

EXTRA-JUDICIAL KILLINGS: A TERMITE HOLLOWING DEMOCRACY

Nittyam Modi*

INTRODUCTION

The recent sensational killing of Atiq Ahmed has once again revived the issue of extra-judicial killings and initiated a debate in the Country's Highest Court. The principle that "everyone is equal in the eyes of the law" is a fundamental tenet of our constitutional principles. The executive branch is responsible for law enforcement and ensuring the protection of the accused until they are in custody. Our constitutional forefathers wisely delineated a clear separation of powers between the three branches of government. They understood that once this separation blurred, chaos and havoc would ensue. The Constitution explicitly outlines the functions of each branch, with the power of decision-making and verdict pronouncement exclusively delegated to the judicial branch.

It is regrettable to witness instances where the executive branch exceeds its authority and takes the law into its own hands, contradicting its mandate to prevent others from doing so. At times, it is shameful to observe government officials acting as masters, treating others as their property, with entitlements over their rights. This leads to the instance of extrajudicial killings which leave a deep scar on the heart of this democratic country. In this article, we will take a closer look at extrajudicial killings by delving into the definition of this practice, the motives behind it, and the measures taken by the apex court and NHRC to address it. Additionally, we will explore how extrajudicial killings are often glorified and depicted as acts of heroism in popular films.

WHAT IS MEANT BY EXTRA-JUDICIAL KILLINGS?

An extrajudicial killing (also known as an extrajudicial execution or an extralegal killing) is the deliberate killing of a person without the lawful authority granted by a judicial proceeding. It typically refers to government authorities, whether lawfully or unlawfully, targeting specific people for death, which in authoritarian regimes often involves political, trade union, dissident, religious, and social figures. The term is typically used in situations that imply the human rights of the victims have been violated; deaths caused by legitimate

*BA LLB, OP JINDAL GLOBAL UNIVERSITY, SONIPAT.

warfighting or police actions are generally not included, even though military and police forces are often used for killings seen by critics as illegitimate. The label "extrajudicial killing" has also been applied to organized, lethal enforcement of extralegal social norms by non-government actors, including lynchings and honor killings.

The very definition of extra-judicial killings is enough to send shivers down anyone's spine. What makes it even more horrifying is that the perpetrator is often disguised as a government servant. The principle that "everyone has the right to be heard in the court of law" is integral to the justice system of any country. However, in extra-judicial killings, the accused is denied the opportunity to present their case before a judge.

The concept of "innocent until proven guilty" presupposes that every accused is considered innocent until proven guilty by a court of law. This fundamental notion comes into direct conflict when an accused, who is presumed innocent until proven guilty, is murdered by someone disguised as a government servant.

Extra-judicial killings not only make a complete mockery of human rights and fundamental rights but also undermine the very essence of the Constitution and the judicial system itself. Although the National Human Rights Commission (NHRC) has issued guidelines for encounter killings, it is often perceived as a "toothless tiger that cannot even roar." Consequently, NHRC guidelines are routinely violated. While the NHRC plays a role in these killings, the root causes can be traced back to corrupt electoral politics and flawed policing, which erode the efficacy of India's judicial system

WHAT ARE THE REASONS BEHIND EXTRA JUDICIAL KILLINGS?

Flawed policing: Ineffective and corrupt policing is one of the primary reasons behind extra-judicial killings. Police officers may take the law into their own hands because they feel that the legal system is too slow or ineffective. Usually, a court proceeding may take up to several years for their judgment, furthermore, in some cases, police officers may feel pressured by the public to take action against individuals who are perceived to be criminals or terrorists. This pressure can result in extrajudicial killings.

According to the 2023 National Judicial Data Grid (NJDG) data, there are over 4.3 crores (43 million) cases pending across all courts in India, including the Supreme Court, High Courts,

and lower courts¹. As of February 2023, the Supreme Court had a backlog of over 69,000 cases, while the High Courts had a backlog of over 59 lacks (5.9 million) cases².

The National Crime Records Bureau (NCRB) report for 2019 shows that the average time taken for a case to be disposed of in India's subordinate courts was 1,442 days or almost 4 years³. The same NCRB report shows that the average time taken for a case to be disposed of in the High Courts was 3,583 days or almost 10 years⁴.

In a recent report, the Law Commission of India noted that there are over 3.3 crores (33 million) cases pending in the subordinate courts, and at the current rate of disposal, it would take more than 15 years to clear the backlog⁵. A study conducted by the Vidhi Centre for Legal Policy in 2020 found that on average, a civil case in India takes around 5 years to be disposed of, while a criminal case takes around 4 years⁶

Prejudice: Prejudice and bias can also be factors in extra-judicial killings. Police officers may target individuals based on their race, religion, or caste. There are several instances of selective extra-judicial killings which may target a particular group, caste, creed, or color. A police officer may hold illogical or untrue assumptions about a person which may be incorrect which is often accompanied by a feeling of hate, it is this hate and prejudice which leads to extra judicial killings.

