



ENCOUNTER KILLINGS IN INDIA; A SOCIO LEGAL ANALYSIS

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ABSTRACT

In recent times, it is evident that there has been a gradual increase in the number of encounter killings in India by the police personnel which is emerging as a threat to the principles of natural justice and rule of law. This also has serious implications on the Indian Judicial system, in which people may lose faith if this fake set up of immediate justice is not discontinued. This paper makes a socio legal analysis on the complex issue of encounter killings in India. The researchers have presented some of the most controversial cases of encounter killings in India and have analyzed the leading guidelines formulated by the Supreme Court of India as well as the NHRC on the procedures of investigation and enquiry of extra judicial killings in India.

The researchers aim to highlight the lacuna in the enabling provisions which leaves a scope for encounter killings and how the offenders manage to escape the liability of the killing of a human being without any reasonable apprehension or ground. Also, certain recommendations have been put forward by the researchers to eradicate the evil of fake encounters.

Key Words; Encounter killings, Police personnel, Indian Judicial system, Natural Justice.

INTRODUCTION

Encounter killings also known as extra-judicial killings is used as a mechanism by the police authorities or law enforcement members to provide 'instant justice' to the offenders which is not backed by law. Section 46 of the Code of Criminal Procedure, 1973¹ provides that the police personnel are allowed to use force or any other means to arrest a person who has been accused of an offence punishable with death or imprisonment for life. Therefore, the police personnel have a right to perform their duties in good faith and can use force with reasonable apprehension that the accused is resisting or may abscond but nowhere it provides them a right to use force to the extent of killing the accused. Law only provides remedy of private defence under Section 96-106 in the Indian Penal Code, 1860 which provides this relief to every citizen including the police personnel. Section 96 of the Indian Penal Code, 1860² provides that "Nothing is an offence, which is done in the exercise of the right of private defence". Further, the provision dealing with public servants and the right to self defence is as under; "There is no right of private defence against an act, which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if

¹ Code of Criminal Procedure, 1973 (Act No. 2 of 1973).

² The Indian Penal Code, 1860 (Act No.45 of 1860).



*done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. Extent to which the right may be exercised—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence”.*³ The right of private defence does not guarantee absolute authority and protection to public servants and is subject to certain restrictions. While the Code, gives an expansive interpretation to the right to self defence, it is pertinent to note that, no more harm be caused than is necessary during the exercise of this right.

The researchers are of the opinion that this right to private defence in recent times has been misused and many a times, the violence caused by encounter killings which have no substantial evidence to prove private defence and are fake encounters, gets a blanket cover of private defence and the offenders easily escape the criminal liability of killing someone. The Constitution of India also known as the Magna Carta of the country’s legal system rests on the principles of natural justice which advocates ‘*audi alteram partem*’ and rule of law. These principles are defeated at the very moment when the instant justice is provided by the police personnel themselves without following the due process of law. Extra judicial killings that include fake encounters are a severe form of violation

of fundamental rights of citizens guaranteed under Article 14 which provides right to equality before the law and equal protection of law and Article 21 that contains provisions on right to life and personal liberty. These extra-judicial killing takes away the right of the accused to receive fair investigation and trial. Therefore, the researchers believe that, the use of encounter killings is a grave danger to the independence of the Indian Judicial system.

CONTROVERSIAL ENCOUNTER KILLINGS IN INDIA

India has witnessed various encounters committed by police personnel which have created great controversy over the legitimacy and genuineness of police action. The researchers undertake to describe some of the most controversial staged encounters herein below;

1. ISHRAT JAHAN CASE

The Ishrat Jahan encounter case is an ongoing case in the State of Gujrat in which Central Bureau of Investigation (CBI) had accused officers of Ahmedabad Police Crime Branch and members of the Subsidiary Intelligence Bureau of Ahmedabad of having carried out a staged encounter by shooting dead four people on 15th June 2004 including 19 year old Ishrat Jahan.⁴ Gujrat police had accused Ishrat Jahan of being a part of a terrorist attempt to assassinate Prime Minister, Narendra Modi, who was the then Chief Minister of Gujrat in the year 2004.⁵ The

³ The Indian Penal Code, 1860, Section 99.

⁴ Darshan Desai, “Ishrat Killing a Fake Encounter says CBI”, (3 July, 2013) (Updated 2 September, 2016), available at: <https://www.thehindu.com/news/national/other-states/ishrat-killing-a-fake-encounter-says-cbi/article4877402.ece>.

