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**Fake Encounters: A Trail of Cold-blooded Murders**

**Shikha Lakra**

## ABSTRACT

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*In democracies like India, the approach is to establish the supremacy or primacy of human life and dignity over anything else. What is at stake here is not justice in digress incidents of extra judicial killings but the fundamental or primary principles of a democratic, secular and liberal State. The moral essential for any State is to get the fundamental principles right and in a justified manner. Extra judicial executions are exactly what killings by the State outside the purview of law implies. When the State acts with immunity or privilege, it erases the sharp line that separates the State from criminals. Extra judicial killings erode democracy, it diminishes the nation's founding values and it delegitimizes the State's authority or power. In the present article the author intends to throw light on the much more prevalent phenomena known as fake encounters and how it has griped India into its clutches since a long time. The author will also highlight that how power and authority are misused in this country resulting in cold blooded murders, that they hide in the name of encounters, and the various loopholes present in our law and criminal justice system that lacks in conducting proper investigation and giving proper and speedy justice and how such inadequacy has weakened our faith in the judiciary thereby deteriorating the very essence of it.*

*Keywords – Fake encounters, police, democracy, power, murder*

## INTRODUCTION

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With great power comes great responsibility, the most widely used phrase which stands true in our Indian system of power. India is a country where the protectors of our nation have been provided with certain powers to uphold when it comes to protect its citizens, be it the army personnel or the police, every person of authority has been bestowed with certain amount of superiority. However, when exclusivity of power blinds a person it creates a havoc which throws everything coming in its way including law.

A necessary ingredient for a just and fair society is democracy. India is a country which is protected by a written Constitution, wherein Article 21 guarantees the Right to life and personal liberty except according to procedures established by law. However, on the contrary State forces often violate this fundamental right by arbitrarily killing its citizens under the defence of extra judicial killings or fake encounters. Under this, due process of law is not followed, where the security forces who are in position of law take it into their own hands and convert themselves into a prosecutor, judge and an executioner thereby using such power beyond its limits.<sup>1</sup>

If we take into consideration the Hyderabad encounter by the police of the four alleged rapists of the veterinary doctor, or the most recent encounter of gangster Vikas Dubey, again raises the question about the validity of the tool of extra judicial killings devised and resorted to by a large section of the Indian police. Unfortunately, extra judicial killings are not new to India they have been widely practised by the Maharashtra police to deal with the Mumbai underworld, by the Punjab police against Sikhs demanding Khalistan, and since the year 2017 after yogi Adityanath became the chief minister, by the UP police.

### **INDIA AND EXTRA JUDICIAL KILLINGS**

Our constitution guarantees that “No person will be deprived of his life or personal liberty except in accordance with the procedures established by law.” This means that before depriving a person of his life, the State is required to put the person on trial in accordance with the provisions of the Criminal Procedure Code (CrPC). In the trial, the accused must be informed of the charges against him and then shall be given an opportunity to defend himself through a counsel and only then, if found guilty,

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<sup>1</sup> Chopra, Deepta, and Dolf te Lintel. "*Democratic governance for social justice: the politics of social protection.*" IDS Bulletin 42, (2011).



he can be convicted and executed. Fake encounters on the other hand completely sidestep and circumvent legal procedures, hence it is completely unconstitutional.

An encounter is a mild alternative used to describe extra judicial killings in India, which involves both the armed forces and the police. Initially, encounters were rare and they were used as a means to deal with complex situations and as a means of self-defence. However, this power of self-defence has been misused by police forces and has given rise to fake encounters. It happens when the armed forces or the police kill the suspects when they are unarmed or in custody, and the police claim that they had to shoot in self-defence. In cases like these police may plant weapons and other evidences near the body to provide justification for the killing. However, the primary problem is that such manifestation is a dangerous philosophy and can be used beyond its limits.

In India death sentences can only be awarded in rarest of the rare instances after following the due process of law as established by the Supreme Court of India. There is a prescribed procedure of law for criminal investigation which is embed in the Constitution of India under Article 21 as the Right to life and personal liberty. It is a fundamental right, which is non-derogable and is available to every person, even the state does not have the power to violate that right. Hence it is the responsibility of the police to follow the constitutional principles and uphold the right to life of every individual, no matter whether that person is an innocent or a criminal. However, when police play the role of executioner and judge by eliminating the accused persons through extra judicial killings there is no following of established law procedures. This eventually leads to a direct violation of Article 21 of the Indian Constitution.<sup>2</sup>

In the *Prakash Kadam vs Ramprasad Vishwanath Gupta*,<sup>3</sup> the SC observed that extra judicial killings by the police officers are nothing but cold-blooded murders, and those committing them must be given the punishment of death sentences, placing them in the category of 'rarest of rare cases.'

