INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

(VOLUME I ISSUE VII)

(JANUARY 2021)

Email – editor@ijlra.com
Website – www.ijlra.com
DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume I Issue VII is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis
EDITORIAL TEAM

EDITORS
Ms. Ezhiloviya S.P.
Nalsar Passout

Ms. Priya Singh
West Bengal National University of Juridical Science

Mr. Ritesh Kumar
Nalsar Passout

Mrs. Pooja Kothari
Practicing Advocate

Dr. Shweta Dhand
Assistant Professor
ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Quarterly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.
"POLICE ENCOUNTERS A SCAPEGOAT FOR DETERIORATING PRINCIPLES OF NATURAL JUSTICE"

(By Muskaan Singh & Jaivardhan Sahay)

INTRODUCTION:

The primary job of Police forces is to maintain and authorize laws, investigate wrongdoings and guarantee security and safety for the citizens of India. In an enormous and crowded nation like India, Police powers should be well drafted, regarding powers and usage, to play out their job well. In India, the citizens of India show full trust and confidence on the Police force to eradicate the wrong doers from the society and maintain peace and harmony. While the Police are charged with solving India's most urgent problems including armed militia, insurgency, and organised crime the lack of political engagement and funding by the state has left the Police overstretched and ill equipped.

Police framework is disintegrating. Decaying, colonial-era Police stations and posts in India are stocked with antique equipment and lack of adequate Police vans, phones, computers and even stationery. Extreme Police vacancies are compounded by increased pressures on an increasingly strained force. Police are regularly redirected to shield "VIPs" usually from officials, executives, and celebrity personalities. Senior Police officers also employ low-ranking personnel as law enforcement officers and also as personal family members.

With the Police framework in question there is no check on the powers of the Police. And which is thus being misused by the Police forces. Human beings expect to uphold minimum fundamental rights and freedoms. The State or Government shall be the supreme authority to promote and protect the interests of its people. The state jurisdiction includes, in total, the Police force, the army force, the judiciary and the civic administration. Unfortunately, however, when doing their assigned service, duty men breach those liberties. Of the most appalling human rights abuses, no other activity is bigger than extrajudicial executions.


Extrajudicial murders are illegal executions. It is a violation of universal human rights and is a right to life. While there is no specific concept of extrajudicial killing, it is generally defined as an illegal killing of a citizen by any political authority or entity without the consent of legal proceedings or government orders. The nature of this act is naturally unconstitutional and is often carried out by the state government or other state agencies such as the Police force, the armed forces etc.³

Extra judicial killings are a clear violation to the principles of natural justice. Natural justice’s principles are those principles which are laid down by the court to protect citizens from being a victim of such abuse of powers. The principles of natural justice lay down that no one should be a judge in any case apart from the authorities as judges and justice should not only be done but also be seen to be done. And with these the Police force have used extra judicial killings as a scape goat to deliver justice to its citizens while deteriorating and completely violating the principles of Natural justice.

**INDIAN POLICE FORCE:**

Police are the civil force of a state responsible for the prevention and investigation of crime and the protection of public order. In the first place, we contact the Police in case some wrongdoing or wrong has been committed against us. The Police are responsible for ensuring general safety and order in society. The first information report shall be written by the Police in the event of any incident. There are a variety of statutes such as the Police Act, 1861; the Delhi Special Police Administration Act, 1946, the Model Police Act, etc. The major role of Police is to make sure that all the laws are being followed by every citizen of the country and if any breach is committed then Police has the right to take necessary actions⁴.

**Role, Functions of Indian Police Force:**

There are numerous errands and obligations of the Police, starting with the fair maintaining and consistence of the law, and the assurance of the life, wellbeing, property, social liberties and poise of individuals from the general population, which is fundamentally the main

function of the Police in the cultivating and security of public request, in which the Police must guarantee that public request is maintained and that there is no risk in the public arena. To forestall and control fear based oppressor exercises, penetrates of common agreement, aggressor exercises and this is significant capacity of Indian Police power where circumstances influencing Internal Security at that point comes to ensure public properties including streets, railroads, spans, fundamental establishments and foundations and so on against destructive incidents, brutality or any sort of assault. Moving ahead to the next point stopping crimes, and reduce the opportunities for the commission of crimes via their personal preventive motion and measures in addition to by using assisting and cooperating with other applicable agencies in enforcing due measures for prevention of crimes then to teach, encourage and ensure welfare of Police personnel is an vital component in it then is available in take charge as a Police officer on duty of all unclaimed belongings and take motion for his or her secure custody and disposal according with the process prescribed and to collect intelligence regarding matters affecting public peace. All kind of crimes including social offences, communalism, extremism, terrorism and different topics regarding national security, and disseminate the equal to all concerned agencies, except acting, as suitable on it themselves and to facilitate orderly motion of people and vehicles, and to manipulate and regulate traffic on roads and highways those work comes underneath Police.

