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An Analysis of Extra-Judicial Killings

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A brief overview of extrajudicial executions in India is given in this article. It explains how staged encounters or extrajudicial executions allow the police to act as judge and executioner and result in a clear breach of Article 21 because the legal process is not followed in such a situation. This is brought up in light of several recent occurrences. The article illustrates the position taken by India's Honourable Supreme Court when addressing cases of extrajudicial murders. It also emphasises the need to establish the value of human life and dignity in a democratic nation like India.

Keywords: *extra-judicial killings, article 21, supreme court ruling, violation of fundamental rights.*

INTRODUCTION

Every person is entitled to a particular set of fundamental freedoms and rights guaranteed by the constitution, and they also have a right to assume that those rights will be upheld. However, there are times when the state government, which is charged with upholding and promoting the protection of human rights, itself infringes on such rights by engaging in extrajudicial or retaliatory killings. Extrajudicial executions are defined as the unlawful killing of an accused by any government official without the consent or directive of the court. There are instances where these murders occur as a result of a genuine encounter (to stop the accused from fleeing), but

there are also numerous instances where false encounters occur with other purposes, however, there are also many instances of fake encounters with ulterior motives, in which the police attempt to distort the facts of the case to avoid being questioned if such an incident occurs. Not only in India but also in nations like Nigeria, the Philippines, etc., these murders are illegal.

The number of extra-judicial killings is increasing in India. The constitution guarantees the right to equality under Article 14 and the right to life and personal liberty under Article 21 which can only be taken away by the procedure established by law. Extra-judicial killings are a gross violation of human rights. Given that the legal institutions are all but defunct, there seems to be a popular outcry in favour of retributive justice. A civilised society cannot afford to have such a primitive kind of retribution in fashion. Instead of being led by intuitive responses, man should follow practical wisdom. It is undeniable that the infamous courthouse backlog is a major motivator for the average person and the Police to enact their laws. This unsettling characteristic has a by-product known as "fake encounters". As we have seen in the 2019 Hyderabad Priyanka Reddy rape case, at the scene where the victim's body was found, the police murdered the accused during a confrontation. Priyanka Reddy, a veterinarian, was sexually assaulted before having some of her body burned. State-sponsored terrorism or mayhem in the form of a "fake encounter" by the Police is undoubtedly not a welcome desideratum for an orderly and civilised society, and it can never be a substitute for the ultimate punishment through the crucial process of a fair trial using the procedure set forth by law.

The biggest depiction of the fact that extrajudicial killings are so common in India that people have come to view them as a quick solution to problems, whether they are personal, official, or case-related, is the occurrence of fake encounters and custodial deaths. However, nothing can go beyond the rule of law, and such an action is always a threat to democracy and a mockery of the Indian judicial system. Cases in which offenders are not given a fair trial are a nightmare for the treatment of all people equally, and such action damages the administration of justice in India because the more the community supports such activities, the more opportunities authorities have to carry out such actions.

WHAT ARE EXTRA-JUDICIAL KILLINGS?

Extra-judicial killings or encounter killings are those in which an accused is killed or illegally executed by the police authorities in charge of the accused before the judgement arrives. It is a mechanism used by the police authorities which is not backed by the law. It is a gross violation of human rights and completely against the principle of natural justice. The right to prove himself/herself is not even given to the accused person as it violates the basic human rights of the individual. Extrajudicial killings also include the physical, sexual, or mental abuse of the accused by the police or any other officials in authority while the individual is in jail. Such extrajudicial executions are always authorised by the administration of the specific state. Section 46 of the Code of Criminal Procedure, 1973 provides that police personnel are allowed to use force or any other means to arrest a person who has been accused of an offence punishable with death or imprisonment for life. So, the police have the right to carry out their tasks in good faith, and use force when they have a good-faith suspicion that the accused is resisting, or fleeing, but nowhere does this give them the authority to use deadly force against the accused. Only Section 96-106 of the Indian Penal Code, 1860, which applies to all citizens, including police officers, gives a legal recourse for private defence. Section 96 of the Indian Penal Code, 1860 provides that "Nothing is an offence, which is done in the exercise of the right of private defence ".

