

A growing blot on the criminal justice system

While there is reason to be concerned about delays in rape trials, a Hyderabad-like solution is out of the question

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 unfailing 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.

A disturbing norm

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.

Trigger-happy police?

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."

The Punjab 'model'

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.

In Andhra Pradesh

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.

Meanings of Difficult Words :

- **blot** (noun) – disgrace, dishonour, stigma.
- **trail** (noun) – court case, judicial proceedings, legal action.
- **out of the question** (phrase) – unthinkable, unimaginable, unsuitable.
- **reflect** (verb) – indicate, show, display/exhibit.
- **due process** (noun) – fair treatment (per established principles & procedures).
- **temper** (noun) – disposition, nature, spirit.
- **unfailing** (adjective) – never-ending, infinite, unbounded.
- **of late** (phrase) – recently, lately, in the past few days, in recent times.
- **revive** (verb) – bring back, reintroduce, re-launch.
- **extra-judicial** (adjective) – out-of court, private, unauthorized/unwarranted (by law).
- **resurgent** (adjective) – rising again, resuscitated, revitalized, revived; increasing or reviving after a period of little activity/dullness.
- **blood lust** (noun) – unstoppable desire to kill others.
- **shower something on** (verb) – lavish, pour/load, bestow freely.
- **rule of law** (phrase) – it is described as "a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.
- **rule out** (phrasal verb) – exclude, eliminate, reject/dismiss.

- **fast track** (adjective) – relating to a method which provides for more rapid results.
- **adjournment** (noun) – postponement, rescheduling, suspension.
- **consolation** (noun) – comfort, solace, relief.
- **anguish** (noun) – distress, suffering, pain, torture, torment.
- **bound by** (adjective) – obliged, constrained, committed/duty-bound.
- **extralegal** (adjective) – not regulated by the law.
- **arbitrary** (adjective) – capricious, personal (whim/choice), erratic/irregular.
- **summary** (adjective) – immediate, instant, prompt.
- **annex** (verb) – add, append, attach, join.
- **subsequently** (adverb) – afterwards, later on, eventually.
- **take into account** (phrase) – consider, bear in mind, heed/note.
- **enforcement** (noun) – imposition, implementation, execution.
- **personnel** (noun) – staff, employees, workforce.
- **the executive** (noun) – the executive is a branch of government which enforces the law as written by the legislature and interpreted by the judiciary.
- **disseminate** (verb) – spread, circulate, propagate.
- **trigger-happy** (adjective) – relating to someone who is too ready and willing to use violent methods without any focus/attention.
- **scrutiny** (noun) – observation, inspection, examination.
- **militant** (noun) – extremist, radical, fanatic, sectarian.
- **insurgent** (noun) – rebel, mutineer, agitator, rioter.
- **with one hand behind one's back** (phrase) – with serious limitations or restrictions.
- **smoking gun** (phrase) – an unquestionable/conclusive evidence which proves that someone has done a crime/wrongdoing.
- **akin** (adjective) – similar, related, equivalent.
- **sledgehammer** (modifier) – powerful; forceful; ruthless (tool).
- **retaliation** (noun) – revenge, vengeance, counter-attack.
- **defy** (verb) – resist, take a stand against, confront.
- **stretch** (verb) – distort, bend, strain; exaggerate, overstate.
- **credulity** (noun) – naivety, innocence, simpleness.
- **confession** (noun) – acknowledgement, acceptance, admission.
- **retraction** (noun) – a withdrawal of a statement.
- **many a time** (phrase) – frequently, often, repeatedly.
- **orchestrate** (verb) – organize/mastermind, plan, choreograph.
- **consent** (noun) – permission, authorization, approval.
- **phenomenon** (noun) – occurrence, event, happening.
- **covet** (verb) – desire, want, wish for.
- **dreaded** (adjective) – terrible/awful, frightening, alarming, terrifying.
- **stand/face trial** (phrase) – to be brought to a court of law.
- **admonish** (verb) – censure, criticize; advise/urge.
- **liquidate** (verb) – kill (someone), annihilate, decimate, destroy.
- **deprecate** (verb) – criticize, censure, condemn.
- **amount to** (verb) – be regarded as, be classified as, be equal to.
- **insurgency** (noun) – uprising, revolt, rebellion.
- **contemptuously** (adverb) – scornfully, with full of contempt.
- **litigation** (noun) – legal process, legal proceeding, legal action.
- **silence** (verb) – suppress, quieten, stop.
- **activist** (noun) – advocate, champion, supporter (of a political or societal change/cause).

