



**POLICE BRUTALITY AND
FAKE ENCOUNTERS: AN
INSIGHT ON COLD- BLOODED
MURDERS**

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of Police. However, they were not made the part of Indian Imperial Police. From the year 1920, Indian Imperial Police was open to Indians and the entrance examination for the services was conducted both in India and England⁴. After the creation and enforcement of Constitution of India in the year 1947, the modern Indian Police Service was created under Article 312(2) in Part XIV⁵.

**POLICE COMPOSITION AND
FUNCTIONING**

INDIA

The advent of the modern policing system dates back to the time of British rule in India. In the year 1861, the British Government came up with the Indian Councils Act, 1861¹ (which overhauled the then India's Executive council). The act laid the foundation stone for the modern and professionalized police bureaucracy in India. It introduced what was known as Superior Police Services, that later came to be known as Indian Imperial Service. The highest rank was that of Inspector General followed by Deputy Inspector General and so on. In the year 1902-03, Sir Andrew Fraser and Lord Curzon established a police commission for implementing police reforms. For the very first time, it recommended the appointment of Indians at officer level in the police services³. They could rise only to the ranks of the Inspector

A. The Police Act, 1861

The police forces in India are governed by The Police Act, 1861⁶. The act lays down not only the hierarchy but various duties and functions that is to be performed by a police officer. The entire police establishment under any State Government, according to the Act, shall be considered as one police force⁷. The appointment, vacancies, pay and all other condition of service of members of the police force shall be such as determined by the State Government. The duty of the police officers is defined under the act as "It shall be duty of every police officer promptly to obey and execute all orders and warrants lawfully issued by the competent authority⁸, to collect and communicate intelligence affecting the public peace, to prevent the commission of offences and public nuisances⁹, to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend.¹⁰" A closer look at the Administration of police will clearly show that most of the problems that have

¹ Repealed by Government of India Act, 1935

² Sir William Wilson Hunter 7 Ors., "The Imperial Gazetteer of India: The Indian Empire (Vol 1st Descriptive)"

³ Ibid

⁴ Supra Note 2

⁵ <http://legislative.gov.in/sites/default/files/COI-updated.pdf>

⁶ Act 5 of 1861

⁷ Under Constitution of Force in the Police Act, 1861

⁸ Ramesh v. State of UP (1978) Cr.LJ 626 (All)

⁹ State of UP v. Lal Bahadur, AIR 1978 All 55

¹⁰ §23, The Police Act, 1861.



originated are from the legacies of their ancestors which was stagnant, disjointed, outmoded and dysfunctional.

A. The Code of Criminal Procedure, 1973

The jurisdiction and power of investigation for the policing system in India is defined under The Code of Criminal Procedure, 1973¹¹. The powers and duties of police is defined from Section 154 to Section 173 of the said act. These sections also maintain check and balance to the police functionaries by enabling them to compulsorily provide information to Magistrate from time to time. The act itself divides the jurisdiction of the police system in respect to investigation by classifying the offences under two heads- Cognizable¹² and Non-Cognizable¹³. Not only this, the police officers have also been given power to search¹⁴, medical examination of a rape victim (to be done by a woman police officer)¹⁵, custody¹⁶ and so on.

UNITED KINGDOM

The policing system during the 18th Century in United Kingdom, were organized by the local communities which generally comprised of Watchmen and Constables, with Central Government having no direct involvement in it¹⁷. The City of Glasgow Police, was the first ever professional policing system, that was established

following the Act of Parliament, 1800. The police system in UK is divided into three major heads-

A. The Police Act, 1996¹⁸/ The Police and Fire Reform (Scotland) Act, 2012¹⁹/ The Police (Northern Ireland) Act, 2000²⁰

The Territorial police services are the first limb of the police division which constitute the majority of policing system in the three states of UK- England and Wales, Scotland and Northern Ireland. As of the census of 2013, there are 45 different types of territorial police services that cover these particular regions and also have either independent police authority or local authority or joint police board. The above-mentioned acts, address number of issues ranging from appointment of a chief-constable to jurisdiction, powers and functions in all the three states. There are certain territorial police service that are entrusted with performing national role, e.g. the Special Operations directorate of Metropolitan Police.

B. The Serious Organized Crime and Police Act, 2005²¹

The National law Enforcement Agencies are the second most important division after the Territorial Police Services. It includes the National Crime Agency²² and the British Transport Police²³. The Serious Organized Crime and Police Act, 2005 cites them as “Special Police Forces”. The NCA operates all across United Kingdom but requires a

¹¹ §177 r/w §209, The Code of Criminal Procedure, 1973

¹² §2(c), The Code of Criminal Procedure, 1973

¹³ §2(l), The Code of Criminal Procedure, 1973.

