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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **JUSTICE OUTSIDE THE LAW: A STUDY OF EXTRA-JUDICIAL KILLINGS**

AUTHORED BY - PRIYA TIWARI & DANIEL PINTO

## **Abstract**

This paper examines the phenomenon of extra-judicial killings in India, commonly referred to as “encounters,” Instances where officers execute individuals without approval or oversight from a court. Despite constitutional guarantees under “Articles 14, 21, and 22 of the Indian Constitution”, Despite the existence of international human rights protections, such killing persists with Disturbing regularity. Drawing on landmark cases such as “*People’s Union for Civil Liberties v. State of Maharashtra (2014)*”, “*DK Basu v. State of West Bengal (1997)*”, and “*Om Prakash v. State of Jharkhand (2012)*”, The study illustrates how these measures corrode legal norms and simultaneously degrade public trust in democratic governance.

The study further explores the intersection of extra-judicial violence with issues of caste, religion, gender, and socio-economic inequality, showing that marginalized communities are disproportionately targeted. It critiques the public and political glorification of encounter killings under the “bullet-for-bullet” mentality, which legitimizes state violence while bypassing due process. By situating the Indian experience within constitutional principles and international human rights standards, the paper argues that extra-judicial killings represent both a failure of justice and a grave threat to democracy. Ultimately, it calls for stronger judicial oversight, institutional accountability, and Human rights approaches to address systemic abuses and reaffirm the sanctity of life and due process.

## **Keywords:**

Extra-Judicial killing, encounters, custodial death, fundamental rights, human rights, rule of law, sections 100, 299, 300, 302 of IPC, section 38, 100, 101, 103 of BNS, articles 14, 21, 22 of Indian Constitution, sections 46, 176 of CRPC, sections 43, 196 of BNSS

## Introduction

Extrajudicial killings, as the term implies, refer to the deliberate taking of a person's life by state agents without the sanction of law or the due process guaranteed by judicial procedures. These acts bypass the formal justice system entirely, denying the accused their fundamental right to a fair trial. They are most often associated with security forces, police officials, or armed personnel—individuals vested with the authority to uphold and enforce the law—yet, paradoxically, who at times exploit this authority to serve personal, political, or institutional interests. When such unlawful actions are carried out to achieve ulterior motives rather than to protect public safety or uphold the principles of justice, they stand as clear violations of both domestic and international legal norms.

Historically, extrajudicial killings have been prevalent across many regions of the world, from authoritarian regimes to democracies struggling with internal conflict or high crime rates. In the Indian context, the term “encounter killing” has become a widely recognized euphemism for such acts, particularly when law enforcement officials claim to have killed a suspect in self-defence during an armed confrontation. While such incidents are often portrayed by authorities as necessary to combat crime or terrorism, they have been the subject of widespread criticism for being staged or fabricated to conceal unlawful executions.

This practice fundamentally contradicts the essence of democracy, which is built upon the rule of law, separation of powers, and the protection of individual liberties. “Article 21 of the Indian Constitution” says that ‘No person shall be deprived of his life or personal liberty except according to procedure established by law’. Extrajudicial killings directly erode this constitutional safeguard, replacing judicial processes with arbitrary decisions by individuals or agencies. The principle of ‘Audi alteram partem’ a cornerstone of natural justice which ensures that both sides have the right to be heard before a verdict is passed is rendered meaningless in such circumstances.

The Indian judiciary has repeatedly pronounced these actions to be unlawful. In the landmark cases ‘People’s Union for Civil Liberties v. State of Maharashtra’ (2014) judgment, the “Supreme Court categorically condemned extrajudicial executions, describing custodial deaths as among the most egregious crimes in a civilized society governed by law”. Similarly, ‘the Code of Criminal Procedure (CrPC), particularly Sections 46 and 176 (the now sections 43 and

196 of BNSS)’, lays down “strict limitations on the use of force during arrests and mandates thorough investigations into suspicious deaths in police custody. Despite these legal provisions, reports of extrajudicial killings continue to surface, raising concerns about misuse of power, institutional accountability, and the lack of adequate oversight mechanisms”.

