

THE RIGHT TO LIFE ENDANGERED

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In this insightful article, Sudha Ramalingam and R.S. Akila highlight the apathy of the State machinery, judiciary and the civil society towards the increasing violations of the right to life through encounter killings. Tracing the history of response to encounter killings, the authors illustrate how perpetrators of this extra-legal deprivation of life and liberty are glorified in news media, revered by the State and civil society, and thus enjoy immunity from the clutches of the criminal justice system. The situation prevalent in a relatively stable Tamil Nadu is especially highlighted in order to demonstrate the falsity of the assumption that encounter killings are widespread only in conflict-ridden states. The willingness of society to acquiesce while the law of the court is replaced with the law of the street is attributed to the lack of faith of civil society in the criminal justice system. The authors lament the proliferation and acceptance of these extra-legal killings in a constitutional democracy like India, labelling the same to be unacceptable.

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INTRODUCTION

In its written word, the Indian Constitution assures to its citizens a tolerant, liberal, secular and democratic State. Through judicial interpretation, the Courts have furthered constitutional goals and have creatively infused Article 21 with life and vigour. The right to life has undergone a startling makeover and serves as the fountainhead of several rights. Various branches of law, particularly environmental law, owe their prosperity to Article 21.

Whilst jurisprudentially rich and considered immutable, in reality, the right to life taken in its strict and narrow sense, is easily dispensed with in the name of security, terrorism, naxalism or any populist concern *du jour*. Police and State excesses disregarding the right to life are perpetuated routinely and are tragically endorsed by the vocal sections of the civil society. In this note, I will attempt to illustrate the growing disregard towards the right to life by using encounter killings in Tamil Nadu and judicial response thereto as a case study.

Encounter killings

Extra-legal deprivation of life and liberty are considered gross violations of human rights. Enforced disappearances and extrajudicial executions are not infrequently used to stifle dissent and avoid confronting inconvenient truths and viewpoints. Whilst more known and sensationalized in societies facing civil war or internal disturbances, extra-legal executions are perpetrated in democratic and relatively peaceful and stable States as well.

In India, “encounter killings” are tragically common. Encounter killing is now a euphemism to indicate extrajudicial execution by the police in staged “encounter” scenarios where persons are killed apparently in exercise of the police’s right to self-defence. Incidents of encounter killings are widely reported in news media and are even glorified. Perpetrators of this brand of violence enjoy impunity and immunity from the criminal justice system. Further, police personnel with special “expertise” in extrajudicial killings are hailed as “encounter specialists”, enjoy key positions in the system and are revered in the State institution and in civil society. This widespread support of encounter killing is

also attributable to the fact that, most commonly, victims are those considered anti-social elements with criminal antecedents.

The Judiciary was slow to recognize encounter killings as a crime amounting to murder and initiate appropriate action against the delinquent police. The first judicial recognition that encounter killing is also homicide and required to be investigated and prosecuted came as late as 1995, when the Andhra Pradesh High Court was faced with the encounter killing of one Madhusudan Raj Yadav, trade union activist with alleged naxal affiliation.¹

This judicial acknowledgment was the fruit of efforts of human rights lawyers such as K.G. Kannabiran who tirelessly advocated that encounter killings be treated as murders, since they are that, for decades. However, the abovementioned decision did not change or even make a dent on the culture of impunity. Since the police do not register a First Information Report (“FIR”) against the involved police officers in cases of encounter killings, initiation of prosecution is not an easy task. Often the higher Judiciary has to be approached for a direction to register FIR and initiate investigation, and the same is agitated with varying degrees of success in individual cases.

NHRC and Encounter Killings

In the year 1996, the National Human Rights Commission (“NHRC”) while dealing with encounter killings of alleged naxals in Andhra Pradesh, pursuant to a complaint lodged by Andhra Pradesh Civil Liberties Committee, found that fake encounter killings were startlingly common and were being carried out with impunity.² No independent investigation was conducted to ascertain the circumstances surrounding encounter killings, much less action initiated against the police. The NHRC noted that the deceased was usually arrayed as the accused in an FIR registered at the Police Station involved in the encounter killing and the case was then taken as abated on account of his death. Often, the police

¹ K.G.Kannabiran v. Chief Secretary, Govt. of A.P. & ors., 1997 (4) ALT 541.