From assisting a citizen who is at risk of physical damage to his or her self or their property, and offering the appropriate aid and relief to persons in need going to the next step, the Police help to provide as first responders all available assistance to people in emergencies resulting from natural or man-made disasters, and to provide active assistance to other relief and recovery organizations. Police are working to build and sustain a sense of confidence in the community and, as much as possible, to avoid confrontation and promote cooperation. It helps to properly record all grievances submitted to them by the plaintiff or his agent, whether in person or by mail, e-mail or other means, and to take timely follow-up action thereon, after duly accepting receipt of the complaint.

The Police must register and must prosecute any identifiable crimes that come before them by such reports or complaints along with properly providing a copy of the First Information Report to the claimant and where applicable, arrest the defendant and offer the required assistance in the prosecution of the defendant. This are some of the general duties and responsibilities of the Police officer in our country.
Social Responsibilities of Indian Police Force:

There are many social duties of the Police, which can be stated here first, that the Police officer should behave with the general public with proper courtesy and decorum, in particular in dealing with senior citizens, women and children, without prejudice, except on the grounds of casting, creed, gender, etc. Second, a Police officer must direct and support members of the public, in particular senior citizens, mothers, children, the vulnerable and indigent, and physically or mentally disabled persons who are found in distressed situations on the streets or other public places, or who may require assistance and protection.

Moving further the Police should offer all the necessary support to victims of violence and traffic accidents and, in particular, guarantees that they get timely medical assistance, irrespective of medical and legal formalities, and that their benefits and other legal demands are taken care of. In addition, the officer must ensure that, in all circumstances, particularly in the case of conflict between cultures, races, castes and political parties, the conduct of the Police is always regulated by the values of impartiality and human rights criteria, with particular regard to the security of weaker sections, including minorities. In doing so, they can also discourage abuse of women and children in public places and public transport, including stalking, making objectionable motions, posters, comments or abuse triggered in every manner in which the hour is required in these days.

Police must provide all required assistance to members of the public, in particular mothers, children and the vulnerable and indigent, against illegal abuse by any individual or organized organization. Police should arrange for lawfully permissible sustenance and accommodation for any person in detention and make known to all such people the provisions of legal aid schemes available to the Government, as well as advise the authority concerned in this regard. Through its social duty, the Police should maintain, encourage and defend human rights and the interests of the poorest groups, the backward classes, the poor, the vulnerable and the marginalized.

When the Government of the State declares any specified service to be an important service to the nation, it is the responsibility of the Police to sustain the essential services and every Police officer must follow any order provided by any officer superior to him in correlation with the service stated in the declaration of the Government, taking on the current pandemic
where the Corona virus is widespread. All the given data is referred from Model Police act, 2006.5

**Extra Judicial killing:**

It is pertinent to notice that there's no provision in our Indian law that directly authorizes the encounter of a criminal or extra judicial killing and it is a clear violation of Article 21 of the Constitution of India which guarantees right to life and personal liberty. Right to life is one of the fundamental human right which has been guaranteed to the citizens of India it states that no citizens shall be violated of his/her personal liberty or life. The state is obligated to guard the liberty of life of one and all and can't shake off their hands from the responsibility that it is an exception where a Policeman under grave provocation acted violently causing death of the person. Therefore, the state is obliged to safeguard the right to life of people against any variety of aggression and force utilized by anyone including the law enforcement officials themselves. In India the Rule of Law is supreme, every citizen should follow and is bound to follow the law of India, Article 14 of the Indian Constitution states that each citizen is equal within the eyes of law and nobody should be denied justice by the state having said that the Police are not immune to this Fundamental right and cannot commit any form of extra judicial killing.

As per Section 96 of the Indian Penal Code, 1860 every individual has inborn right to self-defence, this section implies that every individual has full right to safeguard themselves adding thereto nothing is an offence which is completed within the exercise of the proper of self-defence. Whereas IPC Section 100 enumerates the situation where an assault is like may reasonably cause apprehension to death will preferably be the consequence of such assault. Second, an attack that might fairly have induced an apprehension that might be the result of such an attack. Thus, in situations where there is a rational fear in the mind of a Police officer that there is a danger to life or limb, they are justified in exercising the right to self-defence that can cause death.

---

5 The Model Police Act, 2006
6 The Constitution of India, 1950
7 The Constitution of India, 1950
8 The Indian Penal Code, 1860
9 The Indian Penal Code, 1860
The right to self-defence commences as soon as reasonable apprehension of danger to body arises from an endeavour or threat to commit the offence though offence might not are committed. Further, it's well established that someone faced with eminent peril of life or limb isn't expected to weight in golden scale the precise force required to repeal the danger, and if he carries his defence further at the warmth of moment law makes due allowance for it. The burden of proof just in case of self-defence is discharged by preponderance of probability and it need not be established beyond reasonable doubt. Hence, in most cases where the life of a Policeman is at stake he's deemed to be vested with right of self-defence. Similarly, repeated encounter is presupposed to be amounting to murder but, in such cases, exception 3 of Section 300\textsuperscript{10} of IPC enters the scene providing that culpable homicide isn't murder if the offender, being an public servant or an aiding public servant acting for the advancement of public justice exceeds the ability given to him by law and causes death by doing an act which he, in straightness, believes to be lawful and necessary for the discharge of his duty per an public servant and without ill-will towards the person whose death is caused\textsuperscript{11}.

These are the major reasons behind the increase in the extra judicial killing:

- The main reasons behind increase in Extra-Judicial killing are mainly public support it emerges out of due to the lack of faith in the judiciary because many of us believe that the courts will not provide instant justice.

- Other major reason is huge political support many politicians look encounters as their achievement in the eye of public in maintaining law and order and later uses them as a weapon in the election. The Police force is even rewarded and awarded for encounters, cash incentives and promotions are also a part of reward.

- The National human rights commission and the State human right commission are not effective and have been redundant.

\textsuperscript{10} The Indian Penal Code, 1860

\textsuperscript{11} Diva Rai, Fake encounters and rule of law, IPleaders.in (July 12, 2020), https://blog.ipleaders.in/fake-encounters-and-the-rule-of-law/
CASE READINGS: VIKAS DUBEY CASE AND HYDERABAD RAPE CASE

In the recent times extra judicial cases have been increased by fourfold, recently Vikas Dubey an Indian gangster turned politician from Kanpur, Uttar Pradesh had several cases against him from the late 90’s he had around 60 criminal cases against him till the date when he died. This criminal turned out to be a national level gangster when a large team of Police officers went to Bikaru village in Kanpur to arrest Dubey in connection to a murder case at midnight with a warrant. The arrest was denied by Dubey along with his henchmen who open fired at the whole Police team resulting which eight Police officer died and many were seriously injured some of Dubey’s men were also killed, meanwhile Vikas managed to escape and disappeared, next day Police along with the administration demolished his house and kept a huge prize money on him.

Many of his close associates and his family members were arrested by the UP Police and later after a week he surrendered by shouting his name as he feared encounter in Mahakal temple situated in Ujjain, Madhya Pradesh12.

This case is a clear case of extra judicial killings as when Vikas Dubey was arrested and was in custody of the Police he was taken back to Kanpur from Ujjain, according to the Police when the car in which Dubey was sitting met with an accident at around 5 am in the morning when Dubey was on his way in the Police convoy, only Dubey’s car overturned and according to the Police report Dubey tried to escape by snatching the gun of an Police officer and open fired on them in return the officers in their self-defence killed Dubey, the Police even stopped the media 5 kms before where the incident took place this was done so that the killing of Vikas Dubey could not be captured by media and Police could plot their story and do injustice with Dubey and the faith of people13.

This repetitive sequence of events, which earlier found place in the screenplay of popular cinema, have now become a predictable and consumable plot of hundreds of such instances of ‘Police encounters’ in our country an accepted euphemism for planned and premeditated extrajudicial killings by the Police. The killing of Vikas Dubey obliges one not to see this as

---

an unusual instance of illegal killing by the Police, but as a continuum of the strategy of the government and the Police to suppress crime, with the killings justified as a shield against criminals. This cannot be seen as an only failure of criminal justice system but also the accountability of Police along with the government is questioned.

