

EXTRA-JUDICIAL KILLINGS IN INDIA: EXAMINING BOTH ENDS OF THE ROPE

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Abstract

Extra-judicial killings have become a recurrent phenomenon in India. Today, this issue of extra judicial killings is an urgent concern which the Indian society faces. Such killings lie outside the purview of the judicial mechanism established by law. Just like a coin which has two sides to it, extra-judicial killings also have two facets to them. One facet takes into account the considerations which a police officer has while committing such an act. Whereas, on the other hand, the other facet elucidates the circumstances of the accused who gets killed without being given an opportunity of being heard. The law protects both these individuals provided they act within the confines of law. The dynamics of extra-judicial killing require a careful examination as regards to the stance of law in relation to both the executive agency of the state and the person in custody which ultimately becomes the victim. The present paper comprehensively looks forward to the protections as provided by law to the police officers, when acting within the scope of the law. It also explores the inherent rights bestowed upon the victim by the law. It shall also delve upon the relief which a victim can seek in cases of extra-judicial killings. Thus, the paper examines both the ends of the rope of the criminal justice system.

Keywords

Extra-judicial killing, police officer, accused

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Introduction

Law and Order which relates to the obedience of law in the region, is one of the primary objectives of any Country. The State is consistently tasked with maintaining the law and order in the country and this responsibility sometimes involves cases where the police resorts to killing of the accused persons of a criminal offence in their custody. Such killings can either be under the sanctions of law or can be a wrongful act. The act of the police while murdering such detainees which they are not authorised by the law is known as an extra judicial killing. The said term includes all the killings done by the police officers of the individuals merely accused of an offence and without any authority conferred to them by the law. It is imperative to note here that not all the deaths of the accused persons by the police would amount to extra judicial killings as there are cases where it is indispensable for the police to take away the lives of such accused persons and therefore the law recognises such circumstances and affords adequate protection to the police in such circumstances. There have been instances as well where this power is either abused or misused such as the cases of fake encounters in which the necessity is staged to undertake the execution. Nevertheless the paper will delve into both perspectives and the legal framework surrounding the same.

Constitutional aspect and infringement of rights

The preamble to the Constitution resolves to secure to all the citizens of the country, the notion of equality. Equality is thus, guaranteed to all, be it an accused person or a guilty one. Every citizen in the country is granted certain basic fundamental and human rights for his/her comprehensive well-being and development. The fact that the protection of these rights to an individual continues even while he is under police custody is what this paper revolves around. That is it not the responsibility of the law enforcement agencies i.e., the police officers to kill or get done away with a person who is merely accused of an offence. A prominent saying of the criminal jurisprudence that *a man is innocent until proven guilty* fits in the present context to elucidate point that since a man is innocent until and unless his guilt has been proved therefore, he being in the police custody does not in any way entitle the executive agencies to kill him in a non-judicial manner. The Constitutional provisions which protect an accused under police custody are:

Article 21:

Extra judicial killing by the police officers infringes the Article 21 of the Indian Constitution. The Article guarantees right to life and liberty which cannot be taken away from an individual except in accordance with the procedure established by law.¹⁰⁰ The fact that there exists no procedure as such established by law which entitles the police officers to kill an accused person makes it blatantly clear that killing of a person by police officers in a non-judicial manner is outrightly out of the purview of the powers of this executive organ of the state.

¹⁰⁰ The Constitution of India, a 21.

However, the law provides certain provisions in which the last resort of such killing can be taken up by the police. Such provisions as have been discussed below act as a protection to the police officers, nevertheless, if the act of the police officer does not fall within the said provision, it leads to the direct infringement of the right to life of the accused person who gets killed in such killing. Article 21 of the Indian Constitution aims to provide a dignified human life which is more than a mere animal-like existence. It aims to provide a life worthy of living and not just for namesake existence.¹⁰¹

Any individual who is either guilty or not but is in the police custody, cannot be left devoid of his/her Fundamental Rights as provided by the Constitution. It is a duty cast on the state to ensure that the fundamental right of Right to life as enshrined under Article 21 is not taken away from such a person, except in consonance with the law.¹⁰² However, it is strange that, the state has to perform this duty through its executive agency i.e., police officers, who themselves are the perpetrators of the crime of custodial deaths.

