

EXTRA-JUDICIAL KILLINGS: THE IMPACT ON SOCIETY AND JUSTICE

By Y.ROBERT



Abstract

Extra-judicial killings refer to the unlawful and often systematic use of lethal force by state actors, such as law enforcement agencies or security forces, outside the legal framework of due process. In a nation that upholds democratic values like India, where the Rule of Law is paramount, incidents of human rights violations like this should not be tolerated. Unfortunately, there has been a significant rise in the occurrence of encounter cases in India, which poses a grave danger to the foundations of democracy and the safeguarding of individual freedoms. This

alarming trend raises questions about the accountability and integrity of institutions responsible for upholding the law.

Despite being viewed as “draconian”, the Code of Criminal Procedure, 1973 has established the procedure that outlines the criminal administration from the moment of arrest to the subsequent trial and beyond. The police force is subservient to the laws of the country and hence holds no authority to act beyond the powers that have been vested in them. The failure of our criminal justice system and the violation of human rights are evident when law enforcement officials in our nation decide to act independently, disregarding established legal procedures. The National Human Rights Commission (NHRC) has found that India has registered 813 cases of encounter killings between 2016-17 and 2021-22 but not one was convicted, leaving all the victims with justice undelivered! This research delves deep into the factors contributing to extrajudicial killings in India and aspires to contribute to a broader understanding of the challenges and potential solutions surrounding this grave human rights concern.

Keywords: Extra Judicial Killings, Criminal Law, Encounters, Human Rights, Rule of Law, Code of Criminal Procedure, 1973.

RELEVANCE OF THE STUDY

On paper, police “encounters” are said to comprise a spontaneous shoot-out between police officers and armed civilians in which the police are fired upon, and (in self-defence) fire back, killing the alleged criminals. More often than not, evidence indicates that these police narratives are false and that the alleged encounters have been staged.¹ The relevance of studying “extrajudicial killings” is paramount in understanding and addressing a concerning ongoing issue that has a significant impact on human rights, social justice, and the rule of law. This study sheds light on the root causes, patterns, and consequences of such acts and provides an opportunity to explore the complex interplay of political, social, and economic factors that contribute to the continuation of extrajudicial violence. The significance of this study extends beyond academic

¹ *Extrajudicial Executions: The Supreme Court Has Failed the Citizen on Encounter Killings*, 50 EPW, 7–8 (2015).

study, as extrajudicial killings have emerged as a global concern, transcending geographical and political boundaries.

RESEARCH OBJECTIVES

The primary focus of this study is to identify the root causes and contributing factors that result in extrajudicial killings.

This study allows us to evaluate the effectiveness of existing legal frameworks in preventing and addressing extrajudicial killings.

This research enables us to investigate and explore the social, psychological, and economic consequences of extrajudicial killings on affected communities, and the broader implications for human rights, public trust in institutions, and the rule of law.

STATEMENT OF THE PROBLEM

The police's failure to investigate extrajudicial executions is a major obstacle to justice in the country. The law regarding the investigation and prosecution of extrajudicial executions is silent on many key points, leaving it open to interpretation. The failure to conduct adequate investigations into alleged encounters as well as the failure to prosecute suspects has effectively condoned the actions of the police and contributed to the escalation of violence in many Indian states such as Andhra Pradesh, Maharashtra etc.²

HYPOTHESIS

Communities with lower socioeconomic status experience a statistically significant higher rate of extrajudicial killings 'encounters' as these killings are implicitly approved by political leaders, police officers, and the Indian public at large.

² P. Srikrishna Deva Rao, *Encounter' Killings in Andhra Pradesh*, 30 EPW, 2787–88 (1995).

LITERATURE REVIEW

Extrajudicial Executions: The Supreme Court Has Failed the Citizen on Encounter Killings, 50 EPW, 7–8 (2015).

