



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## Actions Beyond the Law: Examining the Causes and Issues of Extra-Judicial Killings in the 21<sup>st</sup> Century

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*Received* 13 December 2023; *Accepted* 05 January 2024; *Published* 11 January 2024

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*The Indian Constitution Guarantees equal rights to every citizen of the country. An important question that needs to be assessed is whether every citizen gets their rights. One of the primary goals of a democratic government is to ensure that everyone has equal access to opportunities, rights, and liberties. India being one of the largest democracies has seen an unparalleled breakdown in the administration of justice. Extra-judicial killing is said to be a threat to democratic rule. In India Extra Judicial Killings, commonly known as encounters have become commonplace, not only in India but also worldwide. Such executions are said to violate human rights and go against democracy's core values. Despite the fact that courts have framed guidelines, such encounters are on the rise throughout the country. Such killings raise concerns about the legality and morality of such actions. This explains why it's considered a very controversial topic. The root causes for these killings are something that needs to be looked upon and preventing it will ensure and promote the rule of law and strengthen human rights protection. This paper will analyse the issues and causes and will propose effective measures to tackle them.*

**Keywords:** *extra-judicial killings, encounter, human rights, accused, fundamental rights.*

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## INTRODUCTION

*"To deny people Human Rights is to challenge their very humanity."*

**- Nelson Mandela**

Extra-judicial killings occur outside the purview of law, violating one's Human Rights. These killings involve violent acts that are aimed at silencing and intimidating dissenting voices that are carried out without legal justification. Individuals involved or suspected in various crimes, terrorism activities, political opposition, etc., against the government are targets of such killings. Most people consider these deaths to be the arbitrary abuse of power committed by police officers tasked with overseeing the specifics of the accused's pre-trial proceedings. The police who are part of the executive authority of the state are responsible for maintaining law, order, and security and take law into their own hands commonly known as police encounters. Many times, these encounters have proven to be false or fake. In the famous Ishrat Jahan case, In the year 2004, Gujarat police killed Ishrat Jahan, a 19-year-old Mumbai woman, and three other people in an encounter in Ahmedabad<sup>1</sup>, In 2009, the magistrate concluded that the encounter was fake. Recently, the special CBI sentenced three former Punjab cops to life imprisonment for killing youths in a 31-year-old fake encounter during the days of militancy in the state.<sup>2</sup> The encounter or killing of the accused is appreciated by society, terming it to be 'on-the-spot justice'. Other views hold these acts of violence as unlawful and inhumane. This is the reason why it is termed that Extra-judicial killings are inhumane homicides committed by police officials. This topic has become a controversial one for a very long time, Lack of enforcement of human rights and accountability is said to be a major contributor to these unlawful killings. Even after such fake encounters take place, the police take the justification of self-defense given under the India Penal Code. Such brutal killings are a violation of Articles 14 and 21 of the Indian constitution.

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<sup>1</sup> Srishti Ojha, '3 encounters, 3 states: Here's what happened next' *India Today* (13 April 2023)

<<https://www.indiatoday.in/law/story/as-atiq-ahmed-asad-encounter-up-police-a-look-at-encounters-in-the-past-2359656-2023-04-13>> accessed 01 December 2023

<sup>2</sup> '31 yrs after Fake encounter CBI court gives 3 Punjab ex-cops life for killing 3' *Times of India* (15 September 2023)

<<https://timesofindia.indiatimes.com/city/chandigarh/31-yrs-after-fake-encounter-cbi-court-gives-3-punjab-ex-cops-life-for-killing-3/articleshow/103675425.cms>> accessed 01 December 2023

The honourable High Court in the case of **Sunita v State of Maharashtra & Ors**<sup>3</sup> has also taken a firm position against Extra Judicial Killing, '*Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law*'. Despite NHRC and SC guidelines on police encounters, such killings are still prevalent and are on the rise which is a major cause of concern. Extra Judicial Killing deprives the accused of a fair trial as enshrined under the Indian Constitution. Weak Governance, Corruption, and socio-political instability are some of the other reasons that lead to such executions. In India, there is no law or legislation directly dealing with Extra Judicial Killing but certain guidelines as stated above have been formulated which have faded in the eyes and minds of the executors.

### MEANING OF EXTRA-JUDICIAL KILLING

An Extra-Judicial Killing also known as Extra-Judicial execution or extra-legal killing is a deliberate and unlawful killing of a person by the government or state authorities carried out without due process of law or it can be said that it is the killing of an individual without the sanction of any judicial proceeding.

