Journal of Social Science and Humanities ISSN: 1811-1564
DOI: 10.66069/ojspub.1811261008

Extrajudicial Executions and Fabricated Encounters: A Case-Centric Analysis of the Vikas Dubey Incident

Fatima Reddy

Narsee Monjee Institute of Management Studies, Indore, Madhya Pradesh, India

Abstract: ***Article 21 of the Constitution states, "No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law." [Constitution of India] This implies that the government must conduct a criminal trial in line with the Criminal Procedure Code's rules before denying someone their life. However, fake encounters fully avoid and bypass this legal process because they actually involve dumping someone without a trial. As a result, such interactions are completely against the Constitution and the principles of the Rule of Law as well as constitutional appropriateness. They are violations of human rights and fundamental criminal law principles, which state that an accused person is presumed innocent until and unless proven guilty by a court of law. Additionally, the increase in fake encounter cases in India has damaged India's reputation on the global human rights index and damaged our goodwill in international forums. The very suspicious death of mobster Vikas Dubey, who was shot dead in an elaborately staged attack just one day after his capture, has caused a great controversy and raised serious questions about the veracity of encounters and extrajudicial killings. One portion praised the police for bringing "instant justice," while another referred to the incident as "extrajudicial murder" and questioned its legality. India operates under the rule of law and upholds the notion of "presumption of innocence" until the accused is proven guilty. The legal system defends the rule of law and stops the arbitrary use of authority. Even the 26/11 perpetrator Ajmal Kasab was given a trial. The number of fake encounter cases has recently increased sporadically and significantly in our nation. This sets a hazardous precedent and is in no way acceptable in a civilised society where the Rule of Law is upheld.***

Keywords: Fake Encounters, Rule of Law, Criminal Jurisprudence, Cold Blooded Murderers, Extra - Judicial Execution

1. Introduction

Fake Encounters are the extrajudicial executions of people who are typically detained by law enforcement authorities without following the proper legal procedures. Encounters show the appalling state of our criminal justice system and constitute a serious violation of human rights. Fake police encounters are a clear - cut violation of a person's fundamental rights to a free and fair trial as well as their human rights. The number of police contacts has increased, and the officers are become more and more prone to pulling their guns. Many of these confrontations turn out to be false. In the guise of encounters, law enforcement organisations, particularly the police, are swiftly assuming the roles of judge, jury, and executioner, which is hazardous and disturbing for any society that upholds the rule of law.

There has been an increase in fake encounter cases in India recently, including the Shopian Fake Encounter Case in Kashmir and the Manipur Killings. In 2017, the Supreme Court of India ordered the CBI to look into 1528 alleged fake encounters that occurred in the insurgency - affected Manipur between 2000 and 2012. According to an RTI request, there were 1, 782 false encounter instances reported in India between 2000 and 2017, with 794 (44.55%) of them occurring in Uttar Pradesh. Andhra Pradesh (94), Bihar (74), Jharkhand (69), Assam (69), and Manipur (69) are the next states after this one (63). Jammu & Kashmir had 22 instances within the same time period, compared to Delhi's 40 cases. According to NHRC, who made a statement in 2004, the practise of encounter killings has been used by the Police and Armed Forces for years, during wars or insurgencies & even in regular situations, they have essentially become a part of unofficial State Policy. Trigger happy Policemen often resort to Encounter Killings in the pursuit of Gallantry Awards & Out of turn Promotions, also it is done because of pressure by Political masters to show quick results by means of fair or foul.

History of Extra Judicial Executions and Fake Encounters in India

Episodes of interactions between Security forces and law enforcement personnel have long existed in Indian culture. For a variety of reasons, including to put an end to insurgencies in the states of Bengal in the 1960s and Punjab in the 1980s, police and other authorities have turned to encounters.

Encounters with police are common not just in troubled regions like Kashmir or the northeast, but also in everyday situations as they carry out their daily responsibilities.

10 passengers from a bus carrying Sikh pilgrims were shot in the Philbhit encounters of 1991 under the pretext that they were Khalistani militants. India has a history of false encounters, including that involving Sohrabuddin Sheikh in 2005 and Veerappan of Tamil Nadu.

Another similar mistake by the police department that costed more than a thousand lives which was the extrajudicial executions in Manipur.