⁵ India Today Web Desk, “From Ishrat Jahan to Hyderabad Case; Five most controversial encounter killings in India”, (July 10, 2020) available at: <https://www.indiatoday.in/india/story/5-most-controversial-encounter-killings-india-vikas-dubey-ishrat-jahan-sohrabuddin-sheikh-1699195-2020-07-10>.



Supreme Court of India ordered a CBI enquiry over the said staged encounter and the trial is currently underway at CBI court in Ahmedabad.⁶ in 2011. The Special Investigation Team of CBI informed the Gujrat High Court that the said encounter was not genuine after which the Court ordered that a complaint under the Indian Penal Code, 1860 shall be filed against those who were involved in the encounter. After more than a year later, in February 2013, the CBI arrested one of the Gujrat police personnel for his connection with the alleged fake encounter. In June 2013, CBI arrested another police official who was then sent to custody. All the accused police officers are now either out on bail or reinstated back to their official duties. The researchers are of the view that it has been more than 16 years but the said trial has only reached to the investigation stage and nothing concrete has been done till now. Even when various reports by medical practitioners who have done the postmortem have stated that the range of the bullets in the bodies of the accused were from close proximity which shows that they were not trying to escape from the custody of police and at the same time implies that more force was used by the police officials than it was necessary and the act was not done in private defence. Another aspect of the case also shows that the delay in investigation from time and again is to bury the case without justice being done. Therefore, the researchers opined this to be a controversial fake encounter case and people behind the said incident are being protected from any judicial proceeding against them.

2. SOHRABUDDIN SHEIKH CASE

The Sohrabuddin Sheikh case refers to a criminal case in the State of Gujrat wherein Sohrabuddin was alleged by the Gujrat Police to be associated with a terrorist outfit called Lashkar-e-Taiba (LeT) and the Pakistani Intelligence Agency (ISI) on the ground of attempting to assassinate “an important political leader”.⁷ It was reported that his wife Kausar Bi and his aide Tulsiram Prajapati were alleged to have been killed as part of the encounter, but there is no evidence to prove such an incident till date. The Supreme Court of India on a petition filed by the family members of the accused transferred the case to CBI for investigation. On investigation, CBI filed charge sheet against 38 persons including Amit Shah, the then Rajasthan Home Minister Gulab Chand Kataria and other senior IPS officials.⁸

Later, on 22 July 2010, Amit Shah was arrested by the CBI and was later released on bail bond of Rs. 1 Lakh rupees. Thereafter in December 2014, a special CBI court in Mumbai discharged Amit Shah from the case and subsequently, also discharged 15 others including Kataria. After Amit Shah’s discharge, Sohrabuddin’s brother filed a petition against the same in the Bombay High Court which he later withdrew and then a social activist, Harsh Mander filed a petition in the Bombay High Court with respect to Shah’s discharge, but the same was dismissed by the Court on the ground that he has no locus standi on the case and cannot file a petition and this was upheld by the Supreme Court. Thereafter, the CBI special court in

⁶ *Supra*, Note 5.

⁷ Outlook India, “Criminal Sent by LeT, ISI to kill Gujrat Leader Shot Dead”, Outlook India, (26 November 2005) available at;

<https://archive.vn/20130131013520/http://news.outlookindia.com/items.aspx?artid=337770>.

⁸ *Supra*, Note 5.



Mumbai framed charges against the other 22 accused in the year 2017 but on ground of no evidence and prosecution could not establish the case, they were also acquitted and released.

The researchers are of the view that, the delay in investigation and trial in similar cases of encounter killings may mislead important elements which may be aggravated by political influence and may give lot of time to the accused to tamper the evidences in their favor. This has not only delayed the justice but justice seems to have been denied.

3. LAKHAN BHAIIYA CASE

Ram Narayan Gupta, also known as Lakhan Bhaiya was shot dead by Mumbai Police in 2006 in an alleged staged encounter. Few days after his killing, his brother moved the Bombay High Court alleging that Lakhan Bhaiya has been killed by Mumbai Police in cold blood⁹. Thereafter, in 2013, a Mumbai's Sessions Court sentenced 21 people including 13 policemen to life imprisonment for killing Lakhan Bhaiya. The Court also found them guilty of conspiring and kidnapping him. In its observations, the Session's Court observed that the bullet which killed Lakhan Bhaiya was fired from point blank range and as such this was considered to be a staged encounter.¹⁰ The

⁹ Nadim Asrar, "Lakhan Bhaiya Encounter Case; 13 Mumbai Cops 8 Others Awarded Life Sentence", (Updated 12 July 2013), available at: <https://www.ndtv.com/india-news/lakhan-bhaiya-encounter-case-13-mumbai-cops-8-others-awarded-life-sentence-528154>.