¹⁴ §51, The Code of Criminal Procedure, 1973

¹⁵ §164A, The Code of Criminal Procedure, 1973.

¹⁶ §167, The Code of Criminal Procedure, 1973.

¹⁷ Robin Bryant, “Blackstone’s Handbook for Policing Students”.

¹⁸ Cl. 16 of 1996

¹⁹ Asp 8 of 2012.

²⁰ Cl. 32 of 2000

²¹ Cl. 15 of 2005.

²² <https://www.nationalcrimeagency.gov.uk/>

²³ Transport Police (Jurisdiction) Act, 1994.



written agreement of the domestic prosecuting authority to operate in Scotland and Northern Ireland. They come into action against organized crime.

C. Common Law of England

The last limb of the policing system in UK are the Miscellaneous Police Services, which trace back their roots of foundation in older legislation or the common law. They have the function of safeguarding local areas such as parks, ports etc.

UNITED STATES OF AMERICA

The policing system in United States is divided among “18000 federal, state, local and city departments, all with their own rules.”²⁴ Every State has its own nomenclature regarding powers, responsibilities and funding.

The Code of Laws for the United States of America

At the federal level, both i.e. federal police which possess full federal authority as enshrined under United States Code (U.S.C.), and federal law enforcement agencies, which are authorized to enforce various laws at the federal level, exists. Both the police and law enforcement agencies work at the highest level, entrusted with policing roles and may imbibe component of one another e.g. FBI. These police forces have jurisdiction in all states, U.S territories, and U.S possessions for enforcement of federal

law. Some of the police forces at Federal level include The Department of Justice, The Department of Homeland Security, United States Coast Guard, United States Secret Service etc. At county level, county law enforcement is provided by sheriff's department or offices and county police. The County police works only in metropolitan countries. There are even countries that comprises both- the county police and the county sheriff. In such situation's responsibilities given to each are clearly demarcated. County police are entrusted with typical police duties such as patrolling, investigation etc. whereas on the other hand, the Sheriff's department mainly works in court like serving papers etc. Municipal Police are found in cities e.g. New York City Police Department (NYPD).

DIFFERENT FORMS OF POLICE BRUTALITIES

The term “Police brutality” is legally defined as an excessive use of force by a legal enforcing entity in order to curb down a particular subject, thus leading to civil rights violation. The term was firstly used by the Chicago Tribune in the year 1872, when a civilian under arrest, was beaten at the Harrison Street Police Station. The brutality can range from rape to torture and even custodial deaths. A comparative study of the same is discussed below-

INDIA

The cases of police brutality in India before and after independence don't show any major difference in their numbers. Some of

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<https://www.chathamhouse.org/publications/twt/race-problem-black-and-white>



the famous cases are-

1. In the year 1980, the incident of “Bhagalpur Blinding’s” in Bhagalpur, a state in Bihar became very famous wherein, police blinded 31 undertrial prisoners in the custody by pouring acid into their eyes. This was also the first case where Supreme Court ordered compensation for human rights violation.
2. In the case of “Videocon Land Acquisition” in Pune, the police opened fire on people protesting against the illegal land acquisition.
3. In the famous case of “Guru Grant Sahib Desecration”, the police killed 2 and gravely injured 50 others, who gathered for the protest. The police claimed that they acted in self-defense.
4. In the famous “Thoothukudi violence”, the police killed allegedly 13 protestors and gravely injured more than 100 who gathered to protest against the expansion of proposed copper smelter program.
5. The Jamia Milia Islamia attack yet remains one of the darkest days of 2019, wherein police attacked on students protesting and also on non-protestors for raising their voice against Citizenship Amendment Act, at the campus of Jamia Milia Islamia.
6. On 16th of March, 2020, a police constable attached with Laxmipura police station at Vadodara was arrested for allegedly raping 21-year old women, during his late-night patrolling duty.
7. A constable of Ghumarwin Police Station in Himachal Pradesh was arrested, after committing rape with a laborer at her quarter, in guise of giving food ration for whole week.
8. In the famous “Thoothukudi custodial death”, a father-son duo was allegedly beaten, brutally tortured, sexually assaulted

by the police officers of Thoothukudi district, in the custody, for opening their mobile shop beyond the prescribed hours in COVID-19 Pandemic situation. The duo later died in the custody.

