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## **FAKE ENCOUNTERS: A COMPARATIVE STUDY OF INDIA, IRAN AND USA**

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### **ABSTRACT**

Fake encounters also known as extrajudicial killings, are one of the most debatable aspects of contemporary policing and state authority. They befall when law enforcement organisations deliberately assassinate suspects without adherence to the precise legal procedures and then proclaim that the occurrence was a self-defence or an armed skirmish. Despite the strong condemnation of such practices by the International Human Rights law the reports of extrajudicial killings still continue to be surfaced in a number of jurisdictions globally. This study scrutinizes the spectacle of fake encounters by comparing India, Iran and the United State of America and also aims at analysing the key case studies, legal rulings, legal frameworks governing the usage of lethal force, and accountability systems in the above-mentioned countries. Iran has often faced severe criticism for state-approved extrajudicial accomplishments in the context of political suppression and law enforcement, while India has been accused of staged encounters and judicial intrusions to stop them. Despite functioning under a constitutional framework that restricts the use of fatal force by police; racial bias and police shootings continue to persist in the United States of America. The study draws attention to the parallels and inconsistencies in legal regulation, accountability edifices, and human rights insinuations through comparative analysis. In order to restrict the practice of extrajudicial killings and to improve the democratic governance, the study's conclusion lays stress upon the implication of the Rule of Law, autonomous investigations, and recommended institutional reforms.

**Keywords:** Fake encounters; Extra-judicial killings; Rule of Law; Unlawful killings; Law enforcement agencies.

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## **1. INTRODUCTION**

As per the verdict of the exemplary principle of Rule of Law, every person accused of a crime must be investigated/inquired, prosecuted, and penalized through a process upholding the ethics of fair legal system. However, extrajudicial executions occasionally employed by the law enforcement often intentionally or unintentionally dodge this procedure. These extra judicial instances of homicide are commonly portrayed as defensible police encounters or the acts of self-defence, referred to as "fake encounters" when staged or deployed to sustain the illegal man-slaughters. The homicide of a suspect by the law enforcement agencies without the court's sanction is known as a "fake encounter," and it is usually staged to look like a defensive measure whilst an armed conflict. The encounter story is often put up by the agencies when the victim is already taken to the police custody in an order to elude legal scrutiny. This phenomenon of fake- encounters is not country specific, several states around the globe have been accused of executing extrajudicial killings beneath the guise of state security, counterterrorism, or crime control. While cohorts sometimes shield such activities as necessary in an order to combat perilous criminals, critics argue that they encroach upon the fundamental human rights and undermine the authority of Rule of Law. This study aims at examining the issue of fake encounters by contrasting the legal systems prevalent in the state of Iran, India, and the United States of America. India is a constitutional democracy with durable judicial review, Iran is a theocratic republic (theocracy is a concept which is often associated with the rule of religion or governance via the medium of holy religious principles) with centralised power, and the United States is a purely federal constitutional democracy incorporating well established guiding principles for use of force by the police. The contrasting political and legal systems are represented by these states.

## **2. OBJECTIVES OF RESEARCH**

The objectives behind this research are as follows:

- understanding the concept of "fake encounters" and the insinuations for the law.
- investigating the pervasiveness and reasons behind the extrajudicial executions in India, Iran and the United States.

- looking into the laws and judicial decisions governing use of deadly force by the law enforcement agencies such as police.
- comparing the accountability agendas and human rights protections in these areas.

This analysis fosters to high spot the challenges that the contemporary states confront while striking a balance between the law enforcement and the safeguarding of human rights.

### 3. CONCEPT OF FAKE ENCOUNTERS AND EXTRA JUDICIAL KILLINGS

#### 3.1. Meaning and Definition

Extrajudicial killing means the deliberate carnage of a person by the state authorities without due adherence to the Rule of Law or a judicial court's oversight. By circumventing the due procedure i.e., investigation, inquiry, trial, and sentencing, these killings violate the basic principles of the criminal justice system. If we look at these executions from the perspective of international law then it won't be wrong to suggest that these killings can take the form of core crimes such as the war crimes, genocide and crimes against humanity in case the essential ingredients are satisfied.<sup>2</sup>

The phrase "fake encounter" depicts a situation where the police stages confrontation to rationalize the killing of a suspected individual. It is a specific sort of extrajudicial killing. In these situations, the police forces often emphasize upon the fact that there were compelling circumstances due which they were obliged to take commit such an act or were acting in self-defence because the accused fired a weapon against them or was trying to flee.<sup>3</sup>

The United National Organization has regarded that these extrajudicial executions commit a grave violation against the individual's Right to Life, which is explicitly shielded or upheld by various international human rights treaties or conventions as

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<sup>2</sup> TRIAL International, Extra Judicial Executions, *available at*: <https://trialinternational.org/topics-post/extrajudicial-executions/> (last visited on March 3, 2026).

