

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 4

2020

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Extra-Judicial Execution: In Light of Vikas Dubey Incident

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ABSTRACT

In India, extra-judicial executions are witnessed since the history of police. Most individuals appears in favor of this act of the police. The politics of undisguised fake encounters like that of Vikas Dubey is a spot on Indian democracy. The whole occurrence appears to be a Bollywood movie but tragically it is not. These sort of incidents appears great in a movie of three hour but it is creating lawlessness in the real world. Extra-judicial killing is against the procedure established by law. In spite of that, the cases of encounter by police is rising with each passing day.

The notion that individuals have in their mind with respect to extra-judicial killings is that of 'quick justice'. The faith of people is shifting towards the retributive form of justice. The criminals needs not to be punished by arbitrary killings but as per to procedure set up by law. The aim of this paper is to dissect the encounter of Vikas Dubey, reasons for the rise in fake encounters, look into the laws concerned to extra-judicial killing. Further, the paper throws a light on the view of the Supreme Court on this issue.

I. 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.²In this context Justice Markandey Katju had expressed that, “the truth is that such ‘encounters’ are, in fact, not encounters at all but cold-blooded murders by the police”. The recent case where the Indian history sheeter, Vikas Dubey died in an encounter on 10th July 2020. He was the prime suspect of killing 8 policemen while they endeavor to arrest him on 03rd July 2020. Previously he was charged under NDPS Act, Gangster Act, Goonda Act, Arms Act, and National Security Act. He was finally captured on 9th July 2020 in Ujjain. On 10th July 2020 the vehicle carrying him met an accident, Vikas Dubey snatched a pistol from a cop attempting to fix a tyre and tried to run absent. In this, he was shot dead in the encounter like his 6 other associates.

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² Extrajudicial killing, available at https://en.wikipedia.org/wiki/Extrajudicial_killing#United_States accessed on 12.07.2020.

Without a doubt, mutiny has long ruled Uttar Pradesh with high rates of crime. Unfortunately, Extra-judicial killings are not confined to UP only but can be witnessed all over the country. The murder of Vikas Dubey is 119th killing by the police but the government continuously tries to whitewash the killings.³ Police authorities having the support of politician in power tend to play the rules and not obey them as laid down by the law in all cases of police encounters with criminals. Also, it will not be wrong to say that these sort of criminals' gains power and flourishes because they are backed by the political power. Nexus with political power is typically the reason that in spite of 62 registered FIR against him, he was meandering free. The encounter of Vikas Dubey was already predicted by many journalists and intellectuals. With the life of Vikas Dubey, the big names and secrets associated with him are also gone.

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.⁴ The Constitution of India have assigned the powers separately to the executive and judiciary. Only the judiciary is empowered to punish a criminal for the crime by following the procedure established by law. The executive must not take the law in its hand and afterwards legitimize it by saying that the criminal have no right to live and hence warrants to die.

II. LEGALITY OF EXTRA JUDICIAL KILLING

There is a need of provision to direct or control the encounter of a criminal notwithstanding the grave nature of the crime committed by that criminal. In any case, the police may harm or kill the criminal, for only the reason of private-defense or where it is promptly essential for the upkeep of peace and order. The sections engaging police to use force against a criminal are examined as under:

1. Section 96, IPC provides that no offense is made out if any act is done in self-defense, usually pertinent subject to Section 99 of IPC which gives that for the purpose of private-defense unreasonable harm ought not to be caused.
2. Section 100, IPC which empowers an individual to exert the right of self-defense which may amplify to cause death if there is reasonable dread in the mind of an

³VikasDubey 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.

⁴MarkandeyKatju, The Lawlessness of Encounter Killings, available at <https://thewire.in/law/hyderabad-police-encounter> accessed on 12.07.2020.

individual that there is a danger to life or limb.

