

Extra Judicial Killings

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Abstract: This research paper delves into the multifaceted issue of extra-judicial killings, exploring its root causes, societal implications, and the international legal framework designed to prevent and address such violations. By examining real-world examples from different regions and contexts, this article aims to shed light on the complexities of this pressing issue, emphasizing the urgent need for governments, civil society, and international bodies to collaborate in the pursuit of justice and the protection of human rights.

The Indian Constitution provides equal rights to every citizen. But, does every citizen get this right? Even though it's the 'Rule of Law' (Equality before Law), in a Democratic country, like India, it is shameful to say the rights of its citizens are denied by its government servants themselves, by way of Extrajudicial killings (custodial violence). In India, we are taking care of the human rights of a brutal killer like Kasaab but we are not thinking about the human rights of our nationals. The doctrine of Extra Judicial Killing is a highly controversial topic in India, with many instances of such killings reported over the years. Despite efforts to combat this issue, extra-judicial killings continue to occur, raising questions about the legality and morality of such actions.

Keywords: Extra-judicial killing, Democracy, Rights, Accused, Crime

INTRODUCTION

Sometimes government authorities kill criminals without the proper legal process, which means executing a person illegally. It violates human rights mercilessly, and the person who is not proven guilty cannot be called an offender. Sometimes it is a fake encounter without proper investigation. Extrajudicial not only kill a person but also the hopes of the people to get justice because before reaching the door of courts, the justice will be done by the people who don't have authority.

Extrajudicial killings as the name itself suggests are the killings which are not under the purview of law. They are often targeted towards eminent social, religious and political figures and mainly the perpetrators are state authorities like police officials

or armed personnel, those killings where aforementioned authorities take away any person's life because of some ulterior motives, i.e, which cater only their interests and not state's then those killings would not fall within the ambit of "extra judicial killings". These killings are not only prevalent in India but are also prevalent across the world. This ill practise considered to be against the virtue of democracy. If extra judicial killings become a way of dispensing justice, then it will become a hindrance to democracy and will signify hegemony in India. These killings are generally regarded as capricious misuse of power by certain police officials, public officials, duty officials or any official who is duty bound to carry on nitty-gritty of the pre-trial of the accused. At its core, an extra-judicial killing is the deliberate killing of a person by state agents or individuals acting with the implicit or explicit authorization of the state, without due process of law. This form of violence bypasses legal procedures, discards the presumption of innocence, and infringes upon the right to a fair trial, principles that form the bedrock of any democratic society. The victims of extra-judicial killings can range from criminal suspects and political activists to marginalized and vulnerable populations.

The principle of "Audi Alteram Partem" states that "every individual has a right to be heard." It puts forth that no one should be condemned unheard, they should be given the reasonable opportunity to present themselves before the court of law. It is the most basic and yet the most important principle to ensure that a fair trial is done in a case. However, in the present case, the accused is murdered in front of everyone. There is a mockery of the due process of law, basic human rights, fundamental rights, and most importantly the Indian Constitution.

RESEARCH METHODOLOGY

In terms of its nature, this research paper is mainly descriptive. This research is conducted based on both primary and secondary sources. Secondary sources include online databases like newspapers, Committee

Reports, websites, and journals. Few primary sources like statutes and provisions have been used. An extensive study of the legality of Extra-judicial killing in India has been conducted and views are presented based on critical analysis of the topic, to better understand the topic.

Causes of Extra Judicial Killings

The root causes of extra-judicial killings in India are complex and multifaceted, often stemming from a combination of social, political, economic, and institutional factors. While it's important to note that not all instances of extra-judicial killings share the same underlying causes, here are some common factors that contribute to this issue:

1. **Weak Judicial System and Slow Legal Processes:** A significant backlog of cases in the Indian judiciary has led to delays in the resolution of cases. This sluggishness in the legal system can sometimes lead to frustration among law enforcement personnel and result in them taking matters into their own hands, resorting to extra-judicial measures.
2. **Lack of Accountability and Impunity:** In some cases, law enforcement agencies and officials responsible for extra-judicial killings have often escaped accountability due to inadequate oversight mechanisms and a culture of impunity. This fosters an environment where officers believe they can act outside the law without facing consequences.
3. **Socio-Economic Inequalities:** Socio-economic disparities, unequal access to justice, and marginalization can lead to frustrations and grievances within certain communities. This can create an environment where extra-judicial measures are seen as a means of addressing grievances.
4. **Weak Witness Protection:** Lack of effective witness protection mechanisms can discourage witnesses from coming forward to testify against law enforcement officials involved in extra-judicial killings. This further contributes to the culture of impunity.
5. **Armed Conflicts and Insurgencies:** In regions with ongoing conflicts or insurgencies, security forces might resort to extra-judicial killings in their efforts to combat perceived threats. These situations can be particularly complex, blurring the lines between legal actions and abuses.