In the case of *D.K. Basu & Ors. v. State of West Bengal*,¹⁰³ the Apex Court reiterated that the instances of deaths under police custody are a mark of grave injustice caused to the society. The Court highlighted the fact that in cases of police custodial deaths even the evidence is interfered with and it becomes difficult to prove the charge of such deaths. Moreover, no form of a civilised system allows an executive arm of the government to take away the lives of the citizens of its country and then claim the defence of it being the sovereign.¹⁰⁴

Article 21 being one of the most important Fundamental Rights guaranteed by the Constitution forms the basis of living of an individual within our country. The act of extra-judicial killing or killing under police custody directly strikes on this basic human right and thus, such act of extra-judicial killing is an act ultra vires the Indian Constitutional scheme.

Article 14:

The act of killing a person in police custody or out of the judicial set-up amounts to the infringement of Article 14 of the Indian Constitution. According to Article 14 of the Constitution, the State shall not refuse to any person equality before law and equal protection of laws.¹⁰⁵ However, when a person is killed extra judicially by the police officers, who themselves constitute the state, it is a violation of the mandate of Fundamental Right of Article 14 of the Constitution.

¹⁰¹ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608; *People's Union for Democratic Rights (PUDR) v. Union of India*, (1982) 3 SCC 235; *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161; *Olga Tellis v. Bombay Municipal Corporation.*, (1985) 3 SCC 545; *Suk Das v. Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401

¹⁰² *Neelabati Bahera v. State of Orissa*, 1993 (2) SCC 746.

¹⁰³ AIR 1997 SC 610.

¹⁰⁴ *Nagendra Rao & Co. v. State of A.P.*, (1994) 6 SCC 205.

¹⁰⁵ The Constitution of India, a 14.

Article 14 of the Constitution embodies the principle of Rule of Law. Further, this principle of Rule of Law is an antithesis to the concept of arbitrariness. Therefore, the act of unlawfully killing an accused person by the police is also against the rule of law and thus arbitrary, thereby violating the Fundamental right under Article 14 of the person so killed. It is well accepted fact that arbitrariness and Article 14 of the Constitution cannot co-exist.¹⁰⁶

Furthermore, Audi Alteram Partem which translates into '*let the other party be heard*,'¹⁰⁷ is one principles of Natural Justice. Non-observance of principles of Natural Justice in state action amounts to infringement of Fundamental Right under Article 14.¹⁰⁸ Therefore, as in cases of unlawful killing by police officers, the accused is killed without him being provided any opportunity to be heard and present his defence, thus such extra-judicial killings are against the principles of Natural Justice thereby infringing Article 14 of the Indian Constitution.

Other basic Human Rights

The unlawful killing by the police officers leads to the violation of certain other basic human rights of an individual. Every individual is bestowed with certain rights by the virtue of him being a human. Some of the basic human rights which get infringed in an incident of extra-judicial killing are as following:

- Article 3 of Universal Declaration of Human Rights: The Article bestows upon everyone, the right to life, freedom and safety and security of his/her person.¹⁰⁹
- Article 6 of the International Covenant on Civil and Political Rights: According to the Article, every human has an intrinsic right to life. This right is to be protected by law.¹¹⁰
- Article 2 of the EU Convention for the protection of Human Rights & Fundamental Freedoms: The Article guarantees Right to life. It casts a duty on the law to protect everyone's right to life.¹¹¹
- Article 3 of the EU Convention for the protection of Human Rights & Fundamental Freedoms: The Article prohibits the infliction of torture, inhumane treatment or punishment on anyone.¹¹²
- Article 6 of the EU Convention for the protection of Human Rights & Fundamental Freedoms: The Article bestows on an individual the Right to a fair trial. According to the Article, an individual should be provided a fair and reasonable hearing by an independent tribunal established under the authority of law. Furthermore, the Article

¹⁰⁶ *E. P. Royappa v. the State of Tamil Nadu*, AIR 1974 SC 555.

