



Encounter Killing in India

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ABSTRACT –

This article is written by Bhavya Sharma, Janvi sen and Kalpesh Mali. Encounter Killing is form of extra – judicial execution where suspects are killed during alleged armed confrontation with police have become a controversial aspects in india . While police often defend these actions as an necessary to prevent the severe threats posed by terrorist , gangsters and habitual offender.

In the public opinion the encounter Killing are an quick response of crime and fair justice towards the victim in the eyes of society. While others criticis and hence tha it is the violation of human rights.

This article examine historical background of encounter Killing , legal aspects , and guidelines given by judges in the cases that have shaped public perception and discussion the motivation behind such action includes the political parties and societies which demand tha fair justice.

By exploring this things , this article emphasis to underscores urgent need for balanced approach that upholds human rights and rule of law while addressing the legitimate challenges faced by law in india .

INTRODUCTION –

An Encounter Killing is and ‘encounter’ by police or armed forces while exercising ths self defence when they encounter the suspected gangster or terrorist.

Encounter Killing was not defined in any law but it simplyfies that is an extra- judicial killing by police .The term encounter came into widespread use of such incidents in late 20th century . We understood Encounter Killing in two ways –

Many of the reported incidents and complaint that the wide acceptance by practice has led to incidents of police staging Encounters to conceals the offender when they are already in custody or unarmed and such incidents are called as ‘ fake encounter ’. And in some cases surrendered criminals are shot in legs as as extra- judicial punishment which called as ‘half – encounter .

~HISTORICAL EVENTS In ENCOUNTER KILLING

- In year 1990 – 2000 – In this year’s the Mumbai police used encounter Killing to attack the city’s under world and practice spread to other large cities. The 1st recorded encounter Killing was Alluri sitaram Raju who was the local hero in the RAMPA Rebellion of 1992. The Hyderabad police passed on some traditions in 1992 .

- In year 2016-17 and 2021-2022 – In this six year , a cases of encounter Killing was increasing once in every third days register a cases total number of cases was 813 during this period.

- According to National Human Rights Commission Of India reported many cases of encounters . The following data given by (NHRC) as follows –

- In year 2002-2008 – Total number of cases= 440 the mainly focuses state are Uttar Pradesh (231) , Rajasthan (33) , Maharashtra (31) , Delhi (26) , Andhra Pradesh (22) and Uttrakhand (19)
- In year 2009 – February (2013) – Total number of cases registered 555 out of which major state Uttar Pradesh (138) , Manipur (62) , Assam(52) , West Bengal (35) and Jharkhand (30) .
- In Gujarat (2002-2006) – In this year 22 police encounter Killing were reported.as fake encounter. According to NHRC (National human rights and commission) figure the data in year 2002-2007- 440 fake encounter were registered against police officer in Gujarat.
- These cases are gained national media attention in country are –

- **SADIQ JAMAL CASE (2003)**
- **ISHRAT JAHAN CASE (2004)**
- **SOHRABUDDIN SHEIKH CASE (2005)**
- **TULSIRAM PRAJAPATI CASE (2006)**

-On 19 September 2008, Delhi-police Inspector Mohan Chand Sharma, a decorated officer, and two suspects were killed in the Batla House encounter case in New Delhi. The encounter led to the arrest of two suspected Indian Mujahideen (IM) terrorists, while a third managed to escape. The Shahi Imam of the Jama Masjid termed the encounter as 'totally fake'" and accused the government of harassing Muslims. Several political parties and activists demanded a probe into the allegations that the encounter was fake. After an investigation, the National Human Rights Commission cleared the Delhi Police personnel of any violations of human rights. While sections of the media still oppose the ruling and believe the police to be culprits, a video clip that surfaced in 2016 featured a confession from the terrorist who had escaped the encounter, about how he managed to do so and later join the ISIS, further confirming the credibility of the encounter.

*** LEGAL ASPECTS AND FRAMEWORK RELATING TO EXTRA -JUDICIAL KILLING IN INDIA -**

-SECTION 106 OF INDIAN PENAL CODE = Right of private defence against deadly assault when there is risk of harm to innocent person

This section states that in exercise of right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to innocent person, his right of private defence extends to the running of that risk.

- **SECTION 46 OF Criminal procedure of code** – It authorises police to use forces and it extends upto causing death to a person and police has power to arrest person accused of an offence punishable with death and life imprisonment..
- **SECTION 4 OF THE ARMED Forces (special powers) 1958 (AFSPA)** – It authorises, every commissioned, non-commissioned or warrant officer to fire or use forces and extend up to causing death of person who the officers believe to be acting in contravention of a law in a disturbed area and considers necessary for maintenance of public order.

Case- PUCL vs State of Maharashtra (2014) – The supreme court in this case addressed concerns over the genuineness of police encounter particularly regarding the 99 incidents in Mumbai from the year (1995-1997)

Where 135 alleged criminals were killed. In this case, the court was given 16 principles or guidelines to ensure transparency, accountability, and fair investigation in cases involving death of suspect.

