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Extra-Judicial Killing: Injustice done in the Name of Instant Justice

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This paper addresses the most important and disturbing issue extra-judicial killing. This paper peeks into the past of these killings and tries to bring up its starting point. It also addresses the sole reason to oppose these illegal killings. It gives us the maxim (Audi alteram partem) which every person in the world should consider accepting before supporting such illegal acts. It picks up some instances from the past in order to explain to you the illegality of such killings. It also gives you some knowledge about the rights that are violated by such illegal killings. It highlights the importance of Article 21. It also brings up to your knowledge the provisions used by the authorities to defend themselves from the consequences of extra-judicial killing done by them. It highlights some of the important judgments which can be used by the victims to protect themselves. It presents you with some guidelines from the SC and the NHRC. Then finally it addresses some of the reasons and loopholes that lead to extra-judicial killings.

Keywords: *killings, illegality, injustice.*

INTRODUCTION

Of all the human rights violations, no one is more flagrant, degrading, and irreversible than extra-judicial killing. It is the killing of a suspected accused by the government authorities

without following any due process of law or without any sanction from the court of law. This is generally done by the state in order to implement what can be considered instant justice by skipping the whole criminal justice procedure. While the public conscience should be seen as an aberration of the firm rule of law, such a fierce misuse of governmental authority does not frequently affect public consciousness. Far from denouncing these occurrences as abominable crimes, individuals generally welcome the occurrence of such profile encounters.

In a democracy, the basic objective is that each and every citizen gets equal rights, opportunities, liberties, and other basic benefits that come with the basic human rights within a civilized society by the chosen government¹. The state executive, mostly, police, as a rule, is accountable for the safety of the accused from pre-trial to the post-trial stage and if the suspected accused dies in prison, the integrity and behavior of the police raises doubts. This could lead to grounds such as gross negligence on the part of the police, or commission of any act illegal on the part of the police to achieve their own interest or failure to respect their responsibilities, which are enshrined in the statutes and any such possible facts and circumstances established by the court. If extrajudicial executions become a means to dispense justice, they would impede democracy and represent hegemony in India.

"**Audi alteram partem**" means that "both parties need to be heard," which is the cornerstone of the protection of the accused during trial². It is possible that the accused has actually not done the crime for which he or she was held, if he or she is not allowed to represent himself in front of the judiciary then he would suffer because of someone else's wrongful act. Each person shall have the right to be heard and all accused shall be held before the Court for a fair trial. But the murder of an accused before a fair trial would entail the mockery of the due process of law and the violation of fundamental rights that the Indian Constitution has imposed upon the accused.

¹ Shrijita, 'A Short Study On Extrajudicial Killings' (*legalserviceindia*) <<http://www.legalserviceindia.com/legal/article-2777-a-short-study-on-extrajudicial-killings.html>> accessed on 15 July 2021

² Aman Kumar Sinha, 'Extra-Judicial Killings: A Threat to Democracy' (*IJSR*, 9 November 2019) <<https://www.ijsr.net/archive/v9i11/SR201021151412.pdf>> accessed on 15 July 2021

GLIMPSES OF EXTRA-JUDICIAL KILLINGS IN INDIA

The development of the concept of extra-judicial killings finds its start with the Hindu Scriptures providing insight into India's past criminal law system, which includes Manu-Smriti texts and the Manu Code stating that torture is required to protect peace and avert crimes. This rule was used by many kings in order to bring peace to their respective states. A large number of these authorities tortured the accused of the disclosure of the truth, some were tortured or made to admit the crimes they did not commit, sometimes leading to the killing of the accused. The Mohammedan law believed in the concept of an eye for an eye. Which led to enormous torture and harsh treatment of the accused criminals. After the fall of the Mughal Empire, the Britishers took over the control of the legal system of India³. By employing torturing to question the accused, and involving the kotwals, for torturing and executing prisoners without trials, the British became a contributor to the atrocities upon the undertrial prisoners.

Briefly, we did not break with our colonial heritage in the first year of our freedom. The legal and administrative apparatus was entirely British Indians and the judiciary just continued what was created by the Britishers⁴. In order to cope with freedom and limit non-cooperation civil disobedience activities, the oppressive legal system developed by the Britishers is still implemented in Independent India. Police and security services have been using them in different situations in the past – in order to quench insurgencies like Bengal in the 1960s and Punjab in the 1980s. Many of these deaths are currently covered by national security crimes, including terrorism, and inactive conflict regions including the Kashmiri region, North East India states including Manipur, and the Maoist insurgency's Central India territories. This kind of killing is also common in "ordinary" settings such as in those states that have no active conflicts (such as Uttar Pradesh) and in routine law enforcement operations. As a consequence,

³ Anjali, 'A Critical Analysis of Extra judicial Killings in India' (*legalserviceindia*)

<<http://www.legalserviceindia.com/legal/article-5925-a-critical-analysis-of-extra-judicial-killings-in-india.html>> accessed on 15 July 2021

⁴ K G Kannabiran, 'Extra-Judicial Killings' (*Jstor*, 31 December 1966)

<http://www.jstor.org.elibraryhnl.remotexs.in/stable/pdf/4403929.pdf?ab_segments=0/basic_search_gsv2/control&refreqid=excelsior:8485ee9584106b6dc5ac9f0dcacb41c7> accessed on 15 July 2021

similar assassinations have already been notified in comments published in 2012 and 2018 by the international rights experts at the United Nations.

