



Exploring the Indian Outlook on the Doctrine of Extra Judicial Killings

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ABSTRACT:

The Indian Constitution guarantees equal rights to all Indian citizens. Nonetheless, there is a lack of awareness among residents about these rights. In spite of India's democratic values, which place a high value on equality, it is regrettable to learn about cases in which state agents violate people's rights by carrying out extrajudicial killings, sometimes referred to as "custodial violence." India recognizes the human rights of infamous criminals like as Kasab, but it frequently ignores the rights of its own people. Concerns regarding the moral and legal ramifications of extrajudicial executions have been brought up by the number of documented examples that have occurred over the years, sparking a heated discussion on the topic in India. This research aims to investigate the phenomenon of extrajudicial executions in India and determine the elements that contribute to their prevalent occurrence. It will examine a range of pertinent social, cultural, political, and other aspects that impact the extrajudicial killing practice. This article will also look at the problem of police encounters in India, which is a matter that falls under the purview of the courts. This study aims to provide useful ideas to stop the practice of extrajudicial executions and advance justice by analyzing the fundamental reasons of this issue via extensive research.

Introduction

The term "encounter killing" or "extra-judicial killing" describes the unprovoked, outside-of-the-court, killing of a person by state agents, usually the police. This practice is still very sensitive and is a serious violation of human rights. The idea of extrajudicial executions has long raised concerns in India. Extrajudicial killings directly threaten residents' fundamental right to life and personal liberty, even though India is a democratic country with laws protecting citizens' rights, such as Article 21 of the Indian Constitution.

Extrajudicial murders have been reported on many occasions in India in recent years; these deaths are frequently excused by law enforcement as acts of self-defense. On the other hand, several cases have provoked criticism and controversy due to claims of fabricated meetings and violations of human rights. The Supreme Court of India categorically condemned extrajudicial executions in a landmark decision in the *People's Union for Civil Liberties v. State of Maharashtra* (2014) case, stating that "custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law." The court upheld the illegality of these acts and their violation of the constitution.

The 1973 Code of Criminal Procedure provides more legal safeguards against extrajudicial executions (CrPC). Police personnel conducting arrests are required by Section 46 of the CrPC to use just the minimal degree of force. A magistrate is required by Section 157 to look into deaths that occur while a person is in police custody or under dubious circumstances. Nevertheless, the public, human rights activists, and the court continue to express concerns about the prevalence of extrajudicial murders in India in spite of these legal prohibitions.

Beyond only violating someone's right to life, the problem also raises doubts about the legitimacy of the judicial system. Effective enforcement of the CrPC's provisions and constitutional protections is crucial in order to prevent any breaches of human rights. Every person has the inalienable right to live without the government imposing arbitrary limitations on their liberties and rights. Therefore, it is imperative that state authorities abstain from extrajudicial murders and other forms of violence during incarceration, since they are tasked with safeguarding and enhancing protections for human rights. Extrajudicial killings include, for example, the murder of a suspect without the required court approval or legal consequence.

Legality of Extrajudicial Deaths

No matter how serious or how often someone has acted inappropriately, it is crucial to understand that no one has the right to end someone's life outside of a courtroom. Although this is a basic premise, there are certain exceptions to it, especially when dealing with particular types of offenders when encounters might have fatal consequences. The right to self-defense is one of the main protections in these kinds of circumstances. Section 100 of the Indian Penal Code (IPC) states that anybody who has a reasonable concern for their safety may use force, up to and including the use of fatal force, to protect oneself and their property. It's crucial to remember that even in situations when there hasn't been any physical injury caused by the perceived danger, self-defense may still be used.

But as the 2016 Union of India v. Extrajudicial Execution Victim Family Association decision made clear, one can only use the right to self-defense in cases when there is an immediate threat. It cannot be used in a way that would be malicious or motivated by fear for one's safety in the future. Furthermore, under some conditions, police officers are granted unique capabilities. Officers are permitted to make arrests under Section 46 of the Criminal Procedure Code (CrPC). If the suspect resists or tries to elude arrest, authorized personnel may use necessary force, up to and including fatal force, to complete the arrest. If a reasonable person in the same situation would have used the same strategies, then that person's use of force would have been justified.