The persistence of such practices has broader consequences beyond individual violations of human rights. It undermines public confidence in the judiciary, normalizes the bypassing of legal procedures, and fosters a culture of impunity within law enforcement agencies. Internationally, while there is no single comprehensive definition of extrajudicial killings in treaty law, human rights instruments such as the “International Covenant on Civil and Political Rights (ICCPR) prohibit arbitrary deprivation of life, and states are obligated to investigate, prosecute, and punish such acts. India, as a signatory to these conventions, bears both a constitutional and moral responsibility to ensure that justice is pursued within the bounds of law, without resorting to unlawful executions”.

Therefore, extrajudicial killings must be understood not only as isolated incidents of abuse of power, but as symptomatic of deeper systemic issues—ranging from weak institutional checks to political pressures that prioritize expedient outcomes over the due process of law. In contemporary times, their prevalence has sparked intense public debate, judicial intervention, and calls from human rights organizations for stronger accountability mechanisms. Ultimately, confronting this issue is essential to preserving the democratic ethos, upholding the supremacy of the Constitution, and reasserting the protection of fundamental rights of its citizens by the state.

### **Legality on extra judicial killing**

No individual possesses the authority to take another person’s life outside the due process of law, no matter the severity or frequency of that person’s offences. Liability for causing the death of another is generally strict, though certain exceptions exist. Legal provisions recognize circumstances in which the use of force against criminals may result in their death, particularly in extreme situations. Among these, the most significant safeguard is the right of private defence. “Section 100 of the IPC” (now Section 38 of BNS) upholds an individual’s right to protect themselves and their property when there is a reasonable apprehension of danger to life. Notably, the right of self-defence can be exercised even before any actual physical harm occurs.

However, in “Extrajudicial Execution Victim Families Association v. Union of India (2016), the Court clarified that self-defence is valid only in situations of imminent and immediate threat; it cannot be invoked as a justification for retaliation or for anticipated future harm”. Law enforcement officers are granted additional authority under circumstances. Under “Section 46 of the Code of Criminal Procedure (CrPC), police are empowered to make arrests. “Section 46(2) specifies that if a person resists or attempts to evade arrest, the officer may employ necessary measures—including lethal force—to ensure the arrest. The test of proportionality requires that such measures be those a reasonable and non-malicious person would adopt.” Furthermore, “Section 46(3) limits the use of deadly force strictly to cases involving offences punishable with death or life imprisonment”.

In “Om Prakash v. State of Haryana (2009), the Supreme Court ruled that police officers may employ force in self-defence only to the extent that it is reasonable considering the threat faced. The Court emphasized the importance of restraint and judicious use of force by law enforcement.” The prohibition of extrajudicial killings was strongly reiterated in “People’s Union for Civil Liberties v. State of Maharashtra (2014), where custodial deaths were recognized as among the gravest violations in a democratic society governed by the rule of law. Such deaths were held to contravene the fundamental right to life guaranteed under sArticle 21 of the Constitution of India”.

The Court had earlier in “DK Basu v. State of West Bengal (1997), court laid down comprehensive guidelines to safeguard human rights during arrest and detention. These included protections such as the right to legal representation, the right to medical examination, and the obligation for arresting officers to prepare a formal arrest memo.”

### **Statutory safeguards on CRPC and BNSS**

#### **Sections in CrPC (1973) on Extra-Judicial Killings / Use of Force**

“Section 43BNSS/ Section 46 CrPC – Arrest how made.

Police can use “reasonable force” to arrest a person. If a person resists or attempts to evade arrest, the officer may use necessary force, even to the extent of causing death. Deadly force can be used only if the accused is charged with an offence punishable with death or life imprisonment.”

“Section 196 BNSS/Section 176 CrPC – Inquiry by Magistrate into custodial deaths.

Mandatory judicial inquiry in every case of death, disappearance, or rape in police custody.”

## **Culpable Homicide, Murder and Extra-Judicial Killings**

The problem of “extra-judicial killings” in India goes beyond mere questions of legality—it strikes at the heart of constitutionalism, the rule of law, and human dignity. Extra-judicial killings which are also referred as “encounters,” are deaths caused by state authorities, especially the police, without the sanction of a judicial process. Such practices undermine the core of “Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty to every individual, irrespective of their social, economic, or political status.”

“The Indian Penal Code (IPC) outlines the distinction between culpable homicide and murder. While Section 299 defines culpable homicide (now section 100 of BNS), Section 300(now section 101 of BNS) establishes exceptions where culpable homicide does not amount to murder. The third exception of Section 300 provides that if a public servant causes death during an act that they reasonably believe to be lawful and necessary for the advancement of public justice, such an act does not constitute murder, provided it is done without personal malice.”

