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ENCOUNTER KILLINGS IN INDIA AND HUMAN RIGHTS VIOLATION

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ABSTRACT

Encounter killings, a term often used to describe extrajudicial killings by law enforcement officials, have been a recurrent phenomenon in India, sparking debates surrounding human rights violations, the rule of law, and the efficacy of the criminal justice system. This abstract aims to provide a nuanced understanding of encounter killings in India by delving into their socio-legal dimensions. Drawing upon a variety of scholarly works, legal documents, and media reports, this abstract highlights the multifaceted nature of encounter killings. It explores the historical context, tracing the roots of encounter killings to factors such as police militarization, political pressures, and societal attitudes towards crime and punishment. Moreover, it examines the legal framework governing encounters in India, scrutinizing the ambiguities surrounding the use of force by law enforcement agencies. Furthermore, this abstract discusses the consequences of encounter killings, both immediate and long-term, on individuals, communities, and the criminal justice system.

ENCOUNTER KILLINGS IN INDIA – AN OVERVIEW

In India, “encounter killings” are tragically common. Encounter killing is now a euphemism to indicate extrajudicial execution by the police personnel in staged “encounter” scenarios where persons are killed apparently in exercise of the police personnel’s right to self-defence. Incidents of encounter killings are widely reported in media and they are even highlighted. Perpetrators of this brand of violence enjoy immunity from the criminal justice system. Further, police personnel with special “expertise” in extrajudicial killings are called as “encounter specialists”, enjoy important positions in the system and are praised in the State institution and in civil society. This huge support of encounter killing is also attributed to the fact that victims are those who are considered as anti-social elements with criminal history.

The wide prevalence of encounter deaths or extra-judicial killings by the Police personnel and

the Armed Forces post independent period has been documented by various human rights organizations. A study conducted by the Asia Pacific Human Rights Network noted that encounter killings were not isolated incidents but occurred throughout India. They are part of a "deliberate and conscious state administrative practice" for which successive Indian governments must bear responsibility.¹ Indeed, all the state governments have adopted a de facto policy of sanctioning extra-judicial killings by the members of the police personnel forces, army and security personnel.

Definitions

Extra judicial killings, as defined in the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, refers to the "the practice of killing and executing political opponents or suspected offenders carried out by armed forces, law enforcement or other governmental agencies or by paramilitary or political groups" acting with the support, tacit or otherwise, of official forces or agencies."²

According to Oxford Advanced Learners Dictionary 'encounter' in general means "unexpectedly be faced with or experience (something hostile or difficult)", it can be defined in the context for the present purpose as "an incident in which police personnel shoot dead a suspected criminal".³ Sir Nigel Rodley, UN Commission on Human Rights Special Rapporteur on Torture (1993-2003), extra-judicial executions as "killings committed outside the judicial process by or with the consent of, public officials, other than as necessary measures of law enforcement to protect life or as acts of armed conflict carried out in conformity with the rules of international humanitarian law."⁴

Amnesty International in a 2003 report characterised an extra-judicial execution as "an unlawful and deliberate killing carried out by order of a government or with its acquiescence". The report further says that "Extra-judicial killings are killings which can reasonably be assumed to be the result of a policy at any level of government to eliminate specific individuals as an alternative to arresting them and bringing them to justice. These killings take place outside any

¹"Encounter Killing, Torture and Custodial Death", available at: <http://urgentquestions.blogspot.in/2010/12/sunshine-india-encounter-killings.html> (Visited on Feb 21, 2014).

² Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, 25 August-5 September 1980: report prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4), chap. I, sect. B, resolution 5.

³http://www.oxfordlearnersdictionaries.com/us/definition/english/encounter_2 (Visited on March 15, 2014)

⁴Nigel S. Rodley and Matt Pollard, *The Treatment of Prisoners under International Law* 252 (Oxford University Press, Oxford, 3rd ed., 2009).

judicial framework.”⁵

The phrase ‘encounter killing’ is derived from the term ‘encounter’ as employed by the Indian Police personnel Service, along with the Indian Military and Paramilitary,^c to describe a specific kind of contact whereby an alleged criminal or person of interest is killed in ‘spontaneous, unplanned “shootout”’.⁶

