



Extra-judicial Killings

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Why in News

Recently, Vikas Dubey, a gangster was killed by the Uttar Pradesh Police in an encounter (extra-judicial killing). However, many experts raised questions on the encounter and demanded a judicial enquiry into the matter.

Key Points

- **Rights of Police:**

The police force has the right to injure or kill the criminal, **for the sole and only purpose of self-defense or where it is imminently necessary for the maintenance of peace and order.**

- Under **Section-96 of the Indian Penal Code (IPC)**, every human being has the right to private defense which is a natural and an inherent right.
- **Section-46 of the Criminal Procedure Code (CrPC)** authorises the police to use force, extending up to the cause of death, as may be necessary to arrest the person accused of an offence punishable with death or imprisonment for life.

- **Reasons behind Increasing Extra-judicial Killing:**

- **Public Support:** It emerges out of a lack of faith in the judiciary because many believe that the courts will not provide timely justice.

The fact of getting away with cold-blooded murders is the key reason behind police getting bolder by the day and killing at will.

- **Political Support:** Many leaders project encounter numbers as their achievement in maintaining law and order.

- **Rewards:** The police forces are very often rewarded and awarded for encounters.

The government provides promotion and cash incentives to the teams involved in the encounters.

- **Ineffective Institutions:** The National Human Rights Commission and the state human rights commissions have been redundant for many years.

Though the judiciary is fully empowered to take up such cases suo-moto, however, this has now become a very rare practice.

- **Hero-worshipping:** The police become heroes in the society as many people see them doing the job of cleaning up the Indian society by killing the criminals.

- Many times they are also projected as heroes on the silver screen with big budget films made on them and their 'heroic' acts.
- Amidst all the hero-worshipping, the people, the media and even the judiciary seem to cast aside the fact that all the killings are suspect unless they have been properly investigated and the real story established.

- **Constitutional Provision:**

- The Constitution of India intended for India to be a country governed by the **rule of law**.

As per the rule of law, the Constitution is the supreme power in the land and the legislative and the executive derive their authority from the constitution.

- There is a procedure prescribed by the law for **criminal investigation** which is embedded in the Constitution under **Article 21 as the Right to Life and Personal Liberty**. It is fundamental, non-derogable and is available to every person. Even the State cannot violate that right.

Hence, it is the responsibility of the police to follow the Constitutional principles and uphold the Right to Life of every individual whether an innocent one or a criminal.

- **Supreme Court Guidelines:**

- In the *PUCL vs State of Maharashtra case (2014)*, the SC was dealing with **writ petitions** questioning the genuineness of **99 encounter killings by the Mumbai Police** in which **135 alleged criminals** were shot dead **between 1995 and 1997**.
- The Supreme Court then laid down the following **16 point guidelines** as the **standard procedure** to be followed for **thorough, effective, and independent** investigation in the cases of death during police encounters. Some of which include:
 - **Record tip-off (intelligence) regarding criminal activities** pertaining to the commission of a grave criminal offence.
 - **Registering FIR:** If in pursuance to a tip-off, the police uses firearms and this results in the death of a person, then an **FIR initiating proper criminal investigation must be registered and be forwarded to the Court** without any delay.
 - **Independent Probe: Investigation** into such death must be done **by an independent CID team or a police team of another police station** under the supervision of a senior officer. It has to fulfil eight minimum investigation requirements like, identify the victim, recover and preserve evidentiary material, identify scene witnesses, etc.
 - **Inform NHRC:** The NHRC or State Human Rights Commission (as the case may be) must be **immediately informed** of the encounter death.
 - **Prompt Action:** Amounting to an offence under the IPC, disciplinary action must be initiated against the police officer found guilty of wrongful encounter and for the time being that officer must be suspended.
- The Court directed that these requirements/norms must be **strictly observed** in all cases of death and grievous injury in police encounters by treating them as a **law declared under Article 141** of the Indian Constitution.

- **NHRC Guidelines**

- In **March 1997**, **Justice M. N. Venkatachaliah** (the then chairperson of the NHRC), asked all states and Union Territories to ensure that police follows the following set of guidelines in cases of encounter killings:
 - **Register FIR:** When the in-charge of a Police Station receives information about the deaths in an encounter, he shall **record that information in the appropriate register.**
 - **Investigation:** Received information shall be regarded as **sufficient to suspect and immediate steps** must be undertaken to investigate the relevant facts and circumstances leading to the death so as to ascertain, if any, offence was committed and by whom.
 - **Compensation:** It can be granted to the dependents of the deceased when the police officers are prosecuted on the basis of the results of the investigation.
 - **Independent Agency:** Whenever the police officers belonging to the same police station are the members of the encounter party, it is appropriate that the cases for investigation are referred to some other **independent investigation agency**, such as State CID.
- In **2010**, NHRC **extended these guidelines by including:**
 - **Magisterial Probe:** A **magisterial enquiry** must be held in all cases of death which occurs in the course of police action, as expeditiously as possible (preferably **within three months**).
 - **Reporting to Commission:** All cases of deaths in police action in the states shall be preliminary **reported to the Commission** by the Senior Superintendent of Police/Superintendent of Police of the District **within 48 hours** of such death.

A **second report** must be sent in all cases to the Commission **within three months** providing information like a post mortem report, findings of the magisterial enquiry/enquiry by senior officers, etc.

Way Forward

- Encounter killings must be **investigated independently** as they affect the credibility of **rule of law**. There is a need to ensure that there exists a rule of law in the society that needs to be adhered to by every State authority and the masses.
- Ensuring proper physical custody of the accused in order to prevent any attack by them on the police personnel.

- Further, there is a dire need for complete **overhauling of the criminal justice system** and bringing out required **police reforms**.
 - Standard guidelines need to be laid down to better train the police personnel and equip them with all relevant skills so that they can effectively tackle every dreadful situation.
 - Human rights angles need to be kept in the mind while dealing with arrested individuals/persons.

Source: IE