007 never had a licence to kill, and intelligence services are not above the law

Much has been said recently about national interest requiring turning a blind eye towards the extra-judicial killings of Indian citizens allegedly with the connivance of the Intelligence Bureau (IB) and its uniformed police accomplices. To hear some commentators, all that stands between India and imminent destruction is the capacity of an unaccountable body to Parliament to execute whomever, wherever, and whenever they like. Stripped of the immunity to murder at whim, the IB would be allegedly forced to fight suspected terrorists with both hands tied behind its back. Or would it?

No nation can be expected to stand by while the lives of its citizens are threatened. The doctrine of self-defence permits the use of lethal force in such circumstances. But it is not an unequivocal doctrine. Self-defence is qualified by consideration of the imminence of the threat and the proportionality of the response.

In an era of unpredictable threats, what qualifies as imminent and proportional will inevitably be stretched. But must it be stretched to cover the extra-judicial execution of four suspects who were apparently in illegal custody and could not possibly pose a threat to security in their custodial condition?

In any civilized society, who does and does not have the power to kill is carefully regulated to protect its own citizens from arbitrariness and abuse. Such societies intentionally place a firewall between those
organizations that are permitted to act clandestinely, and those empowered to use lethal force on that society’s citizens. The reason for this is self-evident. The permission to use lethal force is an extraordinary power which automatically infringes the most basic constitutional rights of all to their own life, except according to procedure established by law. Granting this extraordinary power to clandestine organizations in the form of blanket immunity from prosecution for crimes committed domestically destroys our most fundamental right and leaves us all less secure.

And for what? So the IB and its police cohorts reportedly can take four illegally held young people out and shoot them at point blank range? What good does this do?

We don’t even know whether or not Ishrat Jehan really was allegedly a terrorist. In fact, we’ll probably never know for sure. Why? Because the so called custodians of the law killed, rather than having arrested her got her to stand trial. This fact alone should raise deep suspicions about the usefulness of alleged extrajudicial killings by the IB and its police cohorts. Trials are one of the best means we have for ascertaining truth. Not shadowy or uniformed lynch gang killings which short-circuit the judicial process and leave us with nothing but corpses, questions, and the gnawing fear that our own freedoms are melting away.

Granting the IB blanket immunity against prosecution would also make them an anomaly among intelligence services in the democratic world. No other intelligence service claims an uninhibited right to execute its country’s citizens.

MI-6, Britain’s secret intelligence service, is given immunity for crimes committed outside of Great Britain if authorized by the Secretary of State. They are not, however, immune from crimes committed within the United Kingdom and what immunity they do enjoy is conditional on the Secretary of State, one of Britain’s mostly highly placed executive officials.

MI-5, Britain’s domestic intelligence service, is also not immune from criminal investigation and prosecution. British Metropolitan Police investigated whether MI-5 was complicit in the torture of a British resident held in Guantanamo Bay.
In addition, both MI-5 and MI-6 are under the constant scrutiny of the Independent Parliamentary Intelligence and Security Committee which has the power to demand documents and initiate investigations.

The Central Intelligence Agency (CIA) of the United States is currently engaged in targeted killings using drone strikes around the world which have included, in four instances, its own citizens. This has sparked a great deal of debate in the country and culminated in the current efforts of two US Senators to introduce legislation that makes it clear that the US Government may not kill a US citizen on US soil if that citizen does not pose an imminent threat of death or grievous bodily harm. In response to this, the US government is now moving the drone program from the hand of the CIA to the department of defence.

However, even the director of the CIA never claimed an unqualified right to use lethal force. John Brennan, supported by the Department of Justice, specified that such killings are only permissible in circumstances where there is an imminent threat of violent attack and capture is impossible. This account very much differs from the circumstances which led to the summary execution of Ishrat Jehan.

Moreover, on the specific question of the CIA killing American citizens on American soil who posed no imminent threat, the Attorney General, Eric Holder, gave an unequivocal no. If the CIA was to engage in such actions, they would be subject to the full force of the law of the United States.

Even our own Supreme Court has come down extremely hard on the use of encounter killings by police. In the Court’s decision to deny bail to police officers in Prakash Kadam vs.Ramprasad Vishwanath Gupta & Anr, it likened an officer’s agreement to carry out a fake encounter to the Nazi complicity in war crimes. The court is unequivocal that encounter killings are murder. As they state, “The ‘encounter’ philosophy is a criminal philosophy…Trigger happy policemen who think they can kill people in the name of ‘encounter’ and get away with it should know that the gallows await them.” If this is the case for police officers, ostensibly granted a monopoly on force in our country, how much more so should it be for an intelligence agency with no legislative right to force at all?

Invoking the high principles of the constitution and the rules regarding intelligence services around the globe ought to compel most Indians to realize the follies of granting the IB blanket immunity. But there will still be a chorus crying out ‘But what about the consequences?’
Well, what about them? We have a police force for carrying out arrests and a military for extraordinary circumstances. We have a legislature capable of changing the law to respond to emergencies and one of the finest judiciaries in the world. Why do we want to create a clandestine hit squad agency operating above and in contradiction to all our laws?

If we want to speak of consequences, consider the fact that of the IB’s 26 directors, only 5 are reportedly dedicated to working on terrorism. Most focus on political intelligence. If the IB or any other police agency is given a blanket immunity to execute whomever they wish, how long will it be until they will be tempted to use it on political opponents?

At the end of the day we must ask ourselves, ‘who should hold the power of life and death?’ Should it be an unaccountable body of spooks in whom we blindly place our faith? Or as Juvenal put it in the first century AD, “Quis custodiet ipsos custodes?” “Who watches the watchmen?”

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