According to Manisha Sethi, a police personnel “encounter killing”, or, simply, “encounter” it has no legal validity but which has speeded via the media that it had so surely that has acquired a life of its own. It refers to a face-to-face interaction between the police personnel and suspects leading to the killing of the suspects.⁷ Encounter killings are one element of a broader category called extra-judicial executions. Note that these custodial deaths generally exclude “encounter” killings. The police personnel typically claim they killed in self-defence outside police personnel custody.⁸

ENCOUNTER KILLING AND FAKE ENCOUNTER: THE DIFFERENCE

The real encounters means state-owned force or police personnel opens fire on armed criminals, indigenous armed people groups or non-state actors as a retaliatory measure to defend civilians or themselves or safeguard public life for Institutions of public importance like Mumbai attack or 9/11 US attack or Indian parliament attack or attack on police personnel /armed forces convoy.

Fake encounter is a murder under the colour of performance of official duty. A fake encounter is where a person has been killed in cold blood, and not in self-defence, whereas a genuine encounter is that in which a person has been killed in self-defence. If somebody is firing at you, and the only way to stop him from killing or grievously injuring you is to shoot back, in that case you’re a part of a genuine encounter. Whereas a fake encounter is when you catch hold of somebody and kill him in cold blood. There is absolutely no threat to you.⁹

In a fake encounter, the police personnel or armed forces kill the suspects, when they are either in custody or are unarmed, and then claim to have shot them in self-defence. In such cases, the

⁵ Amnesty International, Israel and the Occupied Territories: Israel must put an immediate end to the policy and practice of assassinations, 4 July 2003, available at: <http://www.amnesty.org/en/library/asset/MDE15/056/2003/en/16f1eef4-d6bd-11dd-ab95a13b602c0642/mde150562003en.htm> (Visited on March 22, 2014).

⁶ Belur Jyoti, “Why do the Police personnel use Deadly Force? Explaining Police personnel Encounters in Mumbai” *British Journal of Criminology* (Nov, 2009).

⁷ Manisha Sethi, “Fake Encounters in India: Instant Justice By Police personnel and Posthumous Trial by Media”, available at: http://aparc.stanford.edu/events/fake_encounters_in_india_instant_justice_by_police_personnel_and_posthumous_trial_by_media/ (Visited on March 22, 2014).

⁸ Praful Bidwai, “Murder by encounter”, available at: <http://www.prafulbidwai.org/index.php?post/2009/10/09/Murder-by-encounter> (Visited on March 22, 2014).

⁹ Astha Maheswari, “Fake encounters in India” available at: <http://www.ndtvmi.com/b4/dopesheets/aastha.pdf> (Visited on March 13, 2014).

police personnel may plant weapons on or near the corpses to provide a justification for killing the individual. To explain the discrepancy between records that show that the individual was in police personnel custody at the time of his "encounter", the police personnel may say that the suspect had escaped.¹⁰

It is alleged that police personnel typically take a suspected militant into custody without filing an arrest report. If the suspect died during interrogation, security forces would deny ever taking the person into custody and instead claim that they were killed during an armed encounter.¹¹ It is alleged that police personnel would add weapons to the dead body to demonstrate cause for killing the individual, stage-managing the encounter, leading to the popular phrase "fake encounter killing."¹² Other similar occasions were that militants were staging an attack, or the suspect attempted to escape to recover militant arms while being escorted. At times, the police personnel applied for and received production warrants, which allowed them to remove individuals accused in terrorism cases from jail. They often killed the detainees in fake encounters outside the jail.¹³

The Modus operandi of encounter killings reveals whether it is fake or not. There are certain incidents associated with encounters such as the time and place of occurrence and the arms recovered gives a lead that the encounter was a staged or fake. Most of the staged encounter killings occurred in middle of night, large vehicles such as Maruti gypsies, TATA Sumo and van were used for transportation. The place of occurrence was far from human settlement or habitation. Forensic/ballistic examinations of exhibits were mostly avoided or unduly delayed, and the investigation ultimately fizzled out. There was police personnel patrolling in the crime areas prior to and after, but not during the killings.

The Central and State governments generally interpret the word, encounter, to mean genuine encounters, with fake encounters being an exception rather than the rule. Those fighting for civil liberties, however, say that the dividing line between genuine and fake encounters is rather tenuous and argued that most of the cases considered by the police personnel as genuine are indeed fake.¹⁴

SOCIO-ECONOMIC PERSPECTIVES OF THE VICTIMS

¹⁰http://en.wikipedia.org/wiki/Encounter_killings_by_police_personnel (Visited on February 23, 2014)

¹¹US Department of State, India Human Rights Practices, (1993), available at: http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_sasia/India.html

¹²Pepper, Daniel "India Makes a Place for Dirty Harry", available at: http://www.nytimes.com/2009/03/01/weekinreview/01pepper.html?_r=1&pagewanted=all (Visited on April 2, 2014).