3. Exception III of Section 300, IPC gives that if any public servant surpasses their authority to causing death while acting for advancement of justice and which they accept as legal and required for releasing his obligation without any ill intention, at that point they will not be held responsible for murder.
4. Section 46(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.⁵

III. REASONS FOR RISING CASES OF EXTRA- JUDICIAL KILLING

The cases of extra-judicial killings are rising constantly. It emerges out of a need of patience and faith within the judiciary because many people believe that the courts will not provide timely justice. It is very evident that it takes years for a case to get to the stage of conclusion. The want of quick justice makes the people appreciate such encounter by police as of Vikas Dubey. The police is getting bolder with the passing time and killing at will to get away with such criminals has now become a trend. Many politicians reflects encounter numbers as their accomplishment in keeping law and order. The police officials are often rewarded for encounters. The concerned institutions for human rights have been incapable to secure human rights for such criminals. Encounters by police regularly acknowledged and considered as courageous acts by the public, which encourages the police.⁶

IV. JUDICIAL RESPONSE

The Supreme Court time and again have addressed the issue of extra-judicial execution by the police. Some of the cases are discussed as follows:

The Apex Court in *Prakash Kadam v. Ramprasad Vishawanath Gupta*⁷, “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”.

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-judicial-killings-be-justified-caution-graphic-content/> accessed on 12.07.2020.

⁶ Extra-judicial Killings, available at <https://www.drishtiiias.com/daily-updates/daily-news-analysis/extra-judicial-killings> accessed on 13.07.2020.

⁷ *Prakash Kadam v. Ramprasad Vishawanath Gupta*, (2011) 6 SCC 189.

In case of *Om Prakash v. State of Jharkhand*⁸, the Apex Court stated, “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”.

After observing the police atrocities, the Supreme Court in *Arnesh Kumar v. State of Bihar*⁹ 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”.

In *Extra Judicial Execution Victim Families Association v. Union of India*¹⁰ the Supreme Court held that, “a distinction has to be drawn between the right of self-defence 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”.

In *People’s Union for Civil Liberties v. State of Maharashtra*¹¹, the two-judge bench in Supreme Court presided by CJI RM Lodha and Justice Rohinton Fali Nariman formulated directions to be obeyed in cases of police encounter which are as follow:

1. At any moment when the police receives any information with respect to the commission of grave criminal offence, it shall be written in case diary or in any other form.
2. If according to the information, encounter happen by the police party and resulting which death occurs, without any delay an FIR shall be enrolled and forwarded to the court under Section 157 with compliance of Section 158 of the Code.
3. In order to collect evidentiary material, prepare rough sketches of the crime scene, independent enquiry should be conducted. The team for enquiry shall consist of members from other police stations. The videography of post mortem needs to be done.
4. In all cases of death by police, a magisterial inquiry under Section 176 must be conducted. It must be reported to the Judicial Magistrate having jurisdiction under Section 190 of the code.
5. The NHRC can be involved if there arises a question biasness or partiality in the investigation. However, Commissions concerning Human Rights must be informed without delay regarding the death.

⁸ *Om Prakash v. State of Jharkhand*, (2012) 12 SCC 72.

⁹ *Arnesh Kumar v. State of Bihar*, (2014) 4 SCC 273.

¹⁰ *Extra Judicial Execution Victim Families Association v. Union of India*, (2016) 14 SCC 578.

¹¹ *People’s Union for Civil Liberties v. State of Maharashtra*, (2014) 10 SCC 635.

6. The person injured must be given medical aid and the statement of the person shall recorded by the Magistrate.
7. Without delay FIR, diary entries, panchnamans, sketch, etc., must be sent to the concerned court.
8. After complete examination of the case, the report should be sent to the competent court under Section 173 of the Code. Thereafter, the trial must be concluded speedily.
9. In case of death, the family of the alleged criminal must be informed immediately.
10. In every six months a statement of all cases of death by police officials must be sent to National Human Rights Commission by the DGP in the prescribed composition.
11. If after completion of investigation the evidence reflects that death by the police amounts to an offence under the Indian Penal Code. Immediate action against that police official will be action and will be suspended.
12. Under Section 357A of the Code compensation will be given to the dependents of the deceased.
13. Subject to Art. 20 of the Constitution, the weapons will be taken back from the police official for the purpose of investigation.
14. Family of the Police Official must be intimidated and any type of lawyer/counsel services will be offered, if required.
15. No promotion or bravery rewards shall be given to the officers concerned until bravery is proved beyond doubt.
16. A complaint shall be made to the Session Judge by the family of the deceased if according to them, there is a lack proper investigation. The concerned Sessions Judge should look into the complaint made.