In this research paper, the writer emphasizes the stance of the Indian Judiciary on this issue and highlights instances where the judicial system has failed to uphold the principles of criminal administration. It's stated that encounters constitute a gross violation of the right to life, allowing police officers to escape judicial oversight for unlawful tenets enshrined in the Constitution.

Patel, A, For How Long Will We Ignore the Extrajudicial Killings on Indian Soil?

This article discusses the ongoing extrajudicial killings in India and the long-term implications of this issue. It highlights the government's awareness of these killings and the lack of action in response to demands for investigation. The article references the findings of a commission that revealed fake encounters in Manipur, with over 1,500 murders committed by police and security forces. The piece also explores societal acceptance of such murders and the lack of significant pushback, contributing to the continued impunity of the government.

Prakash Singh, Fake Encounters: Why Does Public Support Extrajudicial Killings In India?

This article discusses the issue of police encounters in various countries, with a focus on India. It highlights the high number of police killings in the US and other countries, as well as the presence of questionable encounters in India despite constitutional protections of the right to life and personal liberty. The paper also presents statistics on police encounters in India, particularly in states affected by terrorism, insurgency, or criminal activity. It delves into the phenomenon of "fake" encounters and extrajudicial killings, which reflect a loss of faith in the criminal justice system.

Radhika Jha, Crime As Punishment: How India's Public Backs Extrajudicial Killings By The Police?

This article highlights the implicit social and political approval of extra-judicial killings, especially among marginalized communities like Dalits, Adivasis, and Muslims. The paper presents survey findings that indicate a significant portion of the public and police personnel condone violence by the police, with discriminatory attitudes towards these marginalized groups. The paper further highlights the gaps in official data on fake encounters due to underreporting and contradictory information.

Nidhi Jacob, *Data check: In last six years, India has registered a case of encounter killing every three days?*

This article examines data on encounter killings or extrajudicial executions by police in India over the last six years, revealing a significant increase in such cases. The statistics provided in this article have been used for this research.



Image Source: Solidarity statement: “Stop the killings of human rights defenders in the Philippines”

RESEARCH QUESTIONS

What are the primary motivating factors and root causes that contribute to the occurrence of extrajudicial killings?

How do extrajudicial killings impact affected communities, both in terms of immediate consequences and long-term social, psychological, and economic repercussions?

What legal frameworks, both domestic and international, exist to prevent and address extrajudicial killings, and to what extent are these frameworks effective in holding perpetrators accountable?

ROOT CAUSES FOR THE WIDESPREAD OCCURRENCE OF EXTRAJUDICIAL KILLINGS

Numerous factors contribute to the prevalence of encounters in India. Nevertheless, when examining the situation solely from a human rights standpoint, two crucial and disheartening factors come into play: governmental and societal acceptance and approval. Lengthy trials in India have been a longstanding issue within the country's legal system. An overwhelming number of cases coupled with the inadequate number of courts and judges, contribute to the unnecessary delay of justice where it is rightfully deserved. In such a harrowing situation, it is intelligible why the public would prefer a spontaneous shoot-out rather than the tiring trials of the accused which could go up to years. The lengthy and exhausting police investigations and judicial procedures in India have left the common man deeply dissatisfied.

On certain occasions, accused individuals escape punishment due to lack of evidence or receive lesser penalties than they truly deserve. Consequently, some individuals perceive encounters and killings as a means to achieve swift justice. In December 2019, four men accused of gang rape and burning a veterinarian to death in Hyderabad were shot dead by the Telangana Police. The police claimed that the accused had attacked them while they were reconstructing the crime scene and retrieving evidence. It is to be noted that the killings of the accused were met with approval from a significant portion of the population, who celebrated the incident by distributing sweets and honoring the policemen. Numerous tweets with hashtags supporting the Hyderabad Police flooded social media platforms.

In the eyes of the law, no matter how gruesome an act is, the accused should always be tried before they're pronounced guilty and awarded punishment. Meanwhile, in the eyes of the public, a heinous act such as gang rape and burning someone to death should result in the accused facing immediate punishment. However, in the above case, things took a turn when Justice V.S.