ORIGIN OF EXTRA-JUDICIAL KILLINGS

A chain of historical occurrences led to extrajudicial executions occurrence in the modern period. Hindu scriptures shed light on the older Indian criminal justice system, which was based on the Manu-Smriti or Manu code, which said that the use of torture is required for the maintenance of peace and the prevention of crimes. In earlier times, several governments or an area controlled by monarchs adhered to the Manu law. The state was governed by his officials, and the monarch served as the judge, jury, and executioner. Many of those authorities tortured the accused to uncover the truth; others coerced some of the accused to confess to crimes they did not commit; and occasionally, such tortures resulted in the accused's death.

The Mohammedan law propagated the idea of "an eye for an eye," which was quite common during the Mughal era. While Akbar was in power, he avoided punishing criminals harshly, but after his death, the executions of suspects and inmates resumed. Following the demise of the Mughals and the establishment of British possessions in India. By employing torture to question the Kotwals accused of torturing and executing prisoners without trials, the British became one of the perpetrators of the atrocities. Even after India achieved independence from the British, there were several instances of extrajudicial executions, sometimes known as fake encounters. The accused is approached by the contemporary police before the trial based on Section 46 of the Cr.P.C. and Section 96 of the IPC. They attempt to distort the truth to demonstrate that the murder was justified and cannot be challenged.

EXTRA-JUDICIAL KILLINGS: JUDICIAL AND QUASI-JUDICIAL TRENDS

SUPREME COURT GUIDELINES

Even though there isn't a particular provision in Indian law that deals in-depth with extrajudicial killings, often known as "encounter killings," However, from time to time, the NHRC and the Supreme Court of India have set specific criteria or principles that must be followed while looking into incidents of deaths brought on by police encounters. In the case of People's Union of Civil Liberties v State of Maharashtra[1], 2016, the Supreme Court of India created a series of 16 rules that must be followed while looking into police encounters that result in fatalities to conduct comprehensive, efficient, and impartial investigations.

Recording of Any Intelligence or Tip-Off - Whenever the police get information or a tip-off about criminal activity or movements related to the commission of a serious crime, it must be recorded in writing (ideally in a case diary) or electronically. Such recording should not include information about the suspect or the destination of the party. If a higher authority receives such information or a tip-off, it may record it in some way without disclosing the identity of the suspect or the location.

[1] *People's Union of Civil Liberties v State of Maharashtra* (2014) 10 SCC 635

Registration of FIR - When a fatality results from an encounter in which the police use any firearms upon the receiving of any tip-off or intelligence, an FIR must be filed and sent to the court.

Independent Investigation - To identify the victim, gather and preserve evidence, locate witnesses, and determine the cause of death, an investigation into the incident must be conducted by the Crime Investigation Department or a police team from a different police station.

Magisterial enquiry - In all cases of a fatality brought on by a police shooting, an investigation must be performed by Section 176 of the Criminal Procedure Code, 1973, and a report of the investigation must be delivered to the Judicial Magistrate by Section 190 of the Code of 1973.

Involvement of NHRC - The NHRC must receive details on the purported incident without delay.

Medical Aid - The wounded criminal or victim must receive timely medical attention, and a magistrate and a medical officer with a certificate of competence shall record their account.

No delay - The police should make sure that the FIR, diary entries, and drawings are sent to the relevant Court without delay.

Report - Following the conclusion of the investigation, a report must be submitted to the appropriate court, after which the investigating officer must conduct the trial quickly.

Inform kin - The closest kin of the accused victim or offender should be notified as soon as possible if death has happened.

Submission of the report - The Director General of Police is required to send six monthly statements to the NHRC detailing every instance in which a person has died as a result of a police shooting.