V. NHRC GUIDELINES

The National Human Rights Commission in 1997 chaired by Justice M.N. Venkatachaliah set up rules to be followed in cases of extra-judicial killing:

1. When a police officer gets information regarding death in an encounter by Police, he shall register that information in the appropriate manner.
2. As the information deals with the commission of a cognizable offence adequate steps to examine the death must be taken immediately.

3. The matter must be investigated by impartial investigation agency, to maintain impartiality. As if the police officer who encountered and the one registering FIR belongs to same station, there may be chances of biasness in the investigation.
4. Compensation will be given to the dependents of the decease, if the police officer is found guilty after the investigation.

In 2010, National Human Rights Commission gave revised recommendations, including:

5. Immediately within three months, magisterial inquiry must be held in all cases of death by police encounter.
6. Within 48 hours of such deaths, all death cases by police in the state should be reported to the Human Rights Commission by the Senior Superintendent of police/ Superintendent of police.
7. Another report including post mortem report, inquest report, and discoveries of the magisterial enquiry by senior officers must be sent within three months to the commission.

VI. NEED OF THE HOUR

In the shadow of *Vineet Narain v. Union of India*¹², where the Supreme Court used its power to screen investigation, passed interim orders, appointed amicus curiae, and persistently hold investigative agencies responsible. Equally, this ought to be done in extra-judicial killing case of *Vikas Dubey*, the circumstance casts the onus on the Uttar Pradesh police to certify their clean hands.¹³ The UP government has constituted a Special Investigation Team to examine the questionable case of *Vikas Dubey*.

Reforms in the Indian Police Force are profoundly required to control the police brutality. The police must work in accordance with law and the political control over the police authorities ought to be confined. Police officials must be trained to tackle such circumstance without killing the charged. The police must keep in mind that rule of law should not be interfered. The Supreme Court in *Nandini Sundar v. State of Chattisgarh*¹⁴ has stated that, “It is the responsibility of every organ of the state to function within the four corners of constitutional responsibility. That is the ultimate rule of law”.

For a civilized society, fake encounter by the police is certainly not a prerequisite and can

¹²*Vineet Narain v. Union of India*, 1996 (2) SCC 199.

¹³ *Extrajudicial Killing in India: An Analysis*, available at <https://www.jatinverma.org/extrajudicial-killings-in-india-an-analysis> accessed on 12.07.2020.

¹⁴*Nandini Sundar v. State of Chattisgarh*, (2011) 7 SCC 547.

never be an alternative for the possible punishment through the vital method of reasonable trial obeying the procedure set up by law.¹⁵ Further, the courts must guarantee speedy justice to reestablish the faith of society in the legal framework. The condition of fast track courts requires improvement. The very purpose of the fast track courts appears frustrated because of the colossal backlog of pending cases. The nexus of Politicians-Criminals-Police, must be suspended for the proper functioning of the Criminal Justice Administration.

Alteration in the mentality is most important that, “encounters” do not reduce crime at all, rather the public is deceived that their elected representative is resilient to uphold justice.¹⁶ The people must not invest their blind faith in political leaders rather must support what is fair and reasonable.

VII. 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.¹⁷ Investigation is required in the Vikas Dubey incident unaffected of the political influence. After having a look at the past similar case, it can be easily predicted that the police officials involved in this case will be given clean chit.

¹⁵ Justice V Ramkumar, Law Relating to Encounter Killings by the Police, https://www.livelaw.in/columns/law-relating-to-encounter-killings-by-the-police-151457?infinite_scroll=1 accessed on 12.07.2020.

¹⁶ Swati Chaturvedi, Encounter Raj in India: It could be anyone of us when we say RIP rule of law. VikasDubey today, you tomorrow, available at <https://gulfnews.com/world/asia/india/encounter-raj-in-india-it-could-be-anyone-of-us-when-we-say-rip-rule-of-law-vikas-dubey-today-you-tomorrow-1.1594538533254> accessed on 13.07.2020.

¹⁷ Open Ended Police Encounters and Public Response in India, available at <https://jilsblognujs.wordpress.com/2020/04/14/open-ended-police-encounters-and-public-response-in-india/> accessed on 14.07.2020.