Sirpurkar conducted an inquiry into the incident and found that the police's account was fabricated and therefore not credible. The commission recommended that all 10 police officers involved be prosecuted for murder and destruction of evidence with a common intention.³

On August 27, 2013, Lok Sabha MP Gurudas Dasgupta raised several inquiries to the Home Ministry. These inquiries included whether the Government of India had knowledge of the findings of the commission led by Justice N. Santosh Hegde, which was appointed by the Supreme Court. The commission's findings revealed that seven killings in Manipur were the result of fake encounters. Additionally, Dasgupta inquired about whether the National Human Rights Commission (NHRC) had requested an investigation into all encounters in Manipur. In response, the government acknowledged that they were aware of the Hegde commission's findings.

However, they stated that the NHRC had not demanded an investigation into these findings. Consequently, the government took no action in the matter. On November 24, 2012, the Supreme Court established a commission consisting of three individuals, including former Justice Hegde, former chief election commissioner J.M. Lyngdoh, and former DGP of Karnataka Ajay Kumar Singh. Their objective was to address the 1,528 murders that occurred between 1979 and 2012 in Manipur through encounters. These murders were committed by the Manipur police and security forces. The commission's formation was prompted by a petition filed by the Extra Judicial Execution Victim Families Association (EEVFAM). The commission initially focused on the first six of the 1,528 murders.

By 2013, they determined that all of these encounters had been fabricated. The killings were made possible by the protection provided to the perpetrators under the Armed Forces Special Powers Act (AFSPA).⁴ It is important to note that such encounters are not exclusive to the

³ Prakash Singh, *Fake Encounters: Why Does Public Support Extrajudicial Killings In India?*, OUTLOOK INDIA, <https://www.outlookindia.com/national/fake-encounters-why-does-public-support-extrajudicial-killings-in-india-magazine-213905>

⁴ Patel, A, *For How Long Will We Ignore the Extrajudicial Killings on Indian Soil?*, THE WIRE,

Northeast and Kashmir regions, and AFSPA is not a prerequisite for the State to carry out such actions. We, as a society, have turned a blind eye to these killings unfolding. Even the Prime Minister was compelled to address the issue only after an exceptionally horrific incident came to light. Regrettably, not much has changed in the functioning of the State in India even after the government acknowledged in the Lok Sabha that these types of murders are a reality. There have been recent cases where individuals were killed while in custody despite approaching the Supreme Court for justice, and where someone was killed during transportation while the incident was broadcast live on television, highlighting this alarming trend.

The above-cited example displays a sense of political indifference toward these killings. Despite having the power to bring about some change or raise awareness regarding these killings, the political leaders of the country choose to remain silent regarding the same. This action could be induced by fear of the higher authorities sanctioning such killings or backlash from the public who support these killings, or well, just due to their lack of care or concern regarding this issue. At the societal level, there is a lack of significant resistance to such murders. Society at large categorizes people into “good” and “bad”. There is no middle ground, just an extreme left and right. They ardently believe that anyone who falls into the “bad” category deserves instant punishment and is not worthy of human sympathy. This leads them to think that any killing of an accused is fair, even if it infringes on their fundamental rights or if it demolishes the principles of the Rule of Law and Natural Justice. This perspective is evident in the media’s coverage of such incidents, where holding the State accountable for extrajudicial killings is not the primary focus or concern. Due to this societal acceptance, or at the very least, the absence of opposition from society, the government can continue its actions without significant consequences.