### STATUS OF EXTRA JUDICIAL KILLING IN INDIA

In the last six years, India has registered 813 cases of encounter killings, which means that one such case has been registered nearly every three days since April 2016. A 15% decline in registration of encounter killing cases has been seen in the six years between 2016-17 and 2021-22. At the same time, the cases shot up by 69.5% in the last two years from 2021-22 to March 2022.<sup>4</sup>

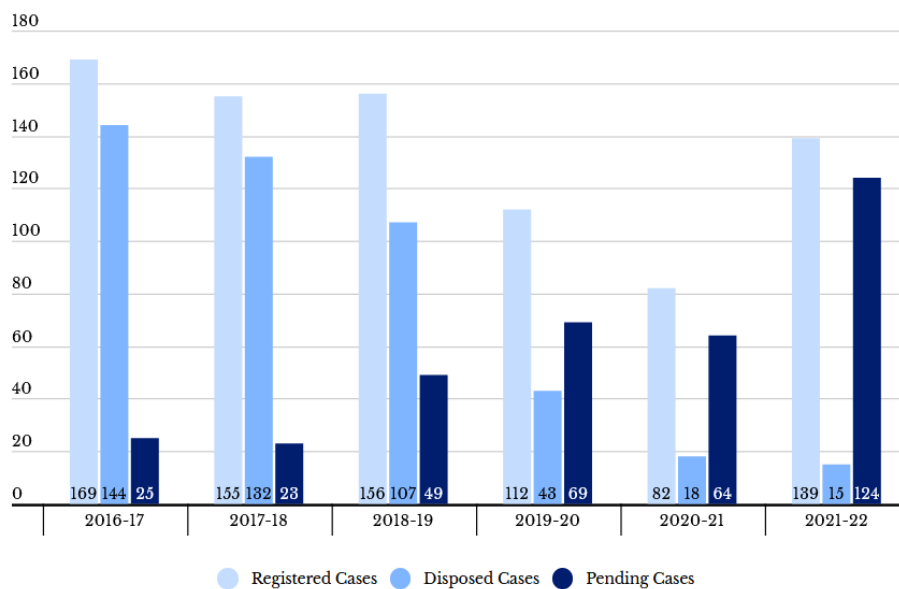
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<sup>3</sup> *Sunita W/O. Kalyan Kute v The State of Maharashtra* Crim WP 1647/2019

<sup>4</sup> 'State of extra-judicial killing in India' (*IAS Parliament*, 15 April 2023)

<<https://www.iasparliament.com/current-affairs/state-of-extra-judicial-killings-in-india>> accessed 01 December 2023

## Fivefold Rise in Pending Cases of Encounter Killings



Source: Rajya Sabha

## HISTORY

The extra-judicial execution of people in the contemporary age is the result of a sequence of historical events. Hindu scriptures shed light on the previous Indian criminal justice system, which was based on the Manu-Smriti or Manu law, which said that torture was required to maintain peace and deter crime. In the past, some nations or an area under kingly sovereignty adhered to the Manu code. The state was ruled by his officials, and the monarch served as judge, juror, and executioner. Numerous authorities subjected the accused to torture in an attempt to force them to reveal the truth. Some even forced the accused to confess to crimes they did not commit, which occasionally resulted in the accused's death. The idea of 'an eye for an eye' which was taught in Mohammedan law, spread widely throughout the Mughal era.<sup>5</sup> While Akbar avoided treating criminals harshly throughout his reign, the executions of suspected accused and convicted persisted after him. By utilizing torture to question suspects in cases where the Kotwals were responsible for murdering and torturing prisoners without a trial, the British became complicit in the atrocities. In the present time, the Indian legal system is based on the principle of 'innocent until proven guilty'. there have been several instances of extrajudicial

<sup>5</sup> Rudolph Peters, *Crime and Punishment in Islamic Law* (Cambridge 2005)

executions in India, sometimes referred to as ‘fake encounters’ even after the country gained independence from the British. Before the trial, the modern police who exploit the provisions of Section 46 encounter the accused<sup>6</sup> and Section 96<sup>7</sup> as a pretext. They attempt to distort the facts in order to prove that the killing was justified. This violence has risen significantly in recent years. Suspects in police or judicial custody are subjected to physical, psychological, sexual, and sometimes rape torture, all of which eventually lead to the suspect's death, and these events are classified as extrajudicial killings or custodial violence.<sup>8</sup>

