



ENCOUNTER KILLINGS: JUSTICE BY POLICE?

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Abstract

An encounter killing is when a police officer uses force against a suspected criminal, either when he tries to flee from the police or when on a search or a raid, to the extent of killing him. The genuine, unplanned encounters are the ones that happen when the police officers act in self-defence however, in recent times, some police officers have been “staging” such encounters may it be for personal gain or to settle a vendetta. This paper aims to understand the origin, past provisions, legality, several contentions regarding Article 21 and other human rights and some important judgements related to the same.

Keywords: uses force, suspected criminal, self-defence, staging.

Background

Encounter killings in India can be traced back to the pre independence times when the Quit India Movement was gaining traction in 1942. Lord Linlithgow (the viceroy of India at the time) promulgated the Armed Forces Special Powers (Ordinance) which authorised the “Commissioned Officers not below the rank of Captain in the army, to use force if necessary to the extent of causing death of a person who fails to halt when challenged by a sentry or who attempts to destroy property which the Officer has been

deputed to protect”¹. The Ordinance openly gave the authority to any commissioned officer to use force, even to the extent of death. This can be marked as the initial wave of encounter killings. By these provisions, the authorities in charge allowed officers to control the protestors and kill them without a proper trial which violated principles of natural justices which helped them hugely in curtailing the Freedom Movement.

The continuation of such a provision was observed when the Governor-General of India promulgated four ordinances to control the situation arising of the Partition at the time. The Ordinances contained similar provisions and therefore, officers of the military were given power to use force even to the extent of death in Independent India.²

However, these legislations were passed with the intention “to control insurgencies” by the army and the dawn of encounter killings by the police emerged in the period of the 90s. Encounter Killings were on a rise with the police often dodging the due process of law. This was made most evident by the PUCL petition filed in the Bombay High Court which claimed that many of the encounters of the police were in fact staged or faked. The court took note of the 47 encounters in 1997 in Mumbai itself and allowed for a judicial inquiry.³

“Let a hundred guilty be acquitted, but an innocent shouldn’t be punished” is what one must keep in mind while trying to analyse the situation in India. Infact, the situation is much worse now with the number of cases

¹ Loitongbam, Babloo., Manipur Update. Human Rights Alert. Vol. I, Issue I, December, 2000.

² Naga People's Movement of Human Rights vs. Union of India AIR 1998 SC 431.

³ People's Union for Civil Liberties vs. State of Maharashtra 1998 BomCR (Cri) 741.



rising. The badly affected areas are Manipur, Andhra Pradesh and even Assam. In Andhra Pradesh, numbers have touched 4000 alleged encounters⁴ and with such large numbers and the question of due process of law, this has become a grave problem that the society needs to deal with.

Police's Defence

The *Extra Judicial Execution Victims' Family Association v. Union of India (2013)*⁵ case shines light on the state of affairs in Manipur and this should be taken into consideration while understanding the attitude of the police. The writ petition questioned the killings of 1528 people in Manipur and alleged the killings to be extra judicial. In the counter-affidavit filed by the State of Manipur in response, they denied the above allegations and it was also stated that the NHRC found no violation of any human rights in some of the cases highlighted in the petition. The State also tried to simply justify these killings by giving the number of policemen that were killed by the insurgents in the State. However, the court opined that this was no explanation for the question raised in the petition. Insurgency, no doubt, is a menace that has troubled the state of Manipur and lots of police officers have lost their life on the line but this cannot be the answer to extra judicial killings.

In the counter-affidavit filed by Union of India, the Centre even contended that, with the different legal provisions of Criminal Procedure Code and the Armed Forces (Special Powers) Act, 1959, the act of the

police killing a person during an anti-insurgency mission may be legal. The Centre, in the counter-affidavit, tried to take the defence of counter-insurgency missions however in 14 of the cases highlighted in the petition, proper judicial inquiries ascertained that none of the victims killed in these cases were part of any insurgency groups. Hence, there is no reason or possibility that insurgency was a part of these cases.⁶

Atleast in the 14 cases, judicial inquiry was conducted wholly. In 10 other highlighted cases, there was a huge lapse in investigation by the Executive Magistrate. Statements of the victims' families weren't recorded and the police officers did not even bother appearing before the court to record their statements. Even with these gaps in inquiries, the Executive Magistrate concluded that there were no encounter killings by the police. The amicus curiae however opined not to take these inquiries into consideration.⁷

Besides claiming anti-insurgency missions, the police have been dodging extra-judicial killing allegations by claiming the right to self-defence. It is imperative that each and every police officer has the ability to protect himself while he or she protects the nation however grave misuse of this has led to many complications and even abuse of power. This is said only because it is observed that in most of the cases, there is a template to what supposedly happened. It appears that the police use a similar narrative in the majority of the cases.

⁴ N. Venugopal, "Fake Encounters: Story from Andhra Pradesh", EPW, Vol. 42, No. 41 (Oct. 13 - 19, 2007), pp. 4106-4111.

⁵ Extra Judicial Execution Victim Families Association. vs. Union of India AIR 2013 SC 818.

⁶ Ibid.

⁷ Extra Judicial Execution Victim Families Association. vs. Union of India AIR 2013 SC 818.



