

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Extra Judicial Killing and the Human Rights of the Criminal in India – An Emerging Botch on Criminal Justice System

DR. VIJETA VERMA¹

ABSTRACT

Police encounters are the violation of the human rights of the person who is actually until not proven guilty cannot be called as offender or criminal. Sometimes it is being reported and acknowledged that it is faked also. So what is that law which allows our executor to take law in their hands? If we will see minutely it is a direct encroachment of the executor on the judiciary. If the executor will perform all the functions of the judiciary the there is no use of the criminal justice system in India, all the decisions of the punishment and releasing of any person would be taken by the executor, it is a grave violation of fundamental rights enshrined under the Constitution of India. So the power exercised by the executor in case of the police encounter is a grave violation and a direct encroachment over the human rights as well as the fundamental rights of the criminal. As our constitution of India protects the rights of the convicted as well as the person in the preventive detention and this police encounters are the direct violation of the human rights of the criminals. In India we are taking care of the human rights of a brutal killer like Kasaab but we are not thinking about the human rights of our own nationals. This paper basically deals with the occurrence of the massive number of the police encounter in India and its direct encroachment on the sphere of the judiciary. This extra judicial killing and fake encounters are the ugly face of our developing nation. If it will not be stopped today then that day is not so far when the executive will become act as a judiciary body and our fourth pillar of the democracy 'the Media' will become the platform to decide the cases.

Keywords- *Police Encounter, Human Rights, Extra judicial killing*

I. INTRODUCTION

According to the Merriam Webster dictionary the word 'Encounter' means 'To engage in conflict with' and 'Police Encounter means 'Engagement of Police officials in conflict with the criminal' it was initially used to encounter the absconder, hardcore killers, but now the

¹ Author is an Assistant Professor at JEMTEC School of Law, Greater Noida, India.

scenario is totally changed it is being applied in some many cases in past few years. Despite of NHRC guidelines on police encounter and Supreme Court's warning police encounters are still occurring and violating the human rights of the convicted person. Police encounters are the direct encroachment over the powers of the judiciary by the executive as police is the subject matters of the state list according to the Seventh schedule of the Constitution of India, so it works according to the guidelines and directions of the state government. Encounter by the police is a serious matter of concern. Recently On 10th July 24, 2020 a news was flashed early in the morning that the most wanted criminal who has killed eight policemen in UP and now absconding is being encountered by the police while he was being brought to Kanpur from Madhya Pradesh as he was arrested at the Mahakaal Ujjain temple after finding him suspicious by the police officers, but on the way he was encountered by the police officials. It was being told by the police officers that he was attempting to snatch the gun or weapon and flee from the scene when one of the cars in the police convoy overturned, so only option rests with the police was to encounter him on the spot.² According to the International Rules and standard for the policing, to which the police officers are attempting to arrest if that person is resisting then they have to review that to restore to use of the force or even firearms. In case of use of the arms, it is also important that person to be encountered must be dangerous to the life of the others as well.

It is also important to note that in Indian statutes and legislations there is no law which directly deals with the encounter of the offenders, so in our country where the encounter case has been registered that is in lieu of the private defense of the police officer. It is mainly noticed where the police trying to arrest the criminal in the most positive way after fulfilling all the essential steps to arrest the criminal but the criminal trying to elope from the custody of the police officer after open fire on the police officials.

II. INCIDENCE OF ENCOUNTER IN INDIA

India has witnessed many cases of encounter, whether they all are fake encounters or not it is to be decided by the concerned authorities, according to NHRC's opinion, in order to show the quick result by means fair and foul to the political leaders, fake encounters are staged by the police officials. And another important reason is that the educated middle class also of the same opinion that police should also take the laws in their own hands with regard to the dreaded criminals as they are of the view that judiciary would take more time to decide the case and

² India Today. 2021. Vikas Dubey killed in encounter in Kanpur. [online] Available at: <<https://www.indiatoday.in/india/story/encounter-erupts-as-vikas-dubey-tries-to-escape-upon-reaching-kanpur-report-1698900-2020-07-10>> [Accessed 17 July 2021].

justice delay is termed as justice denied, a slow-moving criminal justice system so they are not in the opposition of encounters by the police officials³. Another reason cited by the NHRC is Trials drag on interminably for years and the outcome remains uncertain, particularly in respect of the criminals enjoying money and muscle power. Hence the pressure on the police for short cut, and extra-legal methods. Very often, there is connivance of the political bosses and support for the public too⁴.

