



Law Enforcement Overreach

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This article is based on **“The widening fissure in India’s rule of law”** which was published in The Hindu on 18/12/2019. It talks about issues related to law enforcement overreach in pursuit of maintaining law and order.

Recently, there have been many events of protests by the vulnerable sections of society in India. Moreover, the nature of the suppression of dissent may reflect an imbalance of power between the law enforcement agencies and the citizens.

This imbalance of power can be reflected by several cases like

- **Sedition**

- **Khunti’s Sedition Case**

- Police had filed sedition cases against more than 10,000 people in the Khunti district (Jharkhand) over 2017 and 2018 when Adivasi villages erected stone monoliths with engravings of the Indian Constitution related to tribal autonomy. As a result of these FIRs, individuals spent many months in jail.
 - However, police named only 172 people in the charge sheet.

- **Fake Encounter**

- **Chhattisgarh Fake Encounter Case**

- In 2012, security forces in Chhattisgarh were engaged in the fake encounter- as held by a judicial probe.
 - Judicial probe completed a seven-year long investigation, found that the so-called encounter of “Maoists”, killed the people who were not Maoists, but innocent villagers.

Issues Related to Law Enforcement Overreach

- **Sedition law** was first enacted into the Indian Penal Code by the British government in 1870. However, the vague, ambiguous, and unclear wording of the sedition provision provides room for misuse of the law.
 - Sedition is defined as “disaffection” against the government, or bringing it into “hatred or contempt”.
 - In 1962, the Supreme Court decided on the constitutionality of Section 124A in **Kedar Nath Singh v State of Bihar**. The Supreme Court chose to uphold sedition law while claiming to “narrow it down”.

The court noted that only acts that had a **“tendency” to cause public disorder would fall within the scope of the sedition**. But, “tendency to cause public disorder” was almost as vague as the text of the original section.
 - As a result, the sedition law continues to be used for curbing dissent.
- Moreover, the **Unlawful Activities (Prevention) Act**, contains language that is as wide and vague, criminalising “membership” of terrorist gangs or unlawful organisations, without any explanation of what “membership” means.
- The problem of **“fake encounters”** has also long dogged the Indian polity.

Recent Telangana encounter case, where, acting on public interest litigation, the Supreme Court ordered an investigation to a “committee”, with a six-month reporting period.

Note: Telangana police “encountered” four people accused of a brutal rape and murder took place on December 6 2019.

Fake encounters take place because there do not exist adequate structures of accountability.

Way Forward

- Strict adherence to the **High Court of Punjab and Haryana guidelines** on the use of force by law enforcement agencies in **‘Karam Singh vs Hardyal Singh And Ors’ case 1979**.

The High Court underlined in its judgment that before any force can be used, three prerequisites are to be satisfied.

 - Firstly, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace.
 - Secondly, such assembly is ordered to be dispersed.
 - Thirdly, in spite of such orders to disperse, such assembly does not disperse.

- In 2009, the then **High Court of Andhra Pradesh** in an attempt to create a regime of accountability (to check fake encounters) passed a landmark judgment.
 - It held that there is the requirement that encounter deaths would be investigated as if they were murder cases.
 - An FIR would have to be registered against the police officers responsible for the encounter, and to the extent that they invoked self-defence, they would have to prove it.
 - However, this judgment was stayed by the Supreme Court, but a precise and transparent framework can be created based on Andhra Pradesh judgement.
- There is a need to frame laws that empower the citizens and put checks and balances on the arbitrary use of power.

For example, the **Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act**, the **Right to Information (RTI) Act**, have rebalanced the relationship between the individual and the state in important domains.

Law enforcement agencies act as the instrument of the sovereign, having a monopoly on the use of force. However, it must be remembered that in a democracy like India, people are the real sovereigns as highlighted by the Preamble which states that “We the people of India”.

Drishti Mains Questions:

Certain legislations have rebalanced the relationship between the individual and the state in favour of the individual, whereas some laws have made the State supreme resulting in a deep, pervasive imbalance of power. Comment. (250 words)