

# A GROWING BLOT ON THE CRIMINAL JUSTICE SYSTEM

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The Indian criminal justice system increasingly reflects the idea of “power” rather than “justice”. Since the promise of criminal law as an instrument of safety is matched only by its power to destroy, guarantees of due process were accordingly incorporated in the criminal procedure so that every accused person gets a fair trial.

Winston Churchill said: “The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unflinching tests of the civilisation of any country.” We, in India, continue to follow a “culture of control” and a tendency to “govern through crime”. There are instances where the police, of late, have become the judge and the media, especially electronic, has started behaving like a court.

The deaths, in an encounter last Friday, of the four accused in the rape and murder of a young veterinarian in Hyderabad (it happened on Wednesday) has revived the debate on the “right to kill”, or “extra-judicial killings” or “fake encounters”, which is the ugly reality of our country. Earlier, these encounters used to be criticised by the public and media. But in the new and “resurgent” India, we have started celebrating this instant and brutal form of justice. Blood lust has become the norm in preference to due process and constitutional norms. For example, there were many in Hyderabad who were seen showering flower petals on the police officers involved in Friday’s encounter. Even the father of the Unnao rape victim has demanded “Hyderabad-like justice”. Is India moving from rule of law to rule by gun?

We have reason to be concerned about delays in rape trials. But a Hyderabad-like solution is absolutely out of the question. The new Chief Justice of India has rightly ruled out the instant justice model in a speech recently.

The right thing to do in rape cases is to appoint senior judges in fast track courts; no adjournments should be permitted, and rape courts should be put under the direct control of High Courts; the district judge should not have any power to interfere, and the trial must be completed within three months.

The only consolation is that India is not the only country that uses encounters. A UN working group on “Enforced or Involuntary Disappearances” has noted, with anguish, that guilty officials are generally not punished. India is also bound by Resolution 1989/65 of May 24, 1989 which had recommended that the principles on the “Effective Prevention and Investigation of Extra Legal, Arbitrary and Summary Executions” annexed to the Resolution be honoured by all governments. The UN General Assembly subsequently approved the principles. It resolved that the principles, “shall be taken into account and respected by governments within the framework of their national legislation and practices, and shall be brought to the attention of law enforcement and criminal justice officials, military personnel, lawyers, members of the executive and legislative bodies of the government and the public in general”. We have not done much in disseminating these guidelines and norms among our police and security forces.

In the absence of a proper knowledge of international norms, police in India continue to protest against human rights standards in dealing with criminals. Some years ago, in *Extra Judicial Execution Victim Families Association* — the Supreme Court of India was dealing with more

than 1,500 cases of such killings in Manipur, Justice Madan B. Lokur said: “Scrutiny by the courts in such cases leads to complaints by the state of its having to fight militants, insurgents and terrorists with one hand tied behind its back. This is not a valid criticism since and this is important, in such cases it is not the encounter or the operation that is under scrutiny but the smoking gun that is under scrutiny. There is a qualitative difference between use of force in an operation and use of such deadly force that is akin to using a sledgehammer to kill a fly; one is an act of self-defence while the other is an act of retaliation.”

The “Hyderabad encounter” does not look like an act of self-defence. It defies common sense and stretches credulity that the police would take accused to the scene of crime at 5.30 a.m. The sun rises a little after 6 a.m. The confession of rape by them to the police is irrelevant under Section 25 in the Indian Evidence Act, 1872. Moreover, our law does permit retraction of confessions by the accused.

The UN Human Rights Committee, in many reports, has said that “encounters are murders”. Encounter killings are probably the greatest violation of the most precious of all fundamental rights — the right to live with human dignity. Many a time these killings are fake and are so orchestrated that it is difficult to conclusively prove them wrong. These killings always take place with the prior consent of the highest authority, be it either administrative or ministerial. Encounters have indeed become the common phenomenon of our criminal justice system and there are police officers who covet the title “encounter specialists”.

Our legal system does not permit police officers to kill an accused merely because he is a dreaded criminal, rapist or terrorist. Undoubtedly, the police have to arrest the accused and make them face trial. The Supreme Court has repeatedly admonished trigger-happy police personnel who liquidate criminals and project the incident as an encounter. The court observed in *Om Prakash & Ors vs State Of Jharkhand & Anr on September 26, 2012*: “Such killings must be deprecated. They are not recognised as legal by our criminal justice administration system. They amount to state terrorism.”

During the Punjab insurgency in the 1980s, a large number of suspected militants were eliminated through the encounter killings. The DGP of the State, the late K.P.S. Gill, even got the Governor of the State transferred on questioning the police. Gill contemptuously termed those who tried to get justice in encounter matters as “litigation guns”. The police tried its best to silence those who wanted due process such as Jaswant Singh Kalra, an activist, who used government crematoria records of just one Punjab district to show that at least 6,000 people were secretly cremated by the police.

The Government of India itself admitted that as many as 2,097 people had been secretly cremated in Amritsar alone; in spite of the intervention of the National Human Rights Commission (NHRC) and the Supreme Court, just 30 cases were registered by the Central Bureau of Investigation. Punjab’s response to terrorism was appreciated all over as a model to be followed by other States.

Similarly, in Kashmir about 8,000 people who were apparently in police custody were eliminated in a similar manner though the government contests this figure and says some may have even crossed the border. Even after the so-called end of insurgency, encounters have not come to an end. In 2000 for the massacre of 36 Sikhs in Chittisinghpura, five suspected militants were killed in an encounter. Subsequent forensic tests showed them to be innocent local villagers.

NHRC data show that of the almost 2,500 killings in 1993, half turned out to be fake; there were at least 440 cases of encounters between 2002 to 2008. From 2009 to 2013, another 550 cases in different States were documented.

Andhra Pradesh too has been notorious as far as encounter killings are concerned. In February 2009, in its judgment on a writ petition filed by the Andhra Pradesh Civil Liberties Committee in the context of 1,800 encounter deaths (1997-2007), the Andhra Pradesh High Court (of united Andhra Pradesh) recognised that encounter deaths are, prima facie, cases of culpable homicide. Thus in all cases of encounter deaths a first information report must be registered, and an independent and impartial investigation ensured. The state's plea of self-defence has to be established at the stage of trial, and not during the stage of investigation. The Supreme Court gave an ex parte stay on the judgment. The High Court in Hyderabad has shown its displeasure over this killing and will hear the matter on Thursday. It has ordered that the bodies of the Hyderabad encounter be preserved till it hears the matter.

One hopes the top court of the land will now find the time to finally hear this important matter and uphold this progressive High Court judgment.

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