6. **Media and Public Opinion:** A sensationalist media and a lack of accurate reporting can sometimes influence public opinion and contribute to a perception that extra-judicial measures are justified in the interest of maintaining law and order.

7. **Lack of Police Reforms:** The absence of comprehensive police reforms that focus on improving professionalism, accountability, and community-oriented policing can perpetuate a culture where extra-judicial measures are considered acceptable.

Addressing the root causes of extra-judicial killings in India requires a multi-dimensional approach that encompasses judicial reforms, police accountability, strengthening human rights protections, promoting community engagement, and fostering a culture of respect for the rule of law. It necessitates collaboration between government institutions, civil society, and international organizations to bring about meaningful change and ensure the protection of human rights for all individuals.

Societal Implication

Extra-judicial killings have profound and far-reaching societal implications that affect not only the immediate victims and their families but also the broader community and the overall fabric of society. Some of the key societal implications of extra-judicial killings include:

1. **Erosion of Trust in Authorities:** Extra-judicial killings erode public trust in law enforcement agencies and the justice system. When citizens perceive that those responsible for upholding the law are themselves engaged in unlawful actions, it undermines their confidence in the institutions meant to protect their rights and safety.
2. **Culture of Fear and Intimidation:** The occurrence of extra-judicial killings can create a culture of fear and intimidation within communities. People might become afraid to voice their opinions, engage in activism, or cooperate with authorities out of fear of retribution.
3. **Normalization of Violence:** When extra-judicial killings go unchecked, they contribute to the normalization of violence as a means of resolving conflicts. This can lead to a vicious cycle of violence where communities start resorting to violence to protect their interests or seek justice, perpetuating a cycle of revenge.

4. **Social Polarization:** Extra-judicial killings can deepen social divisions and tensions within society. Communities affected by such incidents might develop strong feelings of resentment and anger towards authorities, leading to polarization along lines of trust and mistrust.

5. **Impact on Rule of Law:** Extra-judicial killings directly undermine the rule of law, which is a cornerstone of a just society. When individuals or state agents bypass legal processes and act outside the confines of the law, it weakens the legitimacy of legal institutions and fosters a sense of lawlessness.

6. **Human Rights Violations:** These killings are blatant violations of human rights, including the right to life, the right to a fair trial, and the prohibition of torture and cruel, inhuman, or degrading treatment. This undermines the basic principles of human dignity and equality.

7. **Disruption of Social Cohesion:** Communities affected by extra-judicial killings can experience a breakdown of social cohesion. Trust among community members, as well as between communities and authorities, can be severely strained, making it difficult to build a harmonious and functional society.

8. **Loss of Development Opportunities:** The negative image created by extra-judicial killings can deter foreign investment and development initiatives. A society marked by violence and human rights abuses is less likely to attract economic investments and international partnerships.

9. **Undermining Democracy:** In a democratic society, the role of law enforcement agencies is to protect citizens' rights within the framework of the law. Extra-judicial killings undermine democratic ideals and can lead to a perception that the state prioritizes power over the rights and well-being of its citizens.

10. **International Repercussions:** Extrajudicial killings can lead to international condemnation, affecting a country's global image and diplomatic relations. It may result in sanctions, human rights probes, or restrictions in international aid and cooperation.

Addressing the societal implications of extra-judicial killings requires a comprehensive approach that involves legal reforms, accountability mechanisms, community engagement, awareness campaigns, and

efforts to rebuild trust between citizens and law enforcement agencies. It's crucial to recognize that the impacts of these killings extend far beyond the immediate incidents and have lasting repercussions on the social fabric of a society.

International Legal Framework

The international legal framework designed to prevent and address extra-judicial killings is based on various international human rights treaties, conventions, and declarations. These instruments provide a foundation for holding states accountable and promoting the protection of human rights. Some key components of the international legal framework include:

1. **Universal Declaration of Human Rights (UDHR):** Adopted by the United Nations General Assembly in 1948, the UDHR outlines fundamental human rights principles, including the right to life and the right to a fair trial. While the UDHR is not legally binding, it has served as a moral and political guide for shaping subsequent international human rights law.

