

EXTRA-JUDICIAL KILLINGS AND RULE OF LAW – A CRITICAL ANALYSIS

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INTRODUCTION AND DEFINITION OF ENCOUNTER

An encounter is a spontaneous meeting, which is not planned. In a different word we can say a belligerent meeting. There is a sudden often clash between the two parties. In the late 20th century India and Pakistan describe encounter as putative extrajudicial killing by the police or the armed forces, supposedly in self-defence, when they encounter suspect gangster or terrorist. Extrajudicial are those executions carried out in the absence of a death sentence imposed by a court judgement. In the human rights context, extrajudicial executions are illegal and intended killing carried out by the order of a government or with its connivance or accession other implementation. This Elucidation is used to distinguish encounter from like capital punishment after a fair trial.

A "fake encounter" happens when the police or the armed forces kill the suspects when they are in custody of the police, and then the police claim that they had to shoot in their self-defence because of sudden clash between the two parties. In such circumstances, the police may plant weapons and other evidences near the body to supply justification for the killing. We can say an extrajudicial execution is intentional, not accidental. Strictly speaking encounter is government or with its acquiescence. The concept of carried out of encounter out by order of a type of killing by the officers carrying out law imposition involving a function of disproportionate use of force to any threat posed. The combination of conducts several law and governmental involvement puts extrajudicial execution is, in effect, a murder committed or condoned by the state. The unlawfulness of encounter of against the distinguishes it from warranted killing in self-defence deaths resulting from the use of reasonable force in law

enforcement killing in war that are not forbidden under international laws regulating the conductor armed conflict, and the use of the death penalty following to legitimate process

Personal Liberty- Liberty originates from Latin word *libertas*, derived from the name of the goddess *Libertas*, who along with the Goddess of liberty usually portrays the concept and archaic Roman god *Liber*. According to Marcus Aurelius', a polity in which there is the same law for all, a polity administered with regard to equal right and equal freedom of speech and the idea of a kingly government which respect most of all the freedom of the governed Broadly speaking, liberty is the ability to do as one's satisfying. Liberty is similar word of freedom. In this present time freedom is what we call, being free from society brutal limitations pushed by the authorities. If we look liberty from the view of philosophy, it requires free will as contrast with determinism. Liberty from the view of the freedom from the effect of sin. In some cases, we use the word freedom to make differentiate from the word liberty. It involves the charge of freedom under the rule of law without violating the rules and regulation of law. Right to personal liberty is essentially a personal freedom in which the government cannot abridge. This right was introduced with other human rights which can be formally traced back to the English Magna Carta of 12152 According to our 'Indian constitution "No person shall be deprived of his life and personal liberty except according to the procedure establish by law." In this article two words are important "life" and personal liberty. The word personal liberty was first came up for contemplation in the case of *A. K. Gopalan v. State of Madras*. In this case Supreme Court held that the word "liberty has a very wide meaning but when it is qualified by the word 'personal", the spectrum of the concept of liberty diminishes that means, it does not include all the meaning which comes within the term 'liberty'. The Supreme Court upheld in the matter of *Menka Gandhi*' that the procedure establish by law should be just fair and reasonable.

HISTORY

Extra-Judicial Killing General Augusto Pinochet, undertake power in 1973, instantly he commanded to get rid from death and torture and quite 3000 people hold up the government without trial. During his regime, which lasted from 1973 to 1989, elements of the military police continued committing extrajudicial killings. An extrajudicial killing (also referred to as extrajudicial execution) is that the killing of an individual by government authorities or

individuals without the sanction of any litigation or legal process. Extrajudicial killing frequently targeted to lead the way of some social figures, about trade and union etc. Unfortunately extrajudicial killings are not new in our country. They had been utilized in the past by the police and security forces in varying context to quell Insurgencies within the states of Bengal and Punjab in year 1960s and 1980s respectively. Currently the guise for several of those killing relate to national security offences including terrorism and in areas of active conflict, like in Kashmir state within the North East of India including Manipur, also as areas of central India suffering from the Maoist insurgency. Such killings also are regular feature in "ordinary" circumstances, for instance in those states that don't have active conflict and within the course of normal enforcement operations. As a result, such killings haven't escaped the notice of international rights expert at the United Nation previously, indicated in statement issued in 2012 and 2018.