¹⁰⁷ <https://articles.manupatra.com/article-details/Audi-Alteram-Partem-and-Nemo-Judex-In-Causa-Sua-The-Two-Pillars-of-Natural-Justice>

¹⁰⁸ *Union of India v. Tulsiram Patel*, AIR 1985 SC 1416.

¹⁰⁹ The Universal Declaration of Human Right, a 3.

¹¹⁰ The Universal Declaration of Human Right, a 6.

¹¹¹ European Convention of Human Rights, a 2.

¹¹² European Convention of Human Rights, a 3.

provides that an individual if charged with a criminal offence shall be presumed innocent until his guilt has been established under the law.¹¹³

Protection to Police

The state is vested with the authority to make the laws related to public order as expressly mentioned in state list i.e. List II of the Schedule 7 of the Constitution. The state by the virtue of Article 162¹¹⁴ of the Constitution of India also possesses the executive power related to all the subjects provided in the said list including the advancement of public order. The police being the primary authority of the State to undertake and enforce this power which can also extend to use of lethal force. Therefore police are also conferred with certain immunities and protections while employing these powers. The provisions granting this immunity are essential for police officers, enabling them to carry out their duties effectively without the looming threat of unnecessary repercussions. These immunities and protections are given under various legislations including the (4.1) Code of Criminal Procedure, (4.2) Indian Penal Code and (4.3) the Police Act.

Protection under the Code of Criminal Procedure

The Code of Criminal Procedure (hereinafter referred to as 'CrPC') (now Bharatiya Nagarik Suraksha Sanhita) is the central procedural law dealing with crimes and provides for investigation, inquiry, trial, procedure of bail and alike processes. The Code affords protection to the policeman by way of taking sanctions before prosecution and power to affect the arrest.

Sanction to prosecute

There are provisions in place in CrPC which mandates taking the prior sanction of the state or central government before launching a prosecution against the police officer. The Chapter X of CrPC relates to the maintenance of Public Order and Tranquillity. The Section 129¹¹⁵ pertains to use of civil force to disperse unlawful assembly whereas Section 130¹¹⁶ talks about use of armed forces for the same. If the policeman or a person of armed forces are acting under the aforesaid sections, then it is obligatory to take prior sanction under Section 132¹¹⁷ from the Central Government if the person is a member of armed forces and in any other case, from the State Government. In addition to this, in any other circumstance it is necessary to take sanction under Section 197¹¹⁸ of the CrPC before prosecuting a police officer as them being falling under the purview of public servant. This protection is afforded to prevent them

¹¹³ European Convention of Human Rights, a 6.

¹¹⁴ The Constitution of India, a 162.

¹¹⁵ The Code of Criminal Procedure 1973, s 129.

¹¹⁶ The Code of Criminal Procedure 1973, s 130.

¹¹⁷ The Code of Criminal Procedure 1973, s 132.

¹¹⁸ The Code of Criminal Procedure 1973, s 197.

against vexatious proceedings¹¹⁹. In the case of *Om Prakash v. State of Jharkhand*¹²⁰ as well it was held that the sanction before prosecution is necessary as it affords protection to the police officers.

Affecting of arrest

The CrPC also includes the procedure and safeguards to the police while affecting the arrest. Arrest is done with a multi fold objective of facilitating the interrogation and finding of evidence and ensure his presence at the time of trial without affording an opportunity to the accused person to tamper the evidence or cause any further offence.¹²¹ Therefore, it is crucial that police officers are provided with sufficient authority to make arrests, and the CrPC contains all the necessary provisions for this purpose and one such provision is Section 46¹²² of the Code.

Section 46 provides for manner in which the arrest can be affected. The persons can either submit to the police by their actions or words in case the arrest is being affected and if not the police or any other person can actually touch or confine the body of the person to be arrested as provided by subsection (1) of the aforesaid provision. Subsection (2) provides that if the person being arrested forcibly resists the arrest or tries to evade the arrest then the police officer can use all the necessary means to effect the arrest. The authority in this Section goes as far as causing of death of person in those cases where the person is accused of offence punishable with life imprisonment or death as provided by subsection (3)¹²³. Thus, in all the cases where at the first instance itself the police are attempting to comprehend criminals accused of murder, rape or any other offence which is punishable with life imprisonment or death, and the persons are not giving in to the authority of the police, the officers can use all means necessary even if it causes the death of such persons.