<sup>3</sup> Prasoan Shekhar, "Fake Encounters and the Rule of Law," iPleaders Blog (July 12, 2020), *available at*: <https://blog.ipleaders.in/fake-encounters-and-the-rule-of-law/> (last visited on March 3, 2026).

follows:

- The Universal Declaration of Human Rights (UDHR)- Article 3<sup>4</sup>
- The International Covenant on Civil and Political Rights (ICCPR)- Article 6<sup>5</sup>
- The Convention on the Rights of the Child (CRC)- Article 6<sup>6</sup>
- The Geneva Convention I, II, III & IV, 1949- Common article 3<sup>7</sup>
- The European Convention on Human Rights (ECHR)- Article 2<sup>8</sup>
- The American Convention on Human Rights- Article 4<sup>9</sup>
- The African Charter on Human and Peoples' Rights (Banjul Charter)- Article 4<sup>10</sup>

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<sup>4</sup> The Universal Declaration of Human Rights, 1948, art. 3 states:  
*Everyone has the right to life, liberty and the security of person.*

<sup>5</sup> The International Covenant on Civil and Political Rights, 1966, art. 6 states:

1. *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.*

<sup>6</sup> The Convention on the Rights of the Child, 1989, art. 6 states:

1. *States Parties recognize that every child has the inherent right to life.*

<sup>7</sup> The Geneva Convention IV, Relative to the Convention of Civilian Persons in the Time of War, 1949, art. 3 states:

*In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*

1) *Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.*

*To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:*

- a) *violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;*
- b) *taking of hostages;*
- c) *outrages upon personal dignity, in particular humiliating and degrading treatment;*
- d) *the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*

<sup>8</sup> The European Convention on Human Rights, 1950, art. 2 states:

1. *Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*

<sup>9</sup> The American Convention on Human Rights, 1969, art. 4 states:

1. *Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.*

<sup>10</sup> The African Charter on Human and Peoples' Rights (Banjul Charter), 1981, art. 4 states:

- The Arab Charter on Human Rights- Article 5<sup>11</sup>

These instruments endure a pious obligation upon the signatories to safeguard the human life and to hold those persons accountable who are responsible for the unlawful killings.

### 3.2. Characteristics of Fake Encounters

Usually the below listed pointers/traits are some of the common characteristics to the scenario of fake encounters:

- The victim is already bound in the custody of police.
- Claim by the authorities that the victim allegedly attempted to attack or escape.
- Claim corroborated by shaky or bogus evidence.
- Delay in investigation or either no investigation.
- Participating officers are usually awarded or promoted.<sup>12</sup>

Fake encounters are antagonistic because of the prevalence of these characteristics, thus, compromising legal measures and endorsing impunity within law enforcement agencies.

## 4. FAKE ENCOUNTERS IN INDIA

### 4.1. Historical Background

Several claims of fabricated encounters have been lodged in India particularly in areas affected by the crimes such as the terrorist activities, organised crimes and insurgency. The police forces often justify such happenings as the necessary actions which are

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*Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.*

<sup>11</sup> The Arab Charter on Human Rights, 2004, art. 5 states:

1. *Every human being has the inherent right to life.*
2. *This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

<sup>12</sup> Anurag Ankur, "Fake Police Encounter: A Serious Impediment to Fair trial of Accused in India" 4 *international Journal of Law Management & Humanities* 598-607 (2021).

required to be performed by them in an order to combat hardened criminals or the terrorists. These actions may be committed due to the political pressure, militarization of the police or the brashness of the society towards crimes.<sup>13</sup>

During the time of period of 1970s and 1980s there was an upsurge in public awareness relating to the concept and practice of extrajudicial killings, particularly in areas wedged by organised crime and insurgency. Security forces have often been accused of eradicating alleged militants through theatrical encounters rather than following the path of legal proceedings e.g., actions taken by the security personnel during the Naxalite movement in in the state of Andhra Pradesh. All the brutalities committed by the forces were done under the garb of combatting the “Naxalite Terrorism”.<sup>14</sup> However, the issue got worse in the 1990s and early 2000s during the rise of terrorism and separatist movements in provinces like Punjab,<sup>15</sup> Jammu and Kashmir,<sup>16</sup> and Maharashtra.<sup>17</sup> In all these situations the law enforcement agencies were continually watched justifying the acts of encounter killings as necessary strategies for maintaining public order and morality.

However, the human rights organisations/civil society organisations and the judiciary has questioned the lawfulness of these practices, arguing that they encroach upon the right to life which is guaranteed by Article 21 to the Constitution of India<sup>18</sup>. Over the years a number of controversial cases and court decisions have tinted the stiffness between maintenance of rule of law and effective law enforcement, thus, highlighting the subject of fictional encounters into the nationwide discourse.<sup>19</sup>

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<sup>13</sup> Saima Khan and Sandeep Mishra, “Encounter Killings in India and Human Rights Violation” II *International Journal for Legal Research and Analysis* (2024).

<sup>14</sup> Human Rights in India, “Police Killings and Rural Violence in Andhra Pradesh” (Human Rights Watch, 1992) available at: <https://www.hrw.org/reports/INDIA929.PDF> (last visited on March 4, 2026).

<sup>15</sup> Human Rights Watch, *Dead Silence: The Legacy of Abuses in Punjab* (Human Rights Watch, New York, 1994), available at: <https://www.hrw.org/report/1994/05/01/dead-silence-legacy-abuses-punjab> (last visited on March 4, 2026).

<sup>16</sup> Amnesty International, *India: Summary of Human Rights Concerns in Jammu and Kashmir* (Amnesty International, London, 1995), available at: <https://www.amnesty.org/en/documents/asa20/002/1995/en/> (last visited on March 4, 2026).

<sup>17</sup> India’s Policing Disorder, *OpenDemocracy* (2014), available at: <https://www.opendemocracy.net/en/opensecurity/indias-policing-disorder/> (last visited on March 4, 2026).

<sup>18</sup> The Constitution of India, art. 21 states:

*No person shall be deprived of his life or personal liberty except according to procedure established by law.*

<sup>19</sup> Arabhi Anandan, “Fake Encounter Killings: An Anathema To Rule Of Law “, *Live Law*, December 7, 2019, available at: <https://www.livelaw.in/columns/fake-encounter-killings-an-anathema-to-rule-of-law-150553> (last visited on March 4, 2026).

## 4.2. Major Fake Encounter Cases

Although we have plenty of cases to depict the happening of these events in India, however, the focus of this research would cover the prime cases in an order to reflect the ground level situation with regard to fake encounters.