Furthermore, Section 46(3) of the Criminal Procedure Code states that a person may only use deadly force if under investigation for a felony that carries a life sentence or the death penalty. The Supreme Court of India decided in the 2009 case of Om Prakash v. State of Haryana that police officers are entitled to use force in self-defense as long as it is a reasonable reaction to the threat they are facing. The court stressed that when using force, police enforcement must proceed with prudence and judgment.

The Supreme Court upheld in the 2014 case of People's Union for Civil Liberties v. State of Maharashtra that extrajudicial killings are categorically forbidden. The court ruled that deaths in custody are among the worst crimes in a society that values civility and the rule of law and that they infringe upon the right to life protected by Article 21 of the Indian Constitution. In addition, the court established guidelines in the 1997 case of DK Basu v. State of West Bengal to prevent violence and deaths in correctional facilities. The guidelines emphasized the significance of human rights and listed a number of safeguards, such as the right to medical examination, the right to legal counsel, and the requirement that arresting officers file a report.

Culpable homicide not amounting to murder:

In India, the idea of extrajudicial executions gives rise to serious ethical and legal issues. These types of killings happen when state agents, such as police, murder someone without following the proper legal procedures. Concerning possible violations of fundamental human rights, including the right to life and personal liberty, this raises serious concerns.

The Indian Penal Code (IPC) distinguishes between culpable homicide and murder in Section 299, whereas Section 300 lists several exceptions to the latter. According to the third exception listed in Section 300, culpable homicide is not regarded as murder if it results from an action that a public official reasonably believes to be both legal and essential for the advancement of public justice, free from any personal grudge or malicious intent against the victim. What is "lawful and necessary" behavior for the development of public justice, however, is unclear.

Several times, interactions with law enforcement or alleged extrajudicial killings have been justified on the basis of upholding the rule of law or self-defense. However, these occurrences are often scrutinized and cast doubt on their veracity and genuineness. Human rights activists contend that certain interactions are staged or conducted improperly in order to hide extrajudicial executions. Many times, people who were innocent or just suspected of committing crimes were singled out and put to death without following the proper legal procedures.

The Indian Supreme Court has made it clear that it opposes extrajudicial executions and stresses the significance of protecting both the rule of law and the right to life. The People's Union for Civil Liberties v. State of Maharashtra (2014) landmark case established that all incidents that end in death must be thoroughly investigated to establish their validity and assign responsibility.

In addition, the court reaffirmed the state's duty to uphold and defend the right to life in PUCL v. State of Rajasthan (2013), highlighting the need for unbiased, independent investigations into claims of extrajudicial murders. The legal system must strike a balance between upholding public safety and safeguarding individual rights. When state actors use deadly force, they have to follow all legal procedures and be closely examined.

To tackle the problem of extrajudicial killings in India, one must demonstrate a dedication to justice, equity, and human rights. It necessitates carefully analyzing the facts of every occurrence and holding people accountable for any legal infractions or human rights breaches.

Fake Encounters

The extrajudicial death of people who are already in police custody is referred to as a "fake encounter". These events are frequently manufactured to give the impression that a police officer is opening fire on a crowd during a dispute. The National Human Rights Commission (NHRC) received reports of 1,782 incidents of fictitious encounters from all over India between 2002 and 2017, with Uttar Pradesh having the highest number at 759. According to Article 21 of the Indian Constitution, a person's right to life or liberty cannot be infringed upon unless it is done so by law. According to the criminal procedure act, the state is required by law to make sure that the person who committed the offense gets a fair trial. This means telling the accused of the allegations against them, giving them a fair trial, and only carrying out their execution if proven guilty and given a death sentence. Fake encounters, on the other hand, circumvent these basic legal processes, with people being summarily put to death while posing as engaged in a conflict. It is rather alarming how openly the law and the constitution are being disregarded. Even with the seriousness of these instances, police accountability has frequently been deficient. Law enforcement officers often argue that the need for fictitious encounters is justified by the fear of criminals and the difficulties in acquiring evidence against them. Still, there's a big chance that this may be abused. Corrupt politicians have occasionally been known to buy off dishonest police personnel to set up phony encounters that target their competitors for extermination. The fact that the judicial system has been used for private benefit only serves to highlight how urgently law enforcement institutions must be held accountable and undergo reform in order to stop such flagrant abuses of the rule of law and human rights.