¹³"Communication to Special Representative on the Situation of Human Rights Defenders. Ensaaf. 05/12/2006, available at: <http://www.ensaaf.org/pdf/un/Bhatti.pdf> (Visited on April 2, 2014).

¹⁴Venugopal.V, "Evading Guidelines" 27(17) *FRONTLINE* (Aug. 14-27, 2010). Also available at: <http://www.frontline.in/static/html/fl2717/stories/20100827271702900.htm> (Visited on February 21, 2014).

Every day in India, thousands of citizens – usually the poor and those from the marginalized communities of the society are subjected to various types of violence at the hands of police personnel who behave as super-judiciary who apply a lot of unlawful methods of law enforcement. So, there is a strong association between the victims of crime and their socio-economic milieu. A study of encounter killings in other parts of the country supports the view that the individuals' socio-economic, education, religion and community factors have something to do with the persons killed in the alleged police personnel encounters. The report 'Countering the Silence' (2018) by Citizens Against Hate (CAH), documented as many as 16 incidents of alleged encounter killings in Uttar Pradesh and 12 cases in Haryana, which had occurred between 2017 and 2018. The report observed: "All victims come from vulnerable social groups. Most came from poor 'lower castes' backgrounds, typically, landless farmers, engaged in manual labour and, or working as informal sector workers, as hawkers". In Uttar Pradesh, especially in the western region, a series of encounters took place in which majority of those killed belonged to either Muslim, Dalit or other backward classes. Madhu Garg (2016) states that in Uttar Pradesh alone 1,478 encounters have taken place in which 50 people have died and 390 were injured during the last one-year period. Among those killed, around 70 per cent were Muslims, 15-20 per cent Dalits and the rest from other backward classes. Similarly, the Citizen's Against Hate's (CAH) report (2018) on Haryana indicates that "in Haryana, all the victims of the alleged encounter killings were from very poor backward and Muslims and all of them were socio-economically marginalized.". The NCRB data also corroborates the above view prevailing in the country in a different form. According to the data released by the National Crime Records Bureau (NCRB), as many as 68% of the inmates in 1,387 jails across the country are under-trials. Over two-thirds of all jail inmates are under-trials. Of these, about 40% spend on an average of six months in jail before being released. Some of these people do longer time in jail because they do not have the means to secure bail.. As per 2015 data of NCRB, out of 2, 82, 076 under-trials lodged in various jails in the country, a total of 80,528 under-trials are illiterate (28.5%) and 1, 19, 082 have education below class 10 (42.2%).

In a recent study by Ben Fell and Miles Hewstone (2015), it has been proved accurately that living in poverty drastically affect self-esteem. It has been further established that those living in poverty also suffer in many other aspects of human living, i.e. feelings of personal failure, lack of self-confidence .Sachs says that poverty is the world's current greatest threat to peace and stability more than terrorism, and other highly publicized struggles. United Nation's report (2010) makes it clear that poverty is the deprivation of one's ability to live as a free and dignified human being with the full potential to achieve one's desired goals in life. Justice Markandey Katju

(2016), former Supreme Court Judge, while delivering a key note address during a National Seminar held at Cochin on “Sentencing Policy in India’: Need for revamping”, observed that most of the people you will find in jails in India, in America and in other countries are poor. This indicates that the poor are unable to have access to the existing systems to come out on bail or to prove their innocence due to the heavy cost involved. It is evident from the above facts that very often the socially and economically weak are becoming easy prey at the hands of the unethical systems in place in our country.

In any society, persons’ socio-economic-political backwardness is readily associated with crimes and criminal behavior. Poverty, illiteracy, low income and unemployment contribute further to this effect substantially. Along with poverty and social backwardness, illiteracy too remains a major cause in determining social status. The age factor throws some light on how the potency of the youth on the one hand, and the vacuum in making use of their energies and abilities in building up their future on the other operate. The youth reality in our country is always a matter of concern. The National youth policy (2003) maintains 35 as cut off age for youth (<http://pib.nic.in/newsite/ereelcontent.aspx?reid=519>), (2003). When youth energy is under-utilized, the whole generation becomes stagnant and there is every possibility of the youth getting disoriented and get involved in various unlawful activities.