<https://www.ndtv.com/india-news/lakhan-bhaiya-encounter-case-13-mumbai-cops-8-others-awarded-life-sentence-528154>.

¹⁰ Id.

¹¹ Revathi Krishnan, "Veerappan, Ishrat Jahan, Batla House – India's 10 Most Controversial Encounters

researchers are of the view that the Judiciary has ensured that justice is not only done but seem to be done without discriminating the status of the accused members of police departments. If in this manner, other cases will also be dealt, the evil of fake encounters will soon disappear.

4. HYDERABAD CASE, 2019

In November 2019, India has witnessed another Nirbhaya in the State of Telangana where a woman aged 26 years was brutally gang raped by four men and then was subsequently murdered. The four men accused in the case had been shot by Cyberabad police in an alleged encounter on 6th December 2019 by exercising their right to self-defense on the ground that the four accused tried to escape and began pelting stones on the police personnel¹¹. The Supreme Court on 12th December 2019 appointed a three-member committee to investigate and enquire into the alleged encounter and the committee was required to submit its report within 6 months. However, in July 2020, the Supreme Court has granted additional 6-month time period to the committee to conduct its enquiry and submit its report.¹² Further, a seven-member team of the National Human Rights Commission have commenced with a fact-finding probe in

Since 2003", (10 July 2020) available at: <https://theprint.in/india/veerappan-ishrat-jahan-batla-house-indias-10-most-controversial-encounters-since-2003/458191/>.

¹² PTI, "Hyderabad Encounter; SC Extends Time by Six Months for Enquiry Panel to Conclude Probe", (Updated 24 July 2020), available at: <https://indianexpress.com/article/cities/hyderabad/hyderabad-encounter-veterinary-doctor-rape-and-murder-supreme-court>

6521613/#:~:text=On%20December%206%20last%20year,as%20part%20of%20the%20investigation.



order to ascertain whether the police personnel have killed the four accused by staging a fake encounter. The report of the NHRC in this regard is awaited and the matter is sub-judice.¹³

The researcher believed that this encounter was widely celebrated in all the parts of the country because the entire nation was upset about the delay in Nirbhaya's case and were not wanting to see another Nirbhaya waiting for couple of years to seek justice. They felt that the police personnel have done good in delivering immediate justice to the family of the victim. But the researchers hold a view that it should only be the Indian Judicial system, who should be responsible for delivering justice to the citizens and nobody else with due regard to due process of law and the rule of law.

5. VIKAS DUBEY'S CASE

In July of this year, Vikas Dubey was killed by Uttar Pradesh Police in an alleged encounter while exercising their right of self-defense on the ground that Dubey had snatched a police weapon and was trying to escape from the police custody. In this regard, before the Supreme Court of India, the Uttar Pradesh police has submitted that they have followed all the guidelines laid down by the apex body on conducting encounters and also informed the court that the police vehicle in which Dubey was being transported from Ujjain to Kanpur, has been overturned, and also submitted photos of the bodies of 8 policemen who were killed Dubey and his gang in Bikru village. The

police also informed that the Supreme Court that the U.P. Government has established a Judicial Commission to investigate the encounter as per the guidelines laid down by the Supreme Court.¹⁴ The Supreme Court of India has indicated that it could order a judicial probe into the killing and has asked the U.P Government to submit its response, while hearing three petitions on the alleged encounter of the Vikas Dubey.¹⁵

The researchers are of the view that this a politically influenced case and the said encounter is staged and fake. The researchers believe that only an independent and impartial probe will be able to verify the genuineness of the facts claimed by the U.P. police personnel because the incidents in the case are such that an arrested accused can try to snatch a weapon from the police men and tries to escape in the presence of so many policemen and the car suddenly overturned is hard to believe.

