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# Extra-Judicial Killing: Admirable or Reprehensible

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ADIL ABBAS<sup>1</sup> AND RAJ NARAYAN VERMA<sup>2</sup>

## ABSTRACT

*In the modern era where we are inclined to provide fundamental rights to animals, we are not capable of securing the fundamental rights to the humans. India is a nation where every statutory body regulate with statutes, and police department is one of them. Police Department is one of the best statutory body ever established. With the presence of police, we feel safe, because it is the body responsible for maintaining and implementing laws, and protecting fundamental rights of the humans, but Police Department has dark sides as well. Police Department is in the top of the list for violating the fundamental rights of the humans, by the way of murdering the accused/alleged, without providing the opportunity of being heard fairly by the Hon'ble Courts, and this whole process is termed as Extra-Judicial Killing. But it is very deplorable to accept that Extra-Judicial Killing is very appraisable action among the public, and it gets massive support of public as well as government, which clearly shows the wariness of public upon the judicial system of our nation, which is reprehensible. In this article we will discuss in detail about the Extra-Judicial Killing.*

**Keywords:** *Extra-Judicial Killing, Distrust on Judicial System, Homicide by Police.*

## I. INTRODUCTION

The India, second largest populated country of the world, has a book known as Constitution of India. Constitution of India is considered as the supreme book of the nation, superseding all the books including religious books. The Constitution of India provides fundamental rights to the citizen of nation, required to live a dignified life. Whereas Policemen are the public servants, responsible for maintaining law in the nation, draws their power from the Constitution of India. But it is very shameful to say that the citizens of India is being deprived of their fundamental rights enshrined under the Constitution of India, by the public servant, by way the police encounters also called as Extra-Judicial Killing, which is directly hammering the democracy and constitution of the nation.

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<sup>1</sup> Author is a student at School of Law and Governance, Central University of South Bihar, India.

<sup>2</sup> Author is a student at School of Law and Governance, Central University of South Bihar, India.

The massive increase in the incidents of police encounters in India raises questions on the working of the government and public support for this, shows distrust on our judicial system. The incidents and underhand use of extra judicial killing is not new in country like India, Britishers first introduced this to suppress those voices raised against them. Extra judicial killing which ranges from fake encounters by the police officials as seen in the cases like *Bhagalpur incident*, *Hyderabad encounter case* or *Vikas Dubey's case* to preposterous decision of *khap phanchayat*.

Extra judicial killings refers to the “*killing of a person by any government officials without any legal proceedings or legal process*”. It violates the basic principle of any legal system and the right of the accused to be heard and fair and free trial enshrined under Article 21 of the constitution and hence, is a major concern for our judicial system. *National Human Rights Commission* replying to a RTI states that it has reported more than 1800 fake encounter cases between year 2000 and 2017.

Does these encounters justiciable in law and what laws says about it? There is no law which authorizes police for encounter. However, there are some provisions which justifies this but limited to certain circumstances only. *Section 96* of the Indian Penal Code justifies killing of a person for the sole purpose of self-defense and *section 46* of criminal procedure code authorizes the police to apply force at extent to causing death as in the cases it is necessary to arrest an accused who has committed an offence for which the punishment is death penalty or imprisonment for life. *Exception 3 of Section 300* of IPC also exempts any public servant who causes the death of any person exercising his right to self-defense in good faith and exceeds his power conferred to him by law, but whether it is equitable under law? Clearly No. Hon'ble Supreme Court in many cases emphasized that the no person shall be deprived of their fundamental rights by any statutory body or private body.

## II. ORIGIN OF EXTRA JUDICIAL KILLING

Tracing of extra-judicial killing in India contains series of events. Hindu scriptures was the root of extra-judicial killing, which was derived from Manu-smriti. Manu-smriti emphasizes on torture to offenders for the preservation of peace and avoiding crimes. In the ancient era, when Manu-smriti was followed in most of the states, a state comprises of a King and his officials. Those officials used to torture accused to unveil the truth and during the course of torture most of the accused died, and but there was no rules for punishing the officials who killed the accused because the word of Manu-smriti itself warranted the torture to reduce crime.

Then with the beginning of Islamic Era, instead of enhancing the condition of prisoners, condition got worst, because Mohammadan law emphasized on the principle of Tit for Tat and an eye for an eye, which was very dominant in the Mughal Dynasty, mostly before and after Akbar reign.

Then after the setback of Mughal Empire and emergence of British Colonies, the Britishers were the major contributor in atrocities. They used torture upon the accused as a means of interrogation, and killed many prisoners without trail, with intent to suppress the voices of independence raised against them.

### III. REASONS FOR EXTRA JUDICIAL KILLING

Extra judicial killings shows the failure of the law enforcement agencies in dispensing justice through due process of law and there are number of reasons for the same. Some of them are as follows:

- *Delay in justice and long legal procedures:* It is said “*justice delayed is justice denied*”, some time it takes long decades to dispense justice to the victim as seen in the *Nirbhaya case* and usually involves long investigation procedures. Though our judiciary has a defined legal procedure to reach at the conclusion but all people are not same and hence some police official find it better to give justice through fake encounters which is wrong.
- *Public support:* In most of the fake encounter cases there is massive support of the public, this emerges because of distrust on the judiciary and believe of the people that legal procedure takes time in providing justice. Public projects them as heroes and this all increases the confidence of the police to kill on their will.
- *Government strategy:* Some political parties found it proud to have most number of encounters in this state and find it suitable to curb crime. They uses these data to show their achievement in maintain law and order.
- *Greed for promotion:* Police officials were awarded with cash as well as given promotion for encounters and hence increases greed among the policemen to get promotion by any mean even by killing innocents.
- *Conviction getting reversed:* Generally conviction orders get reversed by the superseding courts due to administrative errors.
- *Over-burdened police officials:* As per the data of Bureau of Police Research and Development, in 2020, many vacancies for policemen is pending and even state government spends their 3% budget on policing.
- *Lack of Proper Training:* Even due to lack of proper training of police officials, resulting

in custodial torture and custodial deaths.