Rule of Law- The term "Rule of law" springs from the French phrase *La Principe de Legality'* which refers to a government supported principles of law and not of men. In a broader sense Rule of law' means law is supreme and above every individual. No individual whether if he's poor, rich, ruler or ruled. The concept of Rule of law is extremely old. In the 13th century, a judge Bracton, in the area of Henry found a rule of law and without mentioning as law of rule. He wrote: The king needs himself to be subject to God and therefore the law, because law makes him king. Edward coke is claimed to be originator of concept of Rule of Law when he said king should be under the law and the god and by this execution;, law would be superior to all others. In India, the concept of 'Rule of Law' is often traced back to the Upanishads. It is as long as the law, that is like Rule of Law' is the king of kings. The idea of "Rule of law" praise to professor A. V Dicey, in his book " Introduction to the study of the law of Constitution ", printed in the year 1885 and was doing hard to enlarge the idea of law.

EFFECTS OF ENCOUNTER ON SOCIETY

The Rule of law builds our society a civilised society, that each one gets their own right. The government and private sector are under the rule of law, no person is supreme and no one can be punished until and unless they will breach the law. But by the encounter many questions raise like when the police themselves seems to break the law, who will hold into count? If

policemen themselves break the law, then citizens will also follow them. They will also take laws into their hands and violate the rule and regulations of law. Encounter is not something which is acceptable at large because it's not even the last option to be taken as consideration. Encounter can never be justified in law or even in anywhere else. This does not give right message to society. The judiciary is here to determine who is culprit or who is not. It is not right of the police to declare whether a person is guilty or not. This arbitrariness action also gives the message that government is superior and judiciary is nothing, it's dead but it's wrong. No one is supreme then the 'Rule of Law' (Constitution).

The Congregationalism says that government is not supreme, Constitution and law is supreme. And of course it's a violation of human rights; government should not breach fundamental rights anyhow. Everyone has right to equal justice and equal opportunities to have judicial procedures. So, you can't kill anybody because in India everyone has the right of life that is a fundamental right and state has to secure it, but here encountering means, state violates the Fundamental Right We have a Court system then how could police kill someone until he is not proven guilty in eyes of law. Criminal philosophy is also an encounter philosophy. Even some time it also happens that officers or politicians warned policemen and told them that it should not look like murder frame it like an encounter. Sometimes there is a big hand of politicians behind the encounter

The most important impact of the encounter falls on the victim's family, their social value decreases, people start looking at them like criminal's family and all these type of things cause a bad effect on the mind of the children. Sometimes situation can be different like when there is only a single earning person in the family, and that person is killed by a fake encounter then family faces major financial problems and because of financial problems most probably their kids can start doing illegal works to fulfil the needs of their family. Here it means becoming criminal is always not a choice but sometimes it become the last option. They become criminal because of the situation. Seeing all these things by their children like financial problems, decreases social status, a feeling of revenge born inside them, this might make them a new criminal.

Legality- Justice Venkatachaliah, underlined that "Under our laws the police have not been conferred any right to take away the life of another person" and "if, by his act, the policeman kills a person, he commits the offence of culpable homicide whether amounting to the offence

of murder or not unless it is proved that such killing was not an offence under the law". The usual defense pressed into service by the policemen to explode encounter killing is that the act of killing had to be resorted, so as to save lots of themselves from deadly attack made by the victim. Contrary to the favoured misunderstanding that encounter killing may be defense available only to the police personnel it's appropriate in touch in mind that encounter killing may be a defense available to all or any persons including the police. According to NHRC guidelines" their actions would not constitute an offence in only two circumstances: • if they have killed the individual in their private defence and, if use of force extending to death is necessary for making an arrest. Although, there is no purveying in the Indian law that directly allowed the encounter of criminal, however there are definite enabling provision which may be elucidated differently to vest police officers with certain powers to deal with criminals. We all know that fake encounter itself is an illegal word then how it often taken under the legality.