JUDICIAL AND QUASI JUDICIAL TRENDS UNDER ENCOUNTER KILLINGS

THE 16 GUIDELINES – A TURNING POINT

Although there is no specific provision under the Indian law which deals exhaustively with extra judicial killings or commonly known as encounter killings but there are certain enabling provisions which are already discussed in the Chapter I of this paper. Nevertheless, the Supreme Court of India and the NHRC have from time to time provided

¹³ Livemint, "Telangana Police Encounter, NHRC Begins Probe, PIL In SC Seeks Action Against Cops", (Updated 08 December 2019), available at; <https://www.livemint.com/news/india/telangana-police-encounter-nhrc-begins-probe-pil-in-sc-seeks-action-against-cops-11575773614336.html>.

¹⁴ ZEE Media Bureau, "Vikas Dubey Encounter as Per Guidelines, Bullets Fired in Self Defense; U.P Police to Supreme Court", (Updated 17 July, 2020) available at; <https://zeenews.india.com/india/vikas-dubey-encounter-as-per-guidelines-bullets-fired-in-self-defence-up-police-to-supreme-court-2296463.html>.

¹⁵ Id.



certain guidelines or principles which have to be followed while conducting an investigation in the cases of death caused by the police encounters. The Supreme Court of India, developed a set of 16 guidelines in the case of *People's Union of Civil Liberties v. State of Maharashtra, 2016*¹⁶ which has to be followed in matters of investigating police encounters in cases of death as the standard procedure for thorough, effective and independent investigation;

- i. **Recording of Any Intelligence or Tip Off** - where the police received any intelligence or tip off regarding criminal movements or any information about the crime, the same has to be recorded by the police either in writing or in electronic form.
- ii. **Registration of FIR** – where the police uses any fire arm and an encounter takes place after receiving any tip-off or intelligence, due to which a death occurs then a FIR have to be registered and forwarded to the court.
- iii. **Independent Investigation** – Crime Investigation Department or police team of another police station has to conduct inquiry into the encounter in order to identify the victim, recover and preserve evidence, identify witnesses and identify the cause of death.
- iv. **Magisterial Enquiry** – an enquiry made under Section 176 of Criminal Procedure Code, 1973 must be conducted in all cases of death arising due to police firing and a report of the same must be sent to the Judicial Magistrate under section 190 of the Code of 1973.
- v. **Involvement of NHRC**- information of the alleged encounter must be sent to the NHRC immediately without any delay.
- vi. **Medical Aid**- the injured criminal/victim must be provided immediate medical aid and

their statement should be recorded by a Magistrate and a medical officer with a certificate of fitness.

No delay – the police should ensure that no delay should be made in sending FIR, diary entries, sketches to the concerned Court.

Report – after the investigation is completed, a report has to be sent to the competent court following which a trial should be conducted by the investigating officer in an expeditious manner.

ix. **Inform Kin**- where death has occurred, the next of kin of the alleged victim/ criminal should be informed at the earliest

x. **Submission of Report** – six monthly statements of all cases where death has occurred in a police firing must be sent to the NHRC to the Director General of Police.

xi. **Disciplinary Action** – if on conclusion of an investigation it is proven that death occurred by use of fire arm which amounts to an offence under IPC, 1860, disciplinary action is to be initiated against a police officer found guilty of the same.

xii. **Compensation** – compensation in accordance with the provision of Section 357-A of Criminal Procedure Code, 1973 has to be given to the dependents of the victims.

xiii. **Surrender of Weapons** – the concerned police officer has to surrender their weapons for forensic analysis as is required by the investigating team.

Legal Aid – information about the incident has to be given to the accused police officer's family and legal aid should be made available to such families.

No Promotion/ Gallantry Awards – concerned officers shall not be bestowed with promotion or gallantry awards immediately after the occurrence of the encounter.

¹⁶ Writ petition (C) No. 316 of 2008.



- xvi. **Grievance Redressal** – if the family of the victim finds that the above guidelines are not followed then it may make a complaint to the Sessions Judge having territorial jurisdiction of the place of incident. The Supreme Court of India has granted these guidelines the status of a statutory law under its exclusive power granted under Article 141 of the Constitution of India.
- iii. **Compensation** – suitable compensation has to be granted to the dependents of the deceased, if the police officer is prosecuted on the basis of the investigation.
- iv. **Independent Agency** – the cases for investigation have to be referred to an independent investigation agency such as the State CID.

In the year 2010, some other guidelines were also formulated by the NHRC extending the scope of the above guidelines.