In addition to this as has been held in the case of *D. Bhuvan Mohan Patnaik & Ors v. State Of Andhra Pradesh & Ors*¹²⁴ that the said section also applies on affecting the re arrest of persons who are trying to evade or have already evaded the custody of police. So the officers can also use necessary means and cause death when the accused persons in heinous cases are trying to abscond the custody.

Protection under the Indian Penal Code

The Indian Penal Code (hereinafter referred to as 'IPC') (now Bharatiya Nyaya Sanhita) is the preeminent substantial law dealing with crimes which penalises certain acts of criminal nature.

¹¹⁹ Pichai Pillai v. Balasundara Mudaly, (1935) ILR 5 Mad 787; Shrilal v. Manmath Kumar, AIR 1960 Raj 173.

¹²⁰ (2012) 12 SCC 72.

¹²¹ R.V. Kelkar, 'Law of Arrest: Some Problems and Incongruities' 22 JILI (1980) 314.

¹²² The Code of Criminal Procedure 1973, s 46.

¹²³ The Code of Criminal Procedure 1973, ss 46(3).

¹²⁴ 1975 SCR (2) 24.

If a police officer commits an extra-judicial killing, they are liable to be punished under the provisions of the IPC. Punishments for extra-judicial killings can include charges of culpable homicide under Section 299¹²⁵ and murder under Section 300¹²⁶ of the Indian Penal Code (IPC), as well as charges of criminal conspiracy under Section 120B¹²⁷ and similar provisions. However, it's important to note that there are still safeguards for such officers within the provisions of the IPC.

Mistake of Fact

If the act of police is done under mistake of fact, then that act can fall under the ambit of Section 76¹²⁸ and 79¹²⁹ of the IPC. The mistake of law is not a defence in law but mistake of fact is a safeguard if falls under the said provisions. The Section 76 and 79 provides safeguard if the act was done by a person under mistake of fact and in good faith. The difference between the section is the under Section 76 the person is bound or believes to be bound by law and under Section 79 the person is justified or believes to be justified by law. Even the illustration of Section 76 provides that in cases where the policeman fires on a mob under the lawful order of his superior, then the act of the police is not an offence. The cases where the police in the belief that the person being arrested is a dreaded criminal, tries executing the arrest and the death is caused can claim the defence under Section 79, if he proves that he was acting under any legal provision. The application of these sections depends on two prerequisites which are good faith as defined under Section 52¹³⁰ of IPC and the act being under the ages of law. It is to be noted that in an encounter argued to be done on the command of the superior officer was not given a defence under the said provisions in the case of *Satyavir Singh Rathi v State*¹³¹ due to it being staged and fake and under no authority of law. In the said case the protection under the above said sections were not allowed.

Section 300

The offence of culpable homicide amounting to murder is encompassed under Section 300 of IPC. If a man commits an act with the intention of causing the death, then that act falls under the ambit of Section 300.¹³² There are situations in which police personnel may be compelled to take actions resulting in the death of accused persons and to safeguard these officers from culpability, certain exceptions are provided for within the said section. Moreover as has already been held in the case of *State of Tamil Nadu v. Balakrishna*¹³³ that the

¹²⁵ The Indian Penal Code 1860, s 299.

¹²⁶ The Indian Penal Code 1860, s 300.

¹²⁷ The Indian Penal Code 1860, s 120B.

¹²⁸ The Indian Penal Code 1860, s 76.

¹²⁹ The Indian Penal Code 1860, s 79.

¹³⁰ The Indian Penal Code 1860, s 52.

¹³¹ AIR 2011 SC 1748.

¹³² The Indian Penal Code 1860, s 300.