Extra - Judicial Killing

An extrajudicial killing (also termed as extra - judicial execution) is the encounter of an individual by law enforcement authorities without having sanction of any lawful process. [1] The truth is that such "interactions" are actually not encounters at all, but rather cold - blooded

[1] Extrajudicial killing, available at https://en.wikipedia.org/wiki/Extrajudicial_killing#United_States accessed on 12.07.2020.

killings by the police, as Justice Markandey Katju has stated in this context. Vikas Dubey, an Indian history gangster, recently died in a confrontation on July 10, 2020. On July 3, 2020, they tried to apprehend him, he was the main suspect in the deaths of 8 police officers. He has previously faced charges under the National Security Act, the Arms Act, the Gangster Act, NDPS Act, and the Goonda Act. On July 10, 2020, the vehicle he was travelling in met with an accident. Vikas Dubey attempted to flee while snatching a gun from a police officer who was changing a tyre. He was shot dead during the confrontation, along with his six other companions.

Unquestionably, mutiny has long been the main cause of the high crime rates in Uttar Pradesh.

However, extrajudicial executions are not limited to the state of Uttar Pradesh; they occur all around the nation. The murder of Vikas Dubey is 119th killing by the police but the government continuously tries to whitewash the killings. [2] In all instances of police confrontations with criminals, police officials with the backing of powerful politicians have a tendency to bend the rules rather than follow them exactly as prescribed by the law. Additionally, it would be accurate to argue that these types of criminals prosper and gain power as a result of governmental support. He was routinely wandering free despite having 62 FIRs recorded against him due to a nexus with political power. Many journalists and intellectuals had previously foreseen Vikas Dubey's meeting. The huge names and secrets connected to Vikas Dubey are also lost with his passing. These kind of activity is gross infringement not only of Human Right but also of Procedure established by Law. Extra - judicial killing advances retribution. Fake encounters totally avoid and circumvent legal procedures, because it basically implies bumping someone off without a trial. Subsequently, it is totally unconstitutional. [3]

The executive and judicial branches of Government of India are each given distinct powers under the constitution. Only the judiciary has the authority to hold a criminal accountable for their crime by carrying out the legal process. The government cannot take the law into its own hands and then justify it by claiming that the criminal has no right to live and is therefore deserving of death.

Legality of Fake Encounters and Extra Judicial Execution

Despite the seriousness of the crime that was committed, there is a need for a provision to guide or manage the encounter of a criminal. In any event, the police have the right to hurt or kill the offender if it is necessary to maintain peace and order immediately or for personal protection. The Sections engaging police to use force against a criminal or offender:

- Section 96, IPC specifies that no crime is established if any act is carried out in self - defense; nonetheless, Section 99 of IPC specifies that disproportionate injury should not be caused for the sake of private defense.
- Section 100, In accordance with IPC, a person has the right to self - defense, which has the potential to result in death if there is a realistic fear for one's life or limb.
- Exception III of Section 300, According to IPC, a public servant is not considered a murderer if they operate outside the scope of their power to cause a fatality while upholding the law and accepting that doing so is necessary without any ill intention for fulfilling their obligations.
- Section 62 (2), CrPC which gives that in case an individual violently counter the attempt to arrest, or endeavors to avoid arrest, such police official or other individual may utilize the method essential to make the arrest. [4]

Judicial Response

The Supreme Court have addressed the problem of extra judicial execution done by the police officers. Some cases related to it are:

The Hon'ble Supreme Court in **Prakash Kadam v. Ramprasad Vishawanath Gupta**, "we warn policemen that they will not be excused for committing murder in the name of 'encounter' on the pretext that they were carrying out the orders of their superior officers or politicians, however high… the encounter' philosophy is a criminal philosophy, and all policemen must know this. Trigger happy policemen who think they can kill people in the name of 'encounter' and get away with it should know that the gallows await them". [5]

In case of **Om Prakash v. State of Jharkhand**the Apex court said, "It is not the duty of the Police Officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the Police have to arrest the accused and put them up for trial". [6]

In the case of **Arnesh Kumar v. State of Bihar**, the Apex court held, "The Police has not come out of its colonial image. Despite 6 decades of independence the Police is largely considered as a tool of harassment, oppression and surely not considered a friend of the public". [7]

In **Extra Judicial Execution Victim Families Association v. Union of India** the Supreme Court held that, "a distinction has to be drawn between the right of self - defense or private defense and use of excessive force or retaliation and that the right can be exercised only to defend oneself but not to retaliate". [8]

[2] VikasDubey encounter, latest example of blatant extrajudicial killing in India, available at https://mediaindia.eu/politics/vikas-dubey-encounter-latest-example-of-blatant-extrajudicial-killing-in-india/ accessed on 13.07.2020.

