

The responsibility of media as a guard dog is similarly significant in the insurance and advancement of common freedoms. It is nonetheless, seen that the media flops either to feature the occurrences of basic liberties infringement, or resolutely works together with the State organizations to conceal the episodes. On occasion, the media likewise assumes a negative part by sensationalizing an occurrence (some of the time alluded to as preliminary by media), which can have grave repercussions for both the general public and the person. Thus media should be sharpened to assume a significant part in getting privileges of individuals.

It would be reasonable for say that while endeavouring expansive correctives, positive

thinking of the will needs to outweigh cynicism prompted by discouraging real factors. Should it then not be our obligation and without a doubt obligation, to give voice to the individuals who proceed to languish and endeavour to look for over them both alleviation and justice? That is when human rights will start to address human wrongs. While closing, I would say that, these freedoms have a place with us, they are our privileges, and consequently we should be acquainted with them. We should assist with advancing and guard them for ourselves and fight for ourselves.

We pledge that human rights are for all of us, all the time: wherever we are from;; no matter our class, our opinions, our GENDER.”

RIGHT OF PRIVATE DEFENCE IN ENCOUNTER DEATH CASES

By

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Whenever there is an encounter or extrajudicial killings, the police will try to justify encounter killings is that the act of killing has to be resorted to in order to save themselves from the deadly attacks made by the victims. The said defence is not only available to the police but also to ordinary person. It is projected by the encounter killers is the ‘right of private defence’ available to them when confronted with the situation of grave danger to their life as would justify the exercise of right of private defence.

If the police officers or public servants having authority to make arrest, knowingly

exercises that authority in contravention with the law, the persons who are arrested can exercise the right of private defence in accordance with the law and subject to, the provisions contained in Sections 96 to 106 of IPC. It is the right inherent in a person. It is based on principles that it is the duty of man to help himself.

What is meant by Right of Private Defence:

Sections 96 to 106 of IPC lay down the law relating to right to private defence. This law gives to every person the right to defend:

- His own person against any attack or restraint.
- His own property against theft, robbery, mischief, criminal trespass.
- The person and property of other in similar circumstances.

Nothing is an offence which is done in exercise of right to private defence

Limitation and restrictions in exercising the Right of Private Defence

There are certain limitations and restrictions in exercising of right of private defence. Those are:

The right of private defence of body can be exercised against an offence affecting the human body. It extends to causing death against an assault reasonably causing the apprehension of:

- (1) Death
- (2) Grievous hurt, or an assault associated with
- (3) Rape
- (4) Unnatural offence
- (5) Kidnapping or abduction
- (6) Wrongful confinement coupled with a reasonable apprehension that he will be unable to have recourse to the Public Authorities (Sec.100)

It extends to causing any harm other than death in other cases (Sec.101)

It commences and continues as long as danger to body lasts (Sec.102)

The right to private defence of property can be exercised against any property, movable or immovable, it can be exercised against the offence of

- (1) Theft

- (2) Robbery

- (3) Mischief, and

- (4) Criminal trespass, committed or attempted to be committed

It extends to voluntarily cause of death in the cases of

- (1) Robbery

- (2) House-breaking by night

- (3) Mischief by fire on any building used for human dwelling or for the custody of property and

- (4) Theft, mischief or house trespass giving rise to a reasonable apprehension that death or grievous hurt will otherwise be the result

Any harm other than death can be caused in other cases (Sec.104)

Right of Private Defence cannot be exercised, when the Police Officer is doing lathi charge to disburse unlawful Assembly

If the lathi charge is done to disburse the unlawful assembly, there is no right of private defence against the acts of said police officer. This right can be exercised in case the Police Officer is reasonably causes apprehension of death or grievous injury.

When is this Right of Private Defence not available

Under the following circumstances, this right of private defence is not available.

- (1) Against the act of public servant.
- (2) Against any person acting under the direction of a public servant.
- (3) When there is sufficient time to seek protection from proper authorities.

The substance of the Right of Private Defence

As can be seen from the above provisions, the right of private defence is available both in respect of the “**body**” and in respect of “**property**”. The first clause of Section 97 IPC provides for the right of private defence of the **body** against any offence affecting human body as contained in Chapter XVI of IPC. The second clause of Section 97 IPC provides for the right of private defence of **property** against acts such as theft, robbery, mischief or criminal trespass or attempts to commit any of those offences which are included in Chapter XVII of IPC.

*While Section 96 IPC declares that anything done in exercise of the right of private defence is not an offence, Section 99 IPC contains a caution that **the right of private defence is not available for inflicting more harm than is necessary for the defence.*** Section 100 IPC enumerates the various situations under which a person will be justified in committing the extreme step of causing “**death**” in exercise of his right of private defence **of the body**. Similarly, Section 103 IPC enumerates the situations under which a person may do the extreme step of causing “**death**” in exercise of the right of private defence **of property**. In the absence of any of the situations contemplated by Section 100 IPC, the right of private defence **of the body** is not available to the extent of causing death as cautioned by Section 101 IPC. Similarly, Section 104 IPC cautions that in the absence of any of the situations envisaged by Section 103 IPC, the person does not have the authority to cause the “**death**” of the aggressor in exercise of his right of private defence **of property**.

The mechanics of the above provisions read along with *Exception 2* to Section 300 IPC will be as follows:

1. *If the act of causing death is committed under any of the situations falling under either Section 100 or under Section 103 IPC, the act of causing death is not an offence in view of Section 96 IPC. The offender in such a case whether it be the Police or a private person is not guilty of any offence and is fully protected.*
2. *In the absence of any of the situations enumerated under Section 100 or Section 103, if the offender, instead of obeying Section 101 or 104 IPC, exceeds the power given to him and causes death with premeditation and not without any intention of doing more harm than is necessary for such defence, he will be guilty of “**murder**” falling under Section 300 and punishable under Section 302 IPC.*
3. *In the absence of any of the situations enumerated under Section 100 or Section 103, if the offender, instead of obeying Section 101 or 104 IPC, exceeds the power given to him and causes death but **without premeditation and without any intention of doing more harm than is necessary** for such defence, his case will fall under *Exception 2* to Section 300 IPC and he would be guilty of “**culpable homicide**” not amounting to murder falling under Section 299 IPC and punishable under Section 304 IPC.*
4. *When once the defence of encounter killing put forward by the Police officer cannot be legally supported, it becomes a “**fake encounter**” which is nothing short of “**murder**” punishable under law.*

Thus, from the stage of “**no offence**”, his act of causing death may “**escalate into murder**” or may get reduced to “**culpable homicide**” depending on the presence or absence of the above ingredients. In encounter killings by the Police, the act of causing death would be justified only if the case falls either under Section 100 or under Section 103 IPC. *Even in cases of*

justifiable killings, can the killer Police officer be allowed to justify his act and go scot free without a trial? If yes, then it will be a case where the Police officer would be the "complainant", the "investigator", the "prosecutor", the "Judge" and the "executioner" all rolled into one. Those who garland the Police officers who indulge in encounter killings should realize that in those cases where the Courts eventually acquit private persons by holding that they were legitimately exercising their right of private defence, the fact remains that they were unnecessarily charge sheeted by the Police. This indicates that even in cases where the Police are convinced that the alleged act was committed in lawful exercise of the right of private defence, the Police are not inclined to give the benefit of the right of private defence to such persons and close the case but they leave it to the Courts to extend the benefit of private defence to those persons. The same is the position with regard to any other exonerating defence as well and the Police fail safe by dragging the unfortunate persons to the avoidable ordeal of a trial before Court. But when it comes to the so called "encounter killings" they want to avoid the Court and reap the credit of exterminating the "alleged culprit".

The defence of grave and sudden provocation

Close to the heels of the above right of private defence is the defence of "*grave and sudden provocation*" falling under Exception 1 to Section 300 IPC. Unlike in the case of an act constituting "*private defence*" which is excused by Section 96 IPC, the defence of "*grave and sudden provocation*" does not exonerate the offender from criminal liability. The gravity of an act which otherwise would have amounted to murder under Section 300 IPC, is lessened in view of the conduct of the victim providing grave and sudden provocation of such a degree as to deprive the offender of his self control

thereby reducing the offence of murder into culpable homicide by virtue of Exception 1 to Section 300 IPC. Even here, the offender should not be the provocateur and the provocation should not be one on account of the lawful exercise of his duties by a public servant or on account of the lawful exercise of the right of private defence by the victim.

The above defences are available to the victim of aggression provided those extenuating circumstances take place in the course of the same occurrence. To put it differently, when once the offence has been committed and the offender has decamped, there is no question of any outsider exercising any of the aforesaid defences. Offences like rape or premeditated murders are usually done in secrecy. There will not ordinarily be any eye witness to such occurrences. Hence, after the occurrence is over and the disappearance of the culprits, if a Police officer were to hunt after and apprehend the alleged culprits and were to shoot them dead, he is, by all definitions, an aggressor who cannot plead the right of private defence. Moreover, in a case where there are no eye-witnesses or any CCTV footage or any other useful detail enabling tower location, how does the Police officer identify the alleged culprits? Has he got any sixth sense to identify a rapist? Article 21 of the Constitution of India shoots down his conduct of killing the alleged culprits as an outrageous act opposed to the procedure established by law. He must be held to belong to that class of trigger-happy policemen who indulge in retributive justice even without being sure as to who the culprit is. (Foot note-Law Relating to Encounter Killings by the Police Justice V. Ram Kumar – 9 January, 2020 6.01 PM)

Conclusion:

In encounter cases police will take the plea of Right of Private Defence, therefore

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.

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