

they have to register the case as homicide and investigate the case. After investigation they have to submit police report to police under Section 173(2) of Cr.P.C. They must

establish in Court that the force used by them is reasonable. The same has to be proved in Court of law.

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## EXTRA-JUDICIAL KILLINGS - A THREAT TO RULE OF LAW

*By*

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In its written word, the Indian Constitution assures to its citizens a tolerant, liberal, secular and democratic State. The right to life has undergone a startling make out and serves as the fountain head of several rights. Various branches of law particularly on Human Rights, Environmental Law owe their prosperity to Article 21.

Extrajudicial killings are not a recent phenomena for India. The extrajudicial killing or 'encounter' in Andhra Pradesh took place as early as in 1968. Then, close to 4,000 people have been killed in all alleged 'encounters'. An overwhelming majority of these occurred during anti-naxalites operations by the Andhra Pradesh. Subsequently, it has become a routine matter, if a case is committed against a woman.

The term 'encounters' are 'encounter killings' are used in the Indian context to describe police killings of alleged criminals, gangsters and terrorists in supposedly 'spontaneous shoot outs', and as a result of 'cornered' police officials acting in self defence.

There have been more than 5,000 encounters in our country. More complaints

are pending in various Courts and before Human Rights Commissions relating to encounter deaths.

Extra deprivation of life and liberty are considered gross violations of human rights and also the fundamental rights. Encounter killings have become very common in India. Police in staged encounter killing the persons and they are mentioning it as they have done it in a right of private defence. Instances of encounter killings are widely reported in news media and are even glorified.

Fake encounters reflect the growing chasm between the demands of a worsening public order situation and resulted public expectation on the one side and the woeful inadequacies/Criminal Justice System on the other. The political executive is under enormous pressure to maintain peace and protect the community against the terrorists. This is transmitted down the line to the constabulary. When careers are at stake in a pressure cooker situation, the first causality is ethics. That's why, when a Judge makes an outrageous pronouncement that an 'encounter' was a way to impress and please those in the political hierarchy and advance one's career prospect, he carries immense credibility, however, wrong he may

be in fact. The public and the media, get carried away by such judicial outburst and the already strong impression that the police employ needless violence is reinforced (footnote – Anger in Union by PK Raghavan Front Line, October 9, 2009)

Civil society Group has long argued that ‘police counter’ are not spontaneous shoot outs as claimed by the police, rather they are a result of planned and premeditated killings, carried out by the police, where the police stage a scene of shoot out between the alleged criminal and them. The police may be motivated by larger end – either to win the public favour or in furtherance of the police officers own political or criminal connections (Foot Note – Human rights Watch (2009) Broken System, Dysfunction, abuse and impunity in the Indian Police New York, Human Rights Watch.)

The State often refers to these killings as “encounters”. State’s motivation behind the use of Euphemism police encounter is telling. It becomes clear that it is use to validate policing methods and deflect from legal accountability. It allows the police and security forces to disregard the rule of law and commit grave human rights violations and instead promotes vigilance justice by celebrating the actions of the police officials in eliminating the alleged criminals without accountability (Page No.22 extinguishing law and life – Report by YHRD 2021)

Governments have refused to acknowledge the prevalence of extrajudicial killings and routinely deny any illegality in killings of this nature. As a result, police and security forces have hide a relatively free hand to employ these as a tactic to quell political dissent in various context of disbranches or conflicts. Starting from nexulburry movement in the 1960s in Bengal to the Maoists insurgency in the then forest of Andhra Pradesh in 1980s, extrajudicial killings have been recurring

phenomenon (footnote – Mukhopadhyay, N.(2019) December 07). An encounter now and then is not a solution to an Endemic problem. The outlook. Available at <http://www.outlookindia.com/website/story/opinion-an-encounter-now-and-then-is-not-a-solution-to-an-endemic-problem/343748>)

### **Saidabad Rape and Murder :**

The prime accused in the case of rape and murder was found dead on September 16, 2021 on a railway track. The Hyderabad Police were on a massive manhunt to trace and nab the accused in the Saidabad Rape and Murder case in which six years old girl was the victim. The prime suspect, 30 years old, Palakonda Raju, had been absconding ever since the incident came to light on September, 09.

Exactly a week after the incident, the prime accused was found dead on the railway track at Station Ghanpur, which falls under the Telangana, Warangal Police Commissionarate limits. The police identified the dead body as that of the accused with the help of three tattoos on his hand. Later, Raju’s family was called to identify the body of the accused.

Experts say the police are inventing new techniques to avoid inquiries in encounter deaths. These two incidents are nothing but police encounters in a different manner.

### **Extra-Judicial Killings a Threat to Rule of Law**

Article 21 of the Constitution of India enshrines right to life: “no person shall be deprived of his life or person liberty except according to procedure established by law.” The Supreme Court has further clarified that where can be no exceptions to Article 21 and held that “...where a citizen has been deprived of his life or liberty, otherwise than in accordance with the procedure by law, it

is no answer to say that the said deprivation was brought about while the officials of the State were acting in discharge of the sovereign functions of the State..." (foot note – *People's Union for Civil Liberties Vs. Union of India* (UOI) (1997) 3 SCC 433

"..The Supreme Court has denounced the extrajudicial killings as having no place in a legal system governed by the rule of law (foot note\_Jaspal Singh Gossain Vs. Central Bureau of Investigation, 2018 Available at <https://indiakanoon.org/doc/29093853>). It described the impunity enjoyed by the Security Forces when they commit act inconsistent with the rule of law. Drawing attention to the absence of any judicial sanction in such cases, the Supreme Court has in fact referred to extrajudicial killings as administrative liquidation.." (foot note – OHCHR (2017) The Minnesota Protocol on the Investigation of Potentially Unlawful death (2016) available at <https://ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>.