### 4.2.1. Ishrat Jahan Encounter Case (2004):

One of the most antagonistic alleged cases of fake encounters in India is the Ishrat Jahan encounter case. On 15<sup>th</sup> June, 2004 the Gujarat police killed Ishrat Jahan, Javed Ghulam Sheikh (Pranesh Pillai), Amjad Ali Rana, and Zeeshan Johar within the locality of the city of Ahmedabad, alleging that they were members of Lashkar-e-Taiba (a terrorist group) and intended to kill Mr. Narendra Modi, the then Chief Minister of the state<sup>20</sup> and currently the Prime Minister of India. In subsequent investigations conducted by the Central Bureau of Investigation (CBI) and a Special Investigation Team (SIT) it was revealed that the encounter was thespian and that the victims were killed in the custody of police preceding the incident being described as an armed hostility. As a result, several senior police officers were prosecuted giving rise to serious apprehensions regarding the abuse of authority by the police.<sup>21</sup>

### 4.2.2. Hashimpura Massacre (1987):

The Hashimpura massacre, 1987 is one of the most dreadful illustrations of custodial killings in India. This incident took place on 22<sup>nd</sup> day of May in year 1987, during communal insurrections in Meerut, Uttar Pradesh, when members of the Provincial Armed Constabulary (PAC) carried out a search in the Hashimpura locality which is primarily inhabited by the members of Muslim community. Approximately forty-two young Muslim men were detained without following the due procedure of arrest. The police truck allegedly moved them to the isolated areas near the Upper Ganga Canal in

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<sup>20</sup> Ishan Marvel, "The death of Ishrat Jahan and the cover-up that followed", *The Caravan*, February 18, 2016, available at: <https://caravanmagazine.in/vantage/ishrat-jahan-coverup> (last visited on March 4, 2026).

<sup>21</sup> Central Bureau of Investigation, "CBI FILES CHARGESHEET AGAINST SEVEN ACCUSED PERSONS FOR THE ALLEGED FAKE ENCOUNTER OF ISHRAT JAHAN AND THREE OTHERS" (Government of India, 2013).

Muradnagar and the Hindon Canal, instead of presenting them before the Magistrate as prescribed by the Constitution of India<sup>22</sup> as well as by the provisions of the Code of Criminal procedure, 1973<sup>23</sup>. The testimonies of the survivors' state that in an effort to fur the crime, PAC staff shot the detainees and threw their bodies inside the canals. The massacre was highlighted after a few survivors of the shooting reported about the happening. After decades of the prolonged court proceedings, the Court held sixteen former PAC employees as guilty in the year 2018 and sentenced them to imprisonment for life.<sup>24</sup> The massacre still continues to be a noteworthy example of the misuse of authority by the state and emphasises upon the requirement of accountability and the defence of the right to life under Article 21 of the Constitution of India.<sup>25</sup>

### 4.3. Judicial Response in India

Indian judiciary has always played a key role in adjudicating upon the matters that are of serious legal concerns and has always aimed at securing justice for the citizens irrespective of status, caste, religion and creed. Similarly, the Indian judiciary has played a pivotal role by delivery tremendous judgements curbing the excessive powers exercised by the state authorities and directing them not to take law in their own hands. Some of the best examples are as follows:

#### 4.3.1. Prakash Kadam v. Ramprasad Vishwanath Gupta (2011):<sup>26</sup>

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<sup>22</sup> *Supra* note 17, art. 22 states:

- (1) *No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.*
- (2) *Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.*

<sup>23</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 57 states:

*No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.*

<sup>24</sup> "Hamirpur massacre, a 'targeted killing' by police: HC, 16 former cops given life term", *The Times of India*, October 31, 2018, available at: <https://timesofindia.indiatimes.com/india/hashimpura-massacre-a-targeted-killing-by-police-hc-16-former-cops-given-life-term/articleshow/66450492.cms> (last visited on March 4, 2026).

<sup>25</sup> *Supra* note 17.

<sup>26</sup> (2011) 6 SCC 189.

As per the Hon'ble Supreme Court of India fake encounters are synonyms for the cold-blooded homicides committed by those people who are themselves entrusted with the responsibility of upholding the law. In the opinion of the court if an ordinary individual commits a crime, then he/she shall be punished in the ordinary manner however if the policemen commit a crime, then they should be awarded a stricter sentence because they are acting in opposition to what they are actually supposed to do.

#### **4.3.2. People's Union for Civil Liberties (PUCL) v. State of Maharashtra (2014):<sup>27</sup>**

In this case a writ was filed on the basis of violation of article 14<sup>28</sup> and article 21<sup>29</sup> under the Indian Constitution in lieu of the act of extra judicial killing. As a result, the Supreme Court laid down sixteen mandatory guidelines to carry out investigations in the cases of encounter deaths, such as every encounter resulting in death mandates the lodging of a formal complaint, it is necessary for the crime investigative department to conduct an autonomous investigation, the National Human Rights Commission must be informed of such an event taking place, etc. The intent behind the formulation of these rules is to assure transparency and curb the abuse of power by the police authorities. Thus, the guidelines mentioned in the judgement have a binding effect by the virtue of Article 141 of the Constitution of India.<sup>30</sup>

#### **4.3.3. Extra Judicial Execution Victim Family Associations (EEVFAM) v. Union of India (2016):<sup>31</sup>**

The Supreme Court had gone through the claims of more than 1,500 extrajudicial executions which took place in Manipur during the time span

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<sup>27</sup> (2014) 10 SCC 635.