Disciplinary action - If it is determined at the end of an inquiry that a fatality was caused by the use of a firearm, which constitutes an offence under the IPC, 1860, disciplinary action must be taken against the police officer who committed the offence.

Compensation - The dependents of the victims must get compensation in line with the terms of Section 357-A of the Criminal Procedure Code, 1973.

Surrender of weapons - The investigative team demands that the concerned police officer turn up their firearms for forensic examination.

Legal aid - The family of the accused police officer must be informed about the occurrence, and legal help should be made accessible to such families.

No Promotion/Gallantry Awards - The concerned officers would not be given a promotion or a gallantry medal right away after the incident.

Grievance Redressal - If the victim's family discovers that the aforementioned rules are not being followed, they may file a complaint with the Sessions Judge in charge of the incident's location.

By its exclusive authority provided by Article 141 of the Indian Constitution, the Supreme Court of India has accorded these recommendations the character of statutory law.

NATIONAL HUMAN RIGHTS COMMISSION GUIDELINES

The NHRC's chairman, Justice M.N. Venkatachaliah wrote to all of India's Chief Ministers in March 1997 to advise them of the complaints the NHRC had received regarding the prevalence of false encounters by the police from members of the general public and NGOs. According to Justice Venkatachaliah, the police are not authorised to take someone's life unless one of the following situations occurs:

- If death is caused in the exercise of the right of private defence

- When it's required to arrest for an offence carrying the death penalty or a life sentence, the police are permitted to use force up to and including lethal force under Section 46 of the Criminal Procedure Code, 1973.

Following that, the NHRC issued a set of instructions to all States and Union Territories to ensure that police officers adhere to them in situations when police confrontations resulted in deaths.

Registration - The responsible police officer is required to enter all details regarding a fatal encounter in the proper registry.

Investigation - The police must look into all the pertinent details, incidents, and information they have learned concerning the deceased.

Compensation - If the police officer is charged as a result of the inquiry, adequate compensation must be given to the deceased's dependents.

Independent agency - An impartial investigating organisation, such as the State CID, must be forwarded the cases for inquiry.

The NHRC also developed some additional rules in 2010 that broadened the scope of the aforementioned ones.

Registration of FIR - When a complaint is made against a police officer that constitutes a cognizable offence, an FIR must be filed by the applicable legal requirements.

Magisterial Probe - A Magisterial enquiry has to be conducted in all cases of death caused due to police action.

Reporting to NHRC - The Superintendent of the police must notify the NHRC of all causes of death resulting from police action within 48 hours of the death's occurrence.

Second Report - Within three months following the results of the magistrate's inquiry, the post-mortem report, etc., a second report must be filed to the NHRC.

As a result, the NHRC has helped the Supreme Court of India by adding to the body of law surrounding the complicated subject of extrajudicial murders in India.

CASES OF EXTRA-JUDICIAL KILLINGS

Khatri and others. v the State of Bihar[2] (1980) - The police in Bihar began using a very brutal method to elicit information or confessions from the suspects in the years 1979–1980 due to the rise in crimes such as kidnapping, murder, and abduction. They did this by pouring acid into the suspects' eyes, which burned their eyes and ultimately caused them to become instantly blind. About 31 people reported this occurrence. The court found the police officers responsible for this incident guilty. Additionally, this case was the first time in history that the Supreme Court considered paying the victim compensation.

D.K. Basu v State of West Bengal[3] (1996) - The Supreme Court provided various directives for the police on how to treat or question the suspects after ruling that physical abuse in detention or extrajudicial murders violates any human being's dignity.

PUCL v State of Maharashtra[4] (2014) - 99 encounter deaths committed by the Mumbai police between 1995 and 1997 were under scrutiny by the Supreme Court, which questioned their veracity. In addition, the Supreme Court established a 16-point guideline that should be followed as the norm in situations of fatalities or grave injuries sustained during confrontations with the police.