[3]MarkandeyKatju, The Lawlessness of Encounter Killings, available at https://thewire.in/law/hyderabad-policeencounter accessed on 12.07.2020.

[4] 5Shivaang Maheshwari, Undermining the 'Rule of Law': Can the 'Extra-judicial' Killings be Justified, available at https://criminallawstudiesnluj.wordpress.com/2019/12/07/undermining-the-rule-of-law-can-the-extra-judicialkillings-be-justified-caution-graphic-content/ accessed on 12.07.2020.

[5] Prakash Kadam v. RamprasadVishawanath Gupta, (2011) 6 SCC 189.

[6] Om Prakash v. State of Jharkhand, (2012) 12 SCC 72.

[7] Arnesh Kumar v. State of Bihar, (2014) 4 SCC 273.

[8]Extra Judicial Execution Victim Families Association v. Union of India, (2016) 14 SCC 578.

In the case of **PUCL v. State of Maharashtra** [[(2014) 10 SCC 635] PUCL v. State of Maharashtra], the Hon'ble Supreme Court issued some guidelines to be followed in the investigation of deaths following police encounters after taking into account the suggestions made by the Bombay High Court, the Counsels, National Human Rights Commission (NHRC), and other stakeholders. The Supreme Court ruled that Article 21 of the Constitution provides "every single person" in the nation the "sacred and cherished right" to life or personal liberty, and that even the state is not exempted from upholding that right. In this instance, the veracity of the encounters that claimed the lives of close to 130 people was in doubt. The Hon'ble Apex Court stated that it is essential for extrajudicial executions to be thoroughly and impartially examined in order for justice to be served in a society where the rule of law is upheld.

The guidelines issued by the Hon'ble Court was:

- Any information provided about criminal activity or movements connected to the commission of a serious crime must be documented in writing or electronically.
- After receiving such intelligence, if an encounter occurs in which the police party uses a firearm and the result is the death of the offender, a FIR must be registered and submitted to the court, under Section 157 of the CRPC in accordance with the guidelines established under Section 158 of the code.
- An impartial investigation into the encounter will be conducted by the police team of a different police station under the supervision of a senior officer (at least one level above the head of the police party involved in the encounter). This investigation will take into account the various factors listed in the order in detail.
- A magisterial inquiry according to Section 176 of the Code of civil procedure must be conducted in every instance of a police shooting resulting in death, and a report must then be forwarded to the Judicial Magistrate.
- The State Commission on Human Rights or the National Human Rights Commission must receive the incident's information, and the NHRC need not be involved unless there is a major question about the investigation's objectivity.
- The alleged criminal's next of kin must be notified as soon as possible in the case of death.
- If the offender/victim is hurt, medical assistance must be administered to him as soon as possible, and a magistrate or medical official must record his statement and the certificate of fitness.
- The concerned Court should get the FIR, panchanamas, sketch, and police diary entries as soon as possible.
- According to their rights under Article 20 of the Constitution, the involved police officer (s) must turn over their firearms for forensic and physical examination, as well as any other materials that the investigative team requests.
- According to Section 173 of the CRPC, the report must be sent to the competent court following a thorough investigation. Thereafter, a trial must be held.
- DGPs are required to send NHRC six monthly statements of all incidents involving deaths in police firing, which must arrive at NHRC by the 15th of January and July of each year.
- Following the interaction, the involved police cannot be promoted or given awards right away. The police agency can only move through with the rewards once the concerned officers' valour has been proven beyond a reasonable doubt.
- After the inquiry is complete, disciplinary action against the officer must be started right away, and their services must be temporarily suspended if the evidence shows that the death was caused by the use of a firearm and constituted an IPC offence.
- The victim's family has the right to file a complaint with the Sessions Judge who has territorial authority over the scene of the occurrence if they believe there was a lack of impartiality or an independent inquiry by any of the functionaries participating in the investigation process. [https://main.sci.gov.in/jonew/bosir/orderpdf/2071582.pdf]