<sup>28</sup> *Supra* note 17, art. 14 states:

*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.*

<sup>29</sup> *Supra* note 17

<sup>30</sup> *Supra* note 17, art. 141 states:

*The law declared by the Supreme Court shall be binding on all courts within the territory of India.*

<sup>31</sup> (2016) 14 SCC 578.

of year 1979-2012. The Court held that the security personnel cannot employ excessive force including those areas which are affected by insurgencies. Even the Armed Forces (Special Powers) Act<sup>32</sup> does not immunise the unlawful killings from prosecution, moreover the alleged encounter deaths are subject to autonomous investigations.

## 5. EXTRA JUDICIAL KILLINGS IN IRAN

### 5.1. Political and Legal Context

The Iranian Revolution of 1979 replaced the monarchical system in Iran with a theocratic system of government devising the Islamic law with the republican institutions which led to the establishment of the Islamic Republic, shaping the political and legal system of Iran. Iran's legal system is a blend of constitutional clauses, statutory laws endorsed following the Islamic Revolution of 1979, and Islamic law (Sharia). The constitution of the Islamic Republic of Iran exemplifies that all laws must observe the Islamic principles and draws an outline for government to carry out efficient governance. As per the Iranian Constitution, the Supreme Leader<sup>33</sup> is Commander-in-Chief of the armed forces<sup>34</sup>, the judiciary, and other important political foundations. Even though

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<sup>32</sup> The Armed Forces (Special Powers) Act, 1958 (Act 28 of 1958).

<sup>33</sup> The Constitution of the Islamic Republic of Iran, 1979, art. 5 states:

*During the Occultation of the Walial-'Asr (may God hasten his reappearance), the wilayah and leadership of the Ummah devolve upon the just ['adil] and pious [muttaqi] faqih, who is fully aware of the circumstances of his age; courageous, resourceful, and possessed of administrative ability, will assume the responsibilities of this office in accordance with Article 107.*

<sup>34</sup> *Id.*, art. 110 states:

*Following are the duties and powers of the Leadership:*

1. *Delineation of the general policies of the Islamic Republic of Iran after consultation with the Nation's Exigency Council.*
2. *Supervision over the proper execution of the general policies of the system.*
3. *Issuing decrees for national referenda.*
4. *Assuming supreme command of the armed forces.*
5. *Declaration of war and peace, and the mobilization of the armed forces.*
6. *Appointment, dismissal, and acceptance of resignation of:*
  - a. *the fuqaha' on the Guardian Council.*
  - b. *the supreme judicial authority of the country.*
  - c. *the head of the radio and television network of the Islamic Republic of Iran.*
  - d. *the chief of the joint staff.*
  - e. *the chief commander of the Islamic Revolution Guards Corps.*
  - f. *the supreme commanders of the armed forces.*
7. *Resolving differences between the three wings of the armed forces and regulation of their relations.*
8. *Resolving the problems, which cannot be solved by conventional methods, through the Nation's Exigency Council.*

the Constitution officially protects some fundamental rights for example right to life<sup>35</sup> and due process<sup>36</sup> and article 38 of the Constitution prohibits the use of torture to strong-arm confessions;<sup>37</sup> however these rights are construed in light of national security apprehensions and Islamic jurisprudence. Because of this provision the state has a wide power to put a full stop to the actions that pose a threat to the Islamic Republic of Iran.<sup>38</sup>

The Islamic Revolutionary Guard Corps (IRGC),<sup>39</sup> the Basij paramilitary group,<sup>40</sup> and the national police are the organisations which are responsible for the maintenance of law enforcement and internal haven in Iran. These organisations are indispensable for perpetuation of political order and suppressing dissent. Human rights organisations have articulated grave concerns about the employment of excessive force and unlawful killings during times of political unrest or protests as the security forces have been endowed

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9. *Signing the decree formalizing the election of the President of the Republic by the people. The suitability of candidates for the Presidency of the Republic, with respect to the qualifications specified in the Constitution, must be confirmed before elections take place by the Guardian Council, and, in the case of the first term [of the Presidency], by the Leadership;*
  10. *Dismissal of the President of the Republic, with due regard for the interests of the country, after the Supreme Court holds him guilty of the violation of his constitutional duties, or after a vote of the Islamic Consultative Assembly testifying to his incompetence on the basis of Article 89 of the Constitution.*
  11. *Pardoning or reducing the sentences of convicts, within the framework of Islamic criteria, on a recommendation [to that effect] from the Head of judicial power. The Leader may delegate part of his duties and powers to another person.*

<sup>35</sup> *Id.*, art. 22 states:

*The dignity, life, property, rights, residence, and occupation of the individual are inviolate, except in cases sanctioned by law.*

<sup>36</sup> *Id.*, art. 32 states:

*No one may be arrested except by the order and in accordance with the procedure laid down by law. In case of arrest, charges with the reasons for accusation must, without delay, be communicated and explained to the accused in writing, and a provisional dossier must be forwarded to the competent judicial authorities within a maximum of twenty-four hours so that the preliminaries to the trial can be completed as swiftly as possible. The violation of this article will be liable to punishment in accordance with the law.*

<sup>37</sup> *Id.*, art. 38 states:

*Any kind of torture used to extract an admission of guilt or to obtain information is forbidden. Compelling people to give evidence, or confess or take an oath is not allowed.*

*Such evidence or confession or oath is null and void. Any person infringing this principle is to be punished in accordance with the law.*

<sup>38</sup> *Id.*, art. 20 states:

*All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.*

<sup>39</sup> Council on Foreign Relations Iran's Revolutionary Guards, available at: <https://www.cfr.org/backgrounder/irans-revolutionary-guards> (last visited on March 5, 2026).