9. The cops of the “Tuticorin district” allegedly took a man without warrant from her widowed mother’s house, kept in custody, was tortured, beaten and later died due to Brain Damage. His fault was that he was the younger brother of a man, suspected in a murder case, and to get to him, they used him as a bait.

10. A 19-year old man, who came to give an SSLC exam died allegedly after being lathi-charged by the police, his only fault being that he did not wore helmet and thus violated traffic police rules.

OTHER COUNTRIES

1. The Royal Ulster Constabulary (RUC) in Northern Ireland killed 5 Catholic Civilians, and also opened fire on crowds, protesting for Irish Nationalist. As a result of it more than 100 people were killed which included as boys as young as 9.
2. Edson Da Costa, a black Portuguese man was killed in police custody in the year 2017, the reason for which is unclear even till today. It sparked a fire among the general masses that led to several protests in the country. Even the slogan “Black Lives Matter” was put up.
3. Jordon Begley, died due to cardiac arrest due to the actions of Greater Manchester Police Officers who allegedly shot the man with taser, while he was restrained and handcuffed two hours before his death.
4. George Floyd, was killed in Minnesota by an officer, by having his neck choked by the officer’s knee. The fault of his was that,



he paid a counterfeit \$20 to a shop in exchange of packet of cigarettes.

5. Michael Brown Jr., an 18-year-old man was shot dead by a Ferguson police officer in the suburb of St. Louis. The officer shot Brown 6 times. He died on the spot.

6. Ian Tomlinson, a newspaper vendor died in the City of London during the protest of G-20 Summit, after being struck by a police officer.

7. Camilo Marcelo Catrillanca Marin was killed by the Chilean police force in the year 2018, by being shot at the back because the force suspected that she was involved in a car theft, that later got disproved.

8. Breonna Taylor, an African-American was killed on March 13, 2020, when the Louisville Metro Police Department, while executing a no-knock-search warrant, entered her apartment and shot at her 8 times. Later it was revealed that she was not the suspect they were looking for.

ENCOUNTERS

The word encounter springs from a French equivalent “*encontre*” meaning “meeting; fight; opportunity”. The term is popular among the masses all over country especially India, because of very high number of killings done by police among major economical cities. In India, the encounter killing by police can be justified for mainly three reasons-

- a. In self-defense or private defense of the police officer under section 96 of the Indian Penal Code, 1860.
- b. Under exception 3 of the Section 300 of the Indian Penal Code or Section 46 of the Code of Criminal Procedure, 1973, wherein provisions have been laid down with regard to extra-judicial killings and cases of

culpable homicide.

Although, there is no provision in the Indian law that straight away defines or authorizes the encounters of the criminals. In the landmark judgement of PUCL v. State of Maharashtra²⁵, the hon’ble bench (comprising of Chief Justice RM Lodha and Justice RF Nariman) issued guidelines as to what should be done if an encounter of a certain person or criminal is done. The guidelines are:

- 1. Record Tip-off:** Whenever the police receive 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.
- 2. Register FIR:** If in pursuance to a tip-off, the police use firearms and this results in the death of a person, then a FIR initiating proper criminal investigation must be registered and be forwarded to the Court without any delay.
- 3. 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.
- 4. 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.
- 5. Inform NHRC:** The NHRC or State Human Rights Commission (as the case may be) must be immediately informed of the encounter death.
- 6. Medical Aid:** It must be provided to the

²⁵ PUCL v. State of Maharashtra, (2017) 13 S.C.C. 773



injured victim/criminal and a Magistrate or Medical Officer must record his statement along with the Certificate of Fitness.

7.No Delay: Ensure forwarding FIR, panchnamas, sketch, and police diary entries to the concerned Court without any delay.

8.Send Report to Court: After full investigation into the incident, a report must be sent to the competent Court ensuring expeditious trial.

9.Inform Kin: In the case of death of accused criminal, their next of kin must be informed at the earliest.

10. 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.

11. 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.*

12. Compensation: The compensation scheme as described under Section 357A of the Cr.P.C must be applied for granting compensation to the dependents of the victim.

13. 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.

14. Legal Aid to Officer: An intimation about the incident must be sent to the

accused police officer's family, offering services of lawyer/counsellor.

15. 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.

16. 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.