GUIDELINES REGARDING ENCOUNTER

Supreme Court Guidelines-

1. The Supreme Court laid down on the matter of fake encounter killings by the police, ruling in a writ petition which was filed by the People's Union for Civil Liberties (PUCL). The Supreme Court of India laid down 16 guidelines, in its judgment in PUCL vs State of Maharashtra, which should be followed when it came to investigation in encounter killings by the police. The bench including Justices RM Lodha and Rohinton Nariman noted that the Article 21 of the Indian Constitution guarantees that no person shall be deprived of their life or liberty except according to procedure established by law which is applicable to everyone, and that the government does not have the power to violate this.

Regarding the alerts tip and tip-off: Whenever the executive investigates some criminal activities and when they got some tip off, then it must be in some form whether it is in writing or in some electronic form.

2. Registration of FIR in case of encounter killing: Coming next, either in a sequence of tip off like in a dispute, if the firearms was first done by the policemen and this cause a death of person, then FIR should be done by the proper investigation and shall be forwarded to the 157

of the code without any delay. Forwarding the report under sect 157 of the code, the thing prescribed in the section 158 of the code shall be followed.

3. Investigation of the encounter killing: -As discuss in last point, if the firearm was first done by the police and that cause a death of a person, then investigation of the encounter killing should be done by the CID or the executive of any police station except those, who were indulge in the dispute, they cannot investigate about that case, the reason behind this if they indulge in the investigation then they might become a barrier of free and flow of the investigation. Hence there is a need of new investigation team or an independent agency to check about this matter One more thing which should keep in mind that the investigation must be done under the senior officer who is not indulge in the case and apart from the police.

4. Magisterial investigation: -It's mandatory to send all the cases, Le the cases of the police firing and all the reports related to encounter must be sent to judicial magistrate having jurisdiction under section 190 of the code

5. Informing the NHRC: -The National Human Rights Commission or the State Human Rights Commission must be informed about all the encounter killing or whatever happen. But the most important point that NHRC or the NHRC should not indulge themselves in the investigation until and unless there was a serious issue that the investigation is not taking fairly.

6. Medical Aid to victim: -The injured victim should be provided a medical Aid as soon as possible and the statement of the victim must be recorded by the medical officer with the certificate that he/she is fit.

7. Timely submission of document in the court: The sketch, Statement, diary entries, FIR all this information related to encounter must be sent to the court

8. Report should be submitted to the court: -After completing of the investigation, the investigation authority must submit the details of the encounter killing to the concerned court as per the 173 of Cr. P. C. The investigation officers without any delay must submit the charge sheet and proper trial must be done with the speed and efficiency.

9. Informing the family members of the victim: -If the firearms by policemen results the death of the victim, the member of his/her family must be informed as soon as possible.

10. Submission of the 6 monthly report to the NHRC: -Half yearly or 6 month reports should be submitted to the National Human Rights Commission, regarding the information of encounter killing or the death by the policemen firearms. The reports should reach the NHRC timely till the 15th day of January or July.

11. Action against the guilty policemen: -After all the investigation and checking the evidence were against of policemen that all the evidence shows that policemen had committed offence under the IPC by the use of firearms on the victim, then necessary action must be against of those officers must be suspended.

12. Compensation to the dependents: If it's proved that policemen had committed offence under the IPC the dependent of that family must be given compensation under the provision of section 357 of the Cr. P. C.

13. Cops must be surrender their weapons: When the investigation was going on the police, officers must surrender their weapon for the subject of right under the Article 20 of the Constitution.

14. Inform cop's family, give legal: Aid: -Information must be given to the cop's family about whatever happened and whatever the family needs like, lawyer, counselling etc. all the things will be provided to them.

15. No immediate award for cops involved: -If the police officer found guilty then no gallantry awarded will be given to him not even in the future and no promotion will be done for him.

16. Victim's family can approach court against bias in probe: -If the victim's family complain about the session, if they feel that the above guidelines have not been followed or they are abusing them or there is lack of investigation, that they are not doing investigation properly then the judge look after all the things and make their complain clear by doing those things.