Although this provision was intended as a safeguard for public officials acting in good faith, its “vagueness” has made it highly problematic. The interpretation of “lawful and necessary” remains contested, leaving room for misuse. In practice, this has translated into “arbitrary and unchecked state violence”. Police encounters are frequently justified under the guise of “self-defence” or “maintenance of law and order”, but investigations and testimonies often reveal that many of these killings are “pre-planned”, staged, or motivated by political or institutional pressures.

### **Ethical and Legal Implications**

The danger of legitimizing extra-judicial killings is twofold. On the one hand, it creates a “parallel system of justice”, where state officials do the role of judge, executioner and jury, thereby bypassing judicial scrutiny. On the other hand, it normalizes a “culture of impunity” once police officers believe they can eliminate suspects and not be held accountable, it corrodes trust in the entire legal system. Instead of upholding justice, such practices foster fear, inequality, and mistrust in state institutions.

The “Supreme Court of India” has repeatedly denounced these killings. In “People’s Union for Civil Liberties v. State of Maharashtra (2014), the Court ruled that every encounter death must undergo an independent and impartial investigation.” Similarly, “DK Basu v. State of West Bengal (1997) set down detailed human rights safeguards to prevent and reduce custodial torture and deaths.” Despite these rulings, extra-judicial killings continue, often celebrated in popular media as “instant justice,” reflecting a dangerous erosion of faith in the judicial process.

### **Fake Encounters in India**

The term “fake encounter” refers to the unlawful killing of individuals by police officers, often staged to appear as though the suspect was shot during an armed confrontation. In reality, such incidents frequently involve persons already in police custody, and the confrontation is fabricated to justify the killing. According to records of the “National Human Rights Commission (NHRC)”, between 2002 and 2017, there were “1,782 reported cases of fake encounters” across India, with “Uttar Pradesh accounting for the highest number (759 cases)”. These practices directly violate the Constitution. “Article 21 of the Indian Constitution states that- No person shall be deprived of his life or personal liberty except according to procedure established by law.” This means that an accused individual can only be punished after being informed of the charges, afforded a fair trial, and given an opportunity to defend themselves. Only upon conviction through due process may a death sentence be lawfully imposed. A fake encounter, by contrast, bypasses this entire process, amounting to nothing more than an “illegal execution” carried out under the guise of law enforcement.

Despite their illegality, the police in India are rarely held accountable for staged encounters. A common justification given by officials is that encounters are a necessary tool to deal with hardened criminals, particularly in cases where gathering evidence and securing convictions is difficult. However, this reasoning opens the door to serious “abuse of power”. There have been documented instances where encounters were not acts of self-defence but deliberate killings—sometimes even orchestrated at the behest of “political actors, who allegedly use police encounters to eliminate rivals or settle scores.

#### **My thoughts**

Fake encounters represent one of the starkest contradictions in a democratic society governed by the “rule of law”. On the one hand, the police are entrusted with the responsibility to uphold

justice, but on the other hand, extra-judicial killings directly erode the credibility of the justice system. By normalizing such practices, the state creates an environment where fear and coercion replace law and due process”.

Furthermore, the lack of accountability emboldens corrupt practices. When politicians exploit the system by bribing officers to stage encounters, it reveals the dangerous nexus between state power, corruption, and violence. Instead of protecting citizens, the law is weaponized against them, often targeting marginalized and politically vulnerable groups.

Ultimately, fake encounters undermine not only individual rights but also public faith in democratic institutions. For a society that claims to uphold justice, “no shortcut to justice can justify the denial of constitutional safeguards”. Strengthening judicial oversight, ensuring independent investigations into all encounter deaths, and holding officers accountable are essential steps toward curbing this dangerous practice.

### **Extra-Judicial Killings and the Violation of Fundamental Rights**

Extra-judicial killing, also termed *extrajudicial execution*, refers to the unlawful killing of individuals by law enforcement officials without prior judicial order. It is essentially the use of violence outside the established legal process, bypassing trial and due procedure in the name of swift justice. Such acts of state-sponsored violence openly disregard the Rule of law and the democratic framework of India. Although the practice has been strongly condemned, it is paradoxically sometimes glorified by sections of the public and endorsed by political leaders, which further deepens the crisis of accountability.