<sup>40</sup> U.S. Department of the Treasury, Treasury Sanctions Iranian Security Forces for Human Rights Abuses, Press Release (June 9, 2011), available at: <https://home.treasury.gov/news/press-releases/tg1204> (last visited on March 5, 2026).

with wide powers.<sup>41</sup>

Iran's legal system employs severe penalties for the offences ascertained in the Islamic Criminal Law. Charges like "moharebeh" (waging war against God or warfare)<sup>42</sup> basically it refers to combatting against the Muslim brotherhood/fraternity which gives birth to a sense of insecurity among the people<sup>43</sup> and "mofsed-e-fil-arz" (corruption on earth)<sup>44</sup> are broadly interpreted and carry the punishment of death penalty in case of breach. As per the claims made by the opponents these clauses are sporadically applied to political dissidents or people who are thought to pose a threat to state security.<sup>45</sup>

The overall charges of extrajudicial executions and abuse of human rights continue to draw strenuous international attention due to the strong concentration of power within security institutions, extensive national security legislation and lacking of independent oversight.

## 5.2. Patterns of Extra Judicial Killings

There are variety of patterns when it comes to the question of extrajudicial

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<sup>41</sup> Human Rights Watch, Iran: No Justice for Bloody Crackdown (Human Rights Watch, New York, 2020), available at: <https://www.hrw.org/news/2020/02/25/iran-no-justice-bloody-crackdown> (last visited on March 5, 2026).

<sup>42</sup> The Islamic Penal Code of the Islamic Republic of Iran, 2013, art. 282 states:  
*The fixed corporal punishment for armed violation of the public security shall be one of the following penalties:*

- a. Death penalty;
- b. Crucifixion;
- c. Amputation of the right hand and left foot;
- d. Banishment.

<sup>43</sup> Zargham Bostanghadirly, "The Jurisprudential Basis of Crimes Equivalent to Moharebeh" 05 *Global Journal of Resarch in Education and Literature* 212 (2025).

<sup>44</sup> *Supra* note 40, art. 286 states:

*Any person who widely commits crimes against physical integrity of persons, crimes against internal or external security of the country, criminal libel, disorder in the State economic system, arson and annihilation, dissemination of toxic, microbial, and hazardous matters, or establish debauchery and prostitution centers, or who becomes accessory thereto, in a manner that causes severe disorder in the public order of the country, creates insecurity or inflicts substantial damage upon physical integrity of persons or public and private properties, or that causes widespread propagation of corruption or prostitution shall be deemed a corrupt on the earth, and will be sentenced to death.*

*Note In case the court, based on the evidence and indications as a whole, does not find an intent to make widespread disorder in the public order, to create insecurity, to inflict substantial damage, and/or to propagate corruption or prostitution extensively; and/or where awareness of effectiveness of the measures taken is not established for the court, and where the crime committed is not punishable by another legally prescribed punishment, the perpetrator shall, depending on the extent of damaging results of the crime, be sentenced to discretionary incarceration of the fifth or sixth degree.*

<sup>45</sup> Human Rights Watch, Iran: Death Sentences Against Protesters (Human Rights Watch, New York, 2022), available at: <https://www.hrw.org/news/2022/12/13/iran-death-sentences-against-protesters> (last visited on March 5, 2026).

executions in Iran, often related to the policies of country's internal security and political ether. One of the most obvious patterns appears when political protests and opposition are curbed. Security forces, like the Islamic Revolutionary Guard Corps (IRGC) and the Basij paramilitary group are frequently deployed to restraint the protests and have been accused on plentiful junctures of using unwarranted or lethal force against the people who are protesting. These actions are mostly defended by the authorities who claim that these steps are necessary to ensure national security and maintaining public order.<sup>46</sup>

Areas inhabited by the ethnic minorities like Kurdistan,<sup>47</sup> Baluchistan, and Khuzestan are linked to another pattern. Security forces in these zones carry out assassination against people who are thought to be involved in armed confrontation or separatist events. According to the human rights organizations, some murders have taken place without a proper investigation or legal procedure.<sup>48</sup>

Alongside the Iran's eastern borders where law enforcement agencies combat against the drug trafficking networks, extrajudicial killings have also been documented at such sites. Suspects are allegedly slaughtered during operations and in some instances even without adequate legal investigation.<sup>49</sup> Critics have also drawn attention towards the absence of open investigations and impartial culpability systems, which recurrently leads to little prosecution of officials implicated in such episodes. International concern over the defence of Iran's right to life and due process has endured as a result of these trends.

## 6. POLICE SHOOTINGS AND THE USE OF FORCE IN USA

### 6.1. Legal Standards

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<sup>46</sup> Human Rights in India, "Iran: Security Forces Violently Crack Down on Protesters" (Human Rights Watch, 2019) available at: <https://www.hrw.org/news/2019/11/19/iran-security-forces-violently-crack-down-protesters> (last visited on March 6, 2026).

<sup>47</sup> Human Rights in India, "Iran: Security Forces Killing Kurdish Border Couriers" (Human Rights Watch, 2024) available at: <https://www.hrw.org/news/2024/07/08/iran-security-forces-killing-kurdish-border-couriers> (last visited on March 6, 2026).

<sup>48</sup> Amnesty International, Iran: Human Rights Abuses Against the Baluchi Minority, AI Index: MDE 13/104/2007 (Amnesty International, September 2007), available at: <https://www.amnesty.org/ar/wp-content/uploads/2021/08/mde131042007en.pdf> (last visited on March 6, 2026).