IMMEDIATE AND LONG-TERM IMPACT OF EJK ON AFFECTED COMMUNITIES

It comes as no surprise that the minorities of India are the most affected by the occurrence of extrajudicial killings, as supported by substantial evidence. In May 2013, a tragic incident occurred in Edsmetta village of Bijapur District in southern Chhattisgarh, where eight unarmed

<https://thewire.in/rights/for-how-long-will-we-ignore-the-extrajudicial-killings-on-indian-soil>

Adivasis, including four minors, lost their lives at the hands of security forces. Initially labeled as Maoists, doubts were raised following a judicial investigation into the matter. The committee, led by Justice V K Agarwal, a former judge of the Madhya Pradesh High Court, released its findings in September 2021, deeming the incident a “mistake” and attributing the use of lethal force to security personnel acting out of panic. This panic resulted in a total of 44 gunshots being fired at the unarmed individuals. A study conducted in 2018 by Common Cause and the Centre for Study of Developing Societies (CSDS) surveyed 15,563 individuals across 22 Indian states and UTs, revealing the public’s perception of discriminatory behavior by the police towards Scheduled Castes (SCs), Scheduled Tribes (STs), and Muslims, as well as biased attitudes towards these communities. Among various caste and religious groups, Adivasis displayed the highest level of distrust towards law enforcement authorities.

Additionally, one out of every four individuals believes that the police engage in discriminatory practices based on caste. Furthermore, 19% of the individuals surveyed expressed the belief that the police discriminate based on religion, with Muslims being the most likely to hold this opinion. Half of the respondents stated that the police discriminate based on social class. A significant portion, approximately 38%, of the population believes that Dalits are falsely implicated in minor criminal offenses. Similarly, 2% of the population believes that Adivasis face similar false charges related to being associated with Maoists. Approximately half of the Muslim respondents reported experiencing false implications in terrorism-related cases by the police. Data from 2017-2020 reveals that nearly 37% of individuals killed in “encounter” deaths in Uttar Pradesh were Muslims, despite Muslims comprising only 19% of the state’s population. Although there is no national-level data available on fake encounters categorized by caste and religion, it is not entirely baseless to hypothesize that these encounters disproportionately target these already marginalized communities. While there are a multitude of cases where members of minority communities are affected, it is crucial to note that extrajudicial killings are not limited to any particular religious, ethnic, or social group.



Image Source: Allahabad High Court order in Pilibhit extra-judicial killings case merits a substantive appeal

The immediate and long-term impacts of EJKs on affected communities are profound, causing fear, trauma, and social disruption within communities. The loss of life and livelihood, coupled with a chilling effect on dissent, creates an environment of insecurity and mistrust. Moreover, the violation of human rights and the erosion of legal and social norms contribute to a cycle of violence that perpetuates injustice. Here are a few examples of how extrajudicial killings affect both the victims and our society as a whole:

Psychological Distress & Generational Trauma: Witnessing or experiencing extrajudicial killings can result in severe fear, anxiety, and psychological trauma for individuals in the affected community. Trauma resulting from EJKs can be passed down through generations, affecting the mental health and well-being of future community members.

Social Disruption: The immediate aftermath of EJKs can lead to a breakdown in social cohesion. EJKs can contribute to a long-term erosion of trust between the affected community and law enforcement or government institutions. Rebuilding trust becomes a significant challenge.

Loss of Life and Livelihood: Families directly affected by EJKs experience the immediate trauma of losing a loved one. The sudden loss of life can lead to emotional turmoil and economic challenges.

Suppression of Dissent: EJKs can create a climate of fear that suppresses dissent and inhibits community members from speaking out against injustice or human rights abuses.

Legal and Human Rights Violations: The immediate impact includes the violation of the right to life and due process. Victims of EJKs are denied the opportunity for a fair trial and legal recourse.

Cycle of Violence: In certain instances, extrajudicial killings (EJKs) have the potential to perpetuate a cycle of violence, leading communities to seek revenge or resort to violence as a means of self-defense. This can result in a loss of trust in institutions' capacity to safeguard individuals' rights.

Thus, the police policy of encounters reflects the frightening scenario in which the state, not just the police, is deeply alienated from the people. Simultaneously, the state is being effectively 'privatized', its agencies functioning only at the behest of the rich and the powerful in blatant disregard for public perception.⁵ Efforts should include psychological support for affected individuals, legal avenues for justice, community rebuilding initiatives, and broader systemic reforms to prevent such abuses in the future. International cooperation and the involvement of human rights organizations are often crucial in holding perpetrators accountable and supporting affected communities.

