

Good and Bad Encounters

Now that Vikas Dubey story has been overtaken by the suicide of a struggling Bollywood actor and search for Covid-19 vaccine, the debate about 'encounters', a truly Indian term for cold-blooded killing, can be examined in a more detached manner. But rather than focusing upon encounters' it is pertinent to expand the issue to the gamut of police abuse of power. The reason is that encounters are just one aspect of this abuse, indeed a gruesome and dangerous one. Police use of torture and or coercion is a common phenomenon in every police force and now even the use of deadly force is becoming acceptable in the desire for swift justice.

Earlier too, the strongest military power when battling a deadly terrorist attack on its soil publicly advocated the application of torture to interrogate and seek intelligence for its operations. The US military and society went even further by using drones to kill suspect terrorists in foreign lands, including few of its own citizens disregarding the rights that they were entitled by the US Constitution. In name of defense of the country, every nation has sanctioned illegal acts to deal with those threatening the country. These have not been military actions that incidentally are also governed by Geneva convention. The police and law enforcement agents have been empowered to deal with those who pose a threat in a manner that circumvents the law of land, generally surreptitiously.

Using unlawful and perhaps immoral means for a good end is an age-old paradox that can have no correct answer. Yet, the issue involving a police officer is

serious for lives are involved. The encounter of four suspects in the rape-murder case in Telangana remains hotly debated for the staged encounter continues to have extensive public support on the delivery of swift justice to the alleged rapists. Vikas Dubey was killed despite surrendering to the police for his crime of murder. Was his killing justified? While the facts have got muddled the issue of illegal means for public good appears to be at the forefront of public discourse today. The proponents have a short answer- if someone picks the gun and kills the police officers he must be prepared to die by the gun. On the other hand, critics point out that the police can only exercise the right to self-defense otherwise it is a case of murder.

There is wide-ranging debate within the police establishment for contrary to general public impression, a very large number of police officers disfavor encounters and advocate following the due process. Unfortunately, the police officer carries a heavy burden and more so when the crime involved is against the security or authority of the state. Terrorism is a deliberate violence in pursuit of some political ideology. The terrorist does not differentiate between a citizen and a state official. Everything is fair game and every strategy is open to execution. Blowing buses and trains; planting bombs in public places and butchering suspected informants are fair tactics in pursuit of ideology. These are not acts of mad religious fanatics but also those driven by the objective of establishing a socialist state.

But for the police the options are blocked. Only the due process lay down in the Code of Criminal Procedure 1973 [CrPC] is an acceptable action. However, this process does not provide a clear path to find conclusive evidence against the suspect. If a Maoist is engaged in deep jungles, a witness must still be found to

support the claim for recovery of weapons from his person. Even when the suspect confesses his involvement in a crime, it is immaterial for Section 25 of the Evidence Act 1872 will not permit any statement made to the police as evidence. While it is clear to the investigating officer that the suspect is guilty and involved in anti-social activities this must be proved decisively in the court of law. He must procure sufficient evidence and the prosecution must prove beyond all reasonable doubt about his guilt. This happens when on the opposite side the defense of the suspect is bolstered by a battery of smart lawyers and inordinate delay in the proceedings. There is little to assist or even protect the investigating officer or the prosecution witnesses.

Meanwhile, from political pressure to physical threats he must overcome all the inducements to protect the nation, society and the victim who everyone forgets quickly. No one can even cite a single name from amongst the thousands killed by extremists from Kashmir to forests of Chattisgarh and hills of Assam. The thousands kidnapped and murdered by the formidable dacoits of Chambal ravines or at the behest of builders' mafia draw tears from only their immediate family members. The society and the media and everyone else have deleted them from their memories. The media and activists in the meantime have already ridiculed the police investigation and attributed motives to the findings. Even after the Supreme Court examined the case and confirmed the death penalty, there remain many who hold Afzal Guru innocent of his participation in the terrorist attack on the Parliament. On the other hand, the police officers killed by Vikas Dubey have become suspects in the organized crime and political shenanigans surrounding his life story.

The system never works as designed. The judge may declare grandiosely about the temple of justice where truth prevails but the reality is otherwise. It is a game that is played between the police and vicious offenders supported by business owners, political leaders and high paid lawyers. Unfortunately, everyone else within the country is also pitched against the police officer. Donning a khaki, with limited resources, the officer must venture into deep jungles; cook his own food and sleep in the open. He does not get leave and someone else must look after his family. He must work hours without break and walk miles on foot. The society ostracizes him and the government treats him equivalent to a class four employee. But he must protect the nation and society at all costs upholding the constitution in its fullest form.