¹³³ 1992 Cr LJ 1872 (Mad).

mere death in the custody of police does not draw an inference that the police caused the murder under Section 300. Therefore, in such cases of encounter as well, all the ingredients of Section 300 need to be proved along with negating the Exceptions to the afore said provision. It is highly likely that the police personnel might not be acting with the intention to cause death and thereby relieving him from the charges of Murder. Further the act of the police can also fall under the said Exceptions:

- A. Exception-1: The Exception 1 of the said section provides grave and sudden provocation as a mitigating factor for the persons who have caused the death. In such cases the person gets convicted for culpable homicide not amounting to murder. For the application of this exception the deceased must give a grave and sudden provocation which leads to a loss of self-control¹³⁴ and further there needs to be a presence of these three conditions:
- i. The provocation need not be sought voluntarily to use it as an excuse to cause death.
 - ii. The provocation is not given *firstly* under the authority of law or *secondly* by a public servant under his authority of being a public sector.
 - iii. The provocation is not given in the right of self-defence.¹³⁵
- B. Exception 2: Exception-2 of the section provides that if a person while acting under private defence causes the death of some person, then the act does not fall under the bounds of Section 300 of IPC. For the applicability of this exception, it is imperative that the person should be acting in good faith, without the intention to cause more harm than necessary in lieu of private defence and without premeditation. It is a common instance for police officers to be a part of certain fatal altercations with criminals who are armed and do not submit to the custody or orders of the police. During these situations the criminals get killed by the police who are merely acting to defend themselves and thus such an act by the police falls under Exception 2 of the said section.
- C. Exception 3: Exception 3 provides protection to a public servant who causes death in good faith, in the due discharge of their duty as a public servant for advancement of public justice and without any ill will towards the person whose death is caused. Thus, when a police officer carries out an action during their official duties, acting in good faith and without any ill intentions, which results in the death of someone, they are entitled to the protection provided under this exception. There are numerous cases in which the courts of law have provided protection to the police officers and one such case is *Purnendu Samanta v. State of West Bengal*¹³⁶. In the said case, the police officer

¹³⁴ *R v. Duffy*, [1949] 1 All ER 932; *KM Nanavati v. State of Maharashtra*, AIR 1962 SC 605

¹³⁵ The Indian Penal Code 1860, s 300.

¹³⁶ 2015 SCC OnLine Cal 119.

was deployed as police patrol to check unruly bike riders. When he attempted to stop a motorcycle, it refused to halt and attempted to flee while firing back at the police officer and one such round even hit the leg of the police personnel. Thereafter, the police personnel fired back at the bike riders and the motorcyclists died as a result and he was afforded protection under exception 3 of Section 300 of IPC. In the case of *Dakhi Singh v. State*¹³⁷, as well the protection of the said exception was given to the police constable for causing the death of the absconding accused person.

Private Defence

The provisions of right of Private Defence is given under Section 96-106 of IPC. Private defence is wider than the term self-defence as it circumscribes the protection of the body and property of oneself and other persons as well. The enabling provision which provides that the act if done in right of private defence is not an offence is Section 96¹³⁸ of the Code. The right of private defence can even extend to causing of death of the person who is providing the apprehension under Section 100¹³⁹. The right to cause death in lieu of private defence as per the said provision is present in cases where the assault is with the apprehension of death or grievous hurt being caused; intention of rape or gratifying unnatural lust; or to wrongfully confine a person; or during an act of throwing of acid. It is a common instance that when apprehending dangerous criminals or when such persons are trying to escape, the police is faced with circumstances in which they have certain means such as guns or alike weapons which they are using or firing upon the police only. In such cases the apprehension to the police is of death or grievous hurt and therefore if the death of these criminals is caused then the act of the police falls under this general exception of Section 100.

This possibility was also weighed in by the Hon'ble Supreme Court in the case of *Om Prakash*¹⁴⁰ in which it was opined that there are circumstances in which policeman have to use force to protect the life and property of themselves and other people while dealing with criminals. The Court took note of the fact that there are rising cases of police personnels being killed by such criminals and the police in these cases have a right to protect themselves. However it should be kept in mind that more harm than necessary should not have been inflicted by the police and the burden to proof¹⁴¹ is on the policeman asserting the right of self-defence. Though, the burden is not too rigorous and the preponderance of probabilities¹⁴² in their favour is enough.

