

***Stop Encounter Killings in UP: End State lawlessness!*****Doubts arise about Complicity of UP Police in killing of Atiq & Ashraf Ahmed:  
*Questions to be answered by UP Police.***

1. Why did the UP Police not seek 'Police Custody' of the killers of Atiq and Ashraf Ahmed when produced for remand before Duty Magistrate on 16.04.2023 itself, and agree to Judicial Custody?
2. If the killer gang was unknown to the police, didn't the police think it important to interrogate them to find out how the killer gang knew about the police allowing the Ahmed brothers to meet the press at an unearthly hour of 1030 pm on 15.04.2023?
3. Didn't the UP police think it was important to find out who all were behind the killer-gang by interrogating the 3 youngsters who shot Atiq and Ashraf?

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PUCL is outraged by and strongly condemns the cold-blooded shooting down by a 3-member gang, of politician and former minister, Atiq Ahmed and his brother, Ashraf Ahmed, at about 1030 pm on 15.04.2023 in Prayagraj (Allahabad) Government Hospital, in public and in the full glare of the media. What is most deplorable is that Atiq and Ashraf, were surrounded by an armed team of policemen who allowed a set of media persons to interview them, when the 3 killers came to the spot in motorcycles, whipped out sophisticated guns and shot the brothers in cold blood at point blank range, with the armed police remaining as mute spectators doing nothing to prevent the slaughter.

What raises serious questions about the complicity of the police is the fact that the 2 brothers, who have been in police custody, were brought by the UP police late in the evening at about 1030 pm on 15<sup>th</sup> April, 2023, to the Prayagraj Government Hospital for a purported medical check-up. Though hand cuffed together, and surrounded by armed policemen, the two were permitted by the police to have a media meet in the open at about 1030 pm which was captured live on visual media, when the 3-member killer gang shot them dead.

The killing is not just a security lapse on the part of the police, who failed to check the identity of the killers posing as media persons; a much more disturbing issue is how the killer gang knew that a media meeting would be held in the open, outside the hospital.

Equally worrisome is the question why Atiq Ahmed and his brother were not transported by ambulance, why the medical check-up was at such an unusual time late at night and why despite the security concerns, the police permitted such a media meet in an open space and in public. The other question is as to why the police did not seek police custody of those who did the shooting? The answer to these questions will tell us whether it was a question of mere negligence by the UP police or a deeper conspiracy by the UP police and the UP administration, in the murders themselves?

The suspicion as to whether the twin killings were planned affairs gets strengthened when viewed against the background of the encounter killing by the police on 13.04.2023 at Jhansi, of Asad Ahmed (son of Atiq Ahmed) and Ghulam, both of whom were also accused of the murder of Raju Pal. In effect, in a space of 2 days, four key accused persons in the Raju Pal murder case, had been killed in alleged encounters, by the UP police.

Atiq Ahmed apprehended being killed in UP and his counsel had told the Supreme Court that if he was transferred from Gujarat to UP, it would literally be a death warrant. The Supreme Court while turning down the plea for protection had orally observed that since he was already in police custody, the state machinery would take care of him. Despite this grave apprehension expressed by Atiq Ahmed of being killed by the police in a staged encounter if he was brought to UP from Gujarat, the UP Government does not seem to have taken adequate steps to ensure this most basic guarantee, namely the right to life. Meanwhile, Tragically, the very state machinery that was to protect him in its custody, has failed miserably.

We are also greatly concerned over the news that on 18<sup>th</sup> April, 2023, a crude bomb was thrown outside the house of Atiq Ahmed's lawyer, Mr. Dayashankar Mishra, in Prayagraj. While thankfully no one was injured, the incident has sent shock waves amongst the family members of Mr. Dayashankar Mishra and Vijay Mishra, Advocates representing the murdered Atiq Ahmed.

An important question that must be raised is as to why the Prayagraj/ UP Police did not seek 'Police Custody' of the three-member killer gang on 16<sup>th</sup> April, 2023 itself. This would have allowed them to interrogate them to find out the full facts behind their gunning down of Atiq and Ashraf Ahmed.

Suspicion arises over the strange conduct of the police. If the gang members were unknown to the police, it was important for the police to interrogate them to find out if other people were also involved in the conspiracy to kill the Ahmed brothers and whether they received support and funding from others. However, this was not done. Instead, they were sent to the Central Prison. The crucial question is why did the police do so.

Ever since Yogi Adityanath government was sworn in on 19.03.2017, he unleashed a controversial plan to eliminate alleged criminal and gangsters with his "*Thok Diye Jayenge*" or "They will be knocked out" policy. The CM also unleashed '*Operation langda*' by which alleged criminals were shot in their legs incapacitating them for life.

According to Prashanth Kumar, Special Director General of Police (Law and Order), UP Police, between March, 2017 and April, 2023, there have been 10,900 police encounters in which over 5046 alleged accused persons have been injured and 185 persons have been shot dead.

It should be noted that the UP Chief Minister, Yogi Adityanath who has sworn an oath to 'bear true faith and allegiance to the Constitution of India' had previously stated that "*Mafia ko mitti mein mila doonga*". This seems to have encouraged his ministers (who, it should be pointed out, are also sworn to uphold the constitution) to give statements that the murders were "karma" or that they were "divine justice". What is very ominous is the news that some groups with links to the ruling party celebrated the encounters by bursting crackers.