2. **International Covenant on Civil and Political Rights (ICCPR):** This treaty, which came into force in 1976, is legally binding and establishes the right to life (Article 6) and the prohibition of torture, cruel, inhuman, or degrading treatment (Article 7). States parties to the ICCPR are obligated to ensure that these rights are protected and respected.

3. **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT):** Enacted in 1984, the CAT specifically addresses the prohibition of torture and other forms of cruel treatment. It requires states to prevent and punish acts of torture and establishes measures for effective investigation and prosecution.

4. **Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions:** Also known as the "Minnesota Protocol," these principles provide guidance on conducting thorough and impartial investigations into cases of extra-judicial killings. They outline procedural safeguards and best practices to ensure accountability.

5. **Rome Statute of the International Criminal Court (ICC):** The ICC, established in 2002, is a permanent international court that prosecutes individuals for the most serious crimes of

international concern, including crimes against humanity, genocide, and war crimes. Extra-judicial killings can fall under its jurisdiction, depending on the circumstances.

6. United Nations Human Rights Council (UNHRC): The UNHRC, through its mechanisms such as special rapporteurs, working groups, and universal periodic reviews, monitors and reports on human rights violations, including extra-judicial killings. It plays a critical role in addressing these issues on a global scale.

7. Inter-American Commission on Human Rights (IACHR): In the Americas, the IACHR has been instrumental in addressing extra-judicial killings and human rights abuses. It monitors compliance with human rights standards in the region and provides recommendations to states.

8. African Commission on Human and Peoples' Rights: For the African continent, this commission plays a similar role to the IACHR, monitoring human rights situations, conducting investigations, and making recommendations to member states.

9. Domestic Legislation and National Jurisdictions: Many countries have domestic laws and legal mechanisms that criminalize extra-judicial killings and hold perpetrators accountable. These can include laws against murder, torture, and abuse of power.

10. Civil Society and Advocacy: Non-governmental organizations (NGOs), human rights groups, and advocacy networks play a crucial role in raising awareness about extra-judicial killings, documenting cases, and pressuring governments to take action.

These international instruments and mechanisms collectively contribute to a framework that seeks to prevent and address extra-judicial killings. However, their effectiveness ultimately depends on the willingness of states to uphold their obligations, implement reforms, and ensure accountability for violations. Advocacy, awareness, and collaboration between governments, civil society, and international organizations are vital to making progress in this area.

Indian Legal Framework

India, the legal framework related to extra-judicial killing encompasses various laws and provisions that

address human rights violations, police misconduct, and the use of excessive force. While the Indian legal system prohibits extra-judicial killings, the enforcement and accountability mechanisms can vary. Here are some key components of the Indian legal framework related to extra-judicial killings:

1. Constitution of India: The Constitution guarantees the right to life and personal liberty as fundamental rights under Article 21. Any violation of this right through extra-judicial killings is subject to legal scrutiny and can be challenged in the courts.

2. Indian Penal Code (IPC): The IPC includes provisions that address unlawful killings, such as murder (Section 300) and culpable homicide not amounting to murder (Section 299). Law enforcement personnel who engage in extra-judicial killings can be charged under these sections if their actions do not fall within the scope of self-defense or legal authority.

3. Code of Criminal Procedure (CrPC): The CrPC outlines procedures for investigation, arrest, and custody of individuals. It mandates that arrests should be made based on evidence and in compliance with established procedures. Any abuse of power leading to extra-judicial killings can be challenged in court.

4. National Human Rights Commission (NHRC): The NHRC is an autonomous body responsible for promoting and protecting human rights in India. It investigates complaints of human rights violations, including extra-judicial killings, and recommends actions to be taken against those responsible.

5. Armed Forces (Special Powers) Act (AFSPA): In conflict-prone areas, the AFSPA grants special powers to the armed forces for maintaining public order. Critics argue that this law has been associated with instances of extra-judicial killings due to the legal immunity it provides to the armed forces.

6. State Police Acts: Different states in India have their own police acts that lay down the powers and responsibilities of the police force. These acts often require police officers to adhere to certain standards of conduct and accountability.

7. Public Interest Litigation (PIL): The PIL mechanism allows citizens to directly approach the courts to seek redressal of public grievances and

human rights violations, including extra-judicial killings.