Incidence of encounters

1. Manipur encounter- Manipur, February 2020 before the Imphal West Chief Judicial magistrate a Inspector and three Police personals surrenders in relation with the alleged fake encounter of the person named Irengbam Ratankumar on 1st September 2010.

2. Telangana Case – Hyderabad, On December 2019, four men who were the accused of gang rape and burning to death of a veterinarian doctor were shot dead by the Telangana police men as four men tried to escape and began pelting stones on the policemen, so according to the police they had to open fire in self defense.

3. Bhopal Jail Encounter- Bhopal, October 2016, eight people were allegedly escaped from the Bhopal central jail, they all were associated with the student's Islamic Movement of India, and they were subsequently shot dead by the Bhopal police officials. According to the report they all were asked to surrender but instead of surrender they start firing in return, so the police had to open fire and they died on spot.

4. Batla House- Delhi, In 2008 a most famous Batla house, Jamia Nagar encounter was took place as two suspected mujahideen terrorists were residing there, so both of them were shot dead on the spot.

5. Ram Narayan Gupta case – Mumbai, 2006 Ram Narayan gupta also known as 'Lakhan bhaiya' was picked up from vashi and allegedly shot dead by Mumbai Police in encounter as according to the data he was apparently aide to gangster Chhota Rajan.

6. Sohrabuddin Shiekh case- Gujarat, 2006 Sohrabuddin Shiekh was claimed by the Gujarat police that he was a Lashkar-e-Taiba operative. According to the CBI report he was a wanted criminal and while he was travelling form Hyderabad to sangli along with his wife in Maharashtra, at that time he was intercepted by the Gujarat ATS team and after three days he

³ NHRC's 2011 manual for human rights for police officers.

⁴ Venkatesan, V., 2021. Debriefed: The law on encounter killings and how the Supreme Court's guidelines are being flouted. [online] Bar and Bench - Indian Legal news. Available at: <<https://www.barandbench.com/columns/debriefed-law-on-encounters-and-where-guidelines-dont-matter>> [Accessed 17 July 2021].

was encountered by the ATS Chief D. G Vanzara claiming that he was a terrorist and planning to attack Narendra Modi.

7. Tulsiram Prajapati, Gujarat, 2006 Tulsiram was allegedly shot dead in a fake encounter as he was known to be associated by Sohrabuddin Shiekh.

8. Ishrat Jahan, Ahmedabad, 2004 Ishrat Jahan was a second year student at Mumbai's Guru Nanak Khalsa college, it was claimed by one of the terrorist that Jahan was an operative of the LeTs. He and three others were allegedly encountered by the Gujarat Police.

9. Veerappan case, Tamilnadu 2004, he was the most wanted criminal infamous for kidnapping, elephant poaching and smuggling of sandalwood was allegedly encountered by the Tamilnadu STF.

10. Sadiq Jamal, Gujarat 2003, he was encountered by the Gujarat police as police claimed that they had information that he was planning to attack on Narendra Modi and other top BJP Leaders.

Besides these cases many cases are also there where a person was allegedly encounter by the police officials claiming that he was trying to escaping or hitting back to the police officials. In many cases police officials were charged for fake encounters.

III. LAW AND LEGISLATIONS

In our country there is no any specific act or legislation which deals with the police encounter, but there are many other provisions that define the protection in regard with this act. The Indian Penal Code defines sections which provide the protection in case of private defense. Right to life is an inherent right of every person.