MISUSE OF POWER BY THE POLICE

The Indian Police Services²⁶ system is authorized to maintain order, enforce law and prohibit events, which violate the sanctity of law. Saddening to which, the IPS within its jurisdiction are failing to act accordingly to their duties. Failing their duties, that extent to register complaints²⁷ or investigate crime²⁸, to false charge²⁹, malicious prosecution³⁰ and ill-treatments within the custody³¹, which sends a clear picture that injustice is not the problem but commitment to their duties is in police administration.

POLICE FAILURES TO REGISTER COMPLAINTS AND INVESTIGATE CRIMES

The Indian police tackles problems of

²⁶ Hereinafter referred to as IPS

²⁷ Nishu v. Commissioner of Police, (2014) 12 S.C.C. 546

²⁸ Superintendent of Police v. Srinivas, (2008) 8 S.C.C. 580.

²⁹ Jai Bhagwan v. Commissioner of Police, (2013) 11 S.C.C 187

³⁰ Ravinder Kumar Sharma v. State of Assam, (1999) 7 S.C.C. 435

³¹ Maniyeri Madhavan v. Sub-inspector of Police, (1994) 1 S.C.C. 536.



terrorism, cognizable crime and non-cognizable crime of the country while general disposition to register and investigate crime, are conversely getting refused by the police force, most of the times. The police can refuse a FIR registration only if the case is of petty issue³², non-cognizable crimes³³ or if the case is outside their territorial jurisdiction³⁴. In 2015, in the case Shri Mohammed Rafi V. The Station House Officer, the respondent police filed a case against the petitioner in respect of the offense punishable under sec 166A of IPC. In Mohd Rafi case the charges against the petitioner, a police officer, was that he refuses to register a case of a rape incident victim. The decision was against the police inspector Mohammed Rafi, over his failure to act against those accused of rape cases, which got him arrested, and adding to it, became the first investigation officer ever to get arrested.

REMEDIES IN LAW

“We the people are the rightful masters of both congress and the courts, not to overthrow the Constitution but to overthrow the men who pervert the Constitution”- Abraham Lincoln.

Accordingly, if any police officers failed his duty to register offenses stated under section 154 of Cr.Pc. the informant under section 154(3) of Cr. Pc can approach any senior officer of police or the Superintendent of Police or the Commissioner of the police with a written complaint³⁵. If even after

approaching to senior Police Officials, no FIR is registered, then the informant can file a complaint to the Judicial Magistrate/ Metropolitan Magistrate u/s 156(3) read with Section 190 of the criminal procedure thereby requesting the FIR to be registered by the police and commencing investigation into the matter. Under section 166A(c) of IPC if the Public servant concerned, fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973, he is punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine. This violation of life and liberty guaranteed under Article 21 of constitution of India because of the inaction of the police are decaying the role of police infrastructure in our country and its repairment is a big call.

FALSE CHARGES AND ILLEGAL DETENTION

The notion of Police dysfunction is far more than we can visualize. Arrest on false charges and illegal detention are another common abuse of police throughout India. But what are false charges?

False charges or accusation are allegations of offense which are not true and/or otherwise made without any supported grounds of facts whereas illegal detention is when a defendant or suspect is falsely imprisoned or unlawfully confined by a Police Officer.

Section 41 of Cr. Pc explains when any

³² Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 S.C.C. 394

³³ Sudhir M. Vora v. Commissioner of Police, (2004) S.C.C Online Bom. 1209.

³⁴ Sugesan Transport Pvt. Ltd. V. Assistant Commissioner of Police, (2016) S.C.C. Online Mad. 9348

³⁵ State v. N.S. Gnaneswaran, (2013) 3 S.C.C. 594.



police may arrest without a warrant³⁶ that also includes an order from a magistrate³⁷. Under section 151 of Cr.P.C³⁸, police may also arrest without a warrant, any individual they suspect is planning to commit any cognizable offense.

A wrongful arrest by police officer can be resisted by the defendant by presenting evidence that proves that the arrest is wrongful and the officer no longer can lawfully arrest the person. If no evidence of proof is presented then the person being arrested must cooperate with the police entirely but claim can be made for presence of personal lawyer. Later, if the complaint filed against the person prove to be false, then in such case the person within his/her rights can sue the complainant or the police officer on account of various loss during the period of incarceration to which the person is legally entitled, that is malicious prosecution³⁹, defamation⁴⁰, false imprisonment⁴¹, lost wages⁴², wrongful conviction⁴³ etc. Thus, law never fails to cognize that no one is above law and the law is applicable to all. The writ of Habeas Corpus⁴⁴ is an effective legal recourse through which a person can report on account of unlawful detention or imprisonment to a court and request the court to order the custodian of the person or the police officer to bring the prisoner to the court and determine whether the detention is lawful⁴⁵.

