
JUDICIAL KILLINGS: AN ANALYSIS

Muskan Goel, Jindal Global Law School

ABSTRACT

Extrajudicial killing refers to the act of a police officer exceeding the authority given to them and taking a life without legal sanction. This violates Article 14 and 21 of the Indian Constitution, which protect the right to life and personal liberty, respectively. While the police are given the power to use force, they are not allowed to cause the death of someone who is not accused of an offense punishable by death or life imprisonment. Extrajudicial killings weaken the rule of law in India and are often attributed to corruption in the judicial system and inadequate policing.

The Indian Penal Code and the Criminal Procedure Code have provisions related to extrajudicial killings. Section 96 of the IPC allows for the right of private defence, but this defence is not available for inflicting more harm than necessary for defence. Section 100 of the IPC provides instances where a person who kills in self-defence will be justified, but it makes an exception for police officers. Section 46(3) of the CrPC allows police officers to use any means necessary to apprehend an accused if the accused violently resists or evades arrest. However, these laws do not allow for extrajudicial killings.

Extrajudicial killings occur when police officers bypass the legal procedure to grab "instant justice." Reasons for extrajudicial killings include the support of the public, political parties, and the reward system. The guidelines for extrajudicial killings were established in the PUCL v. State of Maharashtra case in 2014, which questioned the legality of over 90 police encounter killings in Mumbai between 1995 and 1997. These guidelines include issuing an FIR, informing CID or any other police department, informing the judicial magistrate, providing medical aid to the victim's relatives and any injured parties, surrendering weapons till the investigation is over, and holding a trial. No awards can be granted to the police officers until the investigation is complete.

Introduction:

Extrajudicial killing is a killing without sanction where a police officer goes above and beyond the authority which is usually given to them. It is when the police themselves violate Article 14¹ (which talks about the right to life) and Article 21² (which talks about personal liberty) of the constitution- when they take a life due to the circumstances. This power is given to the police according to Section 46(3)³ of the CrPC which states that '*nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life*³.' According to the section mentioned, it is important to note that the police is not allowed to use greater force only on the accused who haven't been involved in a grievous crime, for the others, using any means such as extrajudicial killings (or sometimes known as 'encounter') is allowed. In India, extrajudicial killings have weakened the rule of law. A string of extrajudicial experiences has been attributed to a harsh technique that limits tenacity for fair treatment. The reasons for these killings are due to India's judicial system being vitiated by corruption in electoral politics and inadequate policing⁴.

Laws relating to Extrajudicial Killings:

- Section 96 of the IPC⁵: Any act performed in the exercise of the 'right of private defence' is not considered an infraction under the IPC. The defence is applicable both in respect of 'person' and 'property,' according to Section 97⁶, although it is not available for inflicting more harm than is necessary for defence, according to Section 99⁷.
- Section 100⁸ of the IPC: lists the many instances (death, grave bodily harm, kidnapping, rape, acid attack, etc.) in which a person who kills in self-defence will be justified.
- It also makes an exception if the interaction is conducted by a police officer. Exemption 3 of Section 300⁹ provides that -Culpable homicide is not murder if the criminal is a public worker who, in good faith, exercises his right of private defence and exceeds his legal authority, and causes the death of such person.

¹ INDIA CONST. art 14.

² INDIA CONST. art 21.

³ Code of Criminal Procedure, 1973, s 46(3).

⁴ Paras Gupta, *Extrajudicial Killings Undermining the Rule of Law: The Saga Continues*, THE MEDIUM, Aug. 15. 2020, <https://medium.com/the-%C3%B3pinion/extrajudicial-killings-undermining-the-rule-of-law-the-saga-continues-8bd9cbe90d26>

⁵ Indian Penal Code, 1860, s 96.

⁶ Indian Penal Code, 1860, s 97.

⁷ Indian Penal Code, 1860, s 99.

⁸ Indian Penal Code, 1860, s 100.

⁹ Indian Penal Code, 1860, s 300.

- Section 46(3)³ of the CrPC: Also allows a police officer to employ any means necessary to apprehend an accused if he violently resists or evades arrest.

Article 21² of India's constitution guarantees all people the right to life as a fundamental right, stating that no one's life or personal liberty may be taken away from them unless they follow the legal procedure. Before a person is punished, a fair criminal trial, evidence-based judgement, an opportunity for the accused to be heard, and appeal options to correct the trial court's verdict are all required. Staged encounters or extrajudicial killings allow the police to act as judge and executioner and constitute a blatant breach of Article 21² because the legal procedure is not followed.

Reasons for Extrajudicial Killings:

Extrajudicial killings, in real life, are many a time misused by police to grab 'instant justice' so that they do not have to abide by the bureaucracy such as investigation and filings reports and all the other formalities necessary. There are many reasons why police officers prefer indulging in extrajudicial killings. The reasons could be as follows:

- Support from the Public: it is a public belief that at times the judiciary does not give justice timely which is unfair to the aggrieved party. Therefore, to prevent that and to make sure that the accused does not get away with cold-blooded murder, the police involve themselves in extrajudicial killings.
- Support from the Political parties: many times, the police officers get pressure from the political parties as many leaders like to project the number of encounters to show how much they have achieved in maintaining good law and order.
- Rewards- usually, actions such as extrajudicial killings are ignored by the government, and sometimes it is even rewarded.
- The Police officer becomes a hero: because the police officers, by encountering the accused, can provide the aggrieved party with instant justice- something that the court and the judiciary couldn't do- they become heroes in the eyes of the whole community and become famous in the whole country.