NHRC & SC GUIDELINES ON EXTRA JUDICIAL ENCOUNTERS

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The National Human Rights Commission (NHRC) and the Supreme Court of India are the two significant institutions that play a vital role in combating the menace that has been plaguing our democracy. In particular, the NHRC has been a potent and vocal force in raising its voice against the issue of extra-judicial encounters. In March 1997, the then-chairperson

¹ National Judicial Data Grid, 'Pendency of Cases' (eCourts Project, accessed 19 April 2023)

<https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard>

² The Economic Times "Nearly 60 lakh cases pending in HCs, over 69,000 in Supreme Court"

<https://economictimes.indiatimes.com/news/india/a-healthy-india-means-a-healthy-world-who-representative/articleshow/99592786.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst%20> accessed 19 April 2023

³NCRB , The National Crime Records Bureau , 2019

<<https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>>accessed 19 April 2023

⁴NCRB , The National Crime Records Bureau , 2019

<<https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf>>accessed 19 April 2023

⁵ Business Today , "3.3 crore cases pending in Indian courts; pendency figure highest: CJI Dipak Misra." , 28 June 2018,<<https://www.businesstoday.in/latest/economy-politics/story/3-3-crore-cases-pending-indian-courts-pendency-figure-highest-cji-dipak-misra-148277-2018-06-28>>

⁶Vidhi Centre for Legal Policy ,Inefficiency And Judicial Delay , <https://vidhilegalpolicy.in/wp-content/uploads/2020/06/InefficiencyandJudicialDelay_Vidhi-1.pdf>

of the National Human Rights), Justice M.N. Venkatachaliah, communicated with all Chief Ministers, expressing concern over increasing reports of fake police encounters resulting in the killing of suspects without due process of law.⁷

Justice Venkatachaliah emphasized that under Indian law, police officers do not possess the right to take the life of another person except under two circumstances: exercising the right of private defense or utilizing force, up to and including deadly force, when arresting individuals accused of a crime punishable by death or life imprisonment.

The NHRC urged all states and Union Territories to follow a set of guidelines in cases of police encounters resulting in death:⁸

- The in charge of a police station should enter information about deaths in encounters in the appropriate register.
- Immediate steps should be taken to investigate the facts and circumstances leading to the death to ascertain what if any, offense was committed and by whom.
- Cases should be made over for investigation to some other independent investigation agency, such as State CID.
- Compensation to the dependents of the deceased may be considered in cases ending in a conviction if police officers are prosecuted on the basis of the results of the investigation.

In May 2010, then-acting NHRC chairperson Justice G.P. Mathur reiterated that police officers do not possess the authority to take the life of another person. Despite the NHRC's guidelines, many states have not adhered to them in their entirety. The NHRC has since expanded the guidelines to include procedures⁹ -:

- Whenever a specific complaint is made against the police alleging the commission of a criminal act that makes out a cognizable case of culpable homicide, an FIR to this effect must be registered under appropriate sections of the IPC.
- A magisterial inquiry must be held in all cases of death which occur in the course of police action, as expeditiously as possible, preferably within three months.

⁷The Indian Express, Explained: What are encounter killings and why is NHRC examining Telangana case? <<https://indianexpress.com/article/explained/explained-encounter-killings-nhrc-supreme-court-hyderabad-rape-murder-case-6153683/>> Accessed 20 April , 2023

⁸*Ibid*

⁹*Supra* Note 7

- All cases of deaths in police action in the states shall be reported to the Commission by the Senior Superintendent of Police/Superintendent of Police of the District within 48 hours of such death in a given format.
- A second report must be sent in all cases to the Commission within three months providing information, including a post-mortem report, inquest report, and findings of the magisterial inquiry/inquiry by senior officers.

THE APEX COURT'S GUIDELINES

In a landmark judgment of the case 'People's Union for Civil Liberties & Anr vs State of Maharashtra and Ors' on September 23, 2014, the then Chief Justice of India, R M Lodha, and Justice Rohinton F Nariman, issued a detailed 16-point procedure for investigating police encounters in cases of death. The court's objective was to establish a standard procedure for a thorough, effective, and independent investigation. **Some of the directives include**¹⁰:

- Whenever the police receive any intelligence or tip-off regarding criminal movements or activities relating to the commission of a grave criminal offense, it should be reduced to writing in some form or in some electronic form, preferably in the case diary.
- If an encounter takes place and the firearm is used by the police party resulting in death, an FIR must be registered without any delay and forwarded to the court under Section 157 of the Code.
- An independent investigation into the incident/encounter must be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter).
- A Magisterial inquiry under Section 176 of the Code must be held in all cases of death that occur in the course of police firing, and a report thereof must be sent to the Judicial Magistrate having jurisdiction under Section 190 of the Code.
- NHRC's involvement is not necessary unless there is serious doubt about an independent and impartial investigation. However, the information about the incident must be sent to NHRC or the State Human Rights Commission without any delay.
- *The court further directed that these "requirements/norms must be strictly observed in all cases of death and grievous injury in police encounters by treating them as the law*

¹⁰*Ibid*

declared under Article 141 of the Constitution of India." These directives aim to establish a transparent and unbiased system for dealing with cases of extra-judicial killings and ensure justice for victims and their families.