- **crematoria** (noun) – a place where dead body is burned.
- **cremate** (verb) – dispose (of a dead person's body) by burning after funeral ceremony.
- **in spite of** (phrase) – despite, notwithstanding, regardless of.
- **intervention** (noun) – involvement/interference.
- **apparently** (adjective) – seemingly, evidently, it appears that.
- **massacre** (noun) – carnage, mass murder, mass killing.
- **forensic** (noun) – the application of scientific knowledge & methods to legal problems and legal proceeding.
- **turn out** (phrasal verb) – transpire, emerge, appear.
- **notorious** (adjective) – infamous, ill-famed, with a bad reputation.
- **as far as** (phrase) – to the extent that.
- **writ petition** (noun) – an application to a court for a writ (a formal written order) when when any of the fundamental rights are violated.
- **prima facie** (adverb/adjective) – something (first impression) considered as right until proved.
- **culpable** (adjective) – offending, guilty, misbehaving, blameworthy.
- **homicide** (noun) – murder, killing.
- **impartial** (adjective) – unbiased, unprejudiced, neutral, fair.
- **ex parte** (adjective) – Latin meaning "for one party only".
- **displeasure** (noun) – dissatisfaction, annoyance, disapproval, disfavour.
- **uphold** (verb) – justify, vindicate, validate.

Lethal misgovernance: On Anaj Mandi fire tragedy

Lax enforcement, as evidenced by the Delhi fire, costs lives and harms the economy

The deadly **fire** at dawn on Sunday that swept through an unregistered bag factory in Delhi's Anaj Mandi area killing 43 workers is a shocking reminder that for every big industrial unit showcased as evidence of an emerging power, there are scores of Dickensian ratholes in which workers toil under crushing, dangerous conditions. Neither the Delhi government nor the Centre, which has control of law and order in the national capital, can pretend to be surprised at the many casualties. It is well known that poorly paid labourers live and work in several residential buildings turned into unregistered factories, and those who died due to suffocation or burn injuries were no different. Most of them came from Bihar and Uttar Pradesh, and virtually slept at night next to the machines they worked on. If it is confirmed by a probe that the victims were locked in and obstructed by materials stacked on staircases, the culpability of those responsible would be enormously higher. A small consolation is the rescue of several people given the narrow approach to the stricken building, and a mass of tangled wires. The building's owner and the manager have been arrested to mollify public anger, but administrative agencies cannot escape responsibility for allowing the factory and other such units to function illegally, without safety audits.

The third deadliest building fire in the national capital in two decades, on December 8, ahead of the polls to the Delhi Assembly, will provide grist to the Opposition to pin the blame on the AAP

government, which is responsible for civic services and labour issues. Delhi's Chief Minister, Arvind Kejriwal has, on the other hand, been blaming the lack of complete authority and obstruction by the Centre for his party not being able to deliver on a broader development agenda. Public safety cannot be allowed to fall victim to this irresponsible wrangling. Political parties, civil society and government must chart a new course, with a plan to make the older, built-up areas safe. At the root of chaotic urban development is the deplorable compact arrived at between governments and violators that allows rezoning to accommodate illegal commercial establishments in residential zones, weak enforcement of regulations and post facto regularisation of illegalities. The Supreme Court of India has come down on municipal authorities in Delhi in the past for this, although culpability of building owners, as in the Uphaar Cinema case, has not been dealt with sternly. Initial financial relief has been announced for the victims in the Anaj Mandi fire, and some people will face the law, but the real test lies in whether this is treated as a watershed. Rules under the new occupational safety code must be strong enough to protect workers. Less government and lax enforcement is bad policy. It costs lives and harms the economy.