While the legal framework is in place to prevent and address extra-judicial killings, challenges remain in terms of enforcement, accountability, and transparency. Cases of extra-judicial killings can involve complex investigations, potential collusion, and difficulties in securing witness testimonies. To truly combat this issue, it is essential to ensure that the legal provisions are effectively implemented and that mechanisms are in place to hold perpetrators accountable and provide justice to victims and their families.

Supreme Court Guidelines

In the *PUCL vs State of Maharashtra case (2014)*, the SC was dealing with writ petitions questioning the genuineness of *99 encounter killings by the Mumbai Police* in which 135 alleged criminals were shot dead *between 1995 and 1997*.

Supreme Court then laid down the following 16-point guidelines as the standard procedure to be followed for *thorough, effective, and independent* investigation in the cases of death during police encounters:

1. Record Tip-off: Whenever the police receive any intelligence or tip-off regarding criminal activities pertaining to the commission of a grave criminal offence, it must be recorded either in writing or electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed.
2. Register FIR: If in pursuance to a tip-off, the police uses firearms and this results in the death of a person, then an FIR initiating proper criminal investigation must be registered and be forwarded to the Court without any delay.
3. Independent Probe: Investigation into such death must be done by an independent CID team or a police team of another police station under the supervision of a senior officer. It has to fulfil eight minimum investigation requirements like, identify the victim, recover and preserve evidentiary material, identify scene witnesses, etc.
4. Magisterial Probe: Mandatory magisterial inquiry into all cases of encounter deaths must be held and a report thereof must be sent to the Judicial Magistrate.
5. Inform NHRC: The NHRC or State Human Rights Commission (as the case may be) must be immediately informed of the encounter death.
6. Medical Aid: It must be provided to the injured victim/criminal and a Magistrate or Medical Officer must record his statement along with the Certificate of Fitness.
7. No Delay: Ensure forwarding FIR, panchnamas, sketch, and police diary entries to the concerned Court without any delay.
8. Send Report to Court: After full investigation into the incident, a report must be sent to the competent Court ensuring expeditious trial.
9. Inform Kin: In the case of death of accused criminal, their next of kin must be informed at the earliest.
10. Submit Report: Bi-annual statements of all encounter killings must be sent to the NHRC by the DGPs by a set date in set format.
11. Prompt Action: Amounting to an offence under the IPC, *disciplinary action must be initiated against the police officer found guilty* of wrongful encounter and for the time being that officer must be suspended.
12. Compensation: The compensation scheme as described under Section 357-A of the CrPC must be applied for granting compensation to the dependants of the victim.
13. Surrendering Weapons: The concerned police officer(s) must surrender their weapons for forensic and ballistic analysis, subject to the rights mentioned under Article 20 of the Constitution.
14. Legal Aid to Officer: An intimation about the incident must be sent to the accused police officer's family, offering services of lawyer/counsellor.
15. Promotion: No out-of-turn promotion or instant gallantry awards shall be bestowed on the officers involved in encounter killings soon after the occurrence of such events.
16. Grievance Redressal: If the family of the victim finds that the above procedure has not been followed, then it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. The concerned

Sessions Judge must look into the merits of the complaint and address the grievances raised therein.

The Court directed that these requirements/norms must be strictly observed in all cases of death and grievous injury in police encounters by treating them as law declared under Article 141 of the Indian Constitution. Supreme Court also directed Police/Para Military Force cannot ambush attack.

Vohra Committee Report

Vohra (Committee) Report was submitted by the former Indian Home Secretary, N. N. Vohra, in October 1993. It studied the problem of the criminalisation of politics and of the nexus among criminals, politicians and bureaucrats in India.

"In the first meeting of the Committee (held on 15th July '93), I had explained to the Members that Government had established the Committee after seeing the reports of our Intelligence and Investigation agencies on the activities/linkages of the Dawood Ibrahim gang, consequent to the bomb blasts in Bombay in March 1993." (2.1, cf. 1993 Bombay bombings, Dawood Ibrahim)

"In the bigger cities, the main source of income relates to real estate - forcibly occupying lands/buildings, procuring such properties at cheap rates by forcing out the existing occupants/tenants etc. Over time, the money power thus acquired is used for building up contacts with bureaucrats and politicians and expansion of activities with impunity. The money power is used to develop a network of muscle-power which is also used by the politicians during elections." (3.2)

"The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country. The existing criminal justice system, which was essentially designed to deal with the individual offences/crimes, is unable to deal with the activities of the Mafia; the provisions of law in regard economic offences are weak (...)" (3.3)