<sup>49</sup> *Ibid.*

In the United States of America, the constitutional clauses, legal statutes and court rulings administer the use of force by the law enforcement agencies. The American legal system lays down clear guiding principles for the police officers regarding the employment of lethal force, in contrast to other countries where extrajudicial killings may take place in the absence of overt legal scrutiny. The Fourth Amendment to the Constitution of the United States of America aims at shielding people against arbitrary search and seizure also it is the main source of derivation for these guidelines. Therefore, use of force by police is assessed in lieu of the reasonableness principle, which requires that the action is objectively justified in the given situation.<sup>50</sup>

In the case **Tennessee v. Garner**,<sup>51</sup> it was held by the U.S. Supreme Court that the police officers cannot use lethal force against a suspect who is try to flee unless the suspect stances a serious threat to the officer's life or the lives of other persons, this ruling also serves as a significant legal precedent. As per the court it is unconstitutional to assassinate an unarmed/non-dangerous suspect in order to prevent their escape.

Another significant case is of **Graham v. Connor**,<sup>52</sup> in which the U.S. Supreme Court expanded upon the standard of "objective reasonableness" as per the fourth amendment to the Constitution of United States of America for the use of force by police. This principle necessitates the courts to evaluate the case from the point of view of a reasonable officer on the spot. A number of factors are considered including the gravity of crime, the immediate threat to safety, and the resistance by the suspect.

Therefore, these legal standards seek to strike a balance between the enforcement of law and the protection of civil liberties of an individual.

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<sup>50</sup> The Constitution of United States of America, Fourth Amendment states:

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

<sup>51</sup> 471 U.S. 1 (1985).

<sup>52</sup> 490 U.S. 386 (1989).

## 6.2. Controversies Regarding Police Shootings

Since many years the acts of police shootings in the US are the focus of heated public dialog and debate. Despite lawful limitations on the use of lethal force a number of high-profile incidents have flickered worries regarding the subject of racial discrimination, unwarranted use of force and dearth of culpability.

The inconsistent effect on racial minorities especially upon the people from black community or the African Americans dissent, poses one of the main issues with regard to police shootings. Protesters sparked the country when the events like the deaths of George Floyd in Minneapolis (2020),<sup>53</sup> Breonna Taylor in Louisville (2020),<sup>54</sup> and Michael Brown in Ferguson (2014)<sup>55</sup> took place. Social movements like "Black Lives Matter," have called for openness, police reforms and more vigorous systems to make the officers accountable for their wrongdoing, emerged as a result of these incidents.<sup>56</sup>

The legal protection accorded to the police officers, predominantly through concepts like 'qualified immunity' makes it a frequently challenging situation to carry out successful prosecution of officers who have been accused of using excessive force.<sup>57</sup> Moreover, there are concerns regarding free and fair investigation pertaining to the fact that the police shooting investigations are often carried out by the same departments that were a part of the incident.<sup>58</sup>

## 6.3. Accountability Mechanisms

The United States of America has established a number of procedures in an

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<sup>53</sup> Pew Research Center, Views of Race, Policing and Black Lives Matter in the 5 Years Since George Floyd's Killing, available at: <https://www.pewresearch.org/race-and-ethnicity/2025/05/07/views-of-race-policing-and-black-lives-matter-in-the-5-years-since-george-floyds-killing/> (last visited on March 7, 2026).

<sup>54</sup> Colleen Walsh, Solving Racial Disparities in Policing, The Harvard Gazette, available at: <https://news.harvard.edu/gazette/story/2021/02/solving-racial-disparities-in-policing/> (last visited on March 7, 2026).

<sup>55</sup> University of San Diego School of Law Library, Police Use of Force, available at: <https://lawlibguides.sandiego.edu/c.php?g=1143468&p=8624812> (last visited on March 7, 2026).

<sup>56</sup> Nazgol Ghandnoosh, "One in Five: Disparities in Crime and Policing" (November, 2023), available at: <https://www.sentencingproject.org/reports/one-in-five-disparities-in-crime-and-policing> (last visited on March 7, 2026).

<sup>57</sup> *Harlow v. Fitzgerald* 457 U.S. 800 (1982).

<sup>58</sup> Amari L. Hammonds, Katherine K. Moy, *et. al.*, "At Arm's Length: Improving Criminal Investigations of Police Shootings" *Stanford Criminal Justice Center* 9 (2016).

order to ensure accountability in the cases involving misconduct by the police and excessive use of force. To uphold the constitutional safeguards and public confidence in the law enforcement agencies, these mechanisms perform a combination of core investigations, civil remedies, criminal prosecutions and federal oversight.

The main mechanism of the internal affairs division of the police departments is to look into the complaints against officers, including those related to the dues of misconduct or disproportionate force. In an order to ascertain whether or not the officers behaved in acquiescence with departmental policies, these investigations look at evidence such as incident reports, body-camera footage, and witness statements. If it is discovered that an officer is engaged in misconduct then such officers may be demoted, suspended or fired.<sup>59</sup>

Criminal enquiry and prosecution are yet another crucial culpability measure. Prosecutors may examine the evidence presented in the case before a grand jury to decide upon the fact whether to file the criminal charges or not. If an officer's actions are sought to be illegal, they may have to suffer prosecution for crimes like murder, manslaughter or the even the violation of civil rights. Federal civil rights laws empower the U.S. Department of Justice (DOJ) to peep into the functioning of the law enforcement agencies for examining the patters of misconduct. Victims or their acquaintances may also file civil lawsuits seeking compensation for wrongful death or the breach of constitutional rights.<sup>60</sup> In order to promote transparency and public oversight of law enforcement, numerous cities have promoted the use body-worn cameras.<sup>61</sup>

## 7. COMPARATIVE ANALYSIS: INDIA, IRAN AND THE USA

A legal analysis relating to the extrajudicial executions in the India, Iran and United States of America reveals both equivalents and inconsistencies in their political

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<sup>59</sup> U.S. Department of Justice, Office of Community Oriented Policing Services, Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice (2009), available at: <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-p164-pub.pdf> (last visited on March 7, 2026).