It is the responsibility of the UP government led by the Chief Minister to ensure that vigilante murders do not occur and that the police do not kill people extra judicially. That is the essence of rule of law. It is in this most basic aspect of the responsibility of the Uttar Pradesh government, that it has most abjectly failed. It is the right of the accused to prove their innocence in a court of law, through due process, which has been blatantly denied and

summary (in)justice is meted out without fair trial. This is in blatant violation of Articles 14 and 21 of the Indian Constitution and cannot be allowed or condoned.

The PUCL is concerned that this de facto policy of the Yogi Government of treating rule of law as an unnecessary irritant of no consequence, will result in the destruction of one of the basic pillars of constitutional democracy – the principle of ‘Rule of law’ and pave the way for lawlessness and brute power. It is up to other institutions of accountability right from the media, the judiciary, the NHRC and other independent human rights bodies to defend this core democratic principle in the face of this ferocious assault on the rule of law by the UP administration.

This position of the UP government led by Yogi Adityanath which asserts that criminals are not entitled to the rule of law is antithetical to the values of the Constitution. To those in the public who support this amoral position that ‘gangsters’ should not be entitled to the benefits of rule of law, one should note that once an exception is made in the grand edifice of rule of law, there will be others who, the state will argue, don’t deserve the protection of ‘rule of law’. If this trend is not checked the state will feel emboldened to opt for vigilante justice, including extra judicial executions, against all those questioning its actions and policies. The ground for this has been prepared through the relentless delegitimation of all dissent, dubbing those who are exercising the right to free speech as ‘anti-nationals’.

This amoral and cynical approach has been roundly castigated by the Supreme Court as being unconstitutional. In ‘*PUCL v State of Maharashtra (2014)*’, a case filed by the PUCL regarding the issue of genuineness or otherwise of nearly 99 encounters between the Mumbai police and the alleged criminals resulting in death of about 135 persons between 1995 and 1997’, the Supreme Court observed that,

“Article 21 of the Constitution of India guarantees “right to live with human dignity”. Any violation of human rights is viewed seriously by this Court as right to life is the most precious right guaranteed by Article 21 of the Constitution. The guarantee by Article 21 is available to every person and even the State has no authority to violate that right”.

The Supreme Court appointed Commission of Inquiry headed by Justice V Sirpurkar to inquire into the killing of four men accused of rape by the Telangana police when the accused were in the custody of the Telangana Police, (known as the Disha rape and murder case which occurred in Hyderabad on 27.11.2019) the Commission came to the conclusion that the killings were murder and not justified as self-defence. The Commission also noted that:

“Just as Mob Lynching is unacceptable, so is any idea of instant justice. At any point of time Rule of Law must prevail. Punishment for crime has to be only by the procedure established by law”.

It is the most basic principle of our constitutional democracy that all are equal before the law. We must hold this principle dear for if we let it go, the rest of the structure will crumble. Action must be taken against all those who failed to uphold their constitutional oath to ‘bear true faith and allegiance to the constitution of India’ and instead chose to use the strategy of using encounter death to eliminate, alleged criminals thereby demolishing the edifice of ‘rule of law’.

Although the UP Government has announced setting up of a 3-member Judicial Commission to enquire into the encounters, considering the questions raised about the role of and complicity of the UP Police and government themselves, it is important that investigation is entrusted by the Supreme Court to a completely independent investigating body.

PUCL therefore demands that:

1. The SC should consider passing orders in the UP encounters PIL already pending before it, entrusting investigation into the quadruple encounter - murders of Atiq Ahmed, Ashraf, Asad Ahmed and Ghulam, on 13<sup>th</sup> and 15<sup>th</sup> April, 2023 to an independent investigating agency, preferably a SIT, consisting of Police officials from outside UP, under the direct supervision of the Supreme Court.
2. The case should be investigated as a custodial killing in accordance with the Supreme Court guidelines in '*PUCL vs State of Maharashtra*' (2014 (10) SCC 635). The UP administration has shown no respect for the rule of law and therefor a Supreme Court monitored probe will build faith and confidence among the larger public as compared to a probe initiated under the aegis of the UP government.
3. A FIR be registered into the encounter killings immediately, naming the police persons responsible for the encounters, and transferred to the 'Special Investigation Team' comprising officials from outside UP, for free, fair and independent investigation.
4. The police officials involved in the encounters should be immediately transferred out of their districts to enable the SIT to conduct an unbiased investigation and to ensure that evidence is not tampered with.
5. Magisterial inquiry in accordance with law should be conducted. All the evidence, including forensic evidence by way of ammunition and weapons used, postmortem findings, chemical examination reports, electronic evidence and so on should be handed over to the jurisdiction Magistrate's court to prevent tampering with evidence.
6. Compensation should be given to the surviving members of the family as a partial recognition of the irreparable loss caused to them. Police officials responsible and complicit in the offence should be punished in accordance with law.

We appeal to right thinking citizens concerned about the total breakdown of constitutional order to stand up and raise their voices to condemn state lawlessness. We also appeal to the Supreme Court of India to take up the matter suo motu, considering the grave repercussions the matter can pose for the rule of law in the country.

**Dr. V. Suresh, General Secretary, PUCL, 19.04.2023**