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EXTRA-JUDICIAL KILLINGS IN INDIA: A CRITICAL ANALYSIS

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Abstract:

"Injustice anywhere is a threat to justice everywhere."

- Martin Luther King Jr.

Extrajudicial killings, a contentious issue in India, have garnered significant attention due to their complex legal, ethical, and human rights implications. This research paper provides a critical study of extrajudicial killings in India, examining the dichotomy of perspectives surrounding these incidents. One perspective views them as necessary acts of justice in the face of rising crime and terrorism, while another condemns them as violations of constitutional rights and due process.

The paper maintains a neutral stance, analysing the phenomenon through the lens of real-life incidents and relevant case laws. It explores the legal framework governing extrajudicial killings, particularly under Articles 14, 21, and 22 of India's Constitution, which guarantee equality, life, liberty, and protection against arbitrary arrest. Despite guidelines from the National Human Rights Commission (NHRC), extrajudicial killings persist, often attributed to political influence and ineffective law enforcement practices. Drawing on case studies such as the Hyderabad encounter in 2019 and the Vikas Dubey killing in 2020, the paper examines Supreme Court and High Court judgments, evaluating legal frameworks and provisions applicable to these incidents. It also considers international human rights standards, comparing India's practices with global norms to identify areas necessitating reforms.

This study aims to contribute to informed dialogue and policy recommendations aimed at curbing extrajudicial killings, advocating for police reform, strengthening legal protections, and upholding fundamental rights within India's criminal justice system. By exploring these critical issues, the

paper seeks to stimulate scholarly debate and promote measures that uphold justice, accountability, and respect for human dignity in India.

Keyword:

Extra-judicial killings, Encounter Killings, Right to Life, Human Rights, Police reform, etc.

Introduction

Article 21 of India's Constitution guarantees the right to life and personal liberty, emphasizing that these rights can only be deprived through established legal procedures. Central to the protection of all other rights, the right to life forms the cornerstone of democratic governance and justice. However, India has grappled with a troubling trend of extrajudicial killings, where individuals are unlawfully executed without due legal process by state entities or individuals. This phenomenon, often manifested through "encounter killings" by police and armed forces, initially arose as a response to threats like the Naxalite movement but has increasingly been misused for personal gain and to evade legal accountability. The traditional methods of resolving cases—interrogation, investigation, and trial—have increasingly been bypassed in favour of unlawful killings, undermining the justice system. State actors, including police and paramilitary forces, are meant to uphold law and order but have resorted to these violent measures.

Extra-judicial killings in India have also surged due to deficiencies in law and legal enforcement. Despite international standards and NHRC guidelines, suspects face torture and killings in custody, with minimal reporting and punishment for perpetrators. This problem persists despite stringent laws in developed countries like the USA and UK. Addressing this issue requires focused and careful decision-making to strengthen India's legal framework and enforcement.

The study seeks to investigate the frequency and extent of extra-judicial killings across diverse regions and demographics in India while identifying the underlying causes behind such incidents. It aims to evaluate the effectiveness of current legal frameworks and enforcement procedures, highlighting critical areas in need of reform. Additionally, the research intends to assess the broader impact of extra-judicial killings on human rights, individual liberties, and the rule of law. Finally, it aims to compare India's approach to extra-judicial killings with global practices to propose potential solutions aimed at strengthening the legal framework, enhancing enforcement mechanisms, and safeguarding fundamental rights. Through this critical analysis, the research

seeks to contribute to informed policymaking and advocacy for reforms that uphold justice, accountability, and respect for human dignity within India's criminal justice system.

Extra-Judicial Killings:

Extra-judicial killings refer to acts where law enforcement officials, government agents, or individuals acting on behalf of state authority intentionally inflict lethal force upon a person without the sanction of any judicial proceeding or legal process. These killings occur outside the established legal framework that governs the use of force by state actors, such as police officers or military personnel. Key aspects of extra-judicial killings include:

1. **Absence of Due Process:** These killings bypass legal procedures and judicial oversight, denying individuals their right to a fair trial, legal defense, and judicial review.
2. **Implications for Human Rights:** Extra-judicial killings often violate fundamental human rights, including the right to life, the right to security, and protection against arbitrary deprivation of life as enshrined in international human rights conventions.
3. **Political or Social Motivations:** These killings may be driven by political agendas, social prejudices, or attempts to suppress dissent, often targeting individuals perceived as threats to state authority or societal norms.
4. **Impunity and Lack of Accountability:** Perpetrators of extra-judicial killings frequently escape legal consequences due to inadequate investigations, weak judicial oversight, or systemic corruption, leading to a culture of impunity.
5. **Impact on Society:** Such killings erode public trust in law enforcement institutions, undermine confidence in the rule of law, and perpetuate cycles of violence and reprisals within communities.