Unfortunately, extra judicial killings are not new to India, and has become increasingly familiar in India at large, specially in its most populous state, Uttar Pradesh. The Uttar Pradesh government and police consider the increasing number of fake encounters as glowing achievement and have not shied away from showing them off on various public platforms. Most recently the Uttar Pradesh police on July 10 killed gangster Vikas Dubey, with more than 60 criminal cases against him, in an encounter. The police's version of the events that led to Vikas Dubey's death is eerily similar to a case that took place in Hyderabad, in December 2019. In that case, four men accused of rape and murder of a woman,

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<sup>2</sup> Stith, Kate. "Crime and punishment under the Constitution." The Supreme Court Review 2004 (2004).

<sup>3</sup> (2011) 6 SCC 189

which shook the nation's collective conscience, were shot dead by the police when they allegedly seized a weapon and tried to abscond during a crime scene reconstruction.<sup>4</sup>

In both these instances of extra judicial killings, public sentiments were immensely in favour of these executions, even though they did attract criticism from some human rights groups. Its worrying that criminality of the police is now getting public approval, courtesy of the pop culture that has played its part in glorifying the practice.

When fake encounters are encouraged by politicians in power, celebrated in popular culture and sanctioned by the general public, then it should not come as a surprise that the police conduct these operations with complete immunity and without any regard to due process of law, and then also a visible lack of effort or creativity in trying to cover their tracks can be seen. Such excessive misuse of power acts as a slippery slope that allows the police to take law in their own hands, and implicating and executing innocent individuals and deciding for themselves who deserves what punishment.

Police vigilantism is apparently been widely used as a tool in the hands of political parties and politicians in power to further their own agendas. There is no doubt about the police-politician-criminal nexus that exists in India, the encounter of Vikas Dubey is one such case of this nexus. Dubey's close connection with politics granted him an almost invincible protective shield from the law. Had Dubey been put through the mandated judicial trial or process instead of being killed in a so-called encounter, it is possible that important information about this dangerous nexus could have been exposed. India has a long history where people are killed so that powerful people can hide information of high public interest.

Police should always be held accountable to law for their actions. Extra judicial killings cannot be disregarded amidst the heinousness of the crime. Such short cut method of justice may give a sense of relief to the public who felt outraged by the crime, but it will divert attention from major structural problems, and allow the culture of lawlessness to prevail.

## **JUDICIAL AND LEGAL ASPECT**

In the past, gallantry awards and out of turn promotions have routinely been given to officers who conducted these operations, thus encouraging and incentivising the tactic. The Supreme Court put a stop to this in the case of *PUCL vs State of Maharashtra*,<sup>5</sup> stating that no such reward would be given

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<sup>4</sup> Pandey, Kamal. "Vikas Dubey: India police murder suspect shot dead after arrest". BBC News. July 10, 2020.

<sup>5</sup> CDJ 2014 SC 831

until an independent inquiry establishes that gallantry rewards given to the concerned officer is beyond any reasonable doubt. In the same judgement the Court laid down 16-point guidelines as the standard procedure to be followed for thorough, effective and independent investigation in the cases of death as a result of police encounters. This included immediate registration of a First Information Report, magisterial inquiry and an independent investigation.

Also, the Supreme Court when dealing with a PIL on alleged 1528 extra judicial killings in Manipur from 2000 to 2012 by the armed forces observed that – “a distinction must be drawn between the right of self-defence and use of excessive force or retaliation.”<sup>6</sup>

*Devinder Singh v. State of Punjab* through CBI<sup>7</sup> held that, protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

In the year 2018 the Delhi High Court in the case of *Jaspal Singh Gosain vs. CBI*, upheld the conviction of seven policemen of UP police for killing a young man in a fake encounter in 2009 and held that extra judicial killings have no place in the Indian legal system.

In 2011 the Supreme Court’s ruling, in which Justice Markandey Katju, by citing international human rights cases, various treaties and some tenets from the scriptures, held that every policeman who if found guilty of staging fake encounters should be given the punishment of death penalty.<sup>8</sup> Keeping aside the harshness of the sentence, what this ruling ignored is that it isn’t the severity but the certainty of punishment that acts as an effective deterrent. Also, for such a severe punishment, the standard of proof is raised exceptionally high, which in effect means that very few cases would actually result in convictions.

There is no law that sanctions the killing of an accused of any crime, no matter how heinous the offence is. This forms the basis for a powerful and strong judicial system. The police are an investigating agency and are not entitled to adjudicate cases by announcing its verdict on someone’s criminal culpability, declaring someone guilty falls under the jurisdiction of the courts. This undermines the separation of powers between the judiciary and the executive, which is the basis of any stable democracy.

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<sup>6</sup> Extra Judicial Execution Victim Families Association v. Union of India, (2013) 2 SCC 493.