#### **Guidelines Issued by NHRC :**

The NHRC issued guidelines in regard to the procedure to be followed in cases of death in police encounters. This requires an investigation into cases of encounter killings. It specifies that the investigation should not be carried out by the same police force, as the police officers belonging to the same police Station, are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency, such as State CID (letter by NHRC 1997 dated 29.3.1997)

In another direction issued in 2003 and 2010 the NHRC took steps towards introducing greater transparency and the accountability and securing evidence in cases of extrajudicial killings. It directed that if a specific complaint was made against the

police, a First Information Report must be lodged; and the Post-Mortem examination of the victims should be photographed and video graphed. It required that a magisterial inquiry must mandatorily be conducted and specified the manner of conducting this enquiry. It also required that for every case of death, in the course of police action, the post-mortem report, inquest report, names and designations of police officials involved in the incident, report of the Forensic Examination and report of Ballistic Examination should be submitted to the NHRC, within a period of three months.

#### **Investigation Procedure in Cases of Encounter Killings**

Basing on the Supreme Court and various High Court directions, and NHRC Guidelines, alongwith the other criminal law procedures, set out the detailed procedure that should be followed in cases of extrajudicial killings.

- (i) FIR should be registered under Sec.302 IPC, etc. against the officers involved in the encounter killings. The police are registering the FIR under Sec. 307 ICP etc. against the deceased persons and they are not registering the FIR under Sec.302 IPC. When they are exercising right of private defence, it is necessary to register a case under Sec.302 IPC, etc.
- (ii) The investigation into the circumstances of death, use of force by the police. This should be done by an independent State CID team or by senior officers of another police station.
- (iii) The Crime scene should be protected necessary material should be preserved and sent to analysis.
- (iv) The inquiry should be conducted as required under Section 176 Cr.P.C.

and mandatory enquiry should be held by a Judicial Magistrate under Section 176(1A) Cr.P.C. A requisition should be sent immediately to the Judicial Magistrate before conducting the inquest.

- (v) After completion of investigation the Police report as required under Section 173(4) Cr.P.C. should be submitted in the competent Court.
- (vi) If the investigation discloses that the death caused during the police firing amounts to an offence, under the criminal law, a regular disciplinary enquiry should be initiated against the erring official. During the course of trial, the police officer may take the plea of self defence. They have to establish the same before the Court of law and not during the course of investigation. It is for the Court to decide whether they have exercised proper right of private defence, taking into consideration all the facts.
- (vii) In spite of the law and judicial pronouncements and guidelines issued by NHRC, there is no effect on extrajudicial killings. They are increasing day by day. There is no accountability to the Police Officers as the encounters are sponsored by the State.

#### **Guidelines issued by NHRC on Extra-Judicial Killings**

- (1) NHRC guidelines on December 14, 1993  
NHRC directed agencies to report matters relating to custodian deaths<sup>3)</sup>
- (2) NHRC guideline on August 10, 1995  
NHRC advised all Chief Ministers of the necessity of introducing video-filming of Post-Mortem examination

from 1<sup>st</sup> October, 1995 onwards to avoid distortion of facts.

- (3) NHRC guideline on March, 27, 1997  
NHRC recommended to all Chief Ministers that all States shall adopt the “Model Autopsy Form” and “Additional Procedure for Inquest” prepared by the NHRC based on discussion with experts and the UN Model Autopsy Protocol.
- (4) NHRC guideline on March 29, 1997  
NHRC issued guidelines recommending the procedure to be followed by States and Union Territories with regard to encounter deaths. It was recommended, *inter alia*, that:
  - (a) Deaths should be entered in an appropriate register of the Police Station’
  - (b) It should be treated as a cognizable offence and investigation should commence;
  - (c) It should be investigated by an independent agency such as the State CID and not by officers of the same Police Station;
  - (d) Compensation to the victims dependants should be considered in cases ending in conviction.
- (5) NHRC Guideline on December 2, 2003  
NHRC introduced the following major changes/additions to the previous guidelines to introduce greater transparency and accountability.
  - (a) If a specific complaint was made against the police, an FIR must be lodged;
  - (b) A Magisterial Inquiry was not mandatory in every encounter death;

- (c) It also required the State Director General of Police to send a six monthly statement to details of all deaths in police action to the NHRC.
- (7) NHRC guideline on May 12, 2010
- NHRC further revised the Guidelines containing the following major changes/additions:
- (a) The Magisterial Inquiry was required to be completed within three months;
- (b) Every death in Police action was to be reported to the NHRC by the District Superintendent of Police (SP) within 48 hours;
- (c) A second report was to be sent to the NHRC by the District Superintendent of Police (DSP) within three months; with Post-Mortem Report, Inquest Report, Ballistic Report and findings of the Magisterial Inquiry.
- Extrajudicial killings in the form of fake encounters are an attack on the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India. Every person is entitled to a fair investigation and trial under Articles 14 and 21 of the Constitution. Fake encounters, the police assume the role of judiciary and executioner without giving proper chance to the accused to be heard at an appropriate judicial forum and thereby violating the natural justice.
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