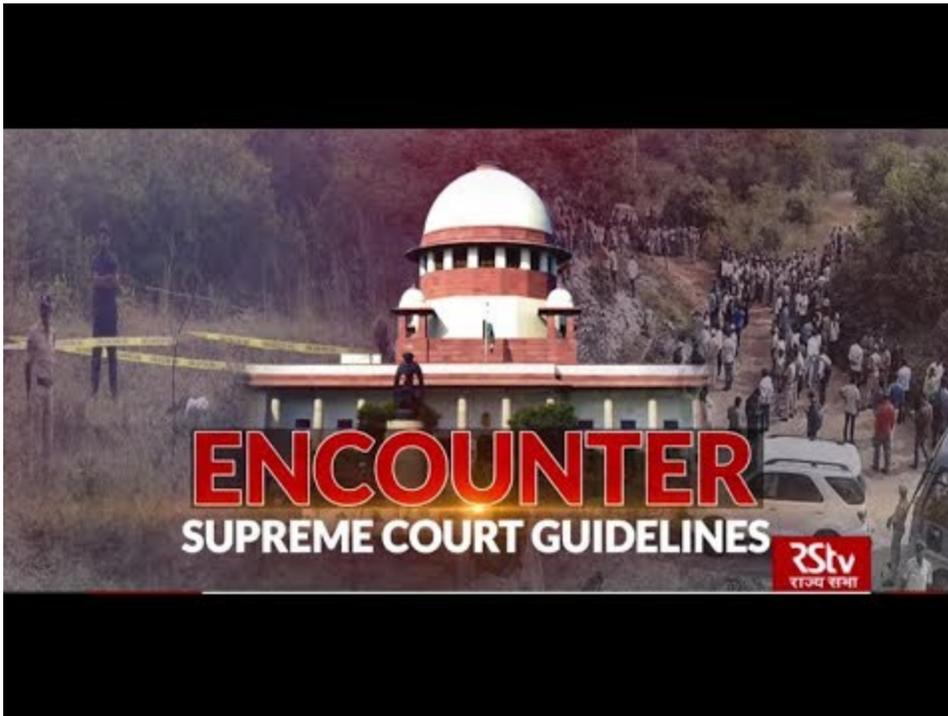




# drishti

## In Depth: Encounter- Supreme Court Guidelines

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In the backdrop of the growing outrage in the country over the **rising incidents of crimes against women**, the encounter of the four accused by Telangana police in the Hyderabad rape and murder case has been welcomed by political leaders, public figures and the masses. However at the same time, questions have also been raised over the **legality and appropriateness** of the police action leading to the debate that '*whether a democratic country should follow the **constitutional norms and adhere to the due process of law** or shall it adopt the measures of **retributive justice** to bring instant and speedy justice to the victims*'.

- On **extrajudicial killings** (also referred to as **encounters**) the **National Human Rights Commission (NHRC)** and the **Supreme Court (SC)** have laid down **proper guidelines and procedures** that must be followed in order to prevent any abuse of power by the law enforcement agencies.

- Also, taking **suo moto cognizance** of the case, the NHRC has asked the Director General of investigation to send a fact finding team to probe the matter carefully and has called for a detailed report from all State governments, Union Women & Child Ministry, and the police heads over rising crimes against women.

## Need for the Guidelines

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- The demand for the instant killing of the accused from all corners of the country created the public opinion for the **abandonment of the rule of law (Article 14)** that appears to have led to this encounter.
 

There is a widespread perception that rule of law is not giving women the due justice, and that at the very least, laws need to be amended to create a stronger deterrent. Hence, there arises a need for a **time-bounded fair legal procedure**.
- There is a procedure prescribed by the law for **criminal investigation** which is embedded in the Constitution under **Article 21** as the **Right to Life and Personal Liberty**. It is **fundamental, non-derogable and is available to every person**. Even the State cannot violate that right.
 