Meanings of Difficult Words :

- **lethal** (adjective) – fatal, deadly, life-threatening.
- **lax** (adjective) – neglectful, inattentive, careless.
- **dawn** (noun) – first thing in the morning, early morning.
- **sweep** through (verb) – engulf, overwhelm, flow across.
- **score of** (noun) – a lot of, a large number, a great deal of.
- **dickensian** (adjective) – relating to the writings and characterizations of 19th-century English writer Charles Dickens in his novels. It refers to a poverty/inequality among social classes, reminiscent of the dark lives of the underprivileged during Victorian times.
- **rathole** (mining) (noun) – it is a kind of mining involves digging pits into the ground to create a narrow hole to find coal.
- **toil** (verb) – work hard, labour, sweat blood, work one's fingers to the bone.
- **crushing** (adjective) – making huge disappointment or embarrassment.
- **pretend** to (verb) – claim, profess, make believe.
- **casualty** (noun) – victim, fatality, loss/dead/injured.
- **suffocation** (noun) – a condition of severely deficient supply of oxygen to the body that arises from abnormal breathing; asphyxia.
- **stack** (verb) – load, fill up, cover.
- **culpability** (noun) – guilt, blame/fault; responsibility.
- **consolation** (noun) – comfort, solace, relief.
- **rescue** (noun) – an act of saving someone from danger.
- **stricken** (adjective) – troubled, deeply affected.
- **tangled** (adjective) – complicated, twisted, complex.
- **mollify** (verb) – calm down, pacify, appease/mitigate.
- **audit** (noun) – probe, inspection, analysis.
- **grist** (noun) – it is valuable thing, particularly to help an argument/contention.
- **pin something on** (phrase) – blame someone for something, hold someone responsible for something.
- **wrangling** (noun) – long dispute, argument, quarrel.
- **chart** (verb) – outline, describe, detail.
- **chaotic** (adjective) – confused, disrupted, messy/disorganized.
- **deplorable** (adjective) – disgraceful, dishonourable, unacceptable.

- **rezoning** (noun) – the process of changing the legal use of a property/land to a different type.
- **accommodate** (verb) – adjust, adapt, attune, accustom.
- **enforcement** (noun) – imposition, implementation, execution.
- **post facto** (adjective) – done with or made something only after (a situation/event) has happened.
- **come down on** (phrasal verb) – criticize, reprimand, rebuke.
- **sternly** (adverb) – strictly, severely, stringently.
- **watershed** (noun) – an event that marks a historic change; critical moment, decisive moment.

Unequal, unsecular: On Citizenship Amendment Bill

Citizenship law amendment goes against non-discriminatory norms in the Constitution

The **Citizenship (Amendment) Bill, 2019 (CAB)**, is brazenly discriminatory and it is only a matter of time before its constitutionality is subjected to severe judicial scrutiny. The government's obstinacy in going ahead with it, despite opposition in Parliament, as well as from enlightened sections, is unfortunate. In both its intent and wording, the proposed amendment singles out a community for hostile treatment. In short, the Bill chooses to open its citizenship door to non-Muslims from three nations with a Muslim majority — Pakistan, Bangladesh and Afghanistan. The ostensible reason: an opportunity to members of minority communities from these countries who had entered India prior to December 31, 2014, to apply for citizenship through naturalisation. The residential requirement for this category for naturalisation is reduced from 11 years to five. The Bill carefully avoids the words 'persecuted minorities', but the Statement of Objects and Reasons says "many persons belonging to Hindu, Sikh, Buddhist, Jain, Parsi and Christian communities have faced persecution on grounds of religions" in these three countries. Further, it refers to Home Ministry notifications in 2015-2016 through which it had exempted these undocumented migrants from the adverse penal consequences under the Passport (Entry into India) Act, 1920, and the Foreigners' Act, 1946. The CAB creates a category of people on the basis of their religion and renders them eligible for its beneficial effects.