Custodial Violence

When persons are subjected to abuse while in police custody, including but not limited to sexual, mental, and physical assault, it is considered a grave violation of their human rights and is referred to as custodial violence. When it comes to jail violence in India, extrajudicial murders—murders committed by state personnel without following the proper legal procedures—are especially concerning. This article explores the many facets of violence against inmates, the factors that contribute to it, and how the Criminal Procedure Code (CrPC) is used to deal with these abuses.

A vital instrument in the fight against extrajudicial executions and other types of mistreatment while incarceration is the Code of Criminal Procedure (CrPC), which includes protections and measures designed to address and prevent misbehavior in various forms. Among the essential elements of the Criminal Procedure Code are:

1. **Section 41 Arrest Guidelines:** Police personnel may only use force when absolutely required, and they must first get probable cause, according to Section 41, which outlines the procedures for making arrests.
2. **Section 46: Restrictions on the Use of Force:** Officers are not permitted to use excessive force when making an arrest under Section 46's prohibitions on the use of force.
3. **Section 176 of the Magistral Inquiry:** Section 176 requires a magistrate's investigation to look into the circumstances surrounding a death when it occurs while a person is in custody or in circumstances that raise suspicions.
4. **Public Officials Prosecution (Section 197):** In order to prosecute a public official for crimes they are suspected of committing while in their official role, Section 197 requires prosecuting authorities to get permission.

These sections of the Criminal Procedure Code are essential tools for maintaining accountability among law enforcement organizations and defending the rule of law. The Criminal Procedure Code (CrPC) is a crucial tool in the fight against extrajudicial executions and violence in detention since it establishes standards for arrests, limits the use of force, requires investigations into fatalities that occur while a person is in custody, and controls the prosecution of public officials.

Definitions of Abuse in Prison:

1. **Physical mistreatment:** This covers a variety of physical harms done to people, including beatings, torture, and the application of excessive force to prisoners. It includes any kind of physical abuse that is inflicted on someone while they are in detention, frequently leading to physical suffering or injury.
2. **Abuse of the mind:** This entails a number of strategies used to cause psychological harm and maintain control over prisoners. Threats, coercion, humiliation, and verbal or emotional abuse are examples of psychological abuse. The main goal of psychological abuse is to control and influence the emotions and conduct of those who are being held in custody.
3. **Misuse of sex:** This concerns situations in which people who are being watched over by law enforcement officers experience sexual harassment, assault, or rape. The exploitation of power imbalances and the violation of people's physical autonomy and dignity are two aspects of sexual abuse that occur in correctional settings.

Reasons Behind Abusive Conduct in Prisons:

1. **Lack of responsibility:** The absence of responsibility among law enforcement personnel is a significant factor causing violence in detention. If there aren't trustworthy monitoring systems in place, offenders can avoid taking responsibility for their acts, which might lead to violent crimes including murder going unpunished.
2. **An Unfair Application of Force:** Situations where there is a notable power disparity between the guards and the inmates are more prone to abuse. Unchecked authority and inequality are known to always result in violent clashes.
3. **Inadequate Training:** Incidents of violence in detention institutions may worsen if staff members are not adequately trained in ethics, human rights, and appropriate questioning methods. Officials may inadvertently commit crimes when they lack sufficient knowledge about the bounds of their responsibilities.
4. **Understaffing and Overcrowding:** The likelihood of violence is increased in Indian jails due to the regular overcrowding and understaffing. Authorities may employ force in these situations to create or uphold order, which raises the possibility of conflicts and abuse.
5. **Improper Conviction and Investigation Procedure:** Prisoner violence might result from a badly conducted investigation and conviction procedure that lays an excessive emphasis on forcing confessions. Securing guilty convictions at the expense of achieving justice undermines the credibility of the judicial system and can result in more injustices and conflicts in prison environments.