Examples of extra-judicial killings range from assassinations of activists or journalists to police encounters where suspects are allegedly killed in self-defence. These incidents are particularly contentious in countries with weak governance or societal divisions. Addressing extra-judicial killings requires robust legal frameworks, effective oversight mechanisms, respect for human rights, and accountability for state actors, ensuring adherence to lawful procedures and upholding justice and the rule of law in democratic societies.

Causes of Extra-Judicial Killings in India:

The causes of extra-judicial killings in India are multifaceted and arise from a combination of systemic, institutional, socio-political, and cultural factors. Here are some of the key causes:

Rapid Results over Due Process:

- **Speed Over Procedure:** Encounters are often seen as a shortcut to achieve quick results. Due process, which involves investigation, arrest, prosecution, and trial, can be lengthy and resource-intensive. In contrast, encounters provide an immediate, albeit extra-judicial, resolution.
- **Public Perception:** The public may view encounters as a demonstration of swift justice, especially when they lose faith in the judiciary's ability to deliver timely verdicts. This perception can bolster the police's image as effective enforcers of law and order, even if the encounters bypass legal procedures.
- **Positive re-enforcement** - In society, these officers who carry out such killings are often hailed as heroes because the public perceives these actions as effective measures to cleanse society of criminal elements.

Resource Constraints:

- **Lack of Resources:** Police forces may face resource constraints, including personnel shortages, inadequate training, or insufficient investigative tools. Encounters, being more immediate, can be seen as a more practical approach under such limitations.
- **Avoiding the Burden of Investigation:** Proper investigation and legal prosecution require significant effort, documentation, and time. Encounters circumvent this burden, providing a quick fix to ongoing criminal activities.

Political and Public Pressure:

- **Pressure for Results:** Police often face immense pressure from the government and the public to control crime rates. High-profile encounters can serve as a demonstration of the police taking decisive action.
- **Political Backing:** In some cases, political leaders may support or even encourage encounters to showcase their commitment to law and order, thereby gaining public favour and votes.

Creating a Deterrent Effect:

- **Fear as a Tool:** Encounters can be used to instil fear among criminals. The logic is that potential criminals will be deterred by the threat of being killed in an encounter rather than facing a lengthy judicial process.

- **Public Assurance:** Such actions can reassure the public that the police are actively working to ensure their safety, thereby maintaining social order and reducing panic.

Addressing these underlying causes requires comprehensive reforms across multiple fronts, including strengthening police training and accountability mechanisms, enhancing judicial oversight, promoting human rights education and awareness, and fostering a culture of respect for the rule of law and due process. Efforts to combat extra-judicial killings must prioritize systemic reforms that uphold constitutional guarantees and protect the rights of all individuals within India's diverse society.

Legal and Constitutional Framework of Extra-Judicial Killings in India:

The legal and constitutional framework surrounding extra-judicial killings in India is governed by several key laws, constitutional provisions, and judicial interpretations aimed at safeguarding fundamental rights and ensuring accountability. Here are the main components:

1. Constitutional Guarantees:

- **Right to Life and Personal Liberty:** Article 21 of the Constitution of India guarantees the right to life and personal liberty to all persons, including protection against arbitrary deprivation of life. This fundamental right forms the bedrock of legal protections against extra-judicial killings.

2. Criminal Procedure Code:

- The Criminal Procedure Code provides the procedural framework for law enforcement actions, including arrests, detention, and investigation. It mandates that arrests must be made strictly according to legal provisions and with respect to the rights of the accused.

3. Indian Penal Code (IPC):

- Relevant provisions of the IPC, such as Section 302 (murder) and Section 304 (culpable homicide not amounting to murder), define the legal consequences for causing death unlawfully. These provisions are crucial in prosecuting cases of extra-judicial killings.