NATIONAL HUMAN RIGHTS COMMISSION

In March 1997, Justice M.N. Venkatchaliah, who was the chairman of the NHRC, wrote to all the Chief Ministers of India informing them about the complaints received by the NHRC from general public and NGOs on occurrence of fake encounters by the police. Justice Venkatchaliah observed that the police do not have the right to take away someone's life except in the following circumstances;

- i. If death is caused in exercise of right of private defense;
- ii. Section 46 of the Criminal Procedure Code, 1973 which authorizes the police to use force extending up to causing death when it is necessary to arrest a person accused of an offence punishable with death or imprisonment for life.

Thereafter, the NHRC has given certain guidelines to all States and Union Territories to ensure that police personnel follow certain guidelines in cases where death has been caused in police encounters.

- i. **Registration** – the police in-charge as to record all information about death in an encounter in an appropriate register.
- ii. **Investigation** – the police personnel have to investigate all the relevant facts, circumstances and information it has received about the death.

- i. **Registration of FIR** – where a complaint is made against a police officer amounting to cognizable offence, a FIR has to be registered as per applicable provisions of law.

- ii. **Magisterial Probe** – a Magisterial enquiry has to be conducted in all cases of death caused due to police action.

- iii. **Reporting to NHRC** – all causes of death arising due to police action have to be reported to the NHRC by the Superintendent of the police within 48 hours of the occurrence of death.

- iv. **Second Report** – second report has to be submitted to the NHRC within three months from findings of Magisterial enquiry, postmortem report etc.

Thus, the NHRC has played a constructive role, in supporting the Supreme Court of India by contributing to the jurisprudence on the complex issue of extra judicial killings in India.

CONCLUSION AND RECOMMENDATIONS

Even though concrete steps have been taken by the Indian Judiciary and Quasi- Judicial bodies in formulating various guidelines to ensure staged or fake encounters do not take



place but the intention of these bodies to curb the practice has not been achieved till date. This is evident from a fact that there has been increase in the number of encounter killings in India. There are enabling statutory provisions which supports encounter killings but the same has now seem to be widely misused by the police enforcement. It remains important that encounter killings should be resorted to by the police personnel only in the legitimate exercise of the right to self-defense only when he has reasonable apprehension that more harm can be caused, as is given under IPC, 1860. Any violation of this right of self defense will defeat not only the administration of justice but also the due process of law and principles of equity.

As elaborated by the researchers under Chapter II of this paper, it has been observed that there are many reasons or causes which from time and again shows that very few killings were done under self defense but majorly there were ulterior motives which has caused the killings of the accused in an unusual and dramatic manner. The extra judicial killings not only violate the fundamental rights of the accused enshrined under Indian Constitution but also defeats the very nature of the criminal jurisprudence of India which speaks at length that no person is guilty unless the offence against him is proved in the court of law. These encounters not only violate the right but also portrays the accused as guilty even before the legal proceedings are initiated in a court of law which has a long bearing social implication on the family of the accused. The family has to live with the burden and stigma all their lives that their family member who was killed in an encounter was a criminal, even when nothing has been proved against their family member in judicial proceedings. The

consequences could negatively affect the health of the dependents of the accused and may also cause greater disturbance to the minds of younger family members mental health. Sometimes, the media trials too have a negative impact which prejudices the interest of the accused and makes it difficult for him/her to seek justice because the public sentiment has already been built around the guilt of the accused and they celebrate the heinous forms of encounter killings without knowing the truth.

Further, the most pertinent and negative impact these extra judicial killings have been continuously causing in on the Indian Judicial system in which people of the country have gradually started losing faith because they believe that more time is invested in seeking justice through legal proceedings initiated in already overburdened court of law, wherein they can see the immediate justice done by these encounters. The researchers strongly oppose extra judicial killings by the police personnel, as their job is not to administer justice and if they will continue to do so, sooner or later a time will come when nobody will resort to judiciary for the redressal of their grievance but they will take the process of imparting justice in their own hands which has serious repercussions on a welfare State like India.

Therefore, the researchers believe that an impartial independent body should be constituted to investigate and enquire in all the matters pertaining to extra judicial killings and stricter punishment and penalties should be imposed on the police officers who have staged fake encounters. This can only be achieved when enabling provisions with respect to extra judicial killings should be added in the Indian criminal jurisprudence by



enactment of appropriate statutes and laws and by ensuring due compliance with these legal provisions has been made.

Further, it is equally important for the fourth pillar of democracy which is Media to refrain themselves from conducting media trial when the matter is sub-judice and ensure all the ethical and moral responsibilities should be adhered to.