Extrajudicial Killings: A danger to the rule of law

Extrajudicial execution, often known as extralegal killing, is the illegal taking of a person's life by law enforcement officers without the required court approval. It entails using violence outside of the existing legal system in order to dispense justice quickly and eschew the typical criminal court procedures. Even if there are sporadic celebrations of historical occurrences, the public disapproves of such acts of governmental violence since they flagrantly violate the rule of law. Worries about staged encounters have led to the Indian Supreme Court ruling that the death sentence is unconstitutional, and political leaders' promotion of such conduct exacerbates the problem. Extrajudicial executions have been classified as state-sponsored terrorism in cases such as *Om Prakash & Ors. v. State of Jharkhand & Anr.* Extrajudicial killings, commonly referred to as "fake encounters," are expressly forbidden by the Universal Declaration of Human Rights' Articles 14 (equality) and 21 (protection of life and liberty). These provisions are similar to those found in the Indian Constitution, which guarantee the right to a fair trial. Law enforcement officers breach natural justice principles, such as *Audi Alteram Partem*, when they act as both judges and executioners in staged encounters, depriving the accused of their right to a fair trial.

According to media sources, victims of these "encounter killings" are often people from underprivileged backgrounds rather than well-known criminals. There is a concerning trend that is evident, especially in Uttar Pradesh, where a large proportion of the people participating in these types of interactions are either Muslims or come from poor socioeconomic backgrounds. Although extrajudicial executions are favorably welcomed by the public because they frequently result in the removal of hated criminals, they seriously undermine the rule of law. The "bullet-for-bullet" policy's proponents contend that murdering criminals will discourage similar acts and elevate the authorities who carry out these executions to heroic status. But this viewpoint—which is based on the "bullet for bullet" theory—undermines equality and justice, jeopardizing the fundamental ideals of a just and democratic society.

Fake encounters and custodial murders, which are examples of extrajudicial killings, are becoming more widely accepted in India as quick fixes for a range of personal and professional problems. Nonetheless, respecting the basic rights guaranteed by the Indian Constitution and upholding the rule of law are essential. The foundation of democracy is put in jeopardy when the values of justice and equality for all people are compromised by a lack of unwavering dedication to due process and fair trials. Upholding fundamental rights and guaranteeing accountability within the legal system are essential to a just and democratic society, which rejects extrajudicial murders as a breach of the rule of law.

Fundamental Rights Violated

It is against the law for someone to be put to death without first having their legal rights upheld. Following their arrest, a person's constitutionally given rights are violated when they are executed without following the proper procedures. The police are there to maintain order and support the government in upholding the law. Even while the law protects everyone's rights, it's important to consider why some accused parties choose not to use their rights. The authority to determine sentences and make specific convictions rests with the courts. Regrettably, there have been instances where police have set up scenarios that resulted in the deaths of innocent people. When someone is killed without following the proper legal procedures, they are violating Articles 14 (equality), 21 (life and personal liberty), and 22 (freedom from arrest and imprisonment) of the Universal Declaration of Human Rights. It is always forbidden to employ force in a way that causes civilian casualties, as specified in Article 21. Everyone is entitled to an exhaustive, impartial inquiry and trial.

Before rendering a decision, the court must provide each party an equal opportunity to present their case in order to maintain natural justice. A party has had their rights infringed if they are not given a chance to appear in court. An individual who is executed extrajudicially is deprived of their right to due process and the chance to establish their innocence. Everyone in India is presumed innocent unless proven guilty by law. However, victims of legal execution are never given the opportunity to provide a defence. People who have done nothing illegal may unknowingly be harassed by law enforcement officers or even killed. According to Indian constitutional law, the accused must be given the same opportunity as everyone else to establish their innocence.