NHRC Guidelines and Data

NATIONAL HUMAN RIGHTS COMMISSION, INDIA

Annexure – 2

Statement Showing State-Wise Disposal of Cases During 2018-2019

Name of the State/UT	Dismissed in Limini	Disposed with Directions	Transferred to SHRCs	Concluded after receipts of Reports			Total
				Complaints/ Suo-Motu Cases	Custodial Deaths/ Rapes	Intimation Received about Encounter Deaths	
All India	875	154	0	15	0	0	1044
Andhra Pradesh	507	644	131	149	36	2	1469
Arunachal Pradesh	10	28	1	25	5	2	71
Assam	93	114	28	68	20	23	346
Bihar	1130	1373	1145	599	81	1	4329
Goa	17	23	8	4	2	0	54
Gujarat	673	598	427	274	91	2	2065
Haryana	884	1228	554	705	20	2	3393
Himachal Pradesh	79	77	16	42	1	0	215
Jammu & Kashmir	73	68	51	38	9	0	239
Karnataka	550	375	285	215	9	0	1434
Kerala	352	254	182	106	23	0	917
Madhya Pradesh	1012	821	650	411	126	0	3020
Maharashtra	864	704	526	298	129	11	2532
Manipur	6	14	3	31	2	5	61
Meghalaya	4	11	1	19	5	7	47
Mizoram	0	5	0	5	5	0	15
Nagaland	3	7	0	4	1	1	16
Orissa	1200	2760	845	680	44	2	5531
Punjab	378	445	552	251	166	0	1792
Rajasthan	997	1037	715	778	67	1	3595
Sikkim	2	8	1	3	2	0	16
Tamil Nadu	1265	944	698	262	73	1	3243
Tripura	11	30	4	21	4	1	71
Uttar Pradesh	11602	16298	10679	5093	354	23	44049
West Bengal	674	664	469	342	117	3	2269
Andaman & Nicobar	10	26	0	10	0	0	46
Chandigarh	65	60	2	23	1	0	151
Dadra & Nagar Haveli	10	10	0	6	0	0	26
Daman & Diu	7	11	0	4	0	0	22
Delhi	2915	2875	2	1184	37	4	7017
Lakshadweep	4	0	0	2	0	0	6
Pondacherry	50	56	0	33	0	0	139
Chhattisgarh	204	157	88	74	38	4	565
Jharkhand	521	600	348	348	48	3	1868
Uttarakhand	453	551	302	161	27	0	1494
Telangana	471	564	103	130	27	0	1295
Foreign Countries	145	122	0	10	0	0	277
Grand Total	**28116**	**33716**	**18816**	**12423**	**1570**	**98**	**94739**

The above data is given by the NHRC (National Human Rights Commission, India) which shows the State - wise disposal of cases during the period of 2018 - 2019.

TABLE 16A.3

Reasons of Custodial Deaths - 2020

SL	State/UT	Suicide	Death due to illness/ Death in Hospitals during treatment	Injuries sustained prior to police custody	Injuries sustained during the police custody due to physical assault by police	While Escaping from Custody	Road Accidents/ Journey Connected with Investigation	Others	Total
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	[10]
STATES:									
1	Andhra Pradesh	1	6	0	0	1	0	0	8
2	Arunachal Pradesh	0	0	0	0	0	0	0	0
3	Assam	1	0	0	0	0	0	0	1
4	Bihar	0	0	0	1	0	0	0	1
5	Chhattisgarh	1	1	0	0	0	0	0	2
6	Goa	0	0	0	0	0	0	0	0
7	Gujarat	6	6	2	0	0	0	1	15
8	Haryana	3	0	0	0	0	0	0	3
9	Himachal Pradesh	0	1	0	0	0	0	0	1
10	Jharkhand	2	0	0	0	0	0	0	2
11	Karnataka	3	1	0	0	1	0	0	5
12	Kerala	3	2	0	0	0	0	0	5
13	Madhya Pradesh	3	1	0	0	0	0	2	6
14	Maharashtra	2	3	0	0	0	0	0	5
15	Manipur	1	0	0	0	0	0	0	1
16	Meghalaya	0	0	0	0	0	0	0	0
17	Mizoram	0	0	0	0	0	0	0	0
18	Nagaland	0	0	0	0	0	0	0	0
19	Odisha	1	1	0	0	0	0	0	2
20	Punjab	0	2	0	0	0	0	0	2
21	Rajasthan	0	4	0	0	1	0	1	6
22	Sikkim	0	0	0	0	0	0	0	0
23	Tamil Nadu	0	5	0	0	0	0	1	6
24	Telangana	1	0	0	0	0	0	0	1
25	Tripura	1	0	0	0	0	0	0	1
26	Uttar Pradesh	1	0	0	0	0	0	0	1
27	Uttarakhand	0	0	0	0	0	0	0	0
28	West Bengal	1	1	0	0	0	0	0	2
	TOTAL STATE(S)	**31**	**34**	**2**	**1**	**3**	**0**	**5**	**76**
UNION TERRITORIES:									
29	A&N Islands	0	0	0	0	0	0	0	0
30	Chandigarh	0	0	0	0	0	0	0	0
31	D&N Haveli and Daman & Diu	0	0	0	0	0	0	0	0
32	Delhi	0	0	0	0	0	0	0	0
33	Jammu & Kashmir	0	0	0	0	0	0	0	0
34	Ladakh	0	0	0	0	0	0	0	0
35	Lakshadweep	0	0	0	0	0	0	0	0
36	Puducherry	0	0	0	0	0	0	0	0
	TOTAL UT(S)	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**0**
	TOTAL ALL INDIA	**31**	**34**	**2**	**1**	**3**	**0**	**5**	**76**