ARE THERE ANY RELATED LAW PROVISIONS?

Section 96 of the Indian Penal Code (IPC), empowers private defense as an inherent right of every individual¹¹. The right to Private Defense can be exercised both for an individual and or saving the life of another individual in case of an "immediate" threat to one's life. This right can also be exercised by the police force in situations where it is necessary to maintain peace and order or for self-defense purposes or whenever there is a danger to their own lives. However one has to make sure that the action and the threat to a person must be proportionate to each other

However, Section 46 of the Indian Criminal Procedure Court¹² further grants police officials some special powers since they are part of the Executive Organ, to use "all means necessary" to arrest a detainee or control a situation, which can lead to excessive use of force resulting in death.

The Armed Forces (Special Powers) Act also provides the Indian Defense Force with extensive powers to use lethal force in various circumstances without adequate safeguards against the excessive use of such powers. This has led to numerous reports of violations in areas where AFSPA is applied. Section (4) of AFSPA gives special powers to army officers in disturbed areas to shoot (even if it kills) any individual who violates the law / or is suspected to violate the law (this includes assembly of five or more people, carrying of weapons), etc¹³. The only condition is that the officer has to give a warning before opening fire.

To prevent custodial abuses and deaths, several amendments have been made to our substantive and procedural laws in recent years. The Criminal Law Amendment Act, of 2013¹⁴, amended Section 376 of the IPC and added Section 114(A) to the Indian Evidence Act, of 1872, which deals with rape in police custody. Under the CRPC Amendment Act,

¹¹The Indian Penal Code, 1860, § 96.

¹²Criminal Procedure Code, 1973, § 46.

¹³Armed Forces (Special Powers) Act, 1958, § 4.

¹⁴The Criminal Law Amendment Act, 2013

2005, Section 176 of the CRPC¹⁵ was inserted, requiring a judicial magistrate or metropolitan magistrate to hold an inquiry if a person dies, disappears, or is raped while in police custody or custody authorized by the magistrate or court. The CRPC Amendment Act, 2008¹⁶ also provides custodial safeguards for persons in custody. The act curbs the power of arrest and provides protection to women in custody, victims, and witnesses. It is essential to ensure that police officials exercise their powers judiciously and adhere to the guidelines set forth by the judiciary and National Human Rights Commission. The use of excessive force, especially in situations that do not warrant it, must be avoided at all costs.

EXTRA JUDICIAL ENCOUNTERS: A PART OF POPULAR CULTURE?

There are numerous movies and books that depict extrajudicial killings. These acts are often justified by the false belief that the judicial system cannot be trusted to punish the perpetrators decisively. The long time taken in court proceedings is often used as an excuse to justify such killings. However, the general public hails such actions and considers the policemen heroes, unaware that this is illegal and punishable under the law. It is important to note that if violence is adopted for every pending case, the purpose and aim of the judiciary would be lost. Such movies and books set a bad precedent for future generations, who may begin to believe in the "an eye for an eye" mentality. Some examples of movies involving extrajudicial killings include:

- Mayanadi (2017)
- Paayum Puli (2015), a Tamil film starring Vishal
- Rege, a Marathi film (2014) starring Mahesh Manjrekar as Pradeep Sharma
- Risk (2007)
- Shootout at Lokhandwala (2007) and Shootout at Wadala (2013)
- Singam, a Tamil film series

CONCLUSION

The act of extrajudicial killing is a pernicious practice that can undermine the integrity of the judiciary and the public's trust in the government. It is imperative to acknowledge that the power to determine an individual's guilt or innocence lies solely with the judicial branch and

¹⁵Code of Criminal Procedure, 1973, § 176.

¹⁶The Code of Criminal Procedure (Amendment) Act, 2008, Act No. 5, Acts of Parliament, 2008

must be preserved. Law enforcement officers involved in such incidents must be held accountable and subjected to legal proceedings.

Every State authority and citizen must abide by the rule of law to ensure a just society. Moreover, the authorities must take adequate measures to ensure the safety of accused individuals in their physical custody to prevent any harm to police personnel. A complete overhaul of the criminal justice system and police reforms is necessary to address these issues.

The significance of ending extrajudicial killings is that they jeopardize the public's trust in India's judicial system and enable corrupt politicians and higher-ups to exploit the legal system. Therefore, it is imperative to establish a criminal justice system that is free from partisan influence and can bring about a qualitative transformation in India's political and security environment.