Incidents of Extrajudicial Killings in Contemporary India

The number of extrajudicial murders has increased recently; this is especially noticeable in Uttar Pradesh, where there have been 24 extrajudicial killings in the last 24 months. It is alarming that the number of extrajudicial executions is increasing, and it is even more worrying that these deaths are being glorified and described as "genuine forms of justice." The acceptance of extrajudicial executions by society serves to normalize and sustain them, increasing their prevalence and relevance in the modern day. Extrajudicial killing is controversial because it casts doubt on the necessity and effectiveness of the present legal system, which some believe to be either too permissive or too restrictive, depending on their point of view. Most people believe that the justice system tends to be too forgiving. As a result, for a variety of reasons, extrajudicial executions are becoming more widely accepted as commonplace in modern times. Extrajudicial killings are becoming more common due to a number of causes, including public perceptions of the legal system's inadequacies and inefficiencies as well as the rising belief that prompt action is required to correct perceived injustices. Furthermore, extrajudicial executions may be made possible and sustained by institutional flaws, political influence, and fundamental problems in law enforcement. All things considered, the rise in extrajudicial murders highlights larger public concerns about the efficacy and sufficiency of the legal system, as well as the necessity of changes to guarantee that justice is carried out in a way that is both legal and responsible. Reforms that are comprehensive and give the rule of law, accountability, and respect for human rights first priority are necessary to address the underlying causes of extrajudicial murders.

What factors contribute to the high rate of extrajudicial executions in the modern era?

Extrajudicial murders have increased dramatically in India recently, raising concerns about the long-standing problem of illegal killings taking place without following the correct legal procedures. Furthermore, the prominence of these actions has been further worsened by the increasing media coverage of these occurrences. Extrajudicial executions are becoming more common due to a number of circumstances. General dissatisfaction with the way justice is administered is one important cause. Many believe that the legal system is slow and corrupt, and that offenders frequently use legal loopholes like bail or parole to avoid punishment. Many people believe that extrajudicial killings are the only way to achieve true justice because they are frustrated by what they perceive to be legal system laxity.

This dissatisfaction with the judicial system's seeming inefficiency also leads some law enforcement officers to misuse their authority. Since many members of the public approve of extrajudicial executions, some law enforcement officials may turn to unlawful means of implementing the law in a timely manner. This abuse of power exacerbates the problem by continuing the cycle of extrajudicial killings. It is crucial to address these issues and make sure India has a just and efficient judicial system. It is essential to restore public confidence in the legal system by using open, responsible, and transparent processes. Furthermore, it's critical to spread knowledge about the value of due process and the repercussions of extrajudicial actions. India cannot successfully address the issue of extrajudicial executions and maintain justice for all unless it cultivates a culture of respect for the rule of law. The increase in extrajudicial executions has also been attributed to the decrease in the use of the death sentence in court cases since the Supreme Court's historic *Bachan Singh Yadav v. State of Punjab* decision. Although the death sentence is seldom used, certain law enforcement officers may turn to extrajudicial methods to make sure that their efforts to find and capture offenders are not in vain.

Moreover, extrajudicial executions are sometimes used by politicians as a way to highlight the effectiveness of their security forces and defend their policies as essential to upholding public order. Because extrajudicial executions have become politicized, offenders are protected from punishment, which feeds the cycle of impunity and encourages criminal activity.

In conclusion, extensive changes to the legal system, law enforcement procedures, and political discourse are necessary to address the underlying causes of extrajudicial murders. Combating extrajudicial killings and advancing justice for all people require upholding the rule of law, guaranteeing accountability, and cultivating a culture of respect for human rights.