G.S. Mani v Union of India (2019) - It was the rape case of Priyanka Reddy of Hyderabad. In this case, at the scene where the victim's body was found, the police murdered the accused during a confrontation. Priyanka Reddy, a veterinarian, was sexually assaulted before having some of her body burned.

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[2] *Khatri & Ors v the State of Bihar* (1981) 1 SCC 627
[3] *D.K. Basu v State of West Bengal* (1997) 1 SCC 416
[4] *PUCL v State of Maharashtra* (2014) 10 SCC 635

Vikas Dubey v State of UP (2020) - Vikas Dubey, a wanted mobster in Uttar Pradesh, was slain by U.P. police during an encounter, and no proof was discovered against the officers.

LEGAL PROVISIONS RELATED TO EXTRA-JUDICIAL KILLINGS

Regardless matter how severe the act was, there are no explicit rules in the Indian legal system that allow any official to murder an accused person without first gaining permission from the state's legal authorities. However, the laws listed below permit an authority to use physical force against a criminal.

Section 100 of the Indian Penal Code (IPC), 1860 - It provides permission for each person to use their right of self-defence, which can include killing the other person if they have a good basis to believe that their lives are in danger. The right to self-defence is a fundamental one.

Section 46 of the Criminal procedure Code (CrPC) 1973 - It enables the use of any amount of force necessary by the police to make the arrest or stop the escape of the accused.

Section 4 of Armed Forces (Special Powers) Act (AFSPA) 1958 - It gives every commissioned, non-commissioned, and warrant officer the right to use lethal force against anybody they suspect of breaking the law in a tense situation and whom they deem essential to keep the peace, up to and including killing them.

The Indian legal system contains additional measures that, in a sense, offer victims of extrajudicial executions or brutality in detention recourse. They are as follows:

Section 300 of the Indian Penal Code (IPC), 1860 - Stipulates that if a public official exceeds the authority granted to him by law and kills someone he in good faith thinks is required for the maintenance of public order and for attaining justice, it is not murder.

Section 176(1) of Criminal Procedure Code (CrPC), 1973 - In addition to the police investigation, a judicial magistrate or metropolitan magistrate should undertake an investigation into any death, disappearance, or rape that occurs while a person is in police custody.

CONSTITUTIONALITY OF EXTRA-JUDICIAL KILLINGS

Encounter killings violate offenders' fundamental rights since everyone has the right to life and liberty, which may only be taken away through the legal process outlined in Article 21 of the Constitution. All people are guaranteed this right, which includes a fair investigation and trial even if they are charged with a serious offence, protecting their equality before the law as stated in Article 14. Additionally, under Article 22 and Section 303 of the Criminal Procedure Code, an accused individual has a statutory right to be represented by an advocate of his choosing. The concept of Audi alteram partem is violated when the police act as the judge in a phoney encounter without allowing the accused a fair opportunity to be heard in a suitable courtroom. Therefore, the police must preserve the constitutional ideals and the right to life of every person, whether they be fearsome criminals or innocent law-abiding citizens.

Natural justice principles dictate that no party in a legal proceeding should go unheard and that the accused must be heard for the court to determine the merits of the case or the accused's guilt. After being detained, everyone has the right to a fair trial; however, extrajudicial murders remove this right. In India, one is deemed innocent until proven guilty, however, in extrajudicial executions, one is killed by the police without the chance to prove their innocence. Even if they are not guilty, there is a chance that the police will kill an innocent person. According to the Indian Constitution, everyone has the right to equal opportunity, even those who are accused, and should be given the same chance to defend their innocence.

CAUSES BEHIND EXTRA-JUDICIAL KILLINGS

Work Pressure: As crimes rise in society daily, police in India are forced to cope with difficult circumstances including riots, unrest in the streets, corruption, and other issues that impact law and order. As soon as a crime is committed, pressure from numerous sources to perform better and conduct investigations more quickly begins to mount on the police. As a result, the government and the general public put pressure on the police to treat offenders brutally to get information or elicit a confession. Today's criminals are well-prepared, well-armed, and outfitted with modern weaponry. They are unstoppable by a typical officer carrying a little

handgun or even a weapon that was frequently given to him. As a result, strong criminals have an easy time eluding the law. The Indian police currently find itself helpless in areas such as modern equipment and weaponry, transportation management, correspondence organisation, and, most crucially, modern training, which is necessary to increase the police officer's effectiveness and persuasiveness in enforcing the law.