CUSTODIAL DEATH AND PUBLIC HARASSMENT

On June 23, 2020 the death of a father and son due to alleged custodial torture in Sathankulam near Tuticorin in Tamil Nadu has led to nationwide outrage. This event had raised serious question not only about administration of criminal justice but also to the administration of the state and credibility of judiciary system of the country. Bennix and Jayaraj were taken into custody for keeping their mobile phone shop open beyond the allowed time as per the lockdown rules. Bennix and Jeeyaraj died on June 3rd because of continuous bleeding and severe injury from alleged custodial torture. This incident of custodial death and public harassment is no new to this country. Dehumanizing torture is a common tactic for criminal investigation. Custodial death and public harassment are another widespread concept all along that need to be questioned. Ultimately to restrain this rampant criminal practice within administration of criminal jurisdiction needs to be put down by collective efforts on multiple fronts -the legal, institutional as well as social. International pressure is also equally important in adding to pressure for change.

FAKE ENCOUNTER

³⁶ Sunil Chainani v. Inspector of Police, (1987) S.C.C. Online Bom. 424.

³⁷ Maledath Bharathan Malyali v. The Commissioner of Police, (1950) S.C.C. Online Bom. 11.

³⁸ Lalita Kumari v. Govt. of U.P., (2014) 2 S.C.C. 1.

³⁹ *Supra Note 30*.

⁴⁰ Subramanian Swamy v. Union of India, (2016) 7 S.C.C. 221.

⁴¹ Monica Bedi v. State of U.P, (2011) 1 S.C.C. 284.

⁴² Divisional Controller of Gujarat SRTC v. Kadarbhai J. Suthar, (2007) 10 S.C.C. 561.

⁴³ J.K. Bombay Ltd. V. Bharti Matha Mishra & Ors., (2001) 2 S.C.C. 700.

⁴⁴ Mohan Lal Verma v. The State of Madhya Pradesh, (2016) S.C.C. Online M.P. 8089.

⁴⁵ Chandrakant Ambalal Gandhi v. B.K. Jha, Commissioner of Police Ahmedabad City & Ors., (1986) S.C.C. Online Guj 15.



Fake encounter is second degree murder by the police or the militia when they encounter person accused or suspected criminals, done as an act of self-defense. "Encounter" by police in India means killing by police officers, with legal legitimation. Self-defence is recognised under section 96 to 106 of IPC states the law relating to the right of private defence of person and property. This act of self-defence or encounter are of course not warrying but cold-blooded murder by the police as can be evident in many cases by far now. Fake shootouts is a concept that existed from British decree in our country when Jallianwala Bagh massacre 1919 materialized where police killed at least 400 innocent people and injured over 1,500, continuously evolves over time into cold blooded brutal murder by the police, with impunity and are accompanied with varied interpretations, posing a herculin challenge for judiciaries across the world to define and limit fake encounters.

CASES THAT BEGAN THE CONCERN ABOUT EXTRAJUDICIAL KILLING

Extrajudicial killing were widely practised in the past to cease insurgencies in the state of Bengal in 1960s and Punjab in 1980s. Fake shootouts are commonly practised in areas of active conflicts in our country mostly in the states of Jammu & Kashmir, states in north east including Manipur as well as in central India affected by maoist insurgency. Some rights group reported a higher figure of 100,000 deaths since 1989 in Kashmiri insurgency. Widespread plague of corruption in India's police force can be

sighted in the high profile Lakhan Bhaiya encounter case where 21 people - mostly police officers were convicted in the kidnapping, wrongful confinement and murder of a real-estate broker, Ramnarayan Gupta and were sentenced to life imprisonment. Senior Inspector Pradeep Sharma who was earlier alleged to be the mastermind behind the deadly operation, was found not guilty of the 2006 murder of broker Ramnarayan Gupta in what is known in India as a "fake encounter. Following in *Prakash kadam v Ram Prasad Vishwanath Gupta*⁴⁶, case headed by bench of justices Markandey Katju & Gyan Sudha Mishra said, "*fake encounter killings should be regarded as "rarest of rare", an essential parameter to award the capital punishment in a case. Fake encounter killings by cops are nothing but cold- blooded brutal murder which should be treated as the rarest of rare offence and police personnel responsible for it should be awarded death sentence. They should be hanged*". The court says "*If crimes are committed by ordinary people, ordinary punishment should be given but if the offence is committed by policemen much harsher punishment should be given to them because they do an act totally contrary to their duties,*". North east states have always been known for its militant activities since its formation, and for smooth functioning, the central government imposed the Armed Forces Special Powers Act (AFSPA) in 1958. Under the AFSPA, the security forces have the right to use deadly force with legal immunity. The army can also keep any person in detention without a warrant indefinitely. The AFSPA was implemented in Manipur to suppress extremist organisation, but there are frequents