4. Police Acts and Regulations:

- Each state in India has its own Police Act and regulations that govern the conduct, responsibilities, and accountability of police officers. These acts typically include provisions related to the use of force, arrest procedures, and disciplinary measures for misconduct.

5. **Judicial Oversight:**

- The judiciary plays a vital role in interpreting constitutional rights and ensuring adherence to legal standards. Courts have consistently emphasized that any use of force by law enforcement must be proportionate to the threat posed and compliant with constitutional guarantees.

6. **National Human Rights Commission (NHRC):**

- The NHRC is mandated to investigate complaints of human rights violations, including cases of extra-judicial killings. It serves as an independent oversight body tasked with ensuring that state actions comply with constitutional and human rights norms.

7. **International Human Rights Obligations:**

- India is a signatory to various international human rights treaties and conventions that impose obligations on the state to protect and uphold human rights, including the right to life and prohibition of torture or cruel, inhuman, or degrading treatment.

Challenges within this legal framework often include gaps in enforcement, weak accountability mechanisms, and instances of impunity for perpetrators of extra-judicial killings. Efforts to address these challenges require robust reforms, including strengthening judicial oversight, enhancing police training on human rights and legal procedures, improving accountability mechanisms, and promoting a culture of respect for constitutional rights and the rule of law.

While India has a comprehensive legal and constitutional framework aimed at protecting citizens' rights and preventing extra-judicial killings, effective implementation and enforcement remain critical to ensure adherence to these principles in practice. Continued efforts are necessary to uphold human rights, strengthen accountability, prevent abuses of power by state actors, and safeguard the rights of all individuals.

Extra-Judicial Killings Judicial Response and Current Trends:

Encounter killings, which began with Alluri Sitarama Raju in the 1920s, were systematized in Hyderabad and Andhra Pradesh after independence. During the Telangana movement, these actions led to around 3000 deaths being justified. By the 1960s, encounter killings had become an accepted practice despite violating constitutional rights, particularly the right to life and due process. On January 11, 1982, Manya Surve, a gangster, was shot dead by police officers Raja Tambat and Isaque Bagwan in Mumbai's Wadala area, marking the city's first recognized encounter killing. Over the next two decades, police carried out about 1,200 similar operations.

The officers involved gained fame as 'encounter specialists,' becoming prominent figures in India's public consciousness.

Several leading cases in India have addressed the issue of extra-judicial killings, each contributing to the legal framework, judicial scrutiny, and public discourse on this critical human rights issue. Here are some prominent cases along with their critical analysis and recent trends:

1. People's Union for Civil Liberties (PUCL) vs. State of Maharashtra (2014)

The PUCL vs. State of Maharashtra case challenged the legality of police encounters in Maharashtra, highlighting concerns about staged killings and lack of accountability. The Supreme Court emphasized the right to life under Article 21 of the Constitution and issued guidelines for preventing misuse of power in such encounters. It mandated independent inquiries, stricter oversight, and accountability measures for police involved in encounters. This landmark case set important precedents for judicial oversight and accountability in cases of extrajudicial killings, reaffirming the judiciary's role in upholding constitutional rights and ensuring lawful conduct by law enforcement. Subsequently, there has been increased judicial scrutiny of encounter killings nationwide, with courts actively reviewing police actions, ordering thorough investigations, and ensuring adherence to legal standards.

2. Extra-Judicial Execution Victim Families Association (EEVFAM) vs. Union of India (2016)

The case EEVFAM vs. Union of India addressed allegations of extra-judicial killings by security forces in Manipur under the Armed Forces (Special Powers) Act (AFSPA). It focused on accountability for human rights violations and ruled that every encounter death in Manipur must be independently investigated. The Supreme Court criticized the excessive use of force and lack of accountability under AFSPA, emphasizing the importance of judicial oversight and accountability. This case highlighted the tension between security imperatives and human rights in AFSPA-affected regions, affirming the judiciary's role in preventing abuse and impunity. It spurred discussions on the need for AFSPA reforms and increased scrutiny of security force operations in conflict zones, contributing to ongoing debates on balancing security concerns with human rights protection.