<sup>7</sup> AIR 2016 SC 2090

<sup>8</sup> Prakash Kadam vs Ramprasad Vishwanath Gupta, (2011) 6 SCC 189

Right to private defence is an inherent and natural right of every human being, it is enumerated under Section 96<sup>9</sup> of the Indian Penal Code. Under Section 46<sup>10</sup> of the Code of Criminal Procedure, it authorises the police to use force, extending up to the causing of death, as may be necessary to arrest the person accused of an offence punishable with imprisonment for life or death. Also, Section 100<sup>11</sup> of the Indian Penal Code enumerates the situations in which the right to private defence can extend to causing death, firstly where an assault is such which may cause reasonable apprehension that death will otherwise be the consequence of such assault. The second situation is where such an assault which may cause the apprehension of grievous hurt will otherwise be the consequence of such assault. Therefore, in cases or situations where there exists a reasonable apprehension in the minds of the police officer that there exists a threat to their life, then they are justified in exercising the right provided under Section 96 of the Indian Penal Code. However, there is no second thoughts that Section 96 has widely been misused by police under the shadow of self-defence.

### **ARE FAKE ENCOUNTERS AN ACT OF REVENGE?**

Retribution is not the policy of a civilized society. India is a secular and democratic country, and retributive form of punishment will only make it fall into darkness. Judicial killings should not be used as a form of revenge, because even though the person committed a crime, he is still a human, and is rightly entitled to all human rights as guaranteed by our Constitution. A proper judicial procedure is

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<sup>9</sup> Things done in private defence. —Nothing is an offence which is done in the exercise of the right of private defence.

<sup>10</sup> Arrest how made.

(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

<sup>11</sup> When the right of private defence of the body extends to causing death.—The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—

(First) — Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

(Secondly) —Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

(Thirdly) — An assault with the intention of committing rape;

(Fourthly) —An assault with the intention of gratifying unnatural lust;

(Fifthly) — An assault with the intention of kidnapping or abduct-ing;

(Sixthly) — An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

to be followed and failure to follow such procedure only aggravates the situation and makes it worse, resulting in riots and protests which can adversely affect the law and order of the country.<sup>12</sup>

It is true that our judicial system is slow in dispensing speedy justice, by giving numerous opportunities to the offenders to defend themselves, the family of the victim and the society at large is emotionally affected. But the bottom line is, law does not rely only on emotions, it is based on law and facts of the case. A decision made on emotion may be a morally right decision, but it may not be a fair judgement which our Constitution guarantees to every citizen of its country.<sup>13</sup>

Mr. Justice S.A. Bobade, the former Chief Justice of India, made a very material point in the wake of the rape-cum-murder of a veterinarian and the subsequent killing of the four accused in an alleged encounter in Hyderabad and said that “justice loses its character when it becomes revenge”, he further continued that justice after a trial may be slow but is fortified by the procedure established by law.

Justice H.R. Khanna expressed the impact of wrongful punishment in the following words :-

“Suppose an innocent person is convicted of an offence of murder and is given the punishment of death, nothing further can undo the mischief for the wrong resulting from a conviction which was not desired and ultimately becomes irremediable. To take another example, if a person who is not guilty of an offence is sent to jail and he undergoes the sentence, the scars left behind by such miscarriage of justice cannot be eradicated by any subsequent act of redemption. All this highlights the importance of ensuring as far as possible, that there should be no wrongful conviction of an innocent person”.

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<sup>12</sup> Riley, Angela R. "Crime and Governance in Indian Country." *UCLA L. Rev.* 63 (2016).

<sup>13</sup> Pearl, M. Alexander. "Criminal Justice in Indian Country." *American Indian Law Review* 38, no. 2 (2014).

## CONCLUSION AND SUGGESTIONS

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For an orderly and civilized society, State sponsored terrorism in the form of “fake encounters” by the police is certainly not a welcome hope and can never be a substitute for the eventual punishment through the crucial process of fair trial following due procedure established by law.

The current provisions are evidently not enough to root out something so widely accepted and deeply entrenched in the system. With so much overlap between those investigating and those being investigated, the possibility of impartiality is compromised. For an instant solution, the legal provisions to investigate these extra judicial killings need to be reinforced and should be implemented more sternly. But a more permanent solution will involve a larger overhaul of the complete criminal justice system. A judiciary infected with rust and years of backlog and no coherent plan to improve the situation, has been the most often cited reasons for citizens lack of trust in due process of law and subsequent support for police encounters. The debate on police reforms, too, needs to be addressed more openly, particularly to severance the institution from the political influence and protect its independence under law. There is also a dire need to ensure that there exists a rule of law in the society that needs to be adhered to by every State authority and the masses.

Extra judicial killings are an extreme form of illegitimate exercise of violence by the establishment. If the state wants to retain its precariously perched moral high ground, someone is going to have to take responsibility. Police forces and army personnel’s duty is to protect and save its citizens and not to commit a crime by eliminating them under the garb of extra judicial killings because of the power or authority bestowed on them. Such powers are given to them to maintain law and order in the society and not to become the ones to disrupt it.