The National Crime Records Bureau, NCRB (2015) recently came out with its annual record for the year 2015 that collates crime statistics from all the states of India. Srinivasan (2016) quoting the NCRB record states that as per the record, there is a steep increase in the cognizable Indian Penal Code crimes in the country in the last five years – from 23.25 lakh in 2011 to 29.5 lakh in 2015. India is basically a caste-ridden society and in spite of various legislations enacted to protect these deprived communities from various atrocities committed against them, till date they remain as paper tiger. Similarly, India also is slowly turning into a communally sensitive State. Along with caste, religion of the persons also plays a sensitive role.

Victims of the System

From the above facts, it could be inferred that the poor economic and social background, illiteracy, no regular employment, no guaranteed salary and low income are the factors for many youths to get trapped into doing petty crimes. Once they are trapped thereby into petty crimes, they have to languish in the prisons as under-trials for a long period as they do not know the ‘what’ and ‘how’ of the system that renders bail. As per the report of the Amnesty International, around 2.8 lakh Indians are being held in prison as under trails. They account for two out of three prisoners in India’s prisons – percentage far higher than other democracies around the world.

Extra-judicial Killings and police personnel Encounter Killings

‘Extra-judicial killings’ are becoming a worldwide phenomenon, as this practice is on the increase day by day in many parts of the world. The numbers of such killings are increasing at a great pace in India. The Amnesty International, an International organization that works for the protection of human rights, defines ‘extrajudicial killing’ as an “unlawful and deliberate killing carried out by an order of the government or with its complicity. It can also be referred to political or ‘death squad’ killing”

(https://www.amnestyusa.org/files/pdfs/ij_intllawdefinitions.pdf), (n. d.). It means that these are “killings committed outside the judicial process and in violation of natural laws and international standards forbidding the arbitrary deprivation of life”. In most of the cases, the police personnel justify the extrajudicial killings by projecting the victims as villainous criminals or terrorists. The free encyclopedia, Wikipedia defines ‘extrajudicial killing’ as the killing of persons by governmental authorities without the sanction of any judicial proceedings or legal process.

When the State uses such excessive or retaliatory force leading to death, it is referred to as an extra-judicial killing or an extra-judicial execution or as the Supreme Court observed in People’s Union for Civil Liberties v. Union of India (1997) as, “administrative liquidation”. In the said case, the Court observed further that the Society and the courts obviously cannot and do not accept a death caused by the State, since it is destructive of the rule of law and plainly unconstitutional. Extrajudicial killings are mostly seen by humanity to be unethical, since they bypass the due process of the legal jurisdiction in which they occur.

Section 3(a) of the United States Torture Victim Protection Act (1991) contains a definition of extrajudicial killing as follows:

‘A deliberate killing not authorized by a previous judgment pronounced by a regular constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation’ (https://en.wikipedia.org/wiki/Extrajudicial_killing), (n.d.).

All the above definitions consider extrajudicial killings as executions of persons outside the purview of laws without any sanction of existing law and hence considered to be unlawful or illegal and arbitrary. The police personnel ‘encounter killing’ when executed without the sanction of any existing law or executed violating the legal procedures and standards prescribed to be followed in such encounters, then it falls under the category of extra judicial killings. In other words, when a police personnel ‘encounter’ is executed outside the purview of law, it is considered to be a form of extrajudicial killing. In fact, it is a fake encounter killing.

Extrajudicial Killings and police personnel encounter killings have to be defined to understand the lawlessness implied in both the terms. Though both are considered as the most brutal forms of human rights violations, they are always used by the police personnel, security forces and paramilitary forces as a tool to give readymade remedies to the problem of terrorism, insurgencies and ever-growing criminal activities. These forces want these unlawful practices to be part of policing. While the term 'extrajudicial killing' is used worldwide, the term 'police personnel encounter' is Asia specific as it is widely practiced in Asian countries. However, police personnel encounters are considered as one type of extrajudicial killing by human rights defenders around the world.