⁴⁶ Prakash Kadam v. Ramprasad Vishwanath Gupta, (2011) 6 S.C.C. 189.



allegations of its misuse. Many protests have been done catching the eye of the nation by Iron Sharmila also earned the name of Iron Lady for her 16-year hunger strike against this law⁴⁷. One of the most famous protests in 2004, where 30 women from Manipur walked naked through the streets of Imphal to decry the gang rape and murder of a young woman and the case was never prosecuted because of the legal immunity granted under the AFSPA to the Indian paramilitary unit responsible. A high-profile case filed in 2012 before the Supreme Court of India related to allegations of 1,528 extrajudicial killings in the state of Manipur, which is conflict-affected⁴⁸. A landmark decision by the supreme court in 2016, adjuring setting up of a special investigation to check the illegality of such actions by a special body of Central Bureau of Investigation and also the operation of National Human Rights Commission, was a result of such cries. Despite of all the steps taken unfortunately the progress is slow and very less number of charge-sheets have been filed till date. The CBI court is investigating these fake encounter cases since 2017 and thus Manipur case continues. These are all set cases of how power is getting misused by India's police and armed forces ostensibly.

Fake encounters are ascending with each growing day. On 6 December 2019 the recent Hyderabad incident of allegedly killing of four men on encounter who were accused of rape and murder of a veterinarian women returning home from her clinic. This

leave us with a question of validation of such encounters and how to define and limit them. Justice Markandey Katju, former Supreme Court Judge quoted judgement of justice A.N. Mulla of the Allahabad High Court. *"I say this with all sense of responsibility: There is not a single lawless group in the country whose record of crime comes anywhere near that of the single organised unit called the Indian Police Force. Policemen in general, barring a few, seem to have come to the conclusion that crime cannot be investigated and security cannot be preserved by following the law, and it can only be achieved by breaking or circumventing the law"*.

While the Indian judicial system is trying to empty the sea of corrupt police jurisdiction, on January 9, 2020 in Mohali a CBI court drop in a bucket of justice in a 27 year old case of Baba Charan Singh fake encounter case and held 6 police officers guilty of the encounter killing of Baba Charan Singh and five of his relatives.

Overemphasizing on the subject matter of all the fake encounter cases the Sahibabad case is not to be left unnoticed. A FIR is registered against 12 cops posted at Vijay Nagar and Sahibabad police station in two separate encounter cases. The charges against the police officials in both the cases were that when the accused went to the police station to surrender for the crime registered under his name, the police officers did not take them into custody and later abducted them from a public place and allegedly hit them in their legs and then took

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<https://www.outlookindia.com/website/story/indian-army-rape-us/296634>

⁴⁸ <https://www.thehindu.com/news/national/supreme-court-order-cbi-probe-into-manipur-extra-judicial-killings/article19276650.ece#:~:text=The%20court%20>

was%20hearing%20a,by%20security%20forces%20and%20police.&text=%E2%80%9CIn%20every%20military%20operation%2C%20the,cannot%20be%20against%20the%20Army.



them to jail. Thus, police with such serious allegations against them should be prosecuted rather than gaining popular support. Recent cases of Elijah McClain and George Floyd in US not only left the world in great grief but also make us realise how injustice have been prevailing among cop's jurisdiction and no action or voice have been raised for so long.

FAKE ENCOUNTER AN INJUSTICE TO ARTICLE 21

Article 21 of the Constitution of India 1950 stipulates that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. The act of intentionally killing accused as an encounter by police officials, is a matter of contentious debate across the world. The debate hinges on the backdrop of such encounters. The former view as opined in Article 3 of Universal Declaration of Human Rights stated: *"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."* Similarly, Article 21 of the Constitution of India guarantees 'right to live with human dignity'. Any violation of fundamental rights guaranteed under article 21 is a punishable offence⁴⁹.