Despite India’s constitutional guarantees, reports continue to document police encounters and custodial deaths. A significant precedent was set “in *Om Prakash & Ors. v. State of Jharkhand & Anr.*, where the Court categorized extra-judicial killings as a form of state terrorism.” Under international law, particularly the Universal Declaration of Human Rights (UDHR), such practices are explicitly prohibited. “Article 14 ensures equality before the law, while Article 21 guarantees the right to life and liberty”. Similarly, the Indian Constitution enshrines these same protections, requiring fair investigation, trial, and adherence to natural justice principles, such as “*audi alteram partem*” (the right to be heard). When police officers act as judges and executioners in staged confrontations, they directly violate these constitutional and

international safeguards.

The Supreme Court has upheld these principles consistently. In “E.P. Royappa v. State of Tamil Nadu”, the Court ruled that arbitrary or subjective actions of the state contravene Article 14. Yet, despite judicial condemnation, media reports reveal that victims of encounter killings are disproportionately from marginalized backgrounds, often Muslims, Dalits, or those belonging to lower socio-economic groups. This trend indicates that encounters rarely target powerful offenders but instead affect those with the least access to justice.

### **The "Bullet-for-Bullet" Mentality**

Public opinion plays a troubling role in normalizing extra-judicial killings. Many view encounters as a legitimate response to crime, subscribing to a “bullet-for-bullet” ideology—the belief that violent offenders can be effectively eliminated through immediate execution. As a result, officers implicated in such killings are sometimes celebrated as “heroes” rather than condemned as violators of constitutional rights. While such attitudes may stem from frustration with delays in the judicial process, they dangerously erode the foundations of democracy by legitimizing violence over due process.

### **Threats to Rule of Law and Democracy**

Extra-judicial killings are often portrayed as efficient solutions to crime, but they pose an existential threat to the rule of law. By circumventing judicial authority, they replace legal justice with arbitrary violence. Both fake encounters and custodial deaths illustrate how state institutions, instead of upholding law and order, can become perpetrators of injustice. Any attempt to suspend or bypass legal safeguards makes a mockery of democracy and undermines public trust in institutions.

Article 21 of the Indian Constitution stresses due process as central to the protection of life and liberty. Yet, when individuals are executed without trial, the very concept of equal justice is undermined. This weakens societal faith in the impartiality of courts and creates conditions where law enforcement operates beyond accountability.

#### **Violation of Fundamental Rights**

The practice of extra-judicial killings results in a direct violation of fundamental rights

violation. The Indian legal system rests on the principle that every person is innocent until proven guilty. Executing an accused without trial denies them the opportunity to defend themselves and violates their rights under “Articles 14 (equality), 21 (life and liberty), and 22 (protection against arbitrary arrest and detention) of the Constitution”, as well as parallel provisions in the UDHR.

Courts alone have the authority to decide guilt and impose punishment. When law enforcement assumes this role, innocent individuals may become victims of wrongful killings. This reality is particularly alarming in cases where encounters are fabricated or politically motivated, leading to the deaths of people who may not even be guilty of any crime.

### My Thoughts

I believe extra-judicial killings reveal a deep contradiction in Indian democracy. On one side, they reflect the public’s disillusionment with a slow judicial system, where delays in trials and weak convictions often frustrate victims of crime. On the other, they expose the dangerous nexus between police power, politics, and public approval—a nexus that undermines fundamental rights.

From both a constitutional and ethical standpoint, extra-judicial killings cannot be justified as a shortcut to justice. They perpetuate inequality, disproportionately harm marginalized communities, and normalize violence as a tool of governance. Strengthening the judiciary, ensuring police officials are held accountable, and building public trust in legal institutions are the only sustainable ways to address crime without compromising democracy.

### **Special Judicial Recommendations on Extra-Judicial Killings**

1. In the “People’s Union for Civil Liberties (PUCL) v. State of Maharashtra (2014)”, ‘This is the most important case where the Supreme Court framed guidelines for police encounters:

Every police encounter resulting in death must be recorded and reported to a Magistrate.

Independent investigation by the CID (Crime Investigation Department) or another police station is mandatory.

The FIR must be registered against the police officers involved, and the case must be investigated like any other homicide.

A Magisterial inquiry under Section 176 CrPC is compulsory in all cases of death in police custody or encounters.

Information about the encounter must be sent to the NHRC or State Human Rights Commission.

Compensation should be granted to the victim's family in cases of wrongful death.

Police officers found guilty must face departmental action and criminal trial.