#### **IV. EXAMPLES OF EXTRA JUDICIAL KILLING**

- Mathura Rape Case- A very famous case, though a smudge on constitution, wherein a tribal girl was raped in police custody, and then she was murdered and cremated by the police officials without the consent of her family.
- Bhagalpur Blinding Case- Crime was rapidly increased during the 1979-1980 period, and to control, police official used brutality to obtain confessions.
- D.K Basu's Case- In this the Hon'ble Supreme Court formulated some guidelines to stop police brutality.
- George Floyd Case- A very recent case wherein the accused face was rammed with shoes by the US police.
- Custodial Death of Jayraj.
- Encounter of famous gangster Vikas Dubey.

#### **V. NHRC GUIDELINES ON CUSTODIAL VIOLENCE**

NHRC, popularly known as National Human Right Commission, is a statutory body was established with intent to protect the basic human rights of the citizens of the nation. A complaint was brought by Andhra Pradesh Civil Liberties Committee on November 5, 1996 to NHRC, wherein it was revealed that Shankaraiah, was not involved in any criminal case, and murdering him through the process of alleged encounter was totally unjustified. Justice MN Venkatachaliah, Chairperson of the NHRC wrote to the Chief Ministers of all the states and union territories, recommending certain steps, following the decision in Shankaraiah's case.

The following directions were issued in that case:

- When the police officer in-charge of a police station receives information about the deaths in an encounter between the police party and others, he shall enter that information in the appropriate register
- The information as received shall be regarded as sufficient to suspect the commission of a cognizable offence and immediate steps should be taken to investigate the facts and circumstances leading to death to ascertain what, if any, offence was committed and by whom.
- As the police officers belonging to the same police station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other

independent investigation agency, such as the state CID.

- Question of granting of compensation to the dependents of the deceased may be considered in cases ending in conviction, if police officers are prosecuted on the basis of the results of the investigation.<sup>3</sup>

In 2010, the NHRC added to these guidelines, by laying down that a magisterial inquiry must be held in all cases of death which occur in the course of police action, as expeditiously as possible, preferably, within three months. Prompt prosecution and disciplinary action against delinquent officers found guilty in the magisterial inquiry/police investigation, denial of out-of-turn promotion or instant gallery rewards on concerned officers soon after the occurrence were other steps recommended by the Commission. The Commission required reporting of all cases of deaths in police action by the Senior Superintendent of Police/SP of the district within 48 hours of death in a prescribed format explaining the circumstances, which made use of force unavoidable. It also made it mandatory for submission of post mortem report, inquest report, and findings of magisterial enquiry after every such death.<sup>4</sup>

## VI. SUPREME COURT ON EXTRA JUDICIAL KILLING

Apex Court at different period of time through their judgment had condemned the act of extra judicial killing. Supreme Court in *Om Prakash & Ors. v State of Jharkhand*<sup>5</sup>, held that it is not the duty of the police to kill a criminal on the ground that he is a threatened criminal and also held that encounters tantamount to state sponsored terrorism.

In *Prakash Kadam v Ramprasad Vishwanath Gupta*<sup>6</sup>, SC observed that fake encounters are categorized as cold blooded murder and the officials who are involved in this are treated as criminals and should be given death penalty, putting this crime in the category of “rarest of rare case”. Similarly in *E.P. Royappa case*, apex court found this as a crime if police arbitrarily resorts to encounter without reasonable justification and it violates the right of the accused to protection of law under Article 14.

The Supreme Court in *PUCL v State of Maharashtra*, laid down 16 point guidelines followed in the investigation of the cases of encounter by the police. Some of the important guidelines among them were:

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<sup>3</sup> Anjali, A Critical Analysis of Extra judicial Killings in India (11.11.2021, 12:09 PM), <https://www.legalserviceindia.com/legal/article-5925-a-critical-analysis-of-extra-judicial-killings-in-india.html>

<sup>4</sup> Anjali, A Critical Analysis of Extra judicial Killings in India (11.11.2021, 12:09 PM), <https://www.legalserviceindia.com/legal/article-5925-a-critical-analysis-of-extra-judicial-killings-in-india.html>

<sup>5</sup> CRIMINAL APPEAL NO. 1492 OF 2012

<sup>6</sup> CRIMINAL APPEAL NOS.1174-1178\_OF 2011

- Wherever police found any tip off regarding commission of any grave criminal activities, the first thing it should do is to reduce it in writing.
- In case of encounter by the police or use of firearm by the police, an FIR should be lodged for further investigation and a copy of it must be send to court.
- An encounter case must be investigated by an independent police team or CID.
- NHRC should be informed about such incident immediately.

## **VII. CONCLUSION**

There is a dire need to regain the decreasing trust of the public from the judiciary and for this judiciary as well as the police have to work together. Our country has divided different duties among the judiciary, Executive and legislature and they all should work together for welfare of all instead of interfering in each other's responsibility. It is time for the literate people to stand together to aware the people about the drawbacks of the encounters. More skillful training is needed train the police personnel to tackle dreadful criminal without causing much harm because no one's human rights should be violated.

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