<sup>60</sup> U.S. Department of Justice, Civil Rights Division, Addressing Police Misconduct: Laws Enforced by the Department of Justice, available at: <https://www.justice.gov/crt/addressing-police-misconduct-laws-enforced-department-justice> (last visited on March 7, 2026).

<sup>61</sup> "Considering Police Body Cameras" 128 *Harvard Law review* 1794- 1817 (2015).

systems, legal frameworks, and accountability frameworks. Despite the fact that all three nations have formal legal frameworks governing the use of force by law enforcement, there are significant differences in the implementation of these laws and the level of oversight. These variations are significantly impacted by the political climate, judicial independence, and constitutional framework of each nation.

### 7.1. Legal Framework

Both the India and United States of America are constitutional democracies where the use of force by law enforcement agencies is regulated by statutes and decisions of the court. Article 21 to the Constitution of India guarantees the right to life and personal liberty,<sup>62</sup> and the statutory laws such as the Code of Criminal Procedure<sup>63</sup> and other criminal laws regulate the action relating to official undertakings. Similarly, the Fourth Amendment to the Constitution of United States of America forbids unwarranted seizures and governs the use of force by the police authorities in the United States. The conditions under which the use of lethal force may be appropriated have been further elaborated by the court of law, especially in situations involving self-defence. The concept of "objective reasonableness" is one of the landmarks rulings laid down by the Supreme Court of United States of America in the case of **Graham v. Connor**.<sup>64</sup>

While on the other hand Iran has a legal system that represents a blend of the Islamic law with constitutional governance, empowering security institutions by granting them the power to deal with state threats. The administration of justice is heavily based upon the religious legal principles and national security concerns, even though the fundamental rights are formally recognised by the Iranian Constitution. The Revolutionary Guards and other security forces are crucial for preserving internal stability, but their activities might not always be subject to the same degree of judicial scrutiny as are visible in the democratic nations.

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<sup>62</sup> *Supra* note 17.

<sup>63</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974).

<sup>64</sup> *Supra* note 51.

## **7.2. Nature of Extra Judicial Killings**

There are contrasting differences among these three nations considering the types and circumstances of extrajudicial executions. Alleged fake encounters often occur in India during counterterrorism operations, insurgency suppression, and organised crime control initiatives. Such actions are frequently defended by the authorities by claiming that they were necessary acts of self-defence. Critics counter that some encounters are staged to get rid of suspects without adhering to the proper legal standards.

In Iran the extrajudicial executions are more commonly linked to national security operations and political repression. The security personnel is often charged with using deadly force against people who are thought to be involved in separatist movements, protests or anti-government activities. In these situations, murders may take place during security operations or in situations where it is alleged that due process was violated.

While the controversial police shootings in the United States of America typically take place during arrests or altercations with suspects. The majority of incidents in the US stem from the disagreements over the fact whether the officer's use of force was appropriate in the given situation or not, in contrast to the idea of staged encounters that is frequently discussed in India. Courts must decide whether the officer used excessive force or acted in self-defence in these cases, which frequently involve complicated factual circumstances.

## **7.3. Judicial Accountability**

The three jurisdictions' judicial accountability systems differ greatly from one another. The Indian judiciary is actively involved in tackling the problem of phoney encounters. The Court has recognized procedural guiding principle to assure autonomous investigation of encounter deaths and has emphasised through a number of rulings that police officers cannot enforce the law on their own. In a number of cases, courts have also mandated investigations and prosecutions, thus, reaffirming the fact that no authority is above the law.

In the United States of America, criminal prosecutions, civil rights enforcement, and constitutional litigation are the main ways to counter the police misconduct. Victims or their families may file civil lawsuits for the violation of the constitutional rights and the courts consider cases based on constitutional standards. Federal organizations like the Department of Justice also have the authority to look into the matter of systemic misconduct in police departments.

However, limited judicial oversight and transparency in cases involving security forces has drawn criticism from foreign observers in Iran. Critics contend that investigations into security agency actions are frequently carried out within the same institutional framework which limits independent scrutiny, despite the fact that the Iranian legal system includes courts tasked with the responsibility of administering justice.

#### **7.4. Public and Media Response**

The public awareness and media attention are crucial in an order to reveal instances of extrajudicial executions and establish accountability systems. The human rights activists, civil society organizations and independent media outlets actively look into and report alleged abuses by law enforcement agencies in the democratic nations like the United States of America and India. Social media campaigns, analytical journalism and public demonstrations have frequently drawn attention to antagonistic cases and put pressure on authorities to conduct investigations.

Police shootings have often sparked not only national but international discussions as well with regard to criminal justice reforms, racial discrimination and policing methods in the United States. In a similar vein, public discussion and judicial intervention in India have been aided by media coverage of purported fake encounters.

However, the Iran's media landscape on the other hand is tightly regulated and limitations on the freedom of press makes it more difficult for the journalists and activists to publicly report on cases involving security forces.

Because of this, there may be relatively little public scrutiny of extrajudicial killings and reports from human rights organizations and international organizations may be the main source of information about such incidents. Overall, this comparative study shows that although extrajudicial killings are a problem in India, Iran, and the US in different ways, but how these incidents are looked into and dealt with is greatly influenced by the strength of democratic institutions, judicial independence, and the freedom of the press.

## 8. CHALLENGES IN PREVENTING FAKE ENCOUNTERS

### 8.1. Corruption

In today's time corruption is the biggest impediment in law enforcement and the worst enemy of humankind. This evil is so deeply embedded in our system that it is probably difficult to shed away the whims of corruption. Bribing by the political leaders, influential individuals or the criminal gangs may in many cases allure the security personnel to conduct such acts which are contract to the legality of the case. This evil erodes the public trust in the criminal justice system.