Greed for Money: Greed for money is one of the causes of involuntary suffering, and it is on the edge of getting worse every day. Many police officers abuse prisoners and innocent bystanders at police stations to get money from them. The topic in the FIR was written truly depends on the policeman on duty when the FIR was registered, and the courts give the FIR more weight. For instance, when investigating a dacoity case, police may compromise a law-abiding individual, even assault him, or effectively detain him until he pays money. Considering that an effort may be made to repel the police officer in question, oversight occurs after the incident has occurred or after it is past the point of no return, and he can simply alter the evidence against him. This is one of the factors contributing to the rise in corruption within the police force.

Punitive Violence: Few police personnel adheres to the philosophy of not allowing criminals to commit crimes. They genuinely believe there is no other effective way to manage offenders save a good beating, thus they employ a variety of methods and techniques for torturing criminals to instill terror in the minds of those who are considering committing crimes.

Public Support: Sometimes, the public encourages these extrajudicial executions because they believe the court will delay delivering justice. Because of the public's backing, police personnel are becoming more and more daring, leading to an increase in such killings.

Lack of Proper Training: The police lack the means to undertake a thorough investigation, which lowers the likelihood of conviction because if the court receives insufficient evidence in a case, the accused will be found not guilty. A simple approach for the police to convey to the people that law and order are being upheld in the region is via encounters. Sometimes the police authorities don't receive the proper training, which frequently increases third-degree practices.

Police officers and their subordinates should be adequately prepared to avoid being harsh with the public.

CONCLUSION

In principle, the executive, the legislative, and the judiciary are charged with carrying out certain responsibilities for the effective administration of a nation. While the country's legal system is responsible for the administration of justice, law enforcement agencies are responsible for preserving the nation's overall sense of law and order. Anyone who violates the law must be detained by law enforcement officials and brought before a judge for prosecution. However, in recent years, extrajudicial executions by law enforcement agents have prevented an accused person from seeking refuge in the legal system. It goes against the fundamental idea of power separation. The public's confidence is at risk due to these excessive actions by law enforcement. Even though the Indian Judiciary and quasi-judicial authorities have made tangible measures to create numerous criteria to guarantee staged or false encounters do not occur, their desire to stop the practice has not yet been successful. The fact that there have been more encounter killings in India is evidence of this. There are legal provisions that enable encounter killings, but they now appear to have been routinely abused by law enforcement. It is nonetheless crucial that police officers only utilise encounter killings as a legal means of exercising their right to self-defence when they have a good faith fear of further injury, as permitted by IPC 1860. Any infringement on this right to self-defence will be detrimental to the administration of justice, the rule of law, and equitable principles.

The rules set out by the NHRC and the Supreme Court must be rigorously obeyed by judicial authorities. To restore the criminal justice system's lost credibility and fast-track procedure, a comprehensive revamp is required. Finally, the media should refrain from characterising extrajudicial executions as heroic deeds because it undermines public confidence in our criminal justice system. State-sponsored terrorism or mayhem in the form of a "fake encounter" by the Police is undoubtedly not a welcome desideratum for an orderly and civilised society, and it can never be a substitute for the ultimate punishment through the curial process of a fair trial using the procedure set forth by law. Even though the Indian Judiciary and quasi-judicial authorities

have made tangible measures to create numerous criteria to guarantee staged or false encounters do not occur, their desire to stop the practice has not yet been successful. The fact that there have been more encounter killings in India is evidence of this. There are legal provisions that enable encounter killings, but they now appear to have been routinely abused by law enforcement.