Further in 2019, the Hyderabad encounter, where four rape-murder accused were killed by police during an alleged escape, sparked controversy. A Supreme Court-appointed committee deemed

the encounter deliberate, questioning the police's self-defence claim and recommending action against 10 officers. This incident raised concerns about extrajudicial killings and police accountability in India, dividing public opinion. Similarly, the 2020 killing of gangster Vikas Dubey by Uttar Pradesh police during a disputed escape attempt highlighted extra-judicial killings and police accountability. Suspicions arose of execution rather than lawful arrest, revealing potential collusion between politicians, criminals, and law enforcement, underscoring the need for justice system reforms.

In summary, these cases illustrate the evolving legal framework and judicial responses to extra-judicial killings in India. While there have been significant strides in judicial scrutiny and accountability, ongoing efforts are necessary to address systemic challenges, promote reforms, and uphold human rights standards across law enforcement practices.

Recent Trends and Challenges:

- **Increased Judicial Activism:** There has been a trend of judicial activism in scrutinizing state actions and ensuring accountability in cases of extra-judicial killings. Courts have intervened to protect constitutional rights and uphold legal standards.
- **Public Awareness and Advocacy:** Civil society organizations, human rights groups, and media scrutiny have contributed to raising awareness and advocating for reforms to prevent extra-judicial killings and ensure justice for victims.
- **Legislative Reforms:** Calls for legislative reforms to strengthen legal protections, enhance accountability mechanisms, and align domestic laws with international human rights standards continue to be debated.
- **Challenges:** Despite judicial interventions and reforms, challenges persist, including delays in investigations, institutional resistance to accountability measures, and gaps in implementation of court directives.

Impact of Extra Judicial Killings in India:

Negative Impacts:

1. **Loss of Life:** The most immediate and severe outcome is the death of innocent people. Police using excessive force or fabricated evidence can kill individuals who have committed no crimes, causing profound grief and trauma to their families and communities.

2. **Violation of Human Rights:** Extra-judicial killings infringe on fundamental human rights, including the right to life, a fair trial, and due process. These actions bypass the judicial system, undermining the rule of law and establishing dangerous precedents.
3. **Damage to Public Trust:** When police engage in fake encounters, it erodes public confidence in law enforcement. This mistrust can lead to increased hostility toward the police and reluctance to cooperate with them in investigations.
4. **Increase in Crime:** A lack of public trust in the police can lead to decreased cooperation from citizens, making it harder for law enforcement to solve crimes. This can result in more criminal activities and a decline in public safety.
5. **Rise of a Retributive Society:** Such incidents can incite feelings of revenge against society, the government, and the police, contributing to the emergence of new criminals and perpetuating a cycle of violence and retribution.

Positive Impacts:

1. **Deterrence of Crime:** Proponents argue that the fear of extrajudicial action can deter potential criminals from engaging in unlawful activities. The perceived speed and severity of such measures might act as a strong deterrent.
2. **Quick Resolution:** In some cases, extra-judicial actions are seen as a way to bypass the slow judicial process and deliver swift justice, which might be viewed as effective in high-pressure or emergency situations where the legal process is perceived to be insufficient.
3. **Boost in Law Enforcement Morale:** Some law enforcement officers might feel empowered by the ability to take decisive action without the constraints of the judicial process. This can temporarily boost morale and provide a sense of immediate accomplishment.
4. **Public Perception of Safety:** In areas with high crime rates, some segments of the population might feel a temporary sense of increased safety and justice being served when they perceive that criminals are being dealt with swiftly.

Extra-Judicial Killings: International Perspective

India's approach to extrajudicial killings differs significantly from many other countries, especially developed nations with robust legal systems and human rights protections. In countries like the United States and the United Kingdom, extrajudicial killings are rare due to strict adherence to legal procedures, strong judicial oversight, and comprehensive accountability

mechanisms for law enforcement agencies. These countries prioritize due process, ensuring suspects are afforded their legal rights and any use of force is strictly regulated and justified.

In contrast, India faces challenges with extrajudicial killings due to systemic issues such as political interference, corruption, and inadequate accountability mechanisms within law enforcement. The prevalence of encounters and custodial deaths highlights deficiencies in legal frameworks and enforcement practices, leading to concerns over human rights violations and erosion of trust in the justice system. International comparisons underscore the need for India to strengthen its legal safeguards, enhance police training and accountability, and uphold constitutional rights to align with global standards of justice and respect for human dignity. Addressing these disparities requires comprehensive reforms aimed at promoting transparency, accountability, and adherence to the rule of law in law enforcement practices.