## CAUSES OF EXTRA-JUDICIAL KILLING

Political, societal, and institutional factors are among the many causes and drivers of Extra-Judicial killings, making them a complicated phenomenon. Authoritarianism, political violence, and poor democratic governance are frequently linked to Extra-Judicial killings. Extra-judicial killings are regarded as a breach of the fundamental principles that formed the foundation of the Indian judiciary. These acts have been committed as a result of the country's law enforcement agency's inability to fairly prosecute the criminals. The following are some of them:

**1. Political Power or Support:** Extra-judicial killings also occur in contexts of political instability. Political leaders frequently claim that extrajudicial executions are their accomplishments. Political leaders give police officers credit for the extrajudicial executions they carry out by elevating them to higher positions or showing them gratitude with gifts of money or other rewards.

**2. Inefficiency or Work Pressure:** Due to the rising rate of crime in India, police are under constant pressure to perform essential duties and handle a variety of challenging scenarios. When a crime is committed, police are under constant pressure to perform better and to begin an investigation as soon as possible. This creates a work atmosphere where the public and

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<sup>6</sup> Code of Criminal Procedure 1973, s 46

<sup>7</sup> Indian Penal Code 1860, s 96

<sup>8</sup> Anjali, ‘Critical Analysis of Extra judicial Killings in India’ (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-5925-a-critical-analysis-of-extra-judicial-killings-in-india.html>> accessed 01 December 2023

government put pressure on employees, which leads to the police treating criminals brutally to obtain information or a confession.

**3. Public Support:** People who believe that the court would not provide justice in a timely manner are the ones who favour extra judicial killings because they lack faith and trust in the judiciary.

**4. Corruption and Lack of Accountability:** Widespread corruption within law enforcement agencies and judicial systems can contribute to such killings. When police officials are not held accountable for their actions, they are more likely to engage in extra-judicial killings.

**5. Punitive Violence:** Police officials are of the view that the only way to reduce crime in a state is by instilling fear among the criminals by using violence and torture.

## ISSUES OR CONSEQUENCES OF EXTRA-JUDICIAL KILLING

**1. Human Rights Violation:** The immediate consequence of Extra-Judicial killing is the violation of the right to life and other basic human rights of the victims. Extra-Judicial killings deny individuals the right to a fair trial and the right to defend themselves against accusations.

**2. Psychological Trauma:** Extra-Judicial killings also have long-lasting psychological and social impacts on the families and communities of the victims. These impacts can include trauma, anxiety, depression as well as social stigma and discrimination.

**3. Erosion of Trust in State Institutions:** Extra Judicial Killings erode trust in the government authorities, the rule of law, and democratic governance. Police officials conduct fake encounters without fear of being held accountable for their actions, it undermines the public's confidence in justice and equality.

**4. Political Instability and Violence:** Extra Judicial Killings can contribute to political instability, social unrest, and violence.

## LANDMARK CASES

**1. Om Prakash v State of Jharkhand:** The Supreme Court held in this case that ‘the instance of taking someone’s life is a crime that is equally applicable to police officials as well. If the police kill any criminal he has to be taken through a disciplinary proceeding, as such encounters are not sponsored by the state. If such an act is promoted by the state it would be taken as an instance of terrorism sponsored by the state also known as ‘State-sponsored terrorism’. It was clearly stated by the court that those officials who indulge themselves in such acts take the law into their own hands, which is not at all acceptable from such a noble profession. Also, the court stated the use of force in self-defence is acceptable so long as it is reasonable in response to the danger they confront’.<sup>9</sup>

**2. Prakash Kadam v Ramprasad Vishwanath Gupta:** The Supreme Court stated, “This is a very serious case that cannot be treated like any other. The accused, who are police officers, are supposed to uphold the law. It was reported that the victim was abducted during the day and taken to a police station before being taken to an unknown location and shot dead. It was further held in this case that, ‘In cases where a fake encounter is proved against policemen in a trial, they must be given a death sentence, treating it as the rarest of rare cases. Fake encounters are nothing but cold-blooded, brutal murders by persons who are supposed to uphold the law. If ordinary people commit crimes, ordinary punishment should be given, but if police officers commit the offence, a much harsher punishment should be given to them because they do an act totally contrary to their duties’.<sup>10</sup>

**3. Raghbir Singh v State of Haryana:** The Court in this case expressed the following, ‘*We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scarce in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death.*’<sup>11</sup> The Court stated that the police, whose job it is to protect citizens rather than carry out gruesome offences against them as has happened in this instance, violently

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<sup>9</sup> *Om Prakash v State of Jharkhand* Crim App No 1491/2012

<sup>10</sup> *Prakash Kadam v Ramprasad Vishwanath Gupta* (2011) 6 SCC 189

<sup>11</sup> *Raghbir Singh v State of Haryana* (1980) 3 SCC 70

violate their rights. The court also cited that such violence is disastrous to our human rights awareness and humanist constitutional order.

