Encounter in Hyderabad Rape-Murder Case

Why in news?

- The four accused in the Hyderabad veterinarian rape case were killed by the Cyberabad police.
- Here is what the National Human Rights Commission (NHRC) and the Supreme Court have said on the procedures to be followed in extra-judicial or "encounter" killings.

When are extra-judicial killings permissible?

- The following are the observations made by Justice Venkatachaliah, who was Chief Justice of India in 1993-94.
- Under Indian laws, the police have not been conferred any right to take away the life of another person.
- If, by his act, the policeman kills a person, he commits the offence of culpable homicide unless it is proved that such killing was not an offence under the law.
- This remains the case whether it amounts to the offence of murder or not.
- The only two circumstances in which such killing would not constitute an offence are -
    1. if death is caused in the exercise of the right of private defence
    2. under Section 46 of the CrPC
- Section 46 "authorises the police to use force, extending up to the causing of death, as may be necessary to arrest the person accused of an offence punishable with death or imprisonment for life".
- In this regard, the NHRC asked all states and UTs to ensure that police follow a set of guidelines in cases where death is caused in police encounters.

What are the NHRC's guidelines on this?

- When the in-charge of a Police Station receives information about the deaths in an encounter between the Police party and others, s/he shall enter that information in the appropriate register.
- Information as received shall be regarded as sufficient to suspect the commission of a cognizable offence.
- Immediate steps should be taken to investigate the facts and circumstances

leading to the death.
- This should ascertain what, if any, offence was committed and by whom.
- The police officers belonging to the same Police Station are the members of the encounter party.
- So, appropriately, the cases are made over for investigation to some other independent investigation agency, such as State CID.
- Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction.
- However, the NHRC finds that most of the States are not following the recommendations issued by it in the true spirit.
- Thereafter, the NHRC expanded the guidelines, adding several new procedures as the following:
- An FIR must be registered under IPC if a complaint is received against the police, alleging commission of a criminal act amounting to a cognisable case of culpable homicide.
- A magisterial enquiry must be held in all cases of death which occurs in the course of police action, as expeditiously as possible, preferably within 3 months.
- All cases of deaths in police action in the states shall be reported to the Commission.
- The Senior Superintendent of Police/Superintendent of Police of the District should report in a given format within 48 hours of such death.
- A second report must be sent in all cases to the Commission within 3 months.
- This should provide information including post mortem report, inquest report, findings of the magisterial enquiry/enquiry by senior officers.

What are the directions by the Supreme Court?

- The Court had, in 2014, issued a detailed 16-point procedure to be followed in the matters of investigating police encounters in the cases of death.
- This was to be followed as the standard procedure for thorough, effective and independent investigation.
- Some of these directives are as follows:
- If the police is in receipt of any intelligence regarding criminal movements or activities relating to grave criminal offence, it shall be written in some form (preferably into case diary) or in some electronic form.
- In regards with this, if encounter takes place and firearm used and death occurs, an FIR shall be registered.
- The FIR shall be forwarded to the court under Section 157 of the Code of Criminal Procedure without any delay.
- An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station.

- This should take place 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 invariably be held in all cases of death which occur in the course of police firing.
- A report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Code.
- The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation.
- However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.
- These requirements should be treated as law declared under Article 141 of the Constitution of India.
- These must thus be strictly observed in all cases of death and grievous injury in police encounters.

What are the concerns in the present case?

- There is wide acceptance to the "encounter killings" to deliver swift retribution.
- Existing laws on sexual crimes and punishment need better application.
- But, a recourse to brutal retribution is no solution.
- The political sanction of "encounter killings" would only be a disincentive for the police to follow the due process of law.
- It may even deter them from pursuing the proper course of justice.
- Far from ensuring justice to the victims, bending the law in such cases would only undermine people's faith in the criminal justice system.
- Justice in any civilised society is not just about retribution, but also about deterrence, and in less serious crimes, rehabilitation of the offenders.

Source: Indian Express, The Hindu

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