² Decision of NHRC in A.P.C.L.C, File Nos. 234(1) to (6)/93-94/NHRC(November 5, 1996), *available at* <http://nhrc.nic.in/Documents/CasesOfEncounterDeaths.pdf>

officers who led the encounter killing also carry out the investigation and use their personal “knowledge” to close the matter.³

Reviewing the law of the land as it relates to murder and the right to private defence, the NHRC noted that a police officer can justifiably use force to effect arrest and even cause death if the person resisting offence was accused of an offence punishable with death or life imprisonment.⁴ However, the right to private defence is a general exception available under the Indian Penal Code that does not distinguish between civilians and police officers. Even in genuine cases where death is caused in pursuance of one’s right to self-defence, the burden of proof in establishing the same falls on the police and will be dealt with during investigation or trial. Similarly, when the power under Sec. 46(3) of Cr.P.C. is used to cause death, circumstances surrounding such death should be investigated and the legitimacy of such use of force should be ascertained. In order to avoid impunity, the NHRC held that whenever the police receive information of encounter death, “the officer-in-charge of the Police Station must, after recording that information, draw the inference that there is reason to suspect the commission of an offence and proceed to investigate the same as required by Section 157 of the Code. If such a procedure is not required to be followed, it would give license to the Police to kill with impunity any citizen in the name of encounter by just stating that he acted in ‘the right to private defence’ or under Section 46 of the Code. A procedure which brings about such unjust, unfair and unreasonable consequences cannot be countenanced as being within Article 21 of the Constitution.”⁵

Following this decision, the NHRC headed by Justice M.N. Venkatachaliah prescribed Guidelines to be followed in case of encounter deaths.⁶ Particularly, it was emphasized that all cases of suspected encounter deaths should be investigated by an independent investigating agency such as the State Criminal Investigation Department (“CID”) and that the delinquent police officers should be prosecuted. The NHRC Guidelines have been adopted by several States.

³ *Id.*

⁴ S. 46(3), Code of Criminal Procedure, 1972.

⁵ *Supra* note 2.

The NHRC found that its Guidelines were not observed in “true spirit” and thus issued Revised Guidelines on December 2, 2003. Therein, the NHRC recommended that all instances of encounter deaths be intimated to it, FIR be registered whenever a specific complaint is made against the police making out a case of culpable homicide, and that Magisterial enquiry be conducted in all cases of death which occur in the course of police action. In its concern that police officers engaging in encounter killings were being glorified for their criminality, the NHRC also emphasized that no gallantry awards or out-of-turn promotions be granted to the officers involved with encounter killings.⁷

The NHRC Guidelines remain the only policy statement regarding encounter killings, and are observed only in their breach. Despite being under the NHRC scanner, encounter killings have not become scarce. Neither are the concerned police officers taken to task for their criminal acts amounting to murder. Whilst encounter killings in conflict-ridden States such as Jammu & Kashmir and Andhra Pradesh are oft reported in the media, it is a lesser known fact that Tamil Nadu, arguably a stable State with comparative economic prosperity and social development, has a sizable body count attributable to encounter killings and has been condoning the acts.

Encounter killings in Tamil Nadu

People’s Watch, a reputed non-governmental organisation, has found that since the year 2003, 48 persons have been killed in fake encounters in Tamil Nadu. The organisation undertook independent fact-finding into these deaths and found that they were pre-meditated murders committed by the police in cold blood. People’s Watch also found that in a few cases, the deceased and their families knew of the police’s intention to kill them; fearing for their lives

⁶ Letter from the Chairperson of the NHRC to all Chief Ministers of States and Union Territories (March 29, 1997), *available at* <http://nhrc.nic.in/Documents/CasesOfEncounterDeaths.pdf>

⁷ Letter from the Chairperson of the NHRC to all Chief Ministers of States and Union Territories, (December 2, 2003), *available at* <http://nhrc.nic.in/Documents/RevisedGuidelinesDealingInEncounterDeaths.pdf>

they had appealed to several State institutions including the Courts to intervene and ensure their safety, but in vain.⁸

It was also found that all encounter killings followed an observable pattern: a few police officers known to be “encounter specialists” were involved in most encounter killings though they were assigned to other police stations at the time of the killing. Further, police officers who were allegedly attacked by the deceased sustained predictable injuries: mild injuries on their limbs causing no serious detriment to their health. It was also observed that most deceased had a history of involvement in criminal activities and were not convicted, thereby strongly suggesting that the police were acting as vigilantes, bypassing the criminal justice system to exact their brand of justice.

Despite being explicitly mandated by the NHRC in its Revised Guidelines, the same having been adopted by the Government of Tamil Nadu,⁹ the police do not register an FIR against the offending police officers to investigate the circumstances surrounding the encounter killing.¹⁰ In their eagerness to provide immunity to the “encounter specialists”, the FIR is registered against the deceased citing his act of aggression as the crime and immediately closed on account of his death.

⁸ For example, one Mithun Chakravarthi was arrested in Chennai on 1.4.2008 at 12.30 AM. Upon receiving information that an “encounter” was planned to extra-judicially murder him, his mother sent telegrams to several authorities including the State Human Rights Commission, District Collector of Thanjavur, and the Chief Justice of Madras High Court on 2.4.2008. Despite this desperate appeal for help, he was killed on 3.4.2008 in an alleged encounter. Another notable instance is that of Manalmedu Shankar whose mother even filed a writ petition in the Madras High Court on 24.10.2006 in WP 40969/06 stating that the life of her son is at risk and that the police had planned to kill him. Despite the said writ petition and an appeal sent to the NHRC on 29.11.2006 seeking help, Manalmedu Shankar was killed on 6.2.2007 in an alleged encounter incident.

⁹ Government Order, (August 8, 2007) in *Letter 9008-/L&O-A2007-1*.

¹⁰ Since 2006, at least 23 lives have been lost in Tamil Nadu in encounter deaths. Such loss of life has resulted solely because of the unchecked brutality of the police. Of these 23 individual cases, only 11 families of these victims have been able to properly register their complaints with the police and receive the required community services register (CSR) receipt due to lack of police cooperation. Of these 11 cases, only 7 have case numbers filed with the NHRC.

People's Watch, through its fact-finding, also observed that in blatant violation of the NHRC Guidelines, post-mortem was supervised by, and investigation was carried out by the officers of the same police station that were involved in the encounter. Further, the post-mortem was found to be a rushed affair, often not conducting essential tests that could (dis)prove the police version, such as the dermal nitrate test when the deceased was alleged to have deployed fire arms. Upon interviewing the families of the deceased, it was found that the police often insisted that the bodies be cremated, and not buried even if the same ran contrary to their customs, thereby rendering impossible any further forensic/medical examination.

According to the amended Section 176(1-A) of the CrPC, the Judicial Magistrate or the Metropolitan Magistrate is to enquire into the death of persons in police custody. People's Watch, in its independent fact-finding, found that most cases of encounter killings, were in fact, custodial deaths where the deceased was already in the custody of the police and that an encounter scenario was staged as though the deceased resisted arrest, in order to bypass the procedure established under Section 176(1-A).

Following encounter killings, in Tamil Nadu, magisterial enquiry mandated by the NHRC is conducted by the Revenue Divisional Officer ("RDO"). People's Watch found that measures to frustrate the RDO enquiry by conducting the same in a different district, and threatening witnesses and family members of the deceased against testifying truthfully in the enquiry are employed. The report of the RDO is not made available, despite requests for the same, exempting the enquiry from scrutiny and accountability. It was also seen that no action, either disciplinary or prosecution, was taken against police, pursuant to any RDO enquiry. In addition, families of the deceased are often victimized by the police, even necessitating their moving away from their hometowns. In addition, most families have not been able to get a Death Certificate of the deceased owing to several hurdles including lack of information about the death itself. The families suffer without the death certificate and are unable to access essential services such as the Public Distribution System ("PDS"), destitute pension, insurance and compassionate appointment.

The State of Tamil Nadu has been condoning, and even endorsing, vigilante justice of the police in the name of encounter killing in exercise of self-defence, as is evident from rewards and promotions bestowed on police personnel involved.¹¹ Families of the deceased, or organizations in public interest, have petitioned the Courts to seek relief against particular instances of fake encounters.¹² People's Watch, using information documented by it pertaining to encounter killings in Tamil Nadu, filed a Public Interest Litigation in the Madras High Court, in order to bring to judicial notice the alarming increase in the number of encounter killings that shows a discernible State policy to bypass the judicial system and enforce street justice. In the said PIL, the Petitioner has sought comprehensive remedies to enquire into encounter killings in Tamil Nadu by appointing a judicial commission, ensure investigation into each instance of encounter killing and award necessary compensation to the families of the deceased. The PIL was admitted by the Court and is now *sub judice*.