Recommendations:

Strengthen Judicial Independence and Capacity:

- **Judicial Reform:** Enhance the capacity of the judiciary to handle cases efficiently and independently. This includes increasing the number of judges, improving infrastructure, and reducing backlog to ensure timely justice.
- **Training and Awareness:** Provide continuous training to judges on human rights principles, due process, and the prohibition of extrajudicial killings. Foster a culture of judicial independence free from political or external influence.

Enhance Police Training and Professionalism:

- **Human Rights Education:** Integrate comprehensive human rights education into police training curriculum. Emphasize ethical policing, respect for human dignity, and lawful methods of investigation and arrest.
- **Skill Development:** Equip police personnel with effective communication skills, conflict resolution techniques, and non-lethal methods of handling suspects to minimize the use of force.

Establish Robust Accountability Mechanisms:

- **Independent Oversight:** Create independent oversight bodies with the authority to investigate complaints of police misconduct and extrajudicial killings. Ensure these bodies are transparent, impartial, and have powers to recommend prosecution.

- **Prosecutorial Accountability:** Hold accountable all individuals involved in extra-judicial killings, irrespective of rank or position. Ensure prosecutions are pursued vigorously and impartially.

Review and Reform Legal Framework:

- **Legislative Reforms:** Review laws like the Armed Forces Special Powers Act (AFSPA) and the Code of Criminal Procedure to align with international human rights standards. Introduce safeguards against misuse of powers and provisions that encourage impunity.
- **Prohibition of Torture:** Enact legislation explicitly prohibiting torture and ensuring that forced confessions are inadmissible in court. Strengthen procedural safeguards to prevent abuse during custodial interrogation.

Promote Media Freedom and Civil Society Engagement:

- **Press Freedom:** Safeguard media freedom to report independently on law enforcement activities and cases of extra-judicial killings. Encourage investigative journalism to expose abuses and hold authorities accountable.
- **Civil Society Participation:** Encourage civil society organizations to monitor and report on human rights violations. Support their role in advocating for legal reforms, raising awareness, and providing support to victims.

Public Awareness and Education:

- **Human Rights Education:** Implement educational programs in schools and communities to promote awareness of human rights, constitutional protections, and the importance of due process.
- **Community Policing Initiatives:** Foster trust between police and communities through community policing initiatives. Encourage dialogue, cooperation, and mutual respect to reduce tensions and prevent extra-judicial actions.

International Standards Compliance:

- **International Commitments:** Fulfil obligations under international human rights treaties and conventions, including the International Covenant on Civil and Political Rights (ICCPR). Align domestic laws and practices with international standards to protect citizens' rights universally recognized.

Addressing extra-judicial killings requires a comprehensive approach that involves legislative

reforms, judicial strengthening, rigorous training for law enforcement, accountability mechanisms, adherence to international norms, and safeguarding media freedom. These recommendations aim to establish a framework where human rights are protected, and justice is served through lawful means, fostering trust in the justice system and promoting a culture of respect for human dignity.

Conclusion:

The issue of extra-judicial killings in India represents a significant challenge to its democratic principles and rule of law. Stemming from a complex interplay of factors including systemic inefficiencies, societal pressures, and institutional failures, these killings not only violate fundamental rights but also erode public trust in law enforcement and judicial integrity. Despite constitutional safeguards and international human rights standards, instances of extra-judicial killings persist, often under the guise of maintaining law and order or combating crime.

To address this grave issue, concerted efforts are needed across multiple fronts. Strengthening the judicial system to ensure swift and impartial justice, enhancing police training in human rights and ethical conduct, and establishing robust accountability mechanisms are imperative steps. Reforming outdated laws such as the Armed Forces Special Powers Act (AFSPA) and ensuring their alignment with international standards is crucial to prevent impunity and ensure justice for victims. Moreover, fostering a culture of respect for human rights and promoting media freedom are essential to hold authorities accountable and raise public awareness about the consequences of extra-judicial actions. Civil society engagement and international scrutiny can also play pivotal roles in pressuring for reforms and monitoring progress.

Ultimately, ending extra-judicial killings requires a sustained commitment from all stakeholders—government, judiciary, law enforcement, civil society, and the public. By upholding constitutional values, respecting human dignity, and enforcing the rule of law uniformly, India can overcome this challenge and reaffirm its commitment to justice, human rights, and democratic governance.

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