Relatives of the deceased have the right to be informed and participate in the inquiry.

The encounter must be reviewed by a District-level Review Committee.

Strict compliance with Sections 46, 96–106 IPC (right of private defence) to ensure force was proportionate and necessary.'

2. In 'DK Basu v. State of West Bengal (1997)' – a case on Custodial Violence

'Although not specifically about encounters, the Court gave detailed guidelines to prevent custodial torture and deaths, which apply to extra-judicial killings as well:

Arresting officers must carry accurate identification and record details of arrest.

A memo of arrest must be prepared, countersigned by a witness and the arrestee.

Family members must be informed immediately about the arrest.

The arrestee must undergo a medical examination every 48 hours.

A copy of the arrest memo must be sent to the Magistrate.

Police must maintain a detailed case diary of custody.

These safeguards reduce the possibility of fake encounters being staged after illegal detention.'

3. In "Extra-Judicial Execution Victim Families Association v. Union of India (2016)" – Manipur Encounters Case

'The Court held that self-defence cannot be used as a blanket justification for encounters.

Only imminent and immediate threat can justify the use of deadly force.

Ordered independent probes into alleged fake encounters in Manipur involving armed forces.

Emphasized that even armed forces under AFSPA are not immune from accountability.'

4. In "Om Prakash v. State of Jharkhand (2012)" case of Arbitrary State Action,

'The Court described fake encounters as "cold-blooded murders".

Held that such acts amount to "state-sponsored terrorism".

Ordered that police officers involved in staged encounters should be prosecuted for murder under Section 302 IPC.'

5. In “E.P. Royappa v. State of Tamil Nadu (1974)” – it was held ‘that arbitrary or mala fide state action violates Article 14.

This principle applies to extra-judicial killings where the state acts as judge and executioner’

### Major Encounter Cases in India (2003–2020)

Year	Place	Victim(s)	Incident	Controversy / Claim
2003	Gujarat	Sadiq Jamal	Encountered by Gujarat Police, claimed he was plotting to attack PM Modi & BJP leaders.	Alleged fake encounter.
2004	Ahmedabad	Ishrat Jahan & 3 others	Gujarat Police claimed he was a Lashkar-e-Taiba operative.	Later suspected as fake encounter; widely debated.
2004	Tamil Nadu	Veerappan	Most wanted sandalwood smuggler & kidnapper killed by Tamil Nadu STF.	Considered a genuine encounter.
2006	Gujarat	Sohrabuddin Sheikh	Claimed Lashkar-e-Taliba terrorist, killed by Gujarat ATS	CBI alleged fake encounter;
2006	Gujarat	Tulsiram Prajapati	Associate of Sohrabuddin Sheikh, killed by Police.	Alleged fake encounter connected to Sohrabuddin case.
2006	Mumbai	Ram Narayan Gupta (Lakhan Bhaiya)	Aide of Chhota Rajan, shot by Mumbai Police.	Later ruled as a fake encounter.
2008	Delhi (Batla House, Jamia Nagar)	2 suspected terrorists	Special Cell raided Batla House; suspects killed in crossfire.	Highly controversial, authenticity questioned.
2016	Bhopal	8 (SIMI) undertrials	Escapee of Bhopal Central Jail, shot dead by police	Accused of being staged.

			when they allegedly opened fire.	
<b>2019</b>	Hyderabad	4 rape accused	Gang-rape & murder of veterinarian; accused killed by police when 'trying to escape.'	Widely criticized as extrajudicial killing.
<b>2020</b>	Manipur	Irengbam Ratankumar (2010 case)	In 2010 he was killed in alleged fake encounter; in 2020, inspector & 3 police surrendered before court.	Judicial probe confirmed as fake encounter.

### Conclusion

Extra-judicial killings in India embody one of the most serious challenges to the principles of justice, equality, and democracy. While often justified as a quick remedy for crime or terrorism, they bypass the courts, violate fundamental rights, and normalize a dangerous culture of impunity. Judicial pronouncements such as *PUCL v. Maharashtra* and *DK Basu v. West Bengal* have categorically condemned such acts, yet their persistence reveals deep-rooted structural issues—ranging from weak institutional checks to political pressures and public demand for instant justice.

To move forward, India must reaffirm its constitutional commitment to the rule of law. This requires narrowing the scope of legal exceptions, ensuring independent investigations into every encounter death, holding perpetrators accountable, and strengthening public trