

EXTRA JUDICIAL KILLINGS - AN OVERVIEW

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INTRODUCTION

It is a well-known fact to the world that the term Extra Judicial literally means “An extrajudicial killing (also known as extrajudicial execution or extra-legal killing) is the killing of a person by governmental authorities without the sanction of any judicial proceeding or legal process”¹. In simple it refers to the phrase ‘fake encounters. In general, fake encounters happen with political leaders, religious figures, social figures etc. This is common in many countries, like India. This is an unavoidable police personnel activity, which is not a newbie to India. Extra Judicial killings are inhumane homicides committed by police. This awful act is a brutal violation of fundamental rights guaranteed under various provisions like Article 14 and Article 21 of the Indian Constitution of India. This activity is a violation of various provisions of The Code of Criminal Procedure 1973; the provisions would be further discussed in detail. The motive and object of the code is to lay down the norms of arrest of the accused and other related guideline in the matter of the crime. The key responsibility of the police officer making arrest is to make the accused aware of the grounds for which he is being arrested, and the key responsibility of the judiciary is to enable him to defend himself by the way of allowing him to represent himself by his advocate. The judge has to abide the legal policy of **Audi alteram partem**, which literally means no person shall be condemned, punished by a law court without being heard². In case of extra judicial killings, the crucial essence of the Code and duties of police and judges are being violated. Extra judicial killings wholly avoid legal proceedings for which an accused should be subjected, and strikes of the lifetime of the said accused in the case without any fair trial, enquiry or investigation. This is purely unconstitutional. Cops regularly legitimize and make use of this strategy by guaranteeing that there are some feared crooks against whom nobody would set out to give proof or evidence, thus it is the best strategy to manage them is through fake ‘encounters’³. Simply put, for instance, if a political party leader

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¹ www.definitions.net, <https://www.definitions.net/definition/EXTRAJUDICIAL%20KILLING#:~:text=An%20extrajudicial%20killin g%20is%20the%20killing%20of%20a,of%20the%20legal%20jurisdiction%20in%20which%20they%20occur.>, last visited (5th June 2022).

² www.Lawtimejournaal.in, <https://lawtimesjournal.in/audi-alteram-partem/>, last visited (5th June 2022).

³ Blog.ipleader.in, <https://blog.ipleaders.in/all-need-know-about-fake-encounter-killings/>, last visited (5th June 2022).

or a Politian wants to get rid of his professional or personal enemy, he can pay off for the in form of bribe to the police to kill him in the name of 'encounter'. Police can also do this for their own benefits or to free themselves from the pressure of their superiors who asks them finish off or close a case immediately, in such cases they just kill any person who is either already booked for some petty case or a person who is nowhere in nexus with the case.

ANALYSIS AND DISCUSSION OF THE TOPIC

Acts of or related to extra judicial killings are saved by **section 100 of Indian Penal Code 1860** which enables a person to exercise his right to private defense which can exceed up to dead in cases of commission of rape, commission of activities associated with unnatural lust, Kidnapping or abduction, wrongful confinement for the purpose of unlawful activities, assault; all the said activities should be accompanied with reasonable fear and apprehension in the mind of victim. This provision saves police officers act of fake encounters in few cases. The most common reason or ground given by a police officer after committing extra judicial killings is that "the accused had tried to flee from the custody and tried causing injury to the personnel, and so they had to commit custodial homicide in the course of exercising their right to private defense extending to cause death". In an important case of **extra judicial execution victim family's association v. Association of India**⁴, it was held that qualification must be drawn between the privilege of self-preservation or private protection and utilization of unreasonable power or reprisal and that the privilege can be performed uniquely to shield oneself yet not to fight back⁵.

Section 46 of the Code of Criminal Procedure 1973 deals with the process of arrest, which is to be followed by the body causing such arrest. Clause 1 of the section states that the police officer causing the arrest or any other person causing the arrest of a person shall touch the body or confine the body of the person who is to be arrested unless the person submits himself to the person causing arrest by word or action. Provided that in case if a female is to be arrested, her submission to the person causing arrest by word or action shall be presumed, or else she is to be arrested by a female police officer but a male police officer is not empowered to effect such arrest of a female.

⁴ Extra Judicial execution victim family's association v. Association of India, 2016 SCC Online SC 685.

⁵ Blog.ipleaders.in, <https://blog.ipleaders.in/all-need-know-about-fake-encounter-killings/>, last visited (6th June 2022).

Clause 3 of the section provides that a person affecting the arrest of a person is not empowered to cause death of a person who is not allegedly accused of any offence which is punishable with death sentence or sentence for life imprisonment. The section also provides that no woman shall be arrested before sunrise or after sunset unless the woman police officer, in writing seeks prior permission from the Judicial Magistrate within whose local jurisdiction the offence was committed or the Magistrate who is empowered to try the offence.

But clause 2 of the section saves the acts of the police officers from being prosecuted for the reason of causing death of the person who is already arrested or the person who tried to flee from the custody of the police officer. This clause states that if a person who is to be arrested resists forcibly to prevent the execution of arrest, then the arresting officer can use reasonable amount of power to enforce the arrest. This enables police officer to encounter a person if he is intruding the duty of police officer to execute the arrest, but this provision does not empower the officer to cause death of a person who is not accused in the case which is punishable with death sentence or life imprisonment. But the provision is widely misused by many of the police officers to cover up their acts of extra judicial killings in the name legitimate encounters.

In the case of [Harendra Kumar Deka vs. State of Assam \(2008\)](#), section 46 was interpreted by the Gauhati High Court with emphasis to section 46(3) to mean that ‘necessary means’ may include causing death of a person escaping or avoiding arrest who has been accused of offences punishable with either death sentence or imprisonment for life.⁶

The Supreme Court of India in the case of **Public Union of Civil Liberties v. Union of India**⁷ while examining the legitimacy of encounters commented that, “If the version of the police with respect to the incident in question were true there could have been no question of any interference by Court. Nobody can say that the police should wait till they are shot at and act reasonably. It is for the force on the spot to decide when to act, how to act and where to act consistently abiding to the laws laid by legislature. It is not for the Court to say how the criminals should be fought or dealt with”.

REASONS FOR EXTRA JUDICIAL KILLINGS

⁶ Theleaflet.in, <https://theleaflet.in/extra-judicial-killings-violate-constitutional-values-rule-of-law/>, last visited (9th June 2022).

⁷ Public Union for Civil Liberties v. Union of India, 1997 (1) SCR 923.

Extra Judicial killings are considered to be the violation of the essence of establishment of the Indian Judiciary. These acts are result of failure of law enforcement in the country to prosecute criminals who committed the crime in a fair manner. One of the main reasons for extra judicial killings is the pendency of the case and extension of decision date of the trial. As per the reports, there are almost three crore pending cases in Supreme Court and High Courts of every state. This creates outrage from the society, which results in extra judicial killings. The following are the ground and basic reasons behind extra judicial killings-

1. Lack of faith in the Judiciary.
2. Incentives to the teams involved in the encounter⁸.

The other major key reasons are:

Public Support-

Public support for extra judicial killings emerges out of lack of trust and faith in Judiciary leaving them opined that court will not deliver timely justice. Misconception of committing encounter would free authorities from case also renders to be the reason for extra judicial killings.

Political Support-

Often, Political leaders portray extra judicial killings to be their achievements. Political leaders praise for the extra judicial killings that police officers commit by means of promoting them to higher positions or appreciating them by presenting them monetary or other kinds of benefits.

Ineffective institutions-

Inefficiency of related institutions like International Human Rights Commission and International Human Rights commission are also contributing to extra judicial killings happening not only in country but also in foreign countries. However, Indian Judiciary is empowered to take such cases of Fake encounter as Suo-moto, but this has become a very rare practice.

Considering the encounters as “Hero”-

⁸ www.ijalr.in, <https://www.ijalr.in/2020/08/extrajudicial-killing.html>, last visited (8th June 2022).

Police officers who commit extra judicial killings become hero in the view of public. Public consider that extra judicial killings committed by police officers are the actions to clean up the society by sweeping off the criminals from society. Many times, they are also projected as heroes on the silver screen with huge budget films made on them and their 'heroic' extra judicial killings; Amidst all the hero-worshipping, the people, the media and even the judiciary seem to cast aside the fact that all the killings are suspect unless they have been properly investigated or enquired or till the actual facts got established⁹.

STATUS OF EXTRA JUDICIAL KILLINGS IN CONSTITUTION

As already discussed, Section 300 of Indian Penal Code 1860 and Section 46 of The Code of Criminal Procedure 1973 lays down the provisions related to extra judicial killings. Commission of extra judicial killings violates Article 21 which talks about right to life and personal liberty and Article 14 of Indian Constitution which talks about right to equality. Article 14 says that, the state is not empowered to deny right of quality of any person on the grounds of religion, race, caste, sex or birth place¹⁰. If a person who is accused in a particular case is killed by police officers without fair trial and enquiry, then the act of police officer causing the death of that person is violating the fundamental right of equality granted under Article 14 of the Indian Constitution. In the case of **E.P. Royyappa v. State of Tamil Nadu**, the Supreme Court had categorically held that arbitrary acts of the State are in stark contravention of Article 14 in cases particularly relating to extra judicial killings¹¹. Extra judicial killings also violate Article 21 of Indian Constitution. This Article grants right to life and personal liberty. A person who is subjected to extra judicial killing is deprived of right to fair trial, right to be heard, and right proper investigation because the accused should be punished only according to the trial of the court accordingly to the sentence. In the case of **Rameshbhai Chandubai Rathod v. State of Gujarat**, held that fairness, justice, and reasonableness constitute to be the essence of the right to life and personal liberty in Article 21 of the Indian Constitution¹².

⁹ Drishti's, <https://www.drishtias.com/daily-updates/daily-news-analysis/extra-judicial-killings>, last visited (9th June 2022).

¹⁰ The Constitution of India, 1949, A. 14, No. 01, Acts of Parliament, 1949 (India).

¹¹ Jurist.org, <https://www.jurist.org/commentary/2020/07/akshat-bhushan-extrajudicial-killings-and-police-impunity/>, last visited (9th June 2022).

¹² Jurist.org, <https://www.jurist.org/commentary/2020/07/akshat-bhushan-extrajudicial-killings-and-police-impunity/>, last visited (9th June 2022).

Extra Judicial Killings not only violate few sections of Indian statutes along with Constitution of India, but also the National and International Human Rights norms.

CLASH OF HUMAN RIGHTS NORMS WITH EXTRA JUDICIAL KILLINGS

Guidelines of NHRC (National Human Rights Commission) say that the commission of extra judicial killings can be excused only in two instances. One is under section 96 of Indian Penal code. Clause 2 of this particular provision lays down that every person is entitled to right to private defense, and this particular right is natural right. Other instance where extra judicial killing can be excused is under section 46(3) of The Code of Criminal Procedure Code 1973. Unless in the above-mentioned cases, extra judicial killings cannot be tolerated by the court of law. In the year 2010, Justice M.N. Venkatchaliah wrote all Chief ministers concerning to the increase in the number of complaints registered against fake encounters. The following guidelines were recommended.

“1. When the police officer who is in charge of the police station receives information regarding or in nexus with the death took place in course of encounter between police parties and another person, he shall record such information relating to the death in the appropriate register.

2. The information which is received should be regarded or should be considered as sufficient piece of data to suspect any cognizable offence and immediate steps should be taken in the facts and circumstances which lead to the death of the person and if any offence was committed and by whom.

3. If the police party is a member of the same police station, in such circumstance the case should be transferred to any independent investigation agency or authority such as State CID.

4. If the police officers are prosecuted and convicted based on the result of the investigation, compensation may be granted to the kin of the deceased person in the course of extra judicial killing”¹³. And in the 2010, NHRC has widened its scope and norms related to extra judicial killings. The extended guidelines of NHRC are-

1. A magistrate must hold inquiry in cases where the death of an accused was caused by the police offices while acting ardently.

¹³ Probonoindia, <https://probono-india.in/blog-detail.php?id=190>, last visited (9th June 2022).

2. In cases of death of an accused caused by police officers, a preliminary report must be sent to the magistrate briefing out the details within 48 hours of the occurrence of death. And a second report containing complete details of the case, cause of such extra judicial killing, post mortem report of such deceased person should be submitted within 3 months to the magistrate.

NHRC also made sure that police officers would follow the following guidelines in cases or circumstances or instances of extra judicial killings-

1. When any responsible person belonging to a police station gets to know about the occurrence of encounter killings, he/she shall record the data of such incident in an appropriate register.
2. The data entered into the filling register shall be analyzed and must be embraced to explore the important realities and conditions rendering for cause of the death of the deceased¹⁴.

