

Against human rights: on encounter killings

Cicero famously said, “We are in bondage to the law in order that we may be free.” John Adams said about the Massachusetts Constitution that it was intended to have a “government of laws not of men”. The rule of law has rightly been argued to be part of the basic structure of the Indian Constitution. It is an unqualified human good. The World Justice Project Index takes into account 44 indicators in 113 countries, and India’s rank in 2017-18 was a dismal 62. Denmark topped the list. In fact, our criminal justice system ranks even lower, at 66. Nepal is ahead of us on this. Police encounters, which have become a common phenomenon, do contribute to our low rank on ‘rule of law’ index.

Measure of arbitrariness

Rule of law is the fundamental principle of governance of any civilised liberal democracy. It is the anti-thesis of arbitrariness. Yet, the Uttar Pradesh government looks somewhat determined to disregard the first principles of the criminal justice system. Police encounters have become routine in U.P., and in December, Chief Minister Yogi Adityanath introduced in the State Assembly the [Uttar Pradesh Control of Organised Crime Bill, 2017](#) on the pattern of the regressive Maharashtra Control of Organised Crime Act (MCOCA). Such legislation does not promote the rule of law, but is itself a kind of violence, though a legitimate one with due authority of law. Such laws are basically examples of “rule by law” as law itself negates human rights and permits deviations from due processes. Authoritarian regimes, such as of Hitler, too govern through “rule by law” and oppose “rule of law”.

It seems that lately the U.P. police has assumed the role of both investigator and judge, and at times it successfully delivers instant justice. U.P. is fast becoming known for its police encounters, with Mr. Adityanath himself telling the U.P. Legislative Council in mid-February about the rare feat achieved by the police in [killing 40 criminals in as many as 1,200 encounters](#) since government formation. He said sympathy for criminals is dangerous for a democracy. He is also reported to have said that “bandook ka jawab bandook se diya jayega (the gun will be answered with a gun)”.

The National Human Rights Commission (NHRC) has issued notices on encounter deaths to the U.P. government.

The fundamental premise of the rule of law is that every human being, including the worst criminal, is entitled to basic human rights and due process. Encounter killings generally take place with the prior consent or in full knowledge of the top authority. What an irony that when after a long wait, the trial in cases of fake encounter takes place, the main culprits easily get discharged, and, in some cases, the Central Bureau of Investigation even refuses to file an appeal against such discharge, and subsequently many prosecution witnesses turn hostile, as has happened in the Sohrabuddin encounter case in Maharashtra.

Mr. Adityanath should not be alone blamed for the encounter culture. Such deaths have been taken place in States across India, and the excesses in Punjab in the 1980s and 1990s, for instance, are well recorded.

Like a sledgehammer

In July 2016 in the case of Extra Judicial Execution Victim Families Association, where the Supreme Court was dealing with more than 1,500 such killings in Manipur, Justice Madan B. Lokur observed: “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.”

Importantly, the above observations were about terrorists, not ordinary criminals like those being killed in U.P. encounters. From the details of U.P. encounters, they do not look like acts of defence by the U.P. police. These encounters demonstrate the government’s resolve to adopt ‘the rule by gun’ in preference to ‘the rule of law’.

We must recall what the Supreme Court said in the *Salwa Judum* case (2011): “The primordial value is that it is the responsibility of every organ of the State to function within the four corners of constitutional responsibility. That is the ultimate rule of law.”

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