**4. Priyanka Reddy Rape Case 2019:** Four suspects in the rape and murder of a woman veterinarian in Telangana were killed in an encounter with police. According to police, they attempted to flee while the murder scene was being recreated. The interaction happened just a few meters away from where the veterinary doctor was set on fire. In a report submitted to the Supreme Court, the Justice V. S. Sirpurkar Commission, which was tasked with investigating the alleged encounter of four accused in the gangrape and murder of a veterinarian on the outskirts of Hyderabad in 2019, stated that it believed the police intentionally fired on the accused 'with an intent to cause their death' and suggested that ten police officers and personnel be charged with a number of offences, including murder.<sup>12</sup>

**5. Vikas Dubey v State of UP:** In an encounter, the U.P. Police encountered Vikas Dubey, the most wanted gangster in the state. According to the police, after the vehicle carrying Dubey overturned, he grabbed a police officer's gun, attempted to flee and then opened fired on them after which the police shot him. Following petitions requesting an inquiry into the encounter, claiming that it was fabricated by the police, The Supreme Court appointed a panel of judges to inquire into the same. The killing of the criminal did not yield any proof against the Uttar Pradesh police. In its report, the inquiry commission faulted the lack of evidence from the criminal's family, the media, and the public.<sup>13</sup>

**6. D K Basu v The State of West Bengal:** The SC, in this case, declared, 'Custodial violence or Extra-judicial killings violate the dignity of any human being'. It also gave police departments certain directives for how to deal with and interrogate suspects.<sup>14</sup>

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<sup>12</sup> Sreenivas Janyala and Ananthakrishnan G, 'SC panel says book 10 cops for killing 4 accused in Hyderabad rape & murder' *The Indian Express* (Hyderabad, New Delhi, 21 May 2022)

<<https://indianexpress.com/article/cities/hyderabad/hyderabad-encounter-2019-gangrape-accused-sc-commission-7927755/>> accessed 01 December 2023

<sup>13</sup> *Vikas Dubey v State of UP* Crim App No 2655/2020

<sup>14</sup> *D.K. Basu v The State of West Bengal* AIR 1997 SC 610



**7. Khatri v State of Bihar:** The police officers in Bihar during the years 1979-80 started using a very brutal way to get information or confessions from the suspects, i.e. they poured acid into the eyes of the suspects which burnt their eyes and eventually led to immediate blindness. This incident was reported by around 31 victims. The police officers involved in this act were convicted by the court. This case also became the first-ever case in which the Supreme Court considered monetary compensation to the victim.<sup>15</sup>

## LEGISLATIONS DEALING WITH EXTRA JUDICIAL KILLING

There is no specific and direct law or legislation dealing with extra judicial killings in India. The police authorities only in case of self-defense permit encounters. The Indian Penal Code contains provisions that make reference to this. In the **CASE OF E. P. ROYAPPA**<sup>16</sup>, “*the Supreme Court had categorically held that arbitrary acts of the State are in stark contravention of Article 14. without any fair justification, it denies the accused the protection of law that he is entitled to under Article 14*”. However, there are certain provisions that allow extra judicial killings, that can be termed as exceptions to extra judicial killings in India.

**1. Sections 96, 97 and 100 of IPC:** Section 96 of the Indian penal code explains that not anything done in the exercise of private defense is an offence in the eye of the law. Section 97 defines the Right of private defense, as contained in chapter XVI of the Indian Penal Code provides protection in cases 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. Therefore, the law fully protects the police's actions. Section 100 details the different circumstances under which an individual exercising their right to self-defense of their body may go so far as to cause that person's death; however, the defense can only be taken against a person who is involved in an act that endangers the life or property of a person against whom force is being used.

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<sup>15</sup> *Khatri v State of Bihar* (1981) SCR 2 408

<sup>16</sup> *E. P. Royappa v State Of Tamil Nadu & Anr* (1974) SCR 2 348

**2. Section 300 of IPC:** According to this section, culpable homicide does not constitute murder when a public official exceeds his statutory power and causes the death of any person in good faith, which is required to secure justice and maintain public order.

**3. Section 46 of CrPC 1973:** This section gives police officers the right to use any degree of force necessary to make an arrest or stop an accused person from fleeing.