A key argument against the CAB is that it will not extend to those persecuted in Myanmar and Sri Lanka, from where Rohingya Muslims and Tamils are staying in the country as refugees. Further, it fails to allow Shia and Ahmadiyya Muslims, who also face persecution, to apply for citizenship. The exemption from the application of the CAB's provisions in tribal areas in Assam, Meghalaya, Mizoram and Tripura, and the Inner Line Permit areas in Arunachal Pradesh, Nagaland and Mizoram, with Manipur to be added soon, is clearly based on political expediency, even if it is in line with the constitutional guarantees given to indigenous populations and statutory protection given to ILP areas. It demonstrates the need for careful and meaningful categorisation, something that the main provisions fail to do. The central feature of the equal protection of the law envisaged in Article 14 is that the basis for classifying a group for a particular kind of treatment should bear a rational nexus with the overall objective. If protecting persecuted neighbourhood minorities is the objective, the classification may fail the test of

constitutionality because of the exclusion of some countries and communities using religion. It would be a sad day for the republic if legislation that challenges its founding principles of equality and secularism is allowed to be passed.

Meanings of Difficult Words :

- **unsecular** (adjective) – religious.
- **non-discriminatory** (adjective) – fair, judicial, unbiased.
- **brazenly** (adverb) – blatantly, clearly, fragrantly.
- **discriminatory** (adjective) – prejudicial, biased, unfair.
- **it is only a matter of time** (phrase) – it is likely to happen.
- **constitutionality** (noun) – the condition of acting in accordance with an applicable constitution.
- **obstinacy** (noun) – inflexibility, uncooperativeness, relentlessness.
- **enlightened** (adjective) – educated/learned, literate, intellectual.
- **intent** (noun) – aim, purpose, intention.
- **wording** (noun) – mode of expression, words, language.
- **single out** (phrasal verb) – select, pick out, choose.
- **hostile** (adjective) – opposed, bitter, unfriendly.
- **in short** (phrase) – briefly, in a nutshell; in conclusion/summary.
- **open one's door** (phrase) – to allow someone to enter.
- **ostensible** (adjective) – apparent, seeming, alleged/purported.
- **naturalisation** (noun) – the admittance of a foreigner to the citizenship of a country.
- **persecuted** (adjective) – oppressed, victimized; troubled/suffering.
- **persecution** (noun) – oppression, victimization, ill treatment/abuse.
- **undocumented** (adjective) – not having the proper legal document.
- **adverse** (adjective) – unfavourable, disadvantageous, bad.
- **penal** (adjective) – disciplinary, punitive, corrective.
- **render** (verb) – depict, portray, represent.
- **extend to** (phrase) – incorporate, encompass, include.
- **provision** (noun) – term, clause, requirement.
- **expediency** (noun) – advantage, benefit, utility.
- **in line with** (phrase) – in accordance with.
- **indigenous** (adjective) – native/local, original, domestic.
- **statutory** (adjective) – legitimate, acceptable, permissible/admissible.
- **categorisation** (noun) – assortment, classification, sorting.
- **envisage** (verb) – foresee, predict, forecast.
- **bear** (verb) – have, carry, support.
- **rational** (adjective) – coherent, logical, reasoned.
- **nexus** (noun) – connection, link.
- **secularism** (noun) – the belief that religion should not have a strong influence in education or other public parts of society.

☞ **“Focus On Making Yourself Better Not On Thinking That You Are Better.”** ☞