According to APCLC & PUDR Position paper (2009), the dictionary meanings of the term 'encounter' range from the benign to the ruthless. You have an encounter when there is a chance/unplanned meeting and also when there is a violent clash between adversarial factions. Over the years, however, the meaning of encounter has become non-ambivalent. An encounter is always violent, almost always planned, and more often than not, results in the death of a 'wanted criminal' or an 'outlaw'. The civil liberties and democratic rights movement in India has rallied around this issue, raising relentless campaigns to unmask the murders that shroud the euphemistic encounters

THE INDIAN CONSTITUTION AND HUMAN RIGHTS

The Constitution of India (1950) is the supreme law of the nation. It was inspired by the aspirational goals set out in the Universal Declaration of Human Rights (UDHR) (1948). In the words of Dr. Manmohan Singh (1993), the Constitution of India which came into force in 1950s is an eloquent testimony of the nation's deep commitment to human rights. As per the scheme embedded in the Constitution, any law or enactment whether legislative or executive, if inconsistent with a fundamental right, is declared to be null and void under Article 13. Since such law goes against the basic principles of the Constitution, it is ultra-virus, unconstitutional and illegal. Part III of the Constitution is celebrated as the Bill of Rights for the people of India. Craig (1999) mentioned that the rights secured in the third part of the Constitution are the necessary consequence of the declaration contained in the Preamble of the Constitution. The Supreme Court reiterated this in *Behram Khurshid v. State of Bombay* (1955). The Supreme Court assertively observed in *Sajjan Singh v. State of Rajasthan* (1965) that the fundamental rights have been said to be the very foundation and the corner-stone of the democratic way of life ushered in this country by the Constitution. In *State of Madras v. Champakam Dorairajan*, (1951) the Supreme Court further asserted that these rights have been declared as Sacrosanct, inalienable and indivisible. One of the salient features of the Indian Bill of Rights is that the remedy for the

enforcement of the fundamental rights is itself declared a fundamental right in the form of Article 32 in the Constitution (1950) and is included in the very chapter on fundamental rights.

A nine-judge bench of the Supreme Court of India observed in *I.R. Coelho v. State of Tamil Nadu* (2007), that the fundamental rights were not limited narrow rights, but provide a broad check against the violations and the excesses by the State authorities. These rights have proved to be the most significant constitutional control on the Government, particularly legislative power. They form a comprehensive test against the arbitrary exercise of State power in any area. Furthermore, India is one of the signatories to the UDHR and parties to various international covenants, conventions and treaties stated above. India also interacts with many countries and has been facilitated to have greater accesses to the statesmen of various countries and international human rights agencies. It is to reaffirm the atmosphere of freedom and India's commitment to its own catalogue of rights. Despite all these instrumentalities and institutional arrangements meant for the protection of human rights standards in our country, there have been large scale violations of human rights in the form of police personnel fake encounter killings and other forms of extrajudicial killings as reported from various parts of our country.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions noted in his report (2012) the widespread use of "fake encounters" by security forces and made a series of recommendation to be fully implemented. India has an obligation under International Human Rights law, its Constitution, and the directions of the Supreme Court to end this practice and, at the very least, thoroughly and impartially investigate such cases and prosecute those responsible.

Human Rights Jurisprudence

In a number of decisions, starting with *Maneka Gandhi* (1978), the Supreme Court has widened the ambit of the fundamental rights and has sought to bring these rights in conformity with the global trends in human rights jurisprudence. By placing the fundamental rights in part III of our Constitution, Seervai (2013) explains that the founding fathers showed that they had the will, and they were ready to adopt the means to confer legally enforceable fundamental rights. First, against whom, were the fundamental rights to be enforced? Broadly speaking, against "the State", not as ordinarily understood but as widely defined by Art. 12. Secondly, against what activity were fundamental rights enforceable? They were enforceable against laws and executive actions, which violated fundamental rights. In brief, Seervai (2013) states that all laws contravening and/or violating fundamental rights are declared to be null and void as defined in Art. 13. The rule of law is the top most value of any democratic nation. It is part of the basic structure of the Indian Constitution. It is an unqualified human good. Any democratic form of government is measured by the importance the nation gives to the performance of rule of law. World Justice

Project Index (2017 – 2018) measures different countries' rule of law performance across eight factors: Constraints on Government Powers, Absence of Corruption, Open Government, Fundamental Rights, Order and Security, Regulatory Enforcement, Civil Justice, and Criminal Justice. The World Justice Project Index takes into account 44 indicators in 113 countries, and India's rank in 2017-18 was a dismal 62. Police personnel encounters, which have become a common phenomenon, do contribute to our low rank on 'rule of law' index. In any democratic country, upholding the rule of law should be the fundamental obligation of the government.