## **NHRC GUIDELINES**

Article 3 of the UDHR<sup>17</sup> establishes the right to life, which includes protection from extra-judicial killings. States are obligated to uphold this right. Also, Article 6 of the ICCPR<sup>18</sup> guarantees the right to life and prohibits arbitrary deprivation of life.

The NHRC released additional guidelines on police encounters in 2010. The NHRC stipulates that an FIR must be filed against any police officer found guilty of a fake encounter. It is necessary to hold a magistrate's inquiry as soon as possible within three months. Within 48 hours of a person's death, the Senior Superintendent of Police in question should report to the NHRC all deaths caused by police action within state territory. In every case, a second report should be submitted to the NHRC/SHRC within three months.

**According to the 1997 guidelines of the NHRC, all states and Union territories must follow the following guidelines. The following are the guidelines:**

- Information regarding deaths resulting from encounters must be entered into the proper register maintained by the police station in charge as soon as it is received.
- Investigations into the relevant facts and circumstances leading up to the death should be started as soon as the information is received.
- If the investigation reveals that the deceased was innocent and the police officers are guilty, they ought to face legal action and the deceased's dependents ought to receive compensation.

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<sup>17</sup> Universal Declaration of Human Rights 1948

<sup>18</sup> International Covenant on Civil and Political Rights 1966

- When a police officer from the same police station conducts an encounter, the investigation should be handed over to another independent investigation authority to ensure a fair and impartial investigation.

## **SUPREME COURT GUIDELINES**

**1. People’s Union for Civil Liberties and Anr v State of Maharashtra and Ors:**<sup>19</sup> While highlighting the significance of Article 21 of the Indian Constitution, the Supreme Court bench, held that extra judicial killings are unlawful. The honourable court issued certain guidelines that should be followed when looking into police encounters in cases involving death and grievous hurt as a standard procedure for a complete, efficient, and independent investigation. It was further declared that these guidelines, which are regarded as laws declared under Article 141 of the Indian Constitution, must be strictly adhered to in all cases of death and serious injury in police encounters.

### **Some of these guidelines include the following:**

- Information received by any police officer related to the commission of any serious offence should be recorded either in video, writing or any other electronic form.
- First Information Report (FIR) registration is required, with provisions for a magistrate's investigation.
- Involving the deceased's next of kin in the course of inquiry.
- To guarantee a fair and impartial investigation, the CID or another independent agency will conduct the investigation.
- It is necessary to provide details about the incident to the State Human Rights Commission (SHRC) or the National Human Rights Commission (NHRC).
- It mandates that records of intelligence inputs should be kept in writing.

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<sup>19</sup> *People’s Union for Civil Liberties and Another v State of Maharashtra and Others* (2014) 10 SCC 635

- 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.

## **CONCLUSION**

Every person on the planet is entitled to a fair trial and has a right to be executed lawfully. Grave injustice is caused when someone is falsely encountered without going through a fair trial or due process of law. Good governance is an essential requisite for a democratic country. Police are entrusted with the duty to protect the lives of the public and therefore such encounters should be abstained unless needed in cases of self-defense to protect one's life and property. People term it as a real form of justice ...but does it really result in justice for the accused is one of the important questions that need to be assessed. Police official shouldn't take the law into their hands, instead, they should abide by their duty by presenting the accused before the court which will ensure a fair and just trial. Police officials must be well-trained and educated to avoid resorting to committing fake encounters with any person accused of a crime. The moment an encounter occurs, the public's approach conforms to the idea of getting a criminal killed because they lack procedural understanding and believe in the "tit for tat" theory, which satisfies their thirst for equal treatment. The officials also become heroes, despite being admonished by the court, which is a common factor. The rationality of law enforcement agencies is called into question at this point. To preserve the legitimacy of the rule of law, encounter killings ought to be thoroughly probed.

## **SUGGESTIONS**

One of the most important ways to refrain from Extra Judicial Killings is by improving ethical standards and police training. This includes providing basic training in human rights, the rule of law, etc. Police officials should get adequate training not to falsely encounter a person in custody unless in the case of private defense. Police officials should be educated in areas of human rights, citing the importance of the right to life. Encouraging and promoting the rule of law and human rights is a crucial step in stopping extra-judicial killings. This can entail

promoting respect for the ideas of justice, fairness, and equality as well as educating the public about their rights and obligations. Lastly, strengthening accountability mechanisms is another vital measure for preventing Extra Judicial Killing.