Currently, India has seen rampant growth in extrajudicial killings. Suspects in custody by police or judicial custody face physical torture and psychological torment, and occasionally sexual torture and abuse. These events finally kill the suspect and are subject to extrajudicial executions or custodial brutality. In the recent case of extrajudicial killing of the accused of the Hyderabad rape case, all 4 accused were killed by the Telangana police at the same spot. More horrifying thing is that people were demanding this killing, there was uproar throughout the country. After the killings of those victims, everybody was so happy that nobody bothered about the fact that they were just accused not the convicts. They were not proven guilty of the crime for which they were killed. One more case of Vikas Dubey's encounter case highlights the importance of extra-judicial killings in the life of Indian people.

PROVISIONS RELATED TO EXTRA-JUDICIAL KILLING IN INDIA

Fundamental rights violated by extrajudicial killing

The principal legislation that protects not just the guilty, but also every Indian citizen, Article 21. It says quite clearly that no individual shall, except through the method set out in the law, be deprived of his life and personal freedom⁵. Thus, under this legislation, a person accused has the right to be tried fairly, represented, judged on evidence, and without it, any authority has no right to take the life of a person, since that is to be deprived of a person's life without proper procedure and would, in turn, infringe on Article 21. It is not permissible to deprive someone of his life even though he is an abominable crime. It also violates the provisions of Articles 14 and 22 of the Constitution. Article 14 establishes equality before the law and equal protection of the law, which means everybody is equal unless stated contrary by the law, that's why this article gives everyone a fair trial and a fair opportunity to every accused or victim to present him/herself. Article 22 gives rights to a person held in custody, a procedure has to be

⁵ Yajush Tripathi, 'Extrajudicial Killings in India : An Analysis on its Legality and Prevalence' (*the probono India*) <<http://probono-india.in/research-paper-detail.php?id=647>> accessed on 16 July 2021

followed after an arrest of a person by not following the prescribed procedure, extra-judicial killings attract violation of a fundamental right.

PROVISIONS USED BY POLICE OFFICIALS

- Section 46 of Cr. P.C and 96 of IPC are used by the police officials as a defense after a pre-trial killing of an accused.
- Article 46 of Cr. P.C Enables police officers to employ all the means necessary to arrest the detained person or control the situation. The use of excessive force can lead to death. For the sole purpose of self-defense or when it is imminently essential for maintaining peace and order, police forces are allowed to harm or kill the offender.
- In accordance with the Indian Penal Code (IPC) Article 96, every human person is entitled to a natural and inherent right to private defense. Which intern gives the right to police officers to kill or use massive force in order to defend themselves.
- The Armed Forces Act gives the Indian Defense Force broad rights to use lethal force in various cases and fails to include controls in the excessive use of those powers that end in varied reports of violations committed in places where AFSPA is implemented.

IMPORTANT JUDGEMENTS

*Om. Prakash & Ors. .v. State of Jharkhand*⁶ - in this it was ruled that it is not the duty of the police to take a person's life just because he or she is a dreadful murderer, and in this case, only 'encounters' were given the name of 'state-sponsored murder'. This act of killing some accused without any orders from the court, without any fair trial on the part of police will not be considered as a legal act in the eye of the criminal justice system.

*People's Union for Civil Liberties & Anr vs. State of Maharashtra and ors.*⁷ -

The Bench of RM Lodha and Justice RF Nariman first underlined, in a detailed decision issued on 23 September 2014, that every individual has the right to life under Article 21 and that even

⁶ *Om Prakash & Ors v State of Jharkhand* (2012) 12 SCC 72

⁷ *People's Union for Civil Liberties & Anr v State of Maharashtra and Ors* CDJ 2014 SC 831

the State has no jurisdiction to violate that right. Both the judges gave a pertinent observation on article 21. The Bench highlighted the need for an impartial investigation of the encounter killing by police. Whilst the Bench made it clear that it knew the tough and sensitive work police are required to do in combating crime, but still it stressed that offenders themselves must be brought to justice by respecting the rule of law. The Supreme Court finally published about 16 guidelines, after reading the proposals submitted by the High Court of the Bombay, PUCL (by the lawyer Prashant Bhushan), Amicus Curiae Gopal Sankaranarayanan, and the NHRC, among others. The main points were –

- Whenever police are informed about criminal movements, and/or activities relating to the perpetrators of a serious criminal offense, it should be reduced to some written form or electronically.
- Where a police party has encountered and firearms are used in accordance with a tip-off or receipt of intelligence as above; the consequence of which death occurs, then FIR shall be recorded to this effect and the FIR shall be sent to the Court without delay under section 157 of the Code.
- The CID or the police of another police station under the direction of a senior (at least a level above the head of the police party engaged in the encounter). The officer should carry out an independent inquiry into the incident/encounter.
- A piece of detailed information must be communicated to the NHRC or State Human Rights Commission.

Prakash Kadam & Etc. vs Ramprasad Vishwanath Gupta & Anr⁸ - According to the judge, extrajudicial executions that are not carried out in an emergency are a cold and merciless assassination by people who must respect the law." So in order to incite terror in police officers' thoughts so as not to misuse the authority, a police officer who takes a person's life

⁸ *Prakash Kadam & Etc vs Ramprasad Vishwanath Gupta & Anr* (2011) 6 SCC 189

illegally under the shadow of executing his duties, will be considered in "rare situations," and the person responsible will be condemned to death.

There are not many statutes related to this issue. There is no statute that directly addresses this growing issue, and also other judgments and provisions are also only in papers. After many encounters, not a single F.I.R is filed against the person responsible for this heinous crime. What is required is a full-fledged specific law related to extra-judicial killings, which will increase accountability in the eyes of law, and will also legalize and make the whole process followed after the killing mandatory and organized.

GUIDELINES PRESENTED BY NHRC

In the light of this, all States and territories of the Union have been urged by the NHRC to guarantee that police follow a series of directives when death occurs during a police encounter⁹.

- When the police officer learns the death information in an interaction between the police party and others, the officer shall put the information in the relevant register.
- Information received will be considered to be adequate to believe that an offense was committed and prompt action is needed to examine facts and circumstances leading to death in order to establish what was committed and by whom.
- As encounter party members are members of the police officers belonging to the same police station, the crimes should also be investigated by other independent investigative agencies, such as State CID.
- In situations concluding with conviction where police officers are punished based on the investigational results, the question of paying compensation to the dependents might be taken into account.

⁹ Meera Emmanuel, 'Even State has no authority to violate Article 21: What the Supreme Court said about Encounter Killings back in 2014' (*bar and bench*, 2019) <<https://www.barandbench.com/columns/even-state-has-no-authority-to-violate-article-21-what-the-supreme-court-said-about-encounter-killings-back-in-2014>> accessed 17 July 2021

According to my opinion, the primary reason behind extra-judicial killing is a delay in justice. Solving cases in India takes approximately more than 5 to 10 years. Heinous crimes such as the Nirbhaya Rape case also took around 7 years until the final justice was given to the girl. This case shock the consensus of the whole country in spite of which it took 7 years to rap up the case and deliver justice to the girl. This delay in justice can be the denial of justice, thinking of which the people support the extra-judicial killing. It develops out of trust in the courts since many feel the court will not provide justice in time. The fact of getting away with cold-blooded murder is the key reason behind police getting bolder by the day and killing at will. In order to decrease the number of extra-judicial killings, the judiciary has to gather the public trust by establishing fast-track courts for heinous and severe crimes, by increasing the appointment of the judges for the vacant seats, by increasing the daily working hours, etc.

The mental pressure that is being faced by the Indian police is also a reason for increasing extrajudicial killings. Day-by-day, as crimes in society rise in India police, are required to do essential jobs and deal with a number of complex circumstances, such as riots, public unrest, corruption, and other law-and-order problems. Anything happens in the country, the first authority that is questioned is the police. Once a crime is committed, police are pressed for greater performance and quick investigations from different sources. The police staff is too small to control such a large population. Today, the criminals are extremely prepared, strengthened, and equipped with existing heavy weaponry. A typical officer with a tiny gun or even a weapon that has been frequently given does not fit the current weaponry held by them. This mismatch can be seen in the Vikas Dubey case, when the police went to arrest him they had to face immense firing from heavy machine guns, which lead to the death of 8 U.P police cops. This explains that mighty criminals can therefore very simply break away from legal reach. This can be solved by increasing the police staff around the country with equipping them with updated weaponry. With updated vehicles, updated communication systems, etc.

CONCLUSION

Finally, I would simply want to say that the attitude should be to prioritize humanity and dignity over everything else in a democratic country like India. It is not a matter of justice that

is at stake here but of fundamental values of a democratic, secular, and liberal state are at stake. When the government acts with impunity, the sharp boundary between the state and criminals will be erased. It weakens democracy, reduces the fundamental principles of the country, and delegitimizes the power of the State. The largest democracy in the world should not come across such violations of human lives if it wants to preserve its status quo and should provide everyone a fair chance and follow the proper legal system.