These guidelines were to be treated as law under Article 141 of the constitution of India. Guidelines are as follows -

1. Record of Tip-off
2. Registration of FIR
3. Investigation must be independent
4. Magisterial inquiry
5. Human rights commission
6. Medical aid
7. Avoid delays
8. Submission of final reports
9. Informing next of kin
10. Submission of annual report
11. Disciplinary action
12. Compensation
13. Surrender of weapons
14. Legal aid for officers
15. No immediate promotion or awards
16. Grievances redressal

-JUSTIFICATION AND SOCIETAI FACTORS ABOUT ENCOUNTER KILLING –

• Encounter Killing popularly support in India' democracy. People from different regions or section of society support and regards them as a legitimate instrument or tool to curb the crime rate and it is the quick response or fair justice in length trial and delay justice in court .These guarantees constitute the moral compact between the citizen and state wherein we grant the state legitimate authority to punish the state us and in return, get a pledge from the state to protect our life and Liberty.

Following are the factors or reasons where society accept encounter Killing as fair justice.

- 1 . **Maintaining public order** – In this factor, the areas with high crime rate or uprising issue relating to rape , terrorist, gangsters etc encounter of criminal are conducted as quick neutralizing tools to restore and maintaining a sense of security and order in affected areas.
2. **Combatting (defeat) terrorism and Insurgency** – Encounter Killing are conducted against the criminals or terrorist or insurgency in the especially states like Jammu and Kashmir where terrorist targeting to attack on national security.
- 3 . **Protection of law and Implementation** – In the situation of self defence encounters are justified and it is an necessary aspects where police officer or armed forces claim to immediate threat from armed suspects
4. **Deterrence of crime** – It is an theory that encounter Killing aimed a creating a strong deterrent against serious crime such as terrorism, organized crime and violenio officers .
5. **Political Messaging** – The encounter Killing serves as an public demonstration of government to resolve crime used as an image of ' strong ' adminstration or law enforcement system.

In these factors people favours the encounter Killing but another way others were critics the encounter Killing

- **According to NHRC (national human rights commission)** – report the fake encounters between the years 2002-2017 the number of 1782 were registered in india out of which the uttar pradesh were leading state where 749 fake encounter were registered .
- **Article 21(3) of constitution of india given the fundamental rights to a person will be a deprived of his life or personal liberty except in a accordance with procedure established by law.**
- Fake encounters are on other essentially mean shooting off person without trial. It is violence of law . Constitution given right under article 21 right to life as the right of dignified life. Police usually justify fake encounter by claiming against whom no one date to given evidence or witnesses. But this can be misused fir instance if a politician wants to eliminate his opponents , he can given bribe to some corrupt officer for murder his opponents. This is brutal truth about infringe of the rights of individuals.

LANDMARK JUDGEMENT AND RECENT JUDGEMENT RELATING TO ENCOUNTER KILLING -

- 1.**Anil kumar and others vs MK Aiyappa & ANR(2013)** – In these supreme court held the magistrate cannot refer a matter under section 156(3) for registration of FIR against a public servants without a valid sanction order.
2. **Rohtash Kumar vs State of Haryana (2013)**– The crucial given by NHRC that investigation into encounter death must be done by an independent investigating agency and that registration of FIR in case whenever a complaint is made against police and making out a case of culpable homicide has not been complied with
3. **Vinothini vs The state and others (2023)** – **Court stated that according to NHRC guidelines the registration of FIR is mandatory against police officer who involve in encounters.**
4. **Devender Singh vs State of Punjab (2016)**- It was observed by tha court that it is not a part of official duty to commit an offence. Hence the question arise was sanction may not relevant at initial stage but at any stage during trial .
5. **Bakshish Singh vs Gurmej kaur (1988)** - In these cases supreme court determined that whether the polic officer while acting in his official duty has exceeded limits of his official capacity or not , the cognizance of offences has to be taken and these circumstances trial shall not be stayed for want of sanction fir prosecution of accused officers.
6. **Hyderabad Gang Rape (2019)** – In these cases telengana police shot dead four men accused of gang – raping and burning to death of doctor in Hyderabad. The police said that they had to open fire in self defence as the four men were escape while crime scene was reconstructed .
7. **Bhopal jail encounter (2016)** – On October 2016 right people associated with students islamic movement of india escaped from Bhopal jail and state police killed them. It was argued that deceased were asked to surrender but instead they began firing . As a result police force was compelled to open fire even after that they did not surrender and caused death . This incident was surrounded by many doubts but remains unanswered.

Conclusion –

In this article we see increase the numbers of fake encounters but how the society accept the encounter Killing as quick justice towards victim but another way it is violation of law. For controlling fake encounters we need to receive any training to police' forces to use forces against suspects. In the recent cases we see how the encounter accepted by society to decrease pending cases or overburdened in judiciary.

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 - Bakshish Singh v/s gurmej kaur (1988)
 - Hyderabad gang rape (2019)
 - Bhopal jail encounter (2016)