¹³⁷ AIR 1955 All 379.

¹³⁸ The Indian Penal Code 1860, s 96.

¹³⁹ The Indian Penal Code 1860, s 100.

¹⁴⁰ *Om Prakash (n 21)*.

¹⁴¹ *Krishan Chand v. State of UP*, (2007) 14 SCC 737.

¹⁴² *Dharminder v. State of HP*, AIR 2002 SC 3097.

Police Act

The police personnels are also regulated by the Police Act, 1861 which is a central statute and also respective states police Acts. The said statutes also confer certain duties on the police officers. The marginal heading of Section 23 of the Police Act, 1861¹⁴³ reads as “*Duties of Police-Officer*” and provides the following mandatory duties for police officers: -

- a) Execute orders and warrants.
- b) Gather and provide intelligence pertaining to public peace.
- c) Prevent the commission of offences and public nuisances.
- d) To bring offences to justice.
- e) Apprehend all persons whom they are bound to apprehend.¹⁴⁴

The officers being the primary executory body of effecting the warrants are either giving effect to warrants and/or are often acting under the orders of their seniors like in the abovementioned case of *Dakhi Singh*¹⁴⁵. In such cases it is their duty under the said section to obey such orders and warrants with utmost gravity, without considering the possible repercussions. Further, there are cases where the accused persons are either committing an offence and the police try to stop the commission of such offences. Furthermore there are instances where such persons either resist arrest or attempt to escape from the custody of police which is also an offence expressly mentioned under Section 224¹⁴⁶ or Section 225B¹⁴⁷ of IPC. The said sections pertain to resistance or an illegal obstruction of the lawful arrest and is also applicable when the person escapes or attempts to escape from custody in which the person is lawfully detained for any offence. Thus in such cases as well the police have to prevent the commission of any possible offence or public nuisances and have to take recourse of fatal measures.

Further there are provisions in various state police Acts where it is expressly mentioned that the police officers shall not be liable to pay any penalty or damages for any act which is done in furtherance of their duty or when acting under any rule, regulation or any order. The said provisions are mentioned under several state statutes including Section 138 of Delhi Police Act, 1978¹⁴⁸; Section 159¹⁴⁹ of Maharashtra Police Act and much more.

Relief for the victims

The unlawful killing of the accused persons by the police persons have been discussed in detail in various cases by the Hon'ble Apex Court and one such case is *PUCL v. State of*

¹⁴³ Police Act 1861, s 23.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Dakhi Singh* (n 38).

¹⁴⁶ The Indian Penal Code 1860, s 224.

¹⁴⁷ The Indian Penal Code 1860, s 225B.

¹⁴⁸ The Delhi Police Act 1978, s 138.

¹⁴⁹ The Maharashtra Police Act 1951, s 159.

*Maharashtra*¹⁵⁰. The Court laid down express guidelines to deal with the cases of encounters and include protections to the deceased persons such as compulsory registration of FIR; provision of independent investigation by CID or police team of other station; provision for Magistral inquiry; compensation to the victims and much more. The Court also opened a path for the family of the victims to approach and complaint to the Sessions Judge of the competent jurisdiction in cases where the procedure laid down in the said case is not followed or there is chances of a rigged investigation or impartiality.

In addition to this layer of protection there are guidelines in place formed by the National Human Rights Commission which were also recognised in the above said case¹⁵¹. The NHRC has also advocated for the independent investigation; registration of FIR in allegations of cognizable cases of culpable homicide; provisions for Magistral Inquiry; direction of prompt prosecution and disciplinary action against the officers found guilty and furthered alike directions. The Apex Court and the NHRC also acknowledged the fact that how the police personnels are lured with promotions or similar rewards in lieu of affecting such unlawful encounters and thus barred such out of turn promotions or instant gallantry awards to the concerned officers after the occurrence unless their eligibility is clearly established beyond reasonable doubt.