It is important to mention here that the time at which Vikas Dubey was taken into Police custody, Vikas Dubey’s lawyers requested the Supreme Court in its petition to give protection to their Client while he is in Police custody and the case to be handed to the CBI as the family and lawyers of Dubey had the hint that he might be killed in a fake encounter. Later the threat turned out to be true.

The trend of extra judicial killing is really worrisome, it is no new to the society this concept where Police takes the role of judge it is not acceptable and deep down it is a treat to the society. If this is the case then the ‘Rule of Gun’ will take over the ‘Rule of Law’.

In another shocking case which happened in November 2019 in Hyderabad. Two drunk lorry drivers along with their assistants raped a lady doctor in their lorry and killed her when the lady had parked her scotty near the toll plaza, the four offender deflated her scotty tyre intentionally and on the pretention to help her they pushed her into nearby bushes, where they raped and smothered her. In the investigation the Police found out that the four men who were involved in the heinous crime of rape and after the rape victim’s body was taken to some other location and the body was burnt.

Later they were arrested and were taken into custody for 14 days. While the accused were in the custody the Police took all the four accused to the crime scene for reconstruction of the crime, where all four of them were killed in the encounter the Police in their statement said that two of the accused allegedly snatched the gun of Police officer and tried to attack them but in self-defence the Police killed all the four accused, two Police officer were also injured according to the reports. After the protest of this extra judicial killing two post mortem were conducted. The National Human Right Commission warned the state government for the encounter and said that it is against the human right and is violation of right to life and personal liberty. After seeing these circumstances in the society it is important to say that

judiciary and the constitutional process must be respected and idea for justice must be followed.

POLICE REFORMS IN INDIA RELATED TO EXTRA-JUDICIAL KILLINGS:

There is no question of law that the Police officers have certain rights to defend themselves in life threatening situations. The Police department holds the power to harm or kill a suspect for the sole and sole intent of self-defense or when it is imminently necessary to preserve law and order. Under Section 96\textsuperscript{15} of the Indian Penal Code, any human being has the right to private defense, which is a normal and intrinsic right. Section 46\textsuperscript{16} of CrPC authorizes the use of force by the Police, extending to the cause of death, as may be appropriate for the apprehension of a person convicted of a crime punishable by death or imprisonment for life. But regardless of the powers the Police officials hold, no one in this country has the power to violate the fundamental right of the citizens. Various cases have taken place in Indian history which establish and set the foundation of Police reforms against extra-judicial killings. These cases have not only set guidelines but also made it compulsory for all the Police officials to follow the same.

Constitutional Provision:
The Constitution of India was intended to make India a country administered by the standard of law. As per the standard of law, the Constitution is the most elevated expert in the nation, and the administrative and leader powers emerge from the constitution. There is a convention set down under the Police Investigation Act, which is revered in the Constitution as per Article 21 as the privilege to life and personal freedom. It is the essential right open to each individual in the nation. It is likewise the obligation of the Police to comply with the key principles and to secure the privilege to life of any individual, regardless of whether blameless or criminal.

\textsuperscript{15} Section 96 “Nothing is an offence which is done in the exercise of the right of private defence”, The Indian Penal Code, 1860
\textsuperscript{16} Section 46(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”, Criminal Procedure Code, 1973
**PUCL vs State of Maharashtra Case:**
The Supreme Court of India dealt with written pleas challenging the validity of 99 encounter killings by the Mumbai Police, in which 135 suspected criminals were killed between 1995 and 1997. The Supreme Court then defined the following 16 point principles as the basic protocol to be followed for a comprehensive, efficient and independent review of cases of death during Police incidents. Some of them include:

- **Record tip-off (intelligence)** relating to illegal activity relating to the commission of a serious criminal offence.
- **Registration of FIR**: On the off chance that, based on a hint, the Police use weapons and this outcomes in the killing of an individual, the FIR which starts a legitimate criminal examination must be recorded and sent to the Court immediately.
- **Independent Probe**: Examination of such death must be done by an autonomous CID organization or by a Police force of another Police station under the order of a senior official. It must follow eight least examination prerequisites, for example, recognizing the person in question, recovering and looking after proof, distinguishing the observers on the scene, and so on.
- **Inform the NHRC**: the NHRC or the State Human Rights Commission (as the case may be) must be informed promptly of the encounter death.
- **Prompt Action**: In the case of an IPC offence, disciplinary action must be taken against a Police officer found guilty of misconduct and, for the time being, the officer must be dismissed.