Section 97⁵ defines Right of private defense, as contained in chapter XVI of the Indian Penal Code this protection provides in case where an action of assaulting criminals or offenders whose may reasonably cause the apprehension of death or grievous hurt to himself or to any other person, this section enables the use of force in self defense. So the action taken by the police is fully protected by the law. While section 96 of the Indian penal code explains that anything done in exercise of private defense is not an offence in the eye of law. Further Section 99 elaborates a caution that extend of the right to the private defense is limited to the gravity

⁵ Every person has a right, subject to the restrictions contained in section 99, to defend- First.- His own body, and the body of any other person, against any offence affecting the human body; Secondly.-The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

of offence committed to that person or to another person; a more harm cannot be inflicted than the offence.

Section 100⁶ further explains the various conditions where a person in exercise his right of private defense of the body may take an extreme step of causing death of the person but defense can only be taken against a person who is involved in an act which endangers the life or property of a person against whom force is being used.

So where the police personnel are under the apprehension that their lives are in danger they are legitimized to practice their right to private defense which may result in causing the death of the person who is trying to escape from the lawful custody of the police man.

Right to self-defense begins when reasonable qualm of hazard to body rises out of an undertaking or risk to present the offense anyway offense probably won't have been submitted. Further, it is settled in that an individual went up against with well known danger of life or extremity isn't depended upon to say something splendid scale the specific force expected to repeal the danger, and if he passes on his defend further at the glow of second law offers due space for it.

The burden of proof if there ought to emerge an event of self-defense is delivered by strength of probability and it need not be set up past reasonable vulnerability. Subsequently, in for all intents and purposes all circumstances where life of police officer or any policeman is being referred to he is viewed as vested with right of self defense.

Section 300 Exception 3⁷ Section 300 explains the provision where the murder is amounting to culpable homicide if the an act is done by the public servant or by any person aiding a public servant or helping him in performing his duties for the advancement of public justice, where in case if he exceeds the powers which are actually given by the law and causes death of any

⁶ 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 abducting;

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.

¹*[Seventhly.*—An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.]

⁷ Section 300 **Exception 3.**—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

person but in good faith where he believes that it is to be lawful and necessary for the due discharge of his duties without any antagonism towards the person whose death is caused by any public servant. So this exception provides immunity to the public servant that they can exceed their powers in order to secure the justice in the society.

Section 46⁸ of the Criminal procedure Code –Chapter V of the CrPC explains the provisions related to arrest of any person, section 46(1) explains that when arrest has been made the police officer or nay other designated person he actually touched the body of a person or confined him in his custody and in case of a woman, her submission to the custody can only be made by any female police officer, she shall not be touched by the police officer at the time of time. But in exceptional situations, contrary to what is mentioned can be done. Section 46(2) explains that police is authorized under the provisions of the act to use reasonable amount of force if in case person to whom police is arrested is using the force or forcibly resisting the police officer or trying to evading the arrest. Section 46(3) it clearly explains that innocent person cannot be punished as this section does not give the rights to the police officers to cause the death of any person who is innocent or not an accused of an offence. Section 46(4) provide the provision that a woman cannot be arrested after sunset and before sunrise but if it expedient for the justice and public good than arrest can only be made by the woman police officer only if the permission is granting by the judicial magistrate within the local jurisdiction to make an arrest.

NHRC Guidelines

On receiving of many complaints by the common public and NGOs NHRC issued guidelines to the state and union territories to regulated the conduct of all the police officers in case any encounter, the guidelines are as follows-

1. A register should be maintained by the police station in any case where the death has been caused in encounter, all the required information about it shall be recorded in the register by the police station incharge.

⁸ 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.

4. Save in exceptional circumstances, no women shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

2. After receiving the information investigation should be initiated to investigate the relevant facts and circumstances leading to the death so as to ascertain.
3. After the investigation if it is found that the deceased was innocent and police officers are at guilt then they should be prosecuted and compensation should be awarded to the dependants of the deceased.
4. Where the encounter is done by the police officer who belong from the same police station than the investigation should be handed over to the other independent investigation authority for the fair and just investigation⁹.