ROLE OF DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORKS IN COMBATING EXTRAJUDICIAL KILLINGS

It is disheartening to acknowledge that a nation that has had a fold rise in extrajudicial killings over the last six years remains silent when it comes to enacting a law specifically for such encounters. Even the new criminal law reform bills which received the President's assent on 25th December 2023, contain no provision which addresses the same. Although there is no specific

⁵ Vrijendra, and C. Upadhya, '*Justice by Encounters*', 32 EPW, 2848–50 (1997).

law in India that defines encounter killings, it is still categorized under “Cases Registered against State Police Personnel for Human Rights Violation” by the National Crime Records Bureau.

The Constitution of India guarantees the right to life, liberty, and equality before the law to every individual. Encounters are a gross violation of Articles 14, 21, and 22 of the Constitution of India. The Indian Penal Code, 1860, provides for the Right to Private Defence under Sections 96-106. According to these sections, there are certain circumstances when death in an encounter shall not be counted as an offence in India. This law applies to all citizens of the country, not just police officials. If a death in an encounter is caused while defending oneself, it does not amount to a criminal offense. It is important to note that while police officials have the authority to injure criminals to protect themselves or maintain peace and order, their motives must be thoroughly examined. If a death in an encounter is caused while defending oneself, it does not amount to a criminal offense. It is important to note that while police officials have the authority to injure a criminal in order to protect themselves or maintain peace and order, their motives must be thoroughly examined. If the death cannot be justified under the law, then the police personnel involved must be held accountable and tried for culpable homicide.⁶ Section 46 of the Code of Criminal Procedure, 1973 allows police officers to use any degree of force that is required to arrest the accused or prevent the accused from escaping. The matter of determining what constitutes reasonable force is brought up in this scenario. It is not justifiable for police to kill an unarmed and defenseless individual who attempted to avoid arrest simply by fleeing. This action cannot be considered a reasonable use of force due to the lack of proportionality in the level of force applied. Section 46(3) provides that 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 imprisonment for life.

While India has a National Human Rights Commission, which addresses various human rights issues including the killing by Police Officers, the commission lacks any power to initiate action

⁶ Nidhi Jacob, *Data check: In last six years, India has registered a case of encounter killing every three days*, SCROLL, <https://scroll.in/article/1029119/data-check-in-last-six-years-india-has-registered-a-case-of-encounter-killing-every-three-days>

against the police, and can only prescribe suggestive directions.⁷ In 1997, the National Human Rights Commission (NHRC) established guidelines for handling encounter killings. These guidelines were further expanded in 2010. In the case of PUCL Vs State of Maharashtra (2014)⁸, the Supreme Court introduced a 16-point guideline as the standard procedure for conducting a “thorough, effective, and independent investigation” into deaths resulting from police encounters. These guidelines included the registration of an FIR, an independent probe, a magisterial inquiry, informing the NHRC, and submitting a report to the competent court among other measures. Despite the guidelines set by the NHRC, which clearly state that FIRs must be registered in all cases of encounter deaths, there has been a failure to register any FIR against uniformed personnel or members of the state police. Consequently, this has led to a complete absence of convictions.

⁷ Saksham Shrivastav and Adesh Sharma, *The Celebration of Extra-Judicial Murders: Who's Watching India?*, VERFBLOG, <https://verfassungsblog.de/the-celebration-of-extra-judicial-murders-whos-watching-india>

⁸ PUCL Vs State of Maharashtra, (2014) 10 SCC 635



Image Source: In the Philippines, a Youth Movement Stands Between Duterte and Dictatorship | The Nation