Encounter killings in Andhra Pradesh: *APCLC v. Govt of Andhra Pradesh*¹³

This landmark decision dealt with a batch of writ petitions concerning several incidents of encounter killings in Andhra Pradesh perpetrated to

¹¹ 752 members of the Special Task Force involved in the Veerappan encounter were awarded Rs. 3 Lakhs and a housing plot. This award was announced by then Chief Minister Ms. J. Jayalalitha; Mr. Jangid was also awarded the President's award for gallantry in 2008 as a direct result of his involvement in the encounter death of Vellai Ravi and Guna; I submit that several police personnel involved in the staged encounter of Mithun Chakravarthi were publicly awarded with money and accolades, including Mr. Ganesamurthy (Inspector of Police, Peravurani police station), Mr. Sivabhaskar (Inspector of Police, Papanasam police station), Mr. Baraneetharan (Sub-inspector of police, Thanjavur Town East police station) and Mr. Karnan (driver). (MAKKAL MURASU, August 4, 2008; INDIAN EXPRESS, August 4, 2008; DAILY THANTHI, July 4, 2008 with photo; THINAMANI, July 4, 2008).

¹² For example, W.P. No. 6318 of 2010. This was filed by Mrs. Tamilarasai, mother of one Dindigul Pandi who was killed in an encounter in Neelangarai, Chennai. The petition is pending before the Madras High Court.

¹³ APCLC v. Govt of Andhra Pradesh, (2009) 1 ALT 754.

allegedly counter naxalism. The Petitioner organisation alleged that over 4000 persons were killed extra-legally in the name of encounter deaths in the past 40 years. A 5-judge bench of the Andhra Pradesh High Court held that whenever information of a death caused by a police officer is received, FIR must be registered and that investigation cannot conclusively decide whether the act was committed in exercise of his right to private defence. Thus, the final report of the police u/s.173 of the Code of Criminal Procedure, even if it exonerates the police officer, is not conclusive, and the Magistrate, in exercise of his discretion u/s.190 of the Code of Criminal Procedure, may take cognizance of the offence.¹⁴ The decision of the Andhra Pradesh High Court admirably emphasized the sanctity of Article 21 and that neither countering naxalism nor other concerns, however valid, should be allowed to defile it. The judgment is presently under appeal before the Supreme Court.

CONCLUSION

Whilst the law clearly states that Article 21 is inviolable and that extra-legal deprivation of life is unconstitutional and subject to penalty, in truth, the right to life stands endangered today. Extra-legal execution in the name of encounters is encouraged tacitly by the State, media and civil society. The current willingness of society to silently acquiesce while the police replace the law of the court with the law of the street reflects a basic lack of faith or trust in our backlogged, understaffed, wholly inaccessible criminal justice administration system in judicial systems, specific and general.

Securing human rights, even those constitutionally acknowledged and publicly proclaimed, is an uphill struggle, as seen above. There are several judicial pronouncements that condemn fake encounter killings, but securing justice in individual cases is no mean task. Families of victims of State abuse are forced to stretch their means and approach the Courts and other State institutions, often in vain, since they for their grand, general pronouncements continue to be unresponsive and conservative, often unwilling to investigate beyond the facts

¹⁴ *Id.*

and figures provided by a very biased State to explore the reality that is India. To illustrate, in a finding so startling that it raises doubts as to its credibility, the NHRC has published a report stating that out of 1846 cases of encounter death registered with it since its inception in 1993, it found that only 27 were fake and unjustified.¹⁵ Similarly the Courts are unwilling to grant remedies in individual cases where murder in the name of encounter killing is suspected.

In a country such as India that boasts of being a constitutional democracy governed by the rule of law, extra-legal executions perpetrated in the name of encounter killings are wholly unacceptable. Granting immunity and allowing impunity to police personnel concerned adds insult to the injury.

¹⁵ Out of 1846 cases, NHRC finds 27 encounters by police as fake since its inception in 1993 till the 31st April, 2010, (May 21, 2010), <http://nhrc.nic.in/dispatchive.asp?fno=2040>.