Right to Life and Personal Liberty

The provisions on Fundamental rights occupy a prominent place of pride in the India Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law" (Constitution of India). Personal liberty, thus, is a sacred and cherished right under the Constitution. In *D. K. Basu v. State of West Bengal*, the Supreme Court (1997) observed that the expression "life or personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against arbitrary killing by the State or its functionaries. Article 22 of the Constitution of India guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Clause (2) of Article 22 directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. These are some of the constitutional safeguards provided to a person with a view to protect his life and personal liberty against and unjustified killing and assault by the State. In tune with the constitutional guarantee, a number of statutory provisions also seek to protect life, personal liberty, dignity and basic human rights of the citizens. The Protection of Human Rights Act, 1993 is one such statutory provision.

LAWS DEFLECTING HUMAN RIGHTS

The laws listed here are in fact contrary to the legal provisions enshrined in the Constitution in the form of fundamental rights. According to Article 13, those laws enacted in contravention to the laws enshrined in the fundamental rights part are illegal, ultra virus and unconstitutional. However, they have been enacted and already in force in several parts of the country. For example, the Unlawful Activities (Prevention) Act, 1967, The Prevention of Detention Act, 1950,

Maintenance of Internal Security Act, 1972, Disturbed Areas (Special Courts) Act, 1976 which allowed the government to declare any area 'disturbed'. The National Security Act 1980 extended extraordinary powers to the police personnel. Terrorists and Disruptive Activities Act 1985 took away the fundamental rights of the citizens enshrined in the Constitution. Armed Forces Special Powers Act 1958 is yet another draconian law which gave enormous powers to the Armed forces in dealing with insurgents and eventually; this Act was misused to kill a huge number of civilians in Manipur and J & K. The Prevention of Terrorism Act, 2002 and the Unlawful Activities Amendment Act, 2004 are more such laws enacted in contradiction to the basic principles of the Constitution. All these laws granted extensive powers to the security forces and police personnel by-passing the constitutional principles that provide protection of fundamental rights of the citizens. In addition to these extended powers, the police personnel and security forces are given protection from prosecution.

"Life and death cannot be left subject to an individual's rationale" says Inshah Malik, a PhD student from Kashmir, as quoted by Langer (2011). While talking about the Armed Forces Special Powers Act, 1958 (AFSPA) the PhD student claims that the Act violates human rights as it is vague and has no standards. Talukdar (2009) reports AFSPA, which has been in operation in most of the Northeastern states, allows any commissioned or non-commissioned officer or any other person of equivalent rank from the armed forces to enter and search any premises without a warrant, arrest without and even fire upon or otherwise use force, even to the extent of causing death, against any person acting in contravention of any law in the notified disturbed area. Langer (2011) while reporting on AFSPA points out AFSPA – a single page law allows shooting to kill on mere suspicion. Ambast (2016) quoting the Home Ministry of India's recent report quoting NCRB on Northeast India states that there were 3867 incidents in Manipur between 2007 and 2015, in which 1205 "extremists" and 486 'civilians' were killed. However, the Supreme Court (2014) raised doubts about the accuracy of the NCRB figures. In the case filed by the Manipur Victims' families Association before the Supreme Court, the petitioners have alleged that over 1500 civilians have been extra-judicially killed in Manipur alone since 1979. The Times of India (2013) reported that the existence of this practice was recently acknowledged in the courts.

CONCLUSION AND SUGGESTIONS

From the study it is found that most of these fake encounter killings happens in the name of counter insurgency operations, anti-terror operations and anti-dacoit operations. The authorities' in the guise of suppression kill them for personal enmity or for the political bosses for rewards

and promotion and at the same time point out to deficiency in methods and training. These problems are acute in the border areas, where judicial tolerance of the Government's heavy-handed counterinsurgency tactics, the refusal of security forces to obey court orders, and terrorist threats have disrupted the judicial system.¹⁵

Though it is an mammoth and Herculean task to bring accountability and transparency in the encounter culture as it requires a multi-pronged approach, it is no longer one can shy to care to preserve our democratic ideals. The impediments to change are enormous as long as the thinking of police personnel, politicians, and members of the public continues that encounter killings are a legitimate and justifiable form of police personnel work.