The criminal justice administrative system in India presumes that an accused is

innocent until proven guilty⁵⁰. The burden of proof relies on the prosecution to prove that the accused is guilty of the offence convicted⁵¹. Section 154 of the Criminal Procedure Code (Cr.P.C) have authorized police officials to register a FIR and commence investigation to person alleged to have committing a crime⁵². While conducting investigation police can arrest the accused. Section 46 of the Cr.P.C define as to how an arrest has to be made under criminal justice administration. Sub-Section 3 of Section 46 contemplates that nothing in the Section gives a right to cause the death of a person, who is not accused of an offence punishable with death or imprisonment for life. It impliedly means that a right to cause death of a person is given to the police officer in case a person is accused of an offence punishable with death or with imprisonment for life when he is trying to evade the arrest⁵³. Any encounter killing not following the principle of rule of law is thus violation of an individual's fundamental rights which is a punishable offence and thus to prevail justice there should be no impunity for such killings⁵³. UNHR raised concerned about increasing extrajudicial killing in India and recently have expressed alarm about allegations of at least 59 extrajudicial killings by police in Uttar Pradesh since March 2017 in Yogi Adityanath ruled UP⁵⁴.

⁴⁹ A.M. Bhattacharjee, *Article 21 and "Due Process" and "Exclusionary rule of evidence"*, (1983) 3 S.C.C. J-32.

⁵⁰ Mohan Lal v. State of Punjab, (2018) 17 S.C.C. 627.

⁵¹ State v. N.S. Ganeswaran, (2013) S.C.C. 594.

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[https://criminallawstudiesnluj.wordpress.com/2020/04/23/deconstructing-section-463-of-the-crpc-a-tacit-approval-](https://criminallawstudiesnluj.wordpress.com/2020/04/23/deconstructing-section-463-of-the-crpc-a-tacit-approval-forencounters/#:~:text=46(3)%20of%20the%20CrPC%20permits%20the%20killing%20of%20a,accused%20attempts%20to%20avoid%20arrest.)

[forencounters/#:~:text=46\(3\)%20of%20the%20CrPC%20permits%20the%20killing%20of%20a,accused%20attempts%20to%20avoid%20arrest.](https://www.firstpost.com/india/vikas-dubeys-death-marks-119th-encounter-killing-since-march-2017-a-look-back-at-up-polices-encounter-express-8586771.html#:~:text=It%20pointed%20out%20that%20098,body%20said%2C%20according%20to%20PTI.)

⁵³ *Ibid*

⁵⁴ <https://www.firstpost.com/india/vikas-dubeys-death-marks-119th-encounter-killing-since-march-2017-a-look-back-at-up-polices-encounter-express-8586771.html#:~:text=It%20pointed%20out%20that%20098,body%20said%2C%20according%20to%20PTI.>



OBSTACLES TO POLICE ACCOUNTABILITY

The spatial and relational basis of section 197 of Cr.P.C grants wider impunity to public servants specially police officers for any act done in discharge of their official duty. The emergence of police brutality in the country and the fact that the court has realized the violation of laws done under police jurisdiction with impunity grants to them under section 197 of Cr.P.C, is imperative that the court and the legislature recognize the despoilment and take action that extremely guarantees citizen their autonomy to fundamental rights, violation of which is a serious offence by whosoever it is done.

STEPS TO PREVENT POLICE ATROCITIES

The people are living in a world, where their voices against police and their related services, are easily clamped down. US and Britain are two such countries, where corruption in police officers, are felt by the people residing there for a long time. There were measures taken to prevent such corruptions. Some of which are-

A. Dismantling of police force

Recent killing of George Floyd by Minneapolis police officers outraged the citizens across US. Steps like “dismantle” and “abolish”, is an ongoing practice which is challenging to the whole police force. The dismantling of police forces is practiced by countries of Iraq, Guatemala and Bougainville (island) which has significantly re-oriented their decayed policing services, in rectification of their

flaws and reconciliation towards serving better. It is followed by employing the three-year process which includes hiring a fresh, trained and most importantly, corrupt free police officers. The step which is substantially skipped in the process, is the registry of such dismissed officers, which is essential to ensure that those who are fired are not serving elsewhere.

B. Zero tolerance policy

The adaption of zero tolerance policy back in New Jersey in the year 1973 proposed a notable set back in police bribery as well as lower the rate of brutality by 42%.

C. Broken window policy

The practice of broken window policy in New York Police department back in 1994 introduced by Bratton, a New York City police commissioner, showed that clamping down of minor crimes, if left unattended, would become a reason for a bigger problem in comparison to what they are already facing. However, on other hand, it led to use of excessive force by the police officials even in harmless situations. The nationwide arrest on violent crimes were allegedly less than the arrest made for low-level non-violent activities in US. These arrests were made on activities involving issues like drug addiction, homelessness, and mental illness which could have been treated by healthcare professionals and social workers, rather than the police.