"Director CBI has observed that there are many such cases, as that of [mafia boss Iqbal] MIRCHI where the initial failure has led to the emergence of Mafia giants who have become too big to be tackled." (3.4)

"Like the Director CBI, the DIB has also stated that there has been a rapid spread and growth of criminal gangs, armed senas, drug Mafias, smuggling gangs, drug peddlers and economic lobbies in the country

which have, over the years, developed an extensive network of contacts with the bureaucrats/Government functionaries at the local levels, politicians, media persons and strategically located individuals in the non-State sector. Some of these Syndicates also have international linkages, including the foreign intelligence agencies." (6.2)

"The various crime Syndicates Mafia organisations have developed significant muscle and money power and established linkages with governmental functionaries, political leaders and others to be able to operate with impunity" (10.1.ii)

"The various agencies presently in the field take care to essentially focus on their respective charter of duties, dealing with the infringement of laws relating to their organisations and consciously putting aside any information on linkages which they may come across" (11.1)

"In the background of the discussions so far, there does not appear to be need for any further debate on the vital importance of setting up a nodal point to which all existing intelligence and Enforcement agencies (irrespective of the Department under which they are located) shall promptly pass on any information which they may come across, which relates to the activities of crime Syndicates" (13.1)

Incidents of India

India has unfortunately witnessed instances of extra-judicial killings over the years, where individuals have been killed by state agents or law enforcement personnel without due process of law. Some well-known cases include:

1. Manya Surve Encounter

Manohar Arjun "Manya" Surve (8 August 1944 – 11 January 1982), was an Indian gangster based in Mumbai. He was one of the educated gangsters who graduated from college and was very well known for challenging and defeating existing gangs. It is First Encounter in the files of Mumbai Police.

On 11 January 1982, Surve took a taxi to the Ambedkar College junction in Wadala. It is believed Mumbai police received a tip from Dawood Ibrahim that Surve would be arriving at a beauty parlour near the Ambedkar College junction there. It is also theorised that his girlfriend Vidya revealed his whereabouts at that time, as was shown in the movie *Shootout at Wadala*. At around 1:30 pm, 18 Crime Branch officers split into three teams and

waited for him to arrive. After twenty minutes, Surve was spotted exiting a taxi to pick up his girlfriend Vidya.

After noticing several men closing in on him and taking positions, Surve pulled out his Webley & Scott revolver. However, before he could fire a shot, police officers Raja Tambat and Isaque Bagwan fired five bullets into his chest and shoulder. Surve was dragged from the scene and put in an ambulance. This encounter was the end of Surve's spree of urban crime. This happened due to his involvement in the murder of Dawood's brother Shabbir.

Surve's death became known as Mumbai's first recorded encounter killing. The rate of encounter killings increased in the late 1980s and further rose after the 1993 Mumbai bombings; a total of 622 alleged criminals were killed in police encounters from 1982 to 2004.

2. Veeramani Encounter

The "dada" of Chennai's coastline was on the run a couple of years ago and had escaped to Cuddalore when the Chennai Police was closing in on him. Later, when an "encounter" looked imminent, he surrendered. The Veeramani killing comes four months after the March 25 shoot-out at Kotturpuram in which Rajaram, a leader of the banned Tamil Nadu Liberation Army, was killed. Last year, the Chennai Police was involved in five encounters, in which five criminals, including Sanjay Ghate, an aide of Mumbai gangster Chhota Rajan, were killed.

Vijayakumar has been reiterating that the police would not hesitate to shoot at criminals if there is a threat to the policemen's lives.

CONCLUSION

In conclusion, the issue of extra-judicial killings is a grave violation of fundamental human rights and a glaring affront to the principles of justice, equality, and the rule of law. Throughout history and across diverse contexts, these killings have left a trail of suffering, fear, and mistrust in their wake, impacting individuals, families, communities, and entire societies.

To combat extra-judicial killings, societies must strive for comprehensive police reforms, strengthen the judicial system, ensure transparency and accountability in law enforcement, and provide accessible avenues for justice and redress. It is incumbent upon governments to create an

environment where the rule of law prevails over the temptation to bypass it in pursuit of expediency.

In this collective endeavor, the media plays a vital role in exposing instances of extra-judicial killings, shedding light on the darkest corners of society, and urging the world to demand change. Communities must also unite to reject violence and call for peaceful and equitable solutions to conflicts, acknowledging that the cycle of violence only begets more violence.

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