Landmark Supreme Court Cases In India Relating To Extra-Judicial Killings

1. The background of the 2002 Gujarati riots established the context for extrajudicial executions, which are the main topic of this case, *NHRC v. State of Gujarat*. The National Human Rights Commission (NHRC) was tasked by the Supreme Court with carrying out a comprehensive inquiry and making recommendations for suitable actions.
2. The state of Manipur was brought to light in *Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India* due to the high rate of extrajudicial executions and staged encounters in that state. In order to guarantee responsibility and punishment for individuals in charge of suspected extrajudicial killings, the Supreme Court emphasized the significance of conducting unbiased investigations into every instance.
3. The case of *People's Union for Democratic Rights (PUDR) v. State of Bihar* dealt with the pervasive problem of police torture and alleged murders in Bihar. The Supreme Court created rules to protect abused victims while they are in the hands of law enforcement, carry out thorough investigations, and offer financial support to their families.

Notable cases of Extrajudicial Executions

1. The Gujarat Police shot and killed Ishrat Jahan and three other people in the 2004 *Ishrat Jahan Case*. They were reportedly involved in a staged encounter and were suspected of belonging to a terrorist organization. This led to major public outcry and suspicions of extrajudicial killing, which prompted investigations.
2. In the *Sohrabuddin Sheikh Encounter Case (2005)*, it was alleged that the Gujarat Police had shot and killed Sohrabuddin Sheikh and his wife, Kausar Bi. Following the event, numerous police officers were charged with what seemed to be a staged homicide, raising questions about the incident's veracity.
3. In the 2008 *Batla House Encounter Case*, a group of experienced law enforcement officers declared they were hunting after terrorists connected to the string of bombings in Delhi. But then there were claims of extrajudicial killing, which called into question the veracity of the encounter.
4. When the rape and murder of two women in Shopian, Jammu & Kashmir, were discovered in 2009, their deaths were first thought to be caused by drowning. Subsequent investigations, however, turned up evidence of sexual assault and homicide, which sparked claims of extrajudicial executions and possible security force cover-ups.

Concerns about how the public may react to extrajudicial murders of individuals like Priyanka Reddy and Vikas Dubey have grown significantly in India in the wake of recent executions. Four rape suspects in the Priyanka Reddy case were slain in December 2019 while allegedly trying to escape police custody. This raised ethical and legal questions as well as considerable appreciation for the participating cops. In a same vein, Vikas Dubey, a well-known criminal who killed eight police officers after his detention in Madhya Pradesh and transfer to Uttar Pradesh, was slain extrajudicially. It is crucial to

emphasize that extrajudicial executions are illegal and violate the essential values of justice, human rights, and due process. Such behavior undermines the basis of a democratic society and erodes public confidence in the criminal justice system in addition to breaking the law and feeding cycles of violence and lawlessness.

Conclusion

The incidence of extrajudicial executions in India presents a grave danger to the nation's legal system, especially in the context of a democratic society where the administration of justice is essential to resolving complaints. Incidents of law enforcement carrying out arbitrary killings undermine public confidence in the force and fuel a cycle of violence. As a result of the public's need for quick justice, extrajudicial executions are frequently justified and celebrated, supported by media narratives that present them as a type of "real justice." The problem is made worse by the legal impunity that police and military personnel have, which makes it easier to employ excessive force on suspects. The prevalence of extrajudicial executions persists despite legislation in place to prevent police impunity, suggesting underlying cultural and institutional problems. Even while the case for accelerated justice through extrajudicial methods could win out, the court has the power to step in and quicken court cases as needed. Respecting the law and not celebrating extrajudicial executions is essential because they go against the foundations of democracy and justice.

Furthermore, as critics of favored groups may be silenced, the growth in heroism linked to extrajudicial executions directly threatens democratic ideals and freedom of speech. In order to satisfy popular demands, political incentives and government resources are frequently abused, which results in abuses of human rights and the eroding of constitutional bounds.

To protect the rule of law and guarantee that justice is done, all arms of government must work together to address the problem of extrajudicial murders. People must continue to have trust in the criminal justice system, strive to keep society from degenerating into anarchy, and support accountability and openness in the actions of law enforcement.

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