There are multifarious protections in place for the victims of such unlawful killings by the police but still the arbitrary actions of police department are still prevalent in the country. The NHRC maintains a portal and releases its monthly data of complaints regarding the violation of human rights. The monthly statistics of complaints registered covers different nature of incidents and is inclusive of Custodial Deaths in Police Custody and Death in Police Encounters. As per the National Human Rights Commission's report¹⁵² the number of cases of encounter in 2023 are as follows:

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Total
Custodial Death (Police)	15	10	10	9	16	23	15	18	10	9	10	7	152
Encounters	5	7	4	6	9	5	10	4	5	8	12	6	81

It can be seen that there are a total of 152 complaints in custodial police death and 81 encounter

¹⁵⁰ 2014 (10) SCC 635.

¹⁵¹ *Ibid.*

¹⁵² National Human Rights Commission, 'Human Rights Case Statistics' < <https://nhrc.nic.in/complaints/human-right-case-statistics> > accessed 14 March 2024.

complaints in National Human Rights Commission alone in 2023 showing how still the encounters and custodial deaths which are considered a last resort are still taking place in India even after there being express guidelines and protections for the same.

ENCOUNTER BY POLICE, 2023			
Month, year	Cases Registered	Cases Disposed	Pendency as of date
January	5	5	322
February	7	5	323
March	4	9	317
April	6	1	322
May	9	18	280
June	5	3	266
July	10	1	267
August	4	3	322
September	5	1	237
October	8	0	241
November	12	1	252
December	6	3	244

The abovementioned data shows that there is a huge disproportionality between the cases of encounters being registered and the disposed of such cases. Only twice last year, the disposal of cases were more than the registered cases. Further a conjoin reading of both the tables show that at the end of the last year there are 275 cases pending of custodial death by police and 244 cases pending of encounters.¹⁵³ This pendency of cases can also encourage the unlawful activities being done by the police personnels.

As per another report of the National Crime Records Bureau, 2023¹⁵⁴, the status of cases registered pan India against police personnel is as follows: -

¹⁵³ *Ibid*

¹⁵⁴ National Crime Records Bureau & Ministry of Home Affairs, *Crime in India 2022* vol 3, < <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/ciiyearwise2022/1701608543CrimeinIndia2022Book3.pdf> > accessed 14 March 2024.

NO. OF CASES					NO. OF POLICEMEN			
Registered	Final Report Submitted	Charge sheeted	Convicted	Acquitted	Arrested	Cases withdrawn	Convicted	Acquitted
2614	477	843	0	0	1113	123	12	282

It is shown by the report that not all the cases reported against the police are charge-sheeted, thus uplifting their will to execute such crimes. Even the rate of submission of final report is lesser than submission of charge sheet and the final report was only submitted in just 477 cases out of 2614 cases. In the *D.K. Basu*¹⁵⁵ case in it was opined that “*Any complaint against such torture or death (in custody) is generally not given any attention by the police officers because of ties of brotherhood*”. In furtherance of this, the synergy and brotherhood among the police department can also plausibly be the reason for a low rate of final reports being filed. The police in the veil of having discretionary powers use them arbitrarily to become a hero for the society using these unlawful means. Thus it is necessary that adequate relief is provided to the victims of such atrocities and such reliefs are (4.1) Writ Petition and compensation; and (4.2) Independent investigation.

Writ Petition and Compensation

The Article 32¹⁵⁶ and Article 226¹⁵⁷ of the Constitution of India provides a mechanism to approach the Supreme Court and High Courts respectively in cases of infringement of Fundamental Rights for the issuance of appropriate writs or any other orders. In the cases of extrajudicial killing the victims can approach the said Courts via invoking the writ jurisdiction to get appropriate relief. The Article 32(1) for instance provides for invoking the said jurisdiction and mentions the expression “appropriate proceeding” i.e. the Court can be approached via an appropriate proceeding. As has been held in the case of *Bandhua Mukti Morcha v. UOI*¹⁵⁸ the appropriateness depends on the infringement of Fundamental Rights and as already mentioned above the acts of extra judicial killing causes an infringement of Fundamental Rights including abrogation of Article 21¹⁵⁹ and Article 14¹⁶⁰ of the Constitution, the writ proceeding becomes an appropriate proceeding. In the cases where FIR is not being registered the issuance of writ of Mandamus can be prayed to bring the criminal law and investigation in motion. Further, the right of compensation in cases of infringement of

¹⁵⁵ *D.K. Basu* (n 4).