### 8.2. Procedural Delays

No doubt each individual has a right to fair hearing and trial by the virtue of article 14 to the International Covenant on Civil and Political Rights.<sup>65</sup> This

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<sup>65</sup> *Supra* note 4, art. 14 states:

1. *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*
2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*
3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:*
  - (a) *To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*
  - (b) *To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;*
  - (c) *To be tried without undue delay;*

right is also expressed by most of the countries in their respective constitutions or domestic regulations, however, the procedural delays which occur during the exercise of this right often increase the rage in public, thus, it's another compelling circumstance which indirectly pushes the personnel towards taking the law in their hands as following the legal procedure becomes a cumbersome task.

### 8.3. Weak Accountability Mechanisms

The accountability mechanisms are usually not strong enough to try and prosecute the police officers involved in extra judicial killings. Even in some cases we could observe that the investigation regarding the fake encounters is being carried by the same team of police officers which was itself involved in those killings.

### 8.4. Political pressure

The security forces are often faced by the challenge of political pressure especially in those cases where the public outrage is involved. This pressure upon them instigates them to take shortcuts by conducting encounters, as a result of which they bypass the legal procedure of investigation, trial and judicial

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- (d) *To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;*
  - (e) *To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
  - (f) *To have the free assistance of an interpreter if he cannot understand or speak the language used in court;*
  - (g) *Not to be compelled to testify against himself or to confess guilt.*
4. *In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.*
  5. *Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*
  6. *When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.*
  7. *No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.*

determination of guilt, thus, leading to the miscarriage of justice.

### **8.5. Public Demand for Instant Justice**

In controversial cases or the cases involving grave crimes such as rape, organized crimes, terrorism etc. the sentiments of public are involved which cannot be easily ignored. These sentiments and demand for justice by the public and media pressure often encourage the police officers to punish the alleged individual by the way of encounters as in such a case the officer executing the encounters are often celebrated as heroes in the society for their bravery and courage, moreover the societal approval leads to the reduction in the guilt of perpetrating extra judicial killings, however, practically it is an offence against the fundamental rights of the individual who is being so eliminated.

## **9. RECOMMENDATIONS**

### **9.1. Autonomous Investigations**

The investigations in such cases must be conducted by an independent or autonomous body and not by the same police force which was involved in the case of fake encounter as it is very well exemplified by the principle of *nemo iudex in causa sua* meaning thereby that “nobody should be judge in their own cause”.

### **9.2. Use of Technology**

Mandating the use of body cameras, dash cameras and the CCTV surveillance system can aid and facilitate in the impediment of fake police encounters as by these mediums a true synchronisation of the events can be evolved. Additionally, the forensic evidence can be used for ballistic analysis, digital crime scene reconstruction and Deoxyribonucleic Acid testing to evolve more certain results from the investigation. Technology also plays an upper hand in the GPS tracking, maintaining digital logs of the police vehicles and digital data management system, all that accelerates transparency in investigation.

### 9.3. Police Training

The training of the police personnel should be intended to promote the values of human rights protection and the use of force legally so as to avoid torture and cruel treatment by the perpetrator upon the subjects of violence. As per article 16 to the International Conventional against Torture<sup>66</sup> each state shall try to obstruct the commission of any kind of cruel or degrading treatment by the person acting in official capacity within its jurisdiction.

### 9.4. Judicial Oversight

The judiciary should have a prompt stance in these cases and must encourage effective investigations. Not only this but judicial rulings also play a great role in setting a binding present so as to provide a mechanism to combat such extraneous killings in future. For example, in the case of **Naga People's Movement for Human Rights v. Union of India**,<sup>67</sup> the Supreme Court of India scrutinized the validity of the Armed Forces (Special Powers) Act<sup>68</sup> and upheld the act by stating that the police forces or the security forces must employ minimal force in an order to maintain public order while preventing the abuse of power at the same time.

### 9.5. Accountability towards the General Public

An important factor which could help in reducing the count of extra judicial killings is the accountability of police towards the general public. Media which is also known as the fourth- pillar of democracy needs to remain vigilant in such cases and must strive towards actively demonstrating such issues at those

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<sup>66</sup> The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1984, art. 16 states:

1. *Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.*
2. *The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.*

<sup>67</sup> (1998) 2 SCC 109.

<sup>68</sup> *Supra* note 31.

platforms which are continuously assessed by the public. The public movements and participation could actually impede the structural framework of accountability or responsibility on the behalf of security personnel.

## **10. CONCLUSION**

Fake encounters are one of the major risks to the protection of human rights and the rule of law. The extrajudicial killings violate the rudimentary idea that each individual has a right to fair hearing and due process of law to be followed during such hearing, however, sometimes the governments themselves defend such acts claiming them as necessary to combat terrorism and crime.

Analysing the legal systems in Iran, India, and the United State of America in contract to each other depicts that despite these countries possess distinct legal systems, the fundamental issue of holding the states accountable for their acts of violence is the same. While the United States banks on constitutional canons governing use of force by the police, India has undergone substantial judicial intercession intended at regulating police encounters. Iran, on the other hand, is often condemned for the lack of accountability and transparency in the similar situations.

In the end, preventing phony encounters makes a call for establishment and efficient functioning of robust institutions, bias less inquiries, and an unfaltering perseverance towards upholding the legendary principles of rule of law. Democratic nations must indorse the values of accountability, justice, and respect for human rights rather than succumbing themselves to taking short cuts in criminal justice system. Therefore, the societies can guarantee the upholding of justice rather than undermining it only by following these steps.