Extrajudicial killings in the state also violate different international instruments like the Universal Declaration of Human Rights, International Covenant for Civil and Political Rights, and Convention against Inhuman or Degrading Treatment and Punishment⁹. The International Covenant on Civil and Political Rights, clearly states in Article 6(2) that death penalties should only be imposed for the most serious crimes and after a fair trial by a competent court.¹⁰ Article 2 of the ICCPR describes that violation of any right or freedom by a state official is subject to a remedy.¹¹ Additionally, Article 9(3) emphasizes the importance of promptly bringing arrested individuals before a judge and ensuring a timely trial.¹² It is alarming to note that many cases of

⁹ Bandhan and M. Farial Haque, *Extrajudicial Killing through the Specs of Rights Jurisprudence: A Study on Bangladesh and India*, SALR 2(2).

https://www.researchgate.net/publication/364817478_Extrajudicial_Killing_through_the_Specs_of_Rights_Jurisprudence_A_Study_on_Bangladesh_and_India

¹⁰ ICCPR, Art 6(2).

¹¹ Ibid, Art 2.

¹² Ibid, Art 9(3).

police brutality have targeted individuals who are still considered “unconvicted” under Article 10(2)(a)¹³.

The United Nations has developed Human Rights Standards and Practices for the Police, recognizing the need for adherence to human rights principles. This framework aims to promote the integration of human rights norms into the actions of police officers. It strongly condemns unlawful killings and emphasizes the importance of treating every accused person as innocent, while respecting their human rights. Furthermore, it emphasizes the significance of providing proper training to police officials, enabling them to develop interpersonal skills, effective communication, conflict resolution, and proportional self-defense techniques. Article 3 of the UDHR provides that the right to life, liberty, and security of a person shall not be curtailed by the state arbitrarily.¹⁴ Article 5 of UDHR provides that no one shall be subjected to torture or cruel, inhuman, or degrading treatment, or punishment.¹⁵ Overall, India’s failure to uphold its national obligations and its blatant disregard for the international instruments to which it is a signatory is a matter of serious concern.

CONCLUSION

The rule of law is a fundamental principle that underpins democratic societies and serves as a cornerstone of a just and orderly society. The rule of law is in place to guarantee equal treatment for all individuals under the law, ensuring that those found guilty are duly punished through the court’s verdict. Extrajudicial Killings are a phenomenon that has progressively chipped away at the stability and protection afforded by the rule of law.¹⁶ In *Om Prakash & Ors vs State of Jharkhand & Anr* (2012)¹⁷, the Court ruled that ‘it is not the duty of the police to kill the accused merely because he is a criminal’, underlining the point that the Indian criminal justice system recognizes and condemns encounter killings as injudicious. In order to safeguard the right to life

¹³ Ibid, Art 10(2)(a).

¹⁴ Universal Declaration on Human Rights 1948, Art 3.

¹⁵ Ibid, Art 5.

¹⁶ Zeeshan M, *India’s Extrajudicial Killings Chip Away at Rule of Law*, THE DIPLOMAT, <https://thediplotmat.com/2023/04/indias-extrajudicial-killings-chip-away-at-rule-of-law/>

¹⁷ *Om Prakash & Ors vs State of Jharkhand & Anr*, Criminal Appeal No. 1492 of 2012

and personal liberty, it is crucial for law enforcement agencies to operate within the boundaries of the law. In cases of “encounter” killings, the Supreme Court has even suggested the imposition of the death penalty.¹⁸ It is imperative that the lawmakers of the nation enact precise laws to tackle the problem of extrajudicial killings, considering the fact that the number of cases continues to persist without decline. Justice is not exclusive to the “good” section of society comprised solely of individuals who have suffered as victims and not committed any wrongdoing. It is equally warranted for all those who stand accused in diverse cases and have tragically fallen prey to the dreaded instances of encounter killings.

¹⁸ Naina Bhargava and Gauri S. Kumar, *Extra-Judicial Killings in India: A Crisis of Justice, Faith and Public Morality?*, BLOG LSE, <https://blogs.lse.ac.uk/southasia/2021/05/24/extra-judicial-killings-in-india-a-crisis-of-justice-faith-and-public-morality/>