The Court ruled that these requirements / norms should be strictly enforced in all cases of death and serious injury in Police incidents by considering them as a statute proclaimed in line with Article 141 of the Indian Constitution.

**NHRC Guidelines:**
In March 1997, Justice M. N. Venkatachaliah (then Chairperson of the NHRC) directed all States and Union Territories to ensure that the Police obey the following rules in cases of encounter killings:


18 Article 141: “The law declared by the Supreme Court shall be binding on all courts within the territory of India.”, The Constitution of India, 1950
• **Register FIR:** When the in-charge for the Police Station gathers reports about the deaths on account of a gathering, the reports will be recorded for in the designated register.

• **Investigation:** the proof acquired is considered to be adequate to presume and incite move must be made to inspect the connected realities and conditions identifying with the deaths in order to decide, if any, the crime committed and by whom.

• **Compensation:** It can be given to the deceased's dependents if the Police officers are charged on the grounds of the findings of the inquiry.

• **Independent Agency:** If the Police officers assigned to the same Police station are members of the conference team, it is acceptable to assign the matter to another independent investigating agency, such as the State CID.

In 2010 NHRC extended these guidelines and included:

• **Magisterial Probe:** Magisterial enquiry must be undertaken as expeditiously as possible (preferably within three months) in any incidents of death that result in the course of Police activity.

• **Reporting to the Commission:** The High Superintendent of Police / Superintendent of Police of the District shall report to the Commission on all cases of death in Police action in the States within 48 hours of such death.

In all cases, a second report must be submitted to the Commission within three months, including information such as a post-mortem report, results of a magisterial enquiry / enquiry by senior officers, etc.\(^\text{19}\).

\(^{19}\) Police Reforms in India, PRS Legislative Research [https://www.prsindia.org/policy/discussion-papers/Police-reforms-india](https://www.prsindia.org/policy/discussion-papers/Police-reforms-india)
CONCLUSION AND RECOMMENDATIONS:

A two-track reform is needed to eradicate Judicial killings as an offence from the Indian executive system. First, renewed engagement by National and state authorities to discipline or punish the Police and necessary officers who commit human rights abuses with benchmark measuring the success in the execution of the commitment. Consistent and determined conviction of criminals, regardless of their ranks and official holdings, is essential to the end of violence. It sends a clear warning to the Police and the public that human rights abuses are illegal and will be punished to the fullest extent of the law.

Second, and in the long term, a sustained decline in Police violations in India requires a revision of Police legislation and rules, as well as systemic frameworks and procedures that promote violations. Although human rights abuses are never justified, changes in these areas are also vital to the creation of competent, rights-abiding Police forces. Encounter killings must be independently reviewed since they harm the legitimacy of the rule of law. There is a need to ensure that there is a rule of law in society that must be upheld by any State authority and by the masses. A proper physical custody of the accused in order is to be ensured so that any attack on the accused can be prevented.

Furthermore, there is a serious need for a full redesign of the criminal justice system and for the introduction of the requisite policing reforms. Standard guidelines are to be set down in order to properly prepare Police officers and provide them with all necessary expertise so that they can efficiently cope with any awful circumstance. Human right’s perspective needs to be kept in mind when coping with people detained.

Extrajudicial executions should not have a place in a western democracy. We should avoid using judicial infirmity as a reason for this. There is generally a political hand behind judicial infirmity. Simply unleashing strong state weapons tactics is what is needed for law and order, and it must be challenged. Supreme Court in its 1998 decision of Vineet Narain vs. the Union of India\(^\text{20}\) sets an example. It has exercised its authority to track investigations, to pass temporary orders, to select amicus curiae, to keep investigating entities responsible on an ongoing basis. In the case of extrajudicial killings and Police excesses, this should be

\(^{20}\) Vineet Narain & Others vs. Union of India & Another, 1987, 1 SCC 226
emulated. In the case of Vikas Dubey, the chain of event has forced the Uttar Pradesh Police to prove their innocence.

With implementations of reforms and guidelines and with taking proper procedural steps while taking into custody an accused, the Police force will now have steps and guidelines to follow violative of which strict actions are to be taken. The Indian Police force have never let their public down and we hope with such implementations and check on their power the Police force will once again gain their glory and will eradicate the ill practice of extra judicial killings from their system.