Hence, **it is the responsibility of the police, being the officers of State, to follow the Constitutional principles and uphold the Right to Life** of every individual whether an innocent one or a criminal.
- **Similar extra-judicial killing** took place in Andhra Pradesh in which three accused of throwing acid on the faces of two women were encountered by the police **in December 2008**. Parallels can be drawn between both cases- the manner in which the accused were taken to the crime spot for recreating the crime scene and later cops shooting them down in an alleged crossfire. Hence, **to inhibit such repetitions**, the guidelines became necessary.

## Drishti Input

### Do Police have the Right to take Lives?

- The police force has the right to injure or kill the criminal, for the sole and only purpose of self-defense or where it is imminently necessary for the maintenance of peace and order. However, **nothing must be done to settle personal feuds** or with any ulterior malafide motives, which could be apparent from the facts of each case.
- **NHRC guidelines in 2010** highlight that **if the use of force cannot be justified** and the death falls outside the jurisdiction of the above mentioned reasons, **it is a crime** and the police officer would be guilty of **culpable homicide** (an act which has resulted in a person's death but is held not to amount to murder).

### What are the legal frameworks that are currently present in India?

Although, there is **no provision in the Indian law that directly authorizes** the encounters of criminals, however, there are **certain enabling provisions** which may be interpreted differently to vest police officers with certain powers to deal with criminals.

- In almost all cases where an encounter have taken place, it is done for **self-defense** of the police officer.
- Under **Section-96 of the Indian Penal Code (IPC)**, every human being has the **right to private defense** which is a natural and an inherent right.
- **Similarly, Section-100 of IPC, exception 3 of Section 300 of IPC, Section-46 of the Code of Criminal Procedure (CrPC), etc.** lay down similar provisions with regard to investigations in extra-judicial killings and cases of culpable homicide.

### **What if the police personnel are found guilty?**

The police personnel will be charged under **Section-299 of the Indian Penal Code** for **culpable homicide**. And, the **compensation** must be granted to the kin of the deceased, in case the police officers are prosecuted on the basis of investigation.

### **Supreme Court Guidelines**

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- In the ***PUCL vs State of Maharashtra case (2014)***, the SC was dealing with **writ petitions** questioning the genuineness of **99 encounter killings by the Mumbai Police** in which **135 alleged criminals** were shot dead **between 1995 and 1997**.

- The Supreme Court then laid down the following **16 point guidelines** as the **standard procedure** to be followed for ***thorough, effective, and independent*** investigation in the cases of death during police encounters:
  - **Record Tip-off:** Whenever the police receives any **intelligence or tip-off regarding criminal activities** pertaining to the commission of a grave criminal offence, it **must be recorded either in writing or electronic form**. Such recording need not reveal details of the suspect or the location to which the party is headed.
  - **Register FIR:** If in pursuance to a tip-off, the police uses firearms and this results in the death of a person, then an **FIR initiating proper criminal investigation must be registered and be forwarded to the Court** without any delay.
  - **Independent Probe: Investigation** into such death must be done **by an independent CID team or a police team of another police station** under the supervision of a senior officer. It has to fulfil eight minimum investigation requirements like, identify the victim, recover and preserve evidentiary material, identify scene witnesses, etc.
  - **Magisterial Probe:** Mandatory magisterial inquiry into all cases of encounter deaths must be held and a **report** thereof must be sent to the Judicial Magistrate.
  - **Inform NHRC:** The NHRC or State Human Rights Commission (as the case may be) must be **immediately informed** of the encounter death.
  - **Medical Aid:** It must be provided **to the injured victim/criminal** and a Magistrate or Medical Officer must record his statement along with the Certificate of Fitness.
  - **No Delay: Ensure forwarding** FIR, panchnamas, sketch, and police diary entries **to the concerned Court** without any delay.
  - **Send Report to Court:** After full investigation into the incident, a **report** must be sent to the competent **Court** ensuring **expeditious trial**.
  - **Inform Kin:** In the case of death of accused criminal, their next of kin must be **informed** at the earliest.
  - **Submit Report: Bi-annual statements** of all encounter killings **must be sent to the NHRC by the DGPs** by a set date in set format.
  - **Prompt Action:** Amounting to an offence under the **IPC, disciplinary action must be initiated against the police officer found guilty** of wrongful encounter and for the time being that officer must be suspended.
  - **Compensation:** The **compensation scheme** as described under **Section 357-A of the CrPC** must be applied for granting compensation to the dependants of the victim.
  - **Surrendering Weapons:** The concerned police officer(s) must **surrender their weapons for forensic and ballistic analysis**, subject to the rights mentioned under **Article 20** of the Constitution.