There is little dispute that the nation and society must be governed and protected through the rule of law. Due process is important as it prevents arbitrariness and promotes fair treatment. The police cannot be the sole arbitrator of guilt and punishment, howsoever heinous the crime. An independent judiciary must prevail to determine the charges brought by the police and innocence of the suspect. There must be well-established procedures of bringing evidence in the court and grounds for proving the involvement of offender. The quantum of punishment must be commiserating with the guilt of accused. The democratic state must be an open society where the state agencies operate according to the will of the people. There cannot be disagreement about any of these principles.

Every policeman readily *agrees* to these concepts and *pleads* for their adoption. The due process of law gives him immunity and shields him from

accusations of abuse of power. But when reality strikes no one believes in the law. Citizens demand 'strong action' against the thief stealing their property. Suspects, if caught are lynched by frenzied mobs. When Khalistani terrorists were executing their rampage and Punjab was burning, the judge sitting at home could not muster the courage to say no to anonymous calls. The suspect apprehended after long pursuit by the police would be given bail only to go and kill a son of the officer. The entire system had broken down. The politician does not move outside without Z-security. For the activist it is humane to smuggle information on behalf of some murderous comrade. It is acceptable that even prominent witnesses like Sharukh Khan and Bollywood stars would succumb to pressure or threat and change their testimony. But under all circumstances the policeman is expected to adhere to the finer grains of law. When the system itself is deviant and where the writ of state is absent there cannot be any rule of law. Judge Posner has stated that 'the constitution cannot be a suicide pact' in defense of America's war against terror. When every segment is ready to take liberties with the law, the police alone cannot pretend that the society is rule-based and he must follow the law.

These are major issues engulfed in ideology and civilizational morality. However, in a democratic society all voices must be heard. Hence, the police officer's voice also needs to be articulated for after all the issue is about him. All policemen recognize that there cannot be a carte blanche open check to act independently in safeguarding the security of society and its people. Every officer accepts restrictions on his or her power and is trained to function within legal boundaries. However, all the officers today are looking for some understanding and support in discharge of

their onerous responsibilities. When dealing with terrorists and organized mafia strict adherence to rules is impossible. Covert and dangerous operations must be launched where the risk to the life of the officer is at stake. As demonstrated in countless incidents and exemplified by Tukaram Omble who caught Kasab alive and in the process made the supreme sacrifice, Indian police have faced danger bravely without flinching. Every year, hundreds of officers die on duty. Police officers' patriotism and service to the community is at par with anyone in the country.

Most officers do acknowledge that there are black sheep and accept unhesitatingly that these must be weeded out. While the continuing presence of such officers is a matter of another discourse it must be pointed out that the political and bureaucratic control is a major reason for their existence. However, not everyone in the police must be judged by the actions of few. Overwhelming majority of officers seek to do their best and serve the society.

Perhaps the encounters can be seen through this prism. In battling Maoists, terrorists and mafia killers, the legal boundaries are invariably breeched. But in common crime and order functions the police must strictly adhere to the law. The problem is who gets to make this distinction. The answer is simple- police leadership in partnership with everyone else. First, political support must exist for the elected representative control the police apparatus. Punjab Chief Minister Beant Singh backed KPS Gill to the hilt and this support was crucial in battling and eradicating terrorism from Punjab. Even today, Punjab remains the solitary example where police succeeded in putting an end to terrorism. There is an example of even judicial support to the beleaguered police officers. A German court found two police

officers guilty for threatening to use torture against a kidnapper [a crime in Germany] but took account of the altruistic motives of the officers. Their verdict was 'guilty but not to be punished'. Largely, citizens are able to understand the altruist motives of the police officers and come out to support as seen at Bhagalpur, Cyberabad and in Kanpur. The support of police leadership is equally important but generally available covertly. This is improper for the police leader must come out to support an officer acting in good faith.

There is no doubt that torture, use of third-degree methods and of course staged encounters are all illegal under any national and certainly international laws. No police department anywhere in the world is given powers where they can act as a judge and executioner. The actions of the police officer must be examined by an independent third party- preferably the judiciary and must be curtailed through legal boundaries. However, the system and the society must understand the dilemma confronting the officer. On a daily basis the officer makes a difficult choice- to risk innocent lives and security of the society or break the law. When judging the conduct their altruistic motive may be kept in mind. Such an assurance to the Indian police will go a long way in resolving between good and bad encounters.

Dr. Arvind Verma
Interim Director
Center for Criminal Justice Research
Department of Computer Science and Engineering
Indian Institute of Technology, Kanpur