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BEYOND THE BULLET: AN ANALYTICAL STUDY OF JUDICIAL ACTIVISM AND CONSTITUTIONAL REMEDIES AGAINST EXTRA-JUDICIAL KILLINGS IN INDIA

- Preeti Deol¹

ABSTRACT

This paper examines the contemporary socio-legal crisis of extra-judicial killings, colloquially termed "fake encounters," in India. It analyses the fine line between sovereign police power and institutional lawlessness. The study shifts the academic focus from individual police excesses to the systemic breakdown of procedural law, evaluating the role of the judiciary and constitutional guarantees under Article 21. By scrutinizing the statutory loopholes in the Indian Penal Code (IPC) and Code of Criminal Procedure (CrPC), this paper underscores the threat that "populist retribution" poses to the rule of law. It further investigates the administrative shield provided by Section 197 of the CrPC and evaluates the effectiveness of the National Human Rights Commission (NHRC) directives. The paper concludes with actionable institutional reforms to restore public faith in the formal criminal justice system.

Keywords: Extra-judicial Killings, Rule of Law, Article 21, Judicial Activism, Police Accountability, PUCL Guidelines, Section 197 CrPC.

INTRODUCTION AND HISTORICAL CONTEXT

The bedrock of any constitutional democracy is the absolute supremacy of the "Rule of Law." This principle dictates that no individual, regardless of their status or the gravity of their alleged crime, can

¹ Research Scholar, School of Legal and Constitutional Studies, Shobhit Institute of Engineering and Technology (Deemed to be University), Meerut, Uttar Pradesh, India

be deprived of life or liberty without a rigorous, fair, and legally prescribed trial. However, contemporary Indian jurisprudence faces a severe challenge from the normalization of extra-judicial killings, commonly known as "fake encounters."

Historically, extra-judicial execution was viewed as an aberration—a desperate measure used by law enforcement agencies in disturbed areas facing active insurgencies or organized terrorism. However, in the modern era, this practice has permeated mainstream policing. Fake encounters can be defined as the premeditated, extra-judicial killing of persons in the custody of law enforcement agencies or cornered during staged operations, entirely bypassing the judicial system. While the police infrastructure is constitutionally empowered to maintain public order and exercise the right to private defense, the systematic execution of accused individuals under the guise of an "imminent threat" reflects a deeper institutional malady. This paper investigates the socio-economic and legal factors driving this phenomenon, evaluates the constitutional framework violated by such actions, and reviews the effectiveness of judicial interventions.

THE SOCIO-LEGAL PARADOX: THE POPULIST TRAP OF "INSTANT JUSTICE"

A highly concerning aspect of modern fake encounters is the growing societal approval they receive. When the formal criminal justice system suffers from chronic delays, severe backlogs, and low conviction rates, the public often celebrates immediate, retributive actions by the police, viewing it as "instant justice." This collective impatience manifests in public celebrations, showering of flower petals on police officers, and widespread support on social media platforms.

However, this populist approval creates a dangerous jurisprudential paradox that undermines democratic institutions:

- Erosion of Innocence: It completely erases the foundational criminal law principle of "presumption of innocence until proven guilty."
- Vigilante State: It transforms the executive branch (the police) into the accuser, the investigator, the judge, and the executioner simultaneously, destroying the doctrine of separation of powers.
- Marginalization: Empirical data from human rights organizations indicates that extra-judicial actions disproportionately affect marginalized, socio-economically weaker sections who lack the resources to access legal remedies or mobilize media attention.

- State-Sponsored Terrorism: As observed by higher courts, replacing the judicial process with bullets risks turning law enforcement into "criminals in uniform," destabilizing the core structure of constitutional democracy.

CONSTITUTIONAL AND INTERNATIONAL FRAMEWORK

The Indian Constitution, along with international treaties ratified by India, provides robust safeguards against state overreach.

A. ARTICLE 21 AND THE DUE PROCESS

Article 21 of the Constitution declares that "No person shall be deprived of his life or personal liberty except according to procedure established by law." In the landmark case of *Maneka Gandhi v. Union of India* (1978), the Supreme Court held that this "procedure" must be just, fair, and reasonable, not arbitrary or whimsical. A staged encounter inherently lacks any legal procedure, making it a direct violation of the state's constitutional mandate to protect its citizens.

B. ARTICLE 14 AND ADMINISTRATIVE ARBITRARINESS

Article 14 guarantees equality before the law and equal protection of the laws within the territory of India. It bars administrative arbitrariness and requires the state to act reasonably. When police officers eliminate suspects instead of arresting them, they violate the equal right of every citizen to be tried by an independent court of law.