- **Legal Aid to Officer:** An **intimation** about the incident must be sent **to the accused police officer's family**, offering services of lawyer/counsellor.
- **Promotion: No out-of-turn promotion or instant gallantry awards** shall be bestowed on the officers involved in encounter killings soon after the occurrence of such events.
- **Grievance Redressal:** If the family of the victim finds that the above procedure has not been followed, then it may make a **complaint to the Sessions Judge** having territorial jurisdiction over the place of incident. The concerned Sessions Judge must look into the merits of the complaint and **address the grievances** raised therein.
- The Court directed that these requirements/norms must be **strictly observed** in all cases of death and grievous injury in police encounters by treating them as **law declared under Article 141** of the Indian Constitution.

## NHRC Guidelines

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- In **March 1997**, **Justice M. N. Venkatachaliah** (the then chairperson of the NHRC), in the backdrop of increased complaints from the general public and non-governmental organisations related to instances of fake encounters by the police underlined that the police have not been conferred with any right to take away someone's life, except under **two circumstances**:
  - If the death is caused in the exercise of the **right to private defence**,
  - **Section-46** of the CrPC that 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 the light of this notion, the NHRC asked all states and Union Territories to ensure that police follows the following set of guidelines in cases of encounter killings:
  - **Register:** When the in-charge of a Police Station receives information about the deaths in an encounter, he shall **record that information in the appropriate register**.
  - **Investigation:** Received information shall be regarded as **sufficient to suspect and immediate steps** must be undertaken to investigate the relevant facts and circumstances leading to the death so as to ascertain, if any, offence was committed and by whom.
  - **Compensation:** It can be granted to the dependents of the deceased when the police officers are prosecuted on the basis of the results of the investigation.
  - **Independent Agency:** Whenever the police officers belonging to the same police station are the members of the encounter party, it is appropriate that the cases for investigation are referred to some other **independent investigation agency**, such as State CID.

- **In 2010, NHRC extended these guidelines by including:**
  - **Registering FIR:** When a complaint is made against police alleging committing of a criminal act recognized as cognizable case of culpable homicide, an **FIR must be registered** under appropriate sections of the IPC.
  - **Magisterial Probe:** 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 three months**).
  - **Reporting to Commission:** All cases of deaths in police action in the states shall be preliminary **reported to the Commission** by the Senior Superintendent of Police/Superintendent of Police of the District **within 48 hours** of such death.
  - A **second report** must be sent in all cases to the Commission **within three months** providing information like post mortem report, findings of the magisterial enquiry/enquiry by senior officers, etc.

The SC guidelines observed that the involvement of NHRC is not mandatory unless there is serious doubt that the investigation was not impartial.

## Way Forward

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- Encounter killings must be **investigated independently** as they affect the credibility of Rule of Law. There is a need to ensure that there exists a rule of law in the society that needs to be adhered to by every State authority and the masses.
- There is a dire need for complete **overhauling of the criminal justice system** and bringing out required **police reforms**.
- Ensuring proper **physical custody** of the accused in order to prevent any attack by them on the police personnel.
- NHRC acknowledges that there is a **lack of Standard Operating Procedure** to immediately respond to panic situations by the police. Hence, the need of the hour is to lay down standard guidelines to better **train the police personnel and equip them with all relevant skills** so that they can effectively tackle every dreadful situation. Commission has insisted the law enforcement agencies to keep human rights angle in their mind while dealing with arrested individuals/persons.
- For several affected families, death is the only answer to rape. But public responses that equate judicial outcomes and justice to immediate and quick retribution are neither universal nor just.

According to the NHRC, although the rising crimes against women have created an atmosphere of fear and anguish, the loss of human life even of an accused might give a wrong message to the society. Hence, it is the **solemn obligation of the State** to encourage police force to deter antisocial elements, and at the same time restrict the blatant abuse of power.