One of the immediate measure that should be done by the government is to set up a separate committee similar to the Fact Finding Committee that was set up after emergency to enquire into the cases of alleged fake encounters pending before NHRC.

It's not fair to accuse police personnel alone for these killings. The public and the politicians too contribute to this menace. Too much of political interference in the police personnel administration and decision making has eroded the authority of police personnel leadership in India which in turn has led to situations where there is complete loss of discipline among the police personnel and they seek outside patronage for rewards, promotion and protection against punishment. This is one of the major reasons for decline in the effectiveness of departmental mechanisms to ensure police personnel accountability.¹⁶

Another major cause is that the political executives who head the government and the forces themselves have criminal background. The presence of criminally tainted ministers and representatives cutting across political affiliations in positions of power can only encourage criminals. As aptly put by the editor of leading newspaper, "The right place for criminals is neither jungles nor the Assembly but behind bars."¹⁷ The Police personnel department has to work under a political executive and hence it's the responsibility of the public to choose the right leader.

Another problem is that the perception of the public towards police personnel. The police personnel feel that the government as well as the public sometimes adopt double standards in dealing with them. This can be compared with Geoff Thompson's Sheep Dog and Wolf Analogy in which the Police personnel are the 'Sheep dog' which protects the 'Innocent herd of Sheep', the

¹⁵United States Department of State, 2000 Country Reports on Human Rights Practices - India (February 23, 2001). Also available at : <http://www.state.gov/j/drl/rls/hrrpt/2000/sa/717.htm> (Visited on April 16, 2014).

¹⁶http://www.humanrightsinitiative.org/programs/aj/police_personnel/papers/gpj/police_personnel_accountability_in_india.pdf (Visited on February 12, 2014).

¹⁷Editorial, "No su-raj this" *Indian Express*, Nov. 5, 2000.

criminal is akin to the "wolf".¹⁸ When there is no threat the sheep hate the presence of the sheep-dog which bosses around intimidate them but the moment the wolf appears the sheep loudly bleat for the sheep-dog to come to their rescue.¹⁹ In essence, a citizen recognizes the utility of police personnel only when he is under threat. Rest of the time he dislikes any interaction with the police personnel, even their presence make it uncomfortable for the citizen.

Whenever there is law and order problem in a city because of anti-social elements and dacoits, when there is intrusion of terrorists in the borders or militant attacks the police personnel and the armed forces are pat at the back and given a free hand to deal with it the way they think fit; but once law and order is restored, normalcy and peace return, their methods are questioned terming them as perpetrators.²⁰ This sort of double standard happened in Punjab where violations of human rights committed by the police personnel during counter-terrorism were ignored by the government but when once the state got rid of that issue, the NGOs became active and demanded for the accountability of police personnel for all the extra judicial measures taken to control terrorism, and as a result of which the government launched prosecutions against a large number of police personnel officers.²¹

The view of the Senior officials who involve in encounters is that though they don't like killing people in cold blood and are aware that such killing makes lower level police personnel unaccountable and therefore open to corruption, Nevertheless, without encounters the underworld would rule most Indian cities thereby insisting there is no alternative to encounters.²² As put by Karthikeyan, former CBI director "No man in uniform has a right to decide who is to live or die. However, opening fire is inevitable when the life of a police personnel or civilian is in danger. Unless there is a genuine reason to believe that any delay might endanger the life of an innocent person, shooting should only be a last resort,"²³ which is possible only when the government comes up with a statutory provision making the accountability of such encounter killings mandatory.

Thus the menace of fake encounter killing can be stopped only when the Government of India brings in a central legislation which gives powers to NHRC, bringing accountability in police personnel supported by the Judiciary, Civil society and the Media.

¹⁸<http://kravmaga-chennai.blogspot.in/2012/12/the-police-personnel-fake-encounters-tip-of.html> (Visited on February 23, 2014).

¹⁹*Ibid.*

²⁰ See *supra* note 143.

²¹*Ibid.*

²²Sanghvi, Vir, "Fake Encounters" 34 *CMLJ* 190 (1998, Jun- Sep).

²³ "Police personnel encounter back with a bang" *The Hindu*, (February 2012). Also available at: <http://www.thehindu.com/news/cities/chennai/police-personnel-encounter-back-with-a-bang/article2925423.ece> (Visited on April 17, 2014).