C. INTERNATIONAL OBLIGATIONS (ICCPR)

India is a signatory to the International Covenant on Civil and Political Rights (ICCPR). Article 6(1) of the ICCPR explicitly states: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Furthermore, Article 14(2) of the ICCPR mandates the presumption of innocence. Fake encounters constitute a severe breach of these international obligations and lower India's standing in international human rights indices.

STATUTORY ANALYSIS AND SYSTEMIC MISUSE OF LAW

Administrative practices often exploit statutory exceptions to shield police officers from criminal culpability.

A. MISUSE OF THE RIGHT TO PRIVATE DEFENSE

The police frequently utilize Sections 96 to 106 of the Indian Penal Code (IPC) (relating to the Right of Private Defense) to justify encounter deaths. They routinely file First Information Reports (FIRs) claiming that the deceased opened fire first, forcing the police to retaliate in self-defense. However, Section 99 of the IPC clearly states that the right of private defense in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defense.

B. CODE OF CRIMINAL PROCEDURE (CRPC), SECTION 46

Section 46 of the CrPC authorizes the police to use "all means necessary" to effect an arrest if a person forcibly resists. However, Section 46(3) explicitly bars the causing of death unless the person is accused of an offense punishable by death or life imprisonment. Police teams often manipulate records to retrospectively fit the profile of the deceased into this exception.

C. THE SHIELD OF SECTION 197 CRPC

One of the greatest legal hurdles in prosecuting guilty police officers is Section 197 of the CrPC, which mandates prior government sanction before prosecuting public servants for acts done in the discharge of official duty. Law enforcement agencies use this as a blanket immunity shield. The judiciary has repeatedly had to clarify that committing cold-blooded murder can never be a part of an officer's official duty.

THE JURISPRUDENTIAL SHIFT: LANDMARK JUDICIAL INTERPRETATIONS

Recognizing the systematic failure of state governments to prosecute guilty officers, the Supreme Court of India has stepped in through aggressive judicial activism to penalize extra-judicial actions.

A. THE PUCL CASE GUIDELINES (2014)

In *People's Union for Civil Liberties (PUCL) v. State of Maharashtra* (2014), the Supreme Court issued 16 mandatory guidelines to be followed in all cases of police encounters. These include:

1. **Mandatory Recording:** Intelligence or tip-offs regarding criminal movements must be recorded in writing or electronic form immediately.
2. **Independent Investigation:** Investigations must be conducted by an independent agency like the CID or a police team from another station.

3. Magisterial Inquiry: A mandatory magisterial inquiry under Section 176 of the CrPC must be conducted in every case of death during a police operation.
4. NHRC Involvement: Information regarding the encounter death must be sent to the National Human Rights Commission (NHRC) without delay.

B. OM PRAKASH V. STATE OF JHARKHAND (2012)

In this case, the Supreme Court strongly deprecated the culture of fake encounters, stating that "it is not the duty of the police officers to kill the accused merely because he is a dreaded criminal... such killings amount to State-sponsored terrorism."

C. PRAKASH KADAM V. RAMPRASAD VISHWANATH GUPTA (2011)

The Supreme Court held that fake encounters by police officers are equivalent to "cold-blooded and brutal murder." The court ruled that if a fake encounter is established in trial against policemen, they must be awarded the death sentence, treating it under the "rarest of rare cases" category, as they acted entirely opposed to their public duties.

THE ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

The NHRC has been a pivotal institutional actor in tracking extra-judicial killings. In 1997, under the chairmanship of Justice M.N. Venkatachaliah, the NHRC issued comprehensive guidelines noting that the police do not possess any right to take away the life of a human being unless it falls under the exceptions of private defense or under Section 46 CrPC. The NHRC mandated that all encounter deaths must be reported within 48 hours of occurrence. However, because the NHRC's recommendations are largely advisory in nature, state governments frequently ignore their findings, highlighting the need for stronger legislative backing for human rights bodies.

CONCLUSION AND ACTIONABLE SUGGESTIONS

Extra-judicial killings are not signs of a strong criminal justice system; they are symptoms of its systemic collapse. "Bullet justice" cannot replace "court justice" without destroying the democratic fabric of the nation. To rectify this deep-rooted issue, the following institutional reforms are urgently required:

Strict Execution of Criminal Law: Police officers found guilty of staging encounters must face swift prosecution under Section 302 of the IPC (Murder), and their legal defense expenses must not be funded by the state treasury.

- Amending Section 197 CrPC: The requirement of prior executive sanction should be automatically waived in cases involving custodial deaths or alleged fake encounters to allow transparent judicial scrutiny.

- Implementation of Police Reforms: The long-pending directives of the Prakash Singh v. Union of India (2006) judgment must be executed to separate investigative police functions from law-and-order duties, drastically reducing political manipulation.

- Strengthening Independent Inquiries: Magisterial inquiries must be handled by Judicial Magistrates rather than Executive Magistrates to ensure strict impartiality and prevent local police influence.

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