One of the popular and recent cases of encounter killing is the Hyderabad case wherein the police killed four men who allegedly raped and killed a female veterinarian. The facts of the case dictate that the police had the four men in custody but took them to the original crime scene. Ten policemen escorted the four men who were not even handcuffed to search for the victim's phone, watch and power bank. The four men supposedly started to attack the ten police officers after which they took guns from two officers and started to fire at them. The police retaliated and killed all four.⁸

When we dig a little deeper, we can observe that this was not the first encounter for the commissioner in charge of the case, VC Sajjanar. In fact, in 2008, three men were arrested for allegedly acid-attacking two girls. Just three days later, they were killed in an encounter. The three men were taken to the crime scene where they broke free, snatched the police officers' weapons and started to fire. The police killed all three in self-defence.⁹ Now what's the similarity in both cases? In both cases, the officer-in-charge was VC Sajjanar. In both cases, there was mounting pressure from the public and media for inaction. In both cases, the suspects were taken to the crime scene. In both cases, the suspects broke free, took the police officers' guns away and fired at the officers. It may seem like a coincidence but in fact may not be one. VC Sajjanar was lauded as a public hero after both cases too. Increasing pressure and a personal gain for

the officers? At what cost, simply killing the suspects in self-defence and closing the case.

This is just one specific police officer with a history of encounters but there are many hailed as "encounter specialists". In the Mumbai Police itself, there are several "well-renowned encounter specialists" such as Daya Nayak, Vijay Salaskar and Pradeep Sharma - the three of them combined over three hundred "encounters" under their belt.¹⁰

In another shocking incident, CPI(M) activists K Parsaiah and M Ravindra Reddy were arrested and just two minutes after they were presented to a magistrate, they were killed in an encounter. The list goes on and in fact, the 3000 naxalites and 1000 ordinary citizens killed in just 38 years of Andhra Pradesh, it is estimated that 90% of them could be fake encounters of similar nature with similar stories.¹¹ The police have a complete need for having the right to self-defence however, if it is misused; and misused to such an extent, there need to be serious consequences to those involved.

The Serious Problem

Under Article 21 of the Indian Constitution lies the right to life and even under Article 3 of the Universal Declaration of Human Rights (UDHR), it is stated that "Everyone has the right to life, liberty and security of person." Hence, the life of any individual cannot be taken away except according to procedure established by law. When the police are required to use force to disperse a crowd (for example as in the case of

⁸ Hyderabad case: Police kill suspects in rape and murder of Indian vet, BBC Asia, 6th Decemeber 2019

⁹ Ians, "Andhra Police kill 3 youths involved in acid attack", IndiaToday, 13th December 2008.

¹⁰ Aakar Patel, "Encounter Specialist: A Rare Breed Of Policemen Whose Criminal Act Is Celebrated As Justice", Outlook India, 8th December, 2019.

¹¹ Supra note 4.



Panchadi Krishna Murty) they must use minimum force and in cases of opening fire, must obtain permission of a magistrate and also shoot without the intention of causing death. Taking the same example of Murty, the police supposedly while returning for the search of him, coincidentally ran into a mob of 30 men. The Inspector in charge tried to get them dispersed however the effort was in vain and the men charged against them shouting “Kill the Police” and with this the police opened fire. Surprisingly or perhaps not, the bullets of the police ended up killing Murty and six others.¹²

This is, unfortunately, very similar to most of the encounters - the police run into a criminal who they have been in search of and the criminal tries to injure them to which the police act in self-defence. This results in death on the side of the criminals but not even an injury to the side of the police. What is more disturbing is that the police officer in charge of the encounter would gain personally for example an ego gratification or medals and promotions. This gives the officer an additional incentive to choose encounters as a way to deal with the criminal.¹³

In many other instances, the police have overstepped their boundaries and used deadly force against innocent citizens and caused the death of an innocent civilian. In another case of *Extra Judicial Execution Victim Family Association v. Union Of India (2017)*, findings of the Commission formed as an outcome of the 2013 case were presented before the court. It was found that

in 32 cases, the Gauhati High Court found a more than prima facie case of fake encounters and therefore awarded compensation to families of the victims.¹⁴ However, monetary compensation is not the answer to this grave issue. The police cannot have it's way, break the law and only pay some money as a punishment. This would make it very convenient for the police to close cases quickly and skirt the law. The state cannot violate the fundamental and human rights of the citizens and be given a way out by compensating the family. Strict action and implementation of the guidelines set forth in the relevant judgements is what is required.

Conclusion

With all things considered, the extra-judicial killings are a threat to the society's human rights and make the investigator, judge and executioner all in one. This is against criminal jurisprudence and rule of law. The mindset of the people is also a part of the problem. Many times, these police officials are valourised and it can be said that the media has a huge role in this heroism. The people accept these actions with huge celebration when in fact it is a clear violation of law. Often, the victim of an extra-judicial killing can be killed to set scores, political vendetta or even because of some kind of rivalry - none of which qualifies as a restriction to the right to life or a reason by which the police has even the slightest authority to take a citizen's life. It has been a few good years since landmark judgements such as the ones spoken above have come to force yet there have been numerous such

¹² Ibid.

¹³ Jyoti Belur, “Why do the police use deadly force?: Explaining Police Encounters in Mumbai”, The

British Journal of Criminology, Vol. 50, No. 2 (March 2010), pp. 320-341.

¹⁴ Extra Judl. Exec. Victim Families Assn. vs. Union of India (2017) 8 SCC 417.



incidents (such as the Hyderabad case in 2019) which just goes to show that the police, not paying heed to the verdicts of even the Supreme Court, continue with their ways.

Of course not all police officers indulge in such practices and some encounters are genuinely unplanned and true however those who do kill alleged criminals are the ones who are responsible for causing an unbalance in the rule of law. The Indian courts are based on the principle “innocent until proven guilty” and therefore when these suspects are shot by the police they are innocent since no court had declared them guilty of the crime. In no form or manner must the public come out to support these “encounter specialists”, political support must come to an end and those who act in a way that have even the slightest element of extra-judicial killing must be severely taken to task. There must be punishment and accountability on the other side of these acts rather than gallantry medals and ready promotions. Only then will we be free of such clear violations of law.