Guidelines for Extrajudicial Killings¹⁰:

¹⁰ NATIONAL HUMAN RIGHTS COMMISSION, INDIA, may. 10. 2022.

In the case of PUCL v. State of Maharashtra¹¹ in 2014 the court was hearing arguments from the People's Union of Civil Liberties (PUCL), which questioned the legality of over 90 police encounter killings in Mumbai between 1995 and 1997¹². After the case, the supreme court came up with the guidelines which must be followed by the police in case of an extrajudicial killing:

Firstly, there needs to be an FIR issued at the police station post the encounter with a detailed analysis of the incident including which gun was fired and how many bullets were used. Secondly, CID or any other police department needs to be made aware of this instance so they can conduct a separate inquiry to administer an impartial investigation and to proof-check the details mentioned in the FIR. thirdly, under section 176¹³ of the CrPC, the judicial magistrate needs to be informed of such an incident at the earliest. The victim's relatives need to be informed and any other person who was injured by this incident needs to be provided with medical aid as soon as possible. Furthermore, the police officers involved in the encounter need to surrender their weapons till the investigation isn't over under Article 20¹⁴ of the constitution and section 173¹⁵ of the CrPC, a trial must be held. Moreover, no awards can be granted to the police officer till the time the investigation isn't over. Also, if it was proven that the encounter taken place by the police officer was unnecessary, he or she will be terminated from the job immediately. And lastly, if the victim's family believes that the investigation which took place wasn't complete or if there was any bias in the judgment, they can make a complaint to the Session Judge having jurisdiction in that area.

Recent Case Law:

In Hyderabad, a young girl named Priyanka Reddy was gang-raped by four men from the same city¹⁶. A few days after the incident, it was informed that when the accused were taken back to re-enact the crime scene, they tried to escape therefore were encountered by the policemen on the spot. The rape of a doctor in Hyderabad sparked outrage and exposed a bloodthirsty society. People requested that the rapists be shot on sight because they were unworthy of a fair trial,

https://nhrc.nic.in/sites/default/files/Guidelines_conducting_Magisterial_Enquiry_in_cases_of_CD_or_police_action.pdf

¹¹ PUCL v. State of Maharashtra (2014) 3 SCC 433

¹² Meera Emmanuel, *Even State has no Authority to violate Article 21: What Supreme Court said about Encounter Killings back in 2014*, BAR AND BENCH, dec. 6. 2019, <https://www.barandbench.com/columns/even-state-has-no-authority-to-violate-article-21-what-the-supreme-court-said-about-encounter-killings-back-in-2014>

¹³ Code of Criminal Procedure, 1973, s 176.

¹⁴ INDIA CONST. art 22.

¹⁵ Code of Criminal Procedure, 1973, s 173.

¹⁶ Jolly Singh, *Extrajudicial Killing: A Threat to Democracy*, Pg. 1, 2020.

and it appears that the cops complied. The rape case in Hyderabad exemplifies a harsh kind of justice in which the execution of an untried offender is equated with a fair process. While the National Human Rights Commission (NHRC) has taken *Suo moto* action in the case, the NHRC's and courts' leniency signals a shift toward more immediate and equally suspect forms of justice¹⁷.

Encounter killings must be probed independently because they jeopardise the rule of law's credibility. There is a need to ensure that there is a rule of law in a society that must be followed by all State authorities and the public. Assuring proper physical care of the accused to prevent them from attacking police officers. Furthermore, a full revamp of the criminal justice system is urgently required, as are police changes.

Conclusion:

Extrajudicial executions are a flagrant breach of not only human rights, but also the rule of law, which is the cornerstone of our Constitution. It shatters to the core the principles that the Constituent Assembly intended to instil in the country's grundnorm¹⁸.

The existing literature on the subject illuminates not only the human rights violations that result from extrajudicial executions but also a pattern of extrajudicial killings being more common in the third world and developing countries. This lends credence to the foregoing argument of how underfunded police forces, a lack of faith in justice, the pending status of cases, and other characteristics of a developing country aid and abet the spread of extrajudicial murders.

A legitimate attempt can be made to prevent such killings through training programs and the limitation of police enforcement authority. When officers cross these lines, they are aggressively penalised, creating a deterrent mechanism. Resolving systemic issues like underfunding and understaffing, as well as developing a better, more well-equipped police force, could help significantly reduce such killings. As a result, an overhaul of the criminal justice system and improved policymaking are urgently needed to ensure that procedural and structural flaws, as well as callousness and impunity, do not lead to the loss of precious life.

¹⁷ Extrajudicial Killings in India: A Crisis of Justice, Faith, and Public Morality? http://eprints.lse.ac.uk/111391/1/southasia_2021_05_24_extra_judicial_killings_in_india_a_crisis_of.pdf, may. 5. 2021.

¹⁸ Mannat Marwah, *Extrajudicial Killings violate Constitutional values, rule of law*, THE LEAFLET, <https://theleaflet.in/extra-judicial-killings-violate-constitutional-values-rule-of-law/>