

ANNEXURE 7

**Statement by the Asian Legal Resource Centre
(ALRC-STM-004-2010) dated July 30, 2010**

INDIA: Is Justice Balakrishnan holding a devil's brief?

The opinion expressed by Justice K. G. Balakrishnan on encounter killings - a euphemism for extrajudicial executions in India - that 'encounter killings' are sometimes unavoidable is condemnable. That the former Chief Justice of India, now heads the National Human Rights Commission (NHRC), paints a depressing picture for the victims of extrajudicial executions since the Chairperson has spoken his mind.

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INDIA: Is Justice Balakrishnan holding a devil's brief?



The opinion expressed by Justice K G. Balakrishnan on encounter killings - a euphemism for extrajudicial executions in India - that 'encounter killings' are sometimes unavoidable is condemnable. That the former Chief Justice of India, now heads the National Human Rights Commission (NHRC), paints a depressing picture for the victims of extrajudicial executions since the Chairperson has spoken his mind.

Addressing the press earlier this week, Justice Balakrishnan said that "... encounters are unavoidable sometimes ... the law and order problem is increasing. Criminals are taking law into their hands, attacking even the police. Police have to take control of the situation." Indeed he offered a concession by adding that there must be checks and balances to ensure that fake encounters do not take place.

To justify his position and elaborating his argument that extrajudicial executions could solve law and order issues, the Chairperson cited examples of the extrajudicial executions of persons suspected to be involved with the Mumbai underworld gangs and those alleged as Naxalites in Andhra Pradesh state. Least to say, these comments are irresponsible and unbecoming of a judicial officer and public servant, mandated to chair the NHRC, an institution that hundreds of victims approach seeking redress in cases of extrajudicial executions.

Certainly, the Chairperson of the NHRC is oblivious about the global condemnation of the summary execution policies followed by the US and the UK - two countries he quoted as having successfully implemented similar policies - and the draconian laws these countries have legislated to justify the killing of foreigners in alien soil in their fight against terrorism. Justice Balakrishnan is certainly unaware that states like Manipur and Kashmir have nothing in common with the UK or the US. Nor has he cared to understand the universal jurisprudence behind the strong views taken by the House of Lords in R v. Magee against draconian legislations and arbitrary methods that deny fair trial even against the most dreaded suspect. For sure, Justice Balakrishnan has not

come across the words of US Supreme Court Justice Robert H. Jackson, who served as chief prosecutor at the Nuremberg War Crimes Tribunal, convincing President Harry Truman that '(w)e could execute or otherwise punish (the Nazi leaders) without a hearing. But indiscriminating executions or punishments without definite findings of guilt, fairly arrived at, would ... not set easily on the American conscience or be remembered by children with pride." What justifies Justice Balakrishnan's departure from this universal norm of justice and fairness or is he proposing that Indians deserve a lower standard of justice than the Europeans and the Americans or suggesting India to follow the so-called Sri Lankan model?

The comment by Justice Balakrishnan, condoning extrajudicial execution makes a travesty of the country's justice framework. It is a challenge and insult upon the intellect of the average Indians who are apparently more informed about the country's police and the manner in which they operate than their former Chief Justice. The country's media is filled with news of the arrest and questioning of the former home minister of Gujarat state who is accused to have ordered extrajudicial executions of his former partner in an extortion syndicate and his wife. If it is for the country's police to decide who is a convict, who must be punished and by what means, then the institution Justice Balakrishnan led prior to assuming office at the NHRC, the Supreme Court of India and its subordinate courts, and the NHRC itself must be closed down.

Justice Balakrishnan's understanding about the Mumbai killings and the Andhra Pradesh Naxalite killings is seriously flawed. Extrajudicial executions is not a solution to law and order issues. Had it been so, Mumbai must have been free from criminal gangs and Naxalism should be history. States like Manipur and Jammu and Kashmir where extrajudicial executions happen routinely should have been a safe place to live.

It is important for Justice Balakrishnan to introspect about how much does he know regarding the extent of extrajudicial executions happening in the country each year; as a former judge, the current Chairperson of the NHRC and above all as an Indian who is offered information through various means concerning what is daily happening in the country. Can Justice Balakrishnan guarantee that the government will follow the instructions issued by the Supreme Court of India and the NHRC concerning arrest, detention and extrajudicial executions?

Forget about extrajudicial executions. While Justice Balakrishnan was the Chief Justice of India in how many cases did he initiate *suo motu* actions against the police officers who were reportedly engaged in open violation of the directives issued by the Court in the D. K. Basu case? In how many cases did the NHRC demand from the government the report the governments are mandated to file in each case of extrajudicial execution? The Asian Legal Resource Centre (ALRC) is aware that the NHRC has done so only in a very few instances.

What proof does the Chairperson have to form an opinion that in 'those cases that he considers are unavoidable' the victims were shot dead as an absolute necessity? In how many cases did the Chairperson have the opportunity to adduce evidence and adjudicate as a judge concerning the 'essentiality of a murder committed by a police officer to maintain control' and in how many of these cases did the Chairperson find that the officer was discharging his lawful duty by killing a suspect? To say the least, based on what statistics, study or information does the Chairperson advocate that extrajudicial execution is sometimes necessary?

The comment demonstrates a way of thinking. It is the mindset prevalent among the country's ruling and the educated classes. They think of serious abuses of human rights like extrajudicial executions, disappearances and torture as unavoidable. This mentality allows the police and other law enforcement agencies to engage in these acts with the excuse that these are unavoidable evils. This outlook demonstrates the lack of appreciation and the understanding of law, the inability to grasp the requirements of a strategy that is required to create a framework of rule of law and constitutionality; and also the absence of the commonsense to realise that to say something is

unavoidable is to make it permissible.

That it should come from the former Chief Justice and the present Chairperson of the NHRC explains the reasons for India's failure to eradicate the deep evils that obstructs its constitutional system. Replacement of persons who possess this kind of mindset with a new leadership that is suitable for the challenges faced by India is a requirement for the very survival of the country as a law-abiding nation.

Justice Balakrishnan owes an apology to the country. His statement condoning extrajudicial execution negates the premises of the constitution that he has sworn allegiance to protect and fulfil. Through the statement he has proved that his legal intellect is unfit of leading a national institution that is mandated to protect, promote and fulfil human rights.

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About theALRC: *The Asian Legal Resource Centre is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. It is the sister organisation of the Asian Human Rights Commission. The Hong Kong-based group seeks to strengthen and encourage positive action on legal and human rights issues at the local and national levels throughout Asia.*