D. Body-worn cameras

It was first tested in UK in the year 2005, as a measure to employ stringent checks and balance against police brutality. Misconduct of power is likely not to be committed if the, action of police is being recorded, was the



idea back then. The cameras were supposed to be active when an incident of encounter took place. US also adapted this policy by the year 2012 to lesser crime in their police jurisdiction.

E. Anti-chokehold policy

An “Anti-Chokehold Act⁵⁵” was passed in New York, after the killing of Eric Garner, who was choked to death by the police officials. This made “chokehold”, forbidden in much parts of USA. The introduction of bill was in high demand after the police killing of George Floyd. According to the act, the act of applying pressure to the throat or wind pipe causing serious physical injury or even choking to death, would be treated as Class C felony, punishable up to 15 years in prison.

F. Limit the use of force

Standardizing the use of force, or employing deadly force, only during exceptional situations can be sought as another alternative. Any excessive force used, should be questioned and investigated for protection of human rights and life. This is widely followed in the culture of police communities in England, Germany, Japan which proves to provide justice to unarmed civilians from police brutality.

INDIA

The policing system in India is not only regulated by the bylaws of the country but various organizations look after it, in order to ensure proper functioning and accountability of the administrative system.

In addition to above solutions that can be inherited by the Indian police administration, some of the others are:

National Police Commission

The National Police Commission (NPC) was constituted by the Government of India in the year 1977, with the sole aim of employing a check and balance strategy on the role, functioning, use of powers, political interference in their work etc. The commission produced a total of 8 reports between 1979 and 1981, suggesting a wide range of reforms that are important, in order to overhaul the police functioning in India. But, none of the recommendations it suggested was implemented by the government. Bureaucrats and politicians have a greater vested interest in regulating the functioning and administration of police in India, and thus the status quo has been maintained and continued. The need of the hour is to revive the administration of National Police Commission and to implement any recommendations, that is suggested by it.

Media

Media is another channel that acts as a spokesperson for policing system in India. Media has been ascribed the status of “fourth pillar of democracy”. It acts as one of a vigilante watchdogs to the functioning and administration of police in the country. It is due to media that all the incidents and fake encounters that takes place, is reported in the first place. Media also acts a channel, a platform to put forth the views of the general masses regarding a particular incident. But, recently reporting biased and

⁵⁵ New York Senate Bill S6670B



lack of empathy for the sensitive topic over the main stream has put a black spot on the sanctity of media. The only thing that can be done is to

Non-Government Organizations

National Government Organizations relating to police brutalities can be classified under two heads

- (i) NGO's concerned with the violations of human rights by the police officers (ii) NGO's concerned with the reforms in bringing about a change in the functioning of the police organizations. The former is more concerned with making the police and government responsible for the atrocities or the fake encounters, that are committed. However, one of the problems they face in doing their task is being ignorant of law, court procedures and many times, even working of police. The task is quite daunting not only because they lack expertise but because of the nature of work, which is becoming complex with each passing day. Another major problem faced by the NGO's, is the non-availability of information regarding government plans and programs concerning police reforms. The police do not share information with outside agencies easily (due to their own constraints), that particularly affects the NGO's in long run.

such atrocities, are much larger in number as that of compared in India. The laws that are meant to protect the civilians often becomes the reason of taking away their lives. In India, the position of police officers is of many honors, but currently, they have reduced themselves as a puppet to bigshot politicians and bureaucrats around the country. The Code of Criminal Procedure, 1973, The Police Act, 1861, and several other judgements specifically lays down guidelines in cases of police mis happenings along with, what steps should be taken in order to prevent the future commission of the same. But improper implementation of laws and guidelines along with corruption to the roof of administrative functionaries has degraded the working of police in India. Fake Encounters, custodial deaths are just an example of it, where police get away easily after such acts because they know that nothing will happen to them. The need of the hour is to revive National Police Commission, ensure independent investigation in all the cold-blooded murders and enact mechanism (as suggested) to ensure proper implementation of laws and guidelines along with stringent checks and balance.

CONCLUSION

The policing system all over the world are governed by the state by-laws that provide exclusive jurisdiction and powers to them. But, since the time of inception, this power is misused in ways, which is capable enough to shake the conscience of a right-thinking member of the society. The laws governed in UK and USA and the cases that pertain to