NHRC Guidelines-

In the year 1993, the National Human Right Commission issued general guidelines which say that every case of custodial death must be intimated to it within 24 hours. After that, the post mortem reports, inquest requests, and other related documentation was to be sent to the human rights watchdog to ascertain its reliability within two months of the incident. The guidelines of

the commission were instructed after a complaint received from Andhra Pradesh civil liberties joining alleging a series of faux encounter within the state to remove persons identified as Maoists or the member of people's war group. The Commission would grant compensation to the victim's family if a death is prime facie found to be a case of death that took place unlawfully. In the year 1997, M N Venkatachalaiah in a letter which was addressed to the chief ministers of all the states, said that if a policeman found responsible for a custodial death then he would have the same defences available in law which are available to a common man, and have no special protection. Therefore, this meant that in every case of custodial death, the indulge officers would be on trial, and their actions would not constitute an offence in only two circumstances: if they have killed the individual in their private defence and, if use of force extending to death is necessary for making an arrest. In 2010, NHRC extended these guidelines by including some more things

Registering of FIR- When a complaint is made against the police alleging like: committing an act of criminal liability recognized as cognizable case of culpable homicide as defined in IPC, then an FIR should be registered under related sections of the Indian Penal Code.

Magisterial enquiry- An enquiry by Magistrate must be held in all cases of death which occurs in the course of police action, as soon as possible (preferably within three months). Submission of report to Commission- In all cases of deaths by police action, the state Commissions shall be preliminary reported by the Senior Superintendent of Police/Superintendent of Police of the District within 48 hours of such death.

Second Report- A second report must be sent in all this type of cases of deaths to the Commission within three months of such matter including information like report of post mortem, findings of enquiry by the magistrate or by senior officers, etc.

Provisions regarding Compensation- The compensation are ordered by the court. It can be sought through the procedure established by the court. It can be for material as well as non-material damages. The provisions related to compensation for the victim of crime are described in sections 357, 357(1), 357(2),357(3), 357A ,358 359 and 250 of the code of criminal procedure in 1973. If it's proved that involved officers had committed offence under the provisions of IPC the dependent members of that family must be given compensation under section 357 of Cr. P. C. If innocent were killed in the encounter, then compensation will be

given to his family. Section 357 of Cr. P. C. clearly says that every state government shall prepare a scheme for providing funds for the purpose of compensation to victim or his dependent who have suffered loss or injury as a result of the encounter and who require rehabilitation. Whenever the Court recommend for compensation, as the case may be, the State Legal Service Authority or the District Legal Service Authority shall decide the quantum of compensation which will be awarded under the scheme prepared by the state government.

SUGGESTION: HOW TO PREVENT

- Proper investigation by SIT Proper investigation must be done by a SIT (special investigation team) so that real culprit can be found. In most of the cases there is someone else behind the scene but someone else caught, this happens due to lack of proper investigation. So proper investigation must be done by SIT
- Guidelines must be followed strictly Guidelines of Supreme Court and NHRC must be followed strictly, if after investigation anyone found guilty of violating the guidelines, that person must be get punished.
- Non-interference of political parties- In most of the cases the reason of extrajudicial killings, are the politicians. It's a bitter truth that in our country most politicians belong to a criminal background. Some leaders or politicians ordered the cops to make as an encounter, just to hide their names because doing encounter will close the entire topic. So, there should be no involvement of political parties in legal actions.

Speedy Investigation must be done as soon as possible. There should not be any delays because if it delays then evidences may be removed. So, the investigation must be done in time and by this we can reach to the impartial decision.

Transparency- The major point is clarity. The investigation should be fair and clear, if there is no involvement of third parties, there will be less chance of unfairness. And by this type of investigation things will be clear in front of the people and then decision will be also fair.

CONCLUSION

Illegal killings by government officials and other well-built groups have been in exercise in most of the countries around the world. Reports are filed but never investigated properly or rarely studied. There are still many cases of fake encounter in Nigeria, India, Philippines, Bangladesh, Pakistan, Nicaragua etc. there are still many challenges to get over. The issues of officers executing unlawfully, custodial deaths, fake encounters still prevail on large scale. There are no special acts or strong legislation made in opposition to this practice. Although the Supreme Court and National Human Rights Commission have issued some guidelines to be followed and a special investigation should be done as soon as possible. Ultimately, to control this type of crime there needs to be a strong act protecting the right related to life of people in the country, a change must be made in the acts which provide powers to government officials. Educating people with their rights is also a good step which may stop crimes in society at a large.

