v. Union of India and another, Respondents. [...]

B.P. JEEVAN REDDY, J.: – People's Union for Civil Liberties has filed this writ petition under Article 32 of the Constitution of India for [...] appropriate order or direction (1) to institute a judicial inquiry into the fake encounter by Imphal Police on April 3, 1991 in which two persons of Lunthilian village were killed, (2) to direct appropriate action to be taken against the erring police officials and (3) to award compensation to the members of the families of the deceased. According to the petitioner, there was in truth no encounter but it was a case where certain villagers were caught by the police during the night of April 3, 1991, taken in a truck to a distant place and two of them killed there. It is alleged that three other persons who were also caught and taken away along with two deceased persons were kept in police custody for a number of days and taken to Mizoram. They were released on bail only on July 22, 1991. It is further submitted that Hamar peoples' Convention is a political party active in Mizoram. It is not an unlawful organisation. Even according to the news released by the said organisation, it was a case of deliberate killing. Though representations were made to the Chief Minister of Manipur and other officials, no action was taken. [...] Affidavits of the wives of the deceased were [...] filed setting out the miserable condition of their families after the death of their respective husbands.

2. On notice being given, a counter-affidavit was filed by the Joint Secretary (Home), Government of

Manipur denying the allegations. The allegation of 'fake encounter' was denied. It was submitted that there was genuine cross firing between the police and the activists of Hamar Peoples' Convention during which the said two deaths took place. The report of the Superintendent of Police, Churachandpur was relied upon in support of the said averment. It was submitted that Hamar Peoples' Convention was indulging in illegal and terrorist activities and in acts disturbing the public order. [...]

3. [...] The learned District and Sessions Judge has concluded that there was no encounter in the night between 3-4-1991 and 4-4-1991 at Nungthulien village. The two deceased, [...] were shot dead by the police while in custody on 4-4-1991. The State of Manipur has filed its objections to the report [...].

We have heard the counsel for the parties. We are not satisfied that there are any reasons for not accepting the report of the learned District and Sessions Judge which means that the said two deceased persons were taken into custody on the night of April 3, 1991, taken in a truck to a long distance away and shot there. The question is what are the reliefs that should be granted in this writ petition?

4. It is submitted by Ms. S. Janani, learned counsel for the State of Manipur, that Manipur is a disturbed area, that there are several terrorist groups operating in the State, that Hamar Peoples' Convention is one of such terrorist organisations, that they have been indulging in a number of crimes affecting the public order – indeed, affecting the security of the State. It is submitted that there have been regular encounters and exchange of fire between police and terrorists on number of occasions. A number of citizens have suffered at the hands of terrorists and many people have been killed. The situation is not a normal one. Information was received by the police that terrorists were gathering in the house on that night and on the basis of that information, police conducted the raid. The raiding party was fortunate that the people inside the house including the deceased did not notice the police, in which case the police would have suffered serious casualties. The police party was successful in surprising the terrorists. There was exchange of fire resulting in the death of the terrorists.

5. In view of the fact that we have accepted the finding recorded by the learned District and Sessions Judge, it is not possible to accede to the contention of Ms. Janani insofar as the manner in which the incident had taken place. It is true that Manipur is a disturbed area, that there appears to be a good amount of terrorist activity affecting public order and, may be, even security of that State. It may also be that under these conditions, certain additional and unusual powers have to be given to the police to deal with terrorism. It may be necessary to fight terrorism with a strong hand which may involve vesting of good amount of discretion in the police officers or other paramilitary forces engaged in fighting them. [...] It is not for the Court to say how the terrorists should be fought. We cannot be blind to the fact that even after fifty years of our independence, our territorial integrity is not fully secure. There are several types of separatist and terrorist activities in several parts of the country. They have to be subdued. Whether they should be fought politically or be death [sic] with by force is a matter of policy for the government to determine. The Courts may not be the appropriate forum to determine those questions. All this is beyond dispute. But the present case appears to

be one where two persons along with some others were just seized from a hut, taken to a long distance away in a truck and shot there. This type of activity cannot certainly be countenanced by the Courts even in the case of disturbed areas. [...] [T]he proper course for them was to deal with them according to law. "Administrative liquidation" was certainly not a course open to them. [...]

7. [...] "The question, however, arises whether it is open to the State to deprive a citizen of his life and liberty [...] and yet claim an immunity on the ground that the said deprivation of life occurred while the officers of the State were exercising the sovereign power of the State? ... Can the fundamental right to life guaranteed by Art. 21 [of the Constitution] be defeated by pleading the archaic defence of sovereign functions? [...] We think not. Article 21 does not recognize any exception, [...]"

[...]

9. [...] [T]his Court [...] held that award of compensation in a proceeding under Article 32 by the Supreme Court or under Article 226 by the High Court is a remedy available in public law based on strict liability for contravention of fundamental rights. It is held that the defence of sovereign immunity does not apply in such a case even though it may be available as a defence in private law in an action based on tort. [...] It is one mode of enforcing the fundamental rights by this Court or High Court. Reliance is placed upon Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 which says, "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation". [...]

"[...] In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal Courts in which the offender is prosecuted, which the State, in law, is duty bound to do. [...]"

[...]

14. Now coming to the facts of the case, we are of the opinion that award of compensation of Rs. 100,000/- [Rupees one lakh only] to the families of each of the deceased would be appropriate and just. [...]

Order accordingly.

Discussion

1.
 - a. Do the police actions in this case violate IHL? Is IHL even applicable here?
 - b. Are the circumstances here those required for the application of Art. 3 common to the Conventions? What criteria have to be met? Are acts disturbing public order or threatening State security sufficient to invoke Art. 3 common to the Conventions? Is it sufficient for the encounters with organized opposition groups (e.g., Hamar Peoples' Convention) to occur regularly?
 - c. Is the level of intensity required for Protocol II to apply to a conflict higher or lower than the

threshold for the application of Art. 3 common to the Conventions? Is Protocol II applicable here? (P II, Art. 1)

2. a. Could the situation in this case be described as internal tension or disturbances? Can violations similar to those in conflicts covered by Art. 3 common to the Conventions not occur during internal disturbances? If Art. 3 common to the Conventions is inapplicable in such circumstances, should the threshold required for its application be lowered?
- b. What law protects individuals caught up in such situations? Is international human rights law always adequate? Does it not provide rights from which States may not derogate? Is this alone sufficient?
- c. Would the adoption of an instrument such as the Turku Declaration [See UN, Minimum Humanitarian Standards] fill this gap in protection? If it was a valid instrument binding on India, would it change the legal situation in the present case?
3. a. Does IHL, like Indian law and Art. 9(5) of the International Covenant on Civil and Political Rights, provide for compensation to victims of IHL violations? Under what circumstances? By whom? (HR, Art. 3; GC I-IV, Arts 51/52/131/148 respectively; P I, Art. 91)
- b. Is compensation an appropriate remedy for the wrongful taking of life as the Court states: “an infringement of a fundamental right?” How is an “appropriate and just” amount assessed?

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