• As per data provided by States/UTs

•States/UTs may not be compared purely on the basis of crime figures

TABLE 16A.3 Page 1 of 1

The above data is given by the NHRC (National Human Rights Commission, India) which shows the reasons of Custodial deaths in different states in the year 2020.

The NHRC (National Human Rights Commission) in the year 1997 chaired by M. N. Venkatachaliah set up some rules which should be followed in cases of Extra - judicial killing:

- When a police officer learns about a fatality during a police interaction, he is required to record that information properly.
- Since the information relates to the commission of a crime that is cognizable, prompt action is required to probe the death.
- To uphold objectivity, the subject must be looked at by an unbiased investigation body. There may be bias in the investigation if the police officer who encountered the person and the one who filed the FIR are from the same station.
- If the police officer is found guilty following the investigation, compensation will be granted to the deceased person's dependents.

In 2010, NHRC gave revised recommendations:

- In every case of a police contact resulting in death, a magisterial inquiry must be conducted right away and within three months.
- All police - related deaths must be reported to the Human Rights Commission by the Senior Superintendent of Police or the Superintendent of Police within 48 hours of the incident.
- Senior officers are required to submit a second report to the commission within three months that includes the post - mortem report, the inquest report, and the findings of the magisterial inquiry.

2. Conclusion

The rising cases of fake encounter is leading the society towards conceiving state of lawlessness, which is not a good sign for a civilized society. Justice must be served obeying to the legal procedure and not arbitrarily. Admiration of prompt - justice served through fake encounters builds a gap between the society and judiciary, which is harmful to the whole criminal justice system. [9] Unaffected by politics, an investigation into the Vikas Dubey event is necessary. After looking at other cases similar to this one, it is simple to anticipate that the police officers involved in this case will receive a clean bill of health. The law of the land has frequently been unable to deal with those determined to impose their own rules of law and order. The criminal justice system's century - old, antiquated statutes take years to deliver justice and no longer deter criminals, which ultimately encourages "haphazard investigation" of crimes and add on to the delay.

A change in the criminal justice system is necessary to achieve the synergy between the judiciary, the prosecution, and the police that is necessary to address the complexity of crime that is rising. Extrajudicial killings have no place in a liberal and rights - respecting society, despite the fact that the courts frequently deliver justice slowly. After every alleged extrajudicial killing, a comprehensive criminal investigation should be carried out in order to uncover the sinister alliance between the police and government officials who protected and patronised such dangerous criminals. Meetings shouldn't be used as a means of evading the law or obtaining quick justice.

References

[1] *The Lawlessness of Encounter Killings, by Justice Markandey Katju, Published in "The Wire" Online Portal on 10July, 2020*
[2] *Extrajudicial killings: India's long history of "fake encounters", by Priya Pillai*
[3] *Fake Police Encounter: A Serious Impediment to Fair trial of Accused in India by Anurag Ankur.*
[4] *Extra - Judicial Execution: In Light of Vikas Dubey Incident by Vidhi Chauradia.*
[5] *Livelaw. in*
[6] *Indiankanoon. com*
[7] *https: //indianexpress. com/article/india/up - police - submits - report - on - vikas - dubey - encounter - says - not - fake - 6510515/*
[8] *https: //www.thehindu. com/news/national/explained - police - encounters - in - india - cases - conviction - court - orders/article65463140. ece*
[9] *https: //blog. ipleaders. in/fake - encounter - killings - a - denunciation - to - the - criminal - justice - system/*
[10] *https: //heinonline. org/HOL/LandingPage?handle=hein. journals/ijlmhs12&div=108&id=&page=*

[9] Open Ended Police Encounters and Public Response in India, available at https://jilsblognuj s.wordpress.com/2020/04/14/open-ended-police-encounters-and-public-response-in-india/ accessed on 14.07.2020.