NHRC 2010

In 2010, NHRC issued additional guidelines on police encounter, according to the NHRC if nay police officer found guilty of fake encounter an FIR must be lodged against him. A Magisterial enquiry must be held expeditiously preferably within three months. All the deaths caused due to the police action within the territory of the state should be reported to the NHRC by the concerned Senior Superintendent of police within 48 hours of the death of a person. A subsequent second report should be sent within three months in all the cases to the NHRC/SHRC.

Supreme Court on police Encounter

The Supreme Court in a writ petition *PUCL v Maharashtra*, which raised the genuineness of the encounters of 99 people by the Mumbai Police, laid down guidelines as the standard procedure that should be followed and regulated through independent and effective investigation in case of death caused due to the encounter. The Supreme court advised that all the information received by any police officer related to the commission of any grave offence, it should be recorded either in video, writing or any other electronic form; revelation of the location and details of the suspect is not needed. If the police uses firearms in pursuance to a tip off, which resulted in the death of a person, then FIR must be registered and should be forwarded to the court without any delay. Once the criminal case has been registered than the investigation should be done by the independent team of the experts like CID or by a police team of another police station so that fair investigation can be done. The magisterial inquiry is mandatory into all the encounter cases and report of all the cases should be sent to the judicial magistrate. The Specialized agencies like NHRC and SHRC should be immediately informed

⁹ Drishti IAS. 2021. In Depth: Encounter- Supreme Court Guidelines. [online] Available at: <<https://www.drishtiiias.com/loksabha-rajyasabha-discussions/in-depth-encounter-supreme-court-guidelines>> [Accessed 17 July 2021].

about the occurrence of the encounter deaths. In case where the victim is alive then his statement should be recorded along with the certificate of fitness. Speedy trial should be conducted after submission of the full investigation report in such type of cases. In case where the police officer is found guilty a disciplinary action should be taken against him and he must be registered under the appropriate provisions of the Indian Penal code. Compensation should be granted to the dependants of the victim as prescribed by the Section 357A of the Criminal Procedure Code. Once the charges are framed against any police officer of fake encounter he must surrender their weapons for forensic and ballistic analysis, subjected to the rights enshrined in part III of the Constitution of India. If the victim's family finds that the proper procedure has not been adopted then they may make complaint to the session judge. The Supreme Court of India directed that these guidelines must be strictly followed in all the cases of grievous hurt and death occurred due to police encounter.

IV. CONCLUSION AND SUGGESTIONS

Conclusion

At the last we can finally conclude that It is pertinent to note that there is no provision in Indian law directly authorizing encounters of criminals Howsoever, grievous crime he is charged with but there are certain enabling provisions, which may be construed to vest police with certain powers to deal with criminals. In almost all cases where encounter have taken place, it is done for the self-defense of the police officer. This generally happens when the police is trying to arrest the criminal, but the criminal opens fire or tries to escape. The SC guidelines observed that the involvement of NHRC is not mandatory unless there is serious doubt that the investigation was not impartial. The burden of proof in case of self-defense is discharged by preponderance of probability and it need not be established beyond reasonable doubt. Hence, in almost all cases where life of police officer is at stake he is deemed to be vested with right of self defense.

Suggestions

Although to maintain the law and order in the society police action is very much mandatory but it should also prescribed to be done within the provisions provided for the same. Police officers should not be allowed to take all the punishment into their hands, they should not be allowed to give the punishment to the person in his custody their duty is to present the person before the judiciary and they should not be allowed to exercise the extra judicial killing. It is one of the side of the coin, where the police is not allowed to exercise the powers beyond their capacity but it is expedient for the interest of the public at large and the life of the police officer

is also in danger then like every human being is must also exercise his right to private defense provided under the provisions of the Indian Penal code. The only thing to remember here is that police officers should be allowed to commit encounter but not the fake one.
