State of extra-judicial killings in India

Why in news?

The Uttar Pradesh Special Task Force has recently encountered two persons who were wanted in connection with the Umesh Pal murder case.

What are extra judicial killings?

- It refers to the deliberate, unlawful killings of an accused person by any government authority outside of any legal framework. (Popularly known as “encounters”).
- It is illegal, as it violates the basic human rights guaranteed to every individual.
- The accused person in such cases is not even given a right to prove himself/herself innocent before the court of law.
- The physical torture, sexual harassment, or mental torture of the accused in custody (i.e. custodial violence) also comes under the ambit of extra-judicial killings.

What is the status of extra-judicial killings in India?

- According to a report, for the last 6 years the cases of encounter killings have increased nearly five-fold.
- India has seen a 15% decline in ***registration*** of encounter killing cases in the six years between 2016-17 and 2021-22.
- The cases shot up by 69.5% in the last two years from 2021-22 to arch 2022.

What are the reasons for extra-judicial killings?

- **Public support** - People often support these extra-judicial killings because they think that the court will not provide timely justice.
- **Political support** - Extra-judicial killings are considered as achievements of ruling political party and gather greater support from the public.
- **Work pressure** - Pressure from Government as well as Public in important cases results in brutal behaviour by the police on criminals for getting information or to get their confession.
- **Punitive violence** - Many police officials believe that the only way to control the crime and criminals is to torture the criminals so that people should have a state of fear in their mind when they are about to commit a crime.
- **Positive re-enforcement** - The officers executing these killings are considered heroes in society as the public thinks such killings to be the best way of cleaning up society.
- **Lack of proper training** - Absence of legitimate preparation of police authorities regularly increases the third-degree techniques.
- **Inefficiency of police** - Encounters are an easy way to create an image, that law and

order are being maintained in the area.

What is the legislative status in India?

- **Legislation** - No law in India exclusively defines encounter killings.
- But it will be classified under *Cases Registered against State Police Personnel for Human Right Violation* in the National Crime Records Bureau (NCRB).
- **Indian Penal Code** - Sections from 96-106 of Indian Penal Code, 1860 deals with the *Right to Private Defence*.
- Under these sections, death in an encounter will not amount to a criminal offence, when it is done as self-defence.
- **CrPC** - Section 46 of the Criminal Procedure Code (CrPC), 1973 allows the police officers to use any degree of force which is required to arrest the accused or prevent the accused from escaping.
- **Supreme Court –** In 2014, the Supreme court in the People's Union for Civil Liberties Vs State of Maharashtra case formulated 16-point guidelines on extra-judicial killings.
- **National human Rights Commission** – In 1997, the National Human Rights Commission (NHRC) under the Chairmanship of *Justice MN Venkatachaliah* issued a guideline for encounter cases.

The Supreme Court in Om Prakash Vs State of Jharkhand (2012) stated that extra-judicial killings are not recognized as legal by our criminal justice administration system and they amount to State sponsored terrorism

What are the guidelines provided by the Supreme Court and the NHRC?

- **16-point guidelines** - In *People's Union for Civil Liberties vs State of Maharashtra, 2014*, the Supreme court provided 16-point guidelines to be followed during investigation of police encounters.
- The guidelines included the
  - Mandatory registration of FIR
  - Provisions for magisterial inquiry
  - Keeping the written records of intelligence inputs
  - Independent investigation by bodies such as the CID.
- The court directed that these norms must be strictly observed as a law declared under Article 141 of the Indian Constitution.

Article 141 says that the law declared by the Supreme Court shall be binding on all other courts in Indian territory.

- Prior to the Supreme court guidelines, the National Human Rights Commission (NHRC) under the Chairmanship of *Justice MN Venkatachaliah* issued a guideline for encounter cases in 1997.
- It deals with the procedure to be followed, obligation of states, compensation to be awarded, etc.

What are the steps to be taken?

- **Mandatory FIR** - To make *amendments in CrPC* to provide for mandatory registration of FIR where a public servant causes death of a person in self-defense.
- **UN Convention against Torture** - India should take immediate measures to ratify UN Convention against Torture and the enactment of Prevention of Torture Bill, 2017.

  The UN Convention Against Torture (UNCAT) is an International human rights treaty adopted in 1984. India signed the treaty but not yet ratified it.

- **Implementation** – Ensure the strict implementation and monitoring of Supreme Court and the NHRC guidelines on fake encounter deaths.
- **Training Programme** - Training the police officials to handle every unforeseen situation and protect the accused in police custody is essential.

References

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