¹⁵⁶ The Constitution of India, a 32.

¹⁵⁷ The Constitution of India, a 226.

¹⁵⁸ AIR 1984 SC 802.

¹⁵⁹ The Constitution of India, a 21.

¹⁶⁰ The Constitution of India, a 14.

Fundamental Rights has already been established in the case of *Neelabati Behra*¹⁶¹ making it a suitable relief as well for the families of the deceased persons. Lastly, the writ jurisdiction can also be invoked to request an independent investigation in such matters.

Independent Investigation in encounter cases

Though there are enough protections in place for the victim of such atrocities, the ground reality was recognised in the *D.K. Basu Case*¹⁶² in which as has already been mentioned above the confederacy between the department was identified while adding that even FIR is not registered in such cases and the investigation if started does not lead to justice due to the lack of efforts in gathering of evidence or even suppression of evidences.¹⁶³ Thus, it is imperative that the victims of such crime are afforded an independent investigation which has also been provided by the Apex Court in various cases as well. Even in the recent case of *G.S. Mani v. Union of India & Ors.*¹⁶⁴, famously known as the Hyderabad Rape & Murder Case, 2019, the individuals accused of the rape and murder of a young veterinary doctor were killed in an encounter by the police, leading to the filing of a writ petition. The Supreme Court in the order dated 12.12.2019, while terming it “*desirable and necessary to know the truth*” recognised the need for an independent investigation, constituted an Inquiry commission for inquiring into the encounter.

This requirement of an independent investigation has been upheld in numerous cases including the case of *R.S. Sodhi Advocate v. State of U.P. & Ors.*¹⁶⁵ in which the Apex Court entrusted the investigation to the Central Bureau of Investigation (hereinafter referred to as, “CBI”). In the case of *B.G. Verghese v. UOI & Ors.*¹⁶⁶ the investigation into the encounter cases was done by a special investigation team in addition to constitution of a Monitoring Authority. Similar reliefs were also provided in the cases of *Rohtash Kumar v. State of Haryana*¹⁶⁷ and *Extra-Judicial Execution Victim Families Assn. v. Union of India*¹⁶⁸.

Conclusion

To conclude, it is imperative to keep in mind that not all the killings done by the police do not amount to extra judicial killing per se. Nonetheless, the law does not authorise the police officers to cause death of anyone until only in exceptional circumstances. While the state has a duty to maintain law and order, it must do so within the bounds of the law and uphold the rights of individuals, including those accused of crimes. The unlawful killing of such

¹⁶¹ *Neelabati Behra* (n 3).

¹⁶² *D.K. Basu* (n 4).

¹⁶³ *Ibid.*

¹⁶⁴ W.P.(Crl.) No. 355/2019.

¹⁶⁵ 1994 Supp (1) SCC 143.

¹⁶⁶ (2013) 11 SCC 525

¹⁶⁷ (2013) 14 SCC 290

¹⁶⁸ (2016) 14 SCC 578

individuals causes an infringement of Fundamental Rights enshrined in the Constitution of India including the infringement of Article 21, 14; and other basic human rights as well.

The police personnels have various protections in the form of prior sanctions before prosecution and power to even take the last resort to affect arrest under the Code of Criminal Procedure. The Indian Penal Code also recognises the mistake of fact which can take place on the part of the police and also the fact that the act of the police can fall under the exceptions of Section 300 of IPC. The officers also have various duties conferred on them by the central Police Act and various State Police Acts they are bound to follow to as well. If the act does not fall under any authority conferred by law, then the victims or their families of such extra judicial killing becomes entitled to seek adequate relief. The relief ranges from filing of a Writ petition and seeking adequate compensation coupled with seeking independent investigation which have been provided in various cases by the Apex Court of the nation. Despite the existence of express guidelines set forth by the Supreme Court and the National Human Rights Commission (NHRC), the available data suggests that there still remains a significant in the protection of the rights of detainees and adherence to the established legal procedures for determining their guilt.