FAMOUS CASES OF EXTRA JUDICIAL KILLINGS AND ATTITUDE OF SOCIETY TOWARDS THE KILLINGS

- Assassination of rapists of Priyanka Reddy in the Telangana by Police officer- A 26-year-old veterinary doctor was raped by 4 men in Hyderabad in the year 2019. The accused raped and burnt her underneath a flyover. Severe distress was faced by state government from public in matter of rape and issues relating to women safety in the state. Police authorities of the state and the government also faced criticism not only from opposition political leaders but also from civilians. On 6th December 2019, all the four accused were killed in a police encounter. According to the police, the encounter took place when, the accused were taken to the location for reconstruction of the crime scene for better understanding of the case where the accused tried to flee from the custody of police officers by injuring. During the course of acquiring the custody of the accused, the police officers shot the accused which caused their death. This act of police officers was highly appreciated not only by civilians but also by film actors and other politicians.
- Encounter case of Veerappan-

¹⁴ Blog. Pleaders, https://blog.ipleaders.in/all-need-know-about-fake-encounter-killings/#Views_of_the_National_Human_Rights_Commission_NHRC, last visited (9th June 2022).

Famous criminal Veerappan was killed in an encounter on 18th October 2008 by Special Task Force (STF). But Human Rights Commission claims that the circumstantial evidence proved that he was killed in a fake encounter.

- Vikas Dubey's case-

On 10th July 2020, Vikas Dubey, who is known to be the most notorious criminals of the state of Uttar Pradesh, was killed in an encounter made by Special Task Force (STF). As per the police officers, Vikas Dubey has grabbed a pistol from the officers and tried fleeing from the custody by firing at them. In course of private defense, the police officers killed him in an encounter.

- Case of Alluri Seetha Rama Raju

It was the first ever recorded case of extra Judicial killing reported. Seetha Rama Raju was a freedom fighter who fought against the British who tried exploiting the civilians. He was killed in an encounter which is considered to be a fake one.

COUNTRIES WHERE THE RATE OF EXTRA JUDICIAL KILLINGS IS AS HIGH AS INDIA

- Philippines

The Human Rights Watch estimated unlawful deaths of around 27,000 people in the year 2020. The number was suspected to be much higher than real.

- Syria

The Syrian Network for Human Rights reported that 723 civilians were killed unlawfully in the year 2021. The number can be seen hiked.

- Nigeria

The Democracy Watch Reports claimed that the state is responsible for 13, 241 Nigerians unlawfully or extra judicially in the 10 years of span up to 2021. The reports also claimed that over 1,324 people were killed by the security forces of the county in the name of "Nation's Security".

- Mexico

Around 2500+ cases of extra judicial killings were reported against Mexican military forces between the time span of 2014 to 2019. In the month of July 2020, 12 civilians were killed by soldiers of the country in a shootout.

- Venezuela

Amnesty International reports estimated that almost 8,200 extra judicial killings that took place between the period of 2015 to 2017. However, the count is suspected to be higher than the actual reports claimed.

Despite the existence of prohibiting laws of extra judicial killings, the unlawful killings are taking place all over the world. This depicts that the laws should be made much more rigid to eradicate extra judicial killings.

CONCLUSION

Extra Judicial killings not only violate fundamental rights of civilians guaranteed under Indian Constitution but are also against the essence of constitution. It is also contrary to the intention of the constitution makers. A person has to be sentenced to punishment only after fair trial, enquiry and investigation. But subjecting him to death even before the occurrence of trial is contrary to the constitutional provisions. The concept of extra judicial is arbitrary to Human Rights also since the object of human rights is to protect an individual against various kinds of exploitations.

Building the statutes more strictly prohibits an individual to commit crimes against another person or state, this helps in mitigating the rate of extra judicial killings occurring. Constitution in India was built with the intention to protect the rights of all citizens. Extra judicial killings ruin the image of the country internationally. There would be no end if harsh steps are not taken, as the each and every Citizen of India is guaranteed with fundamental rights and it shouldn't be infringed be it a person is behind the bars or a person who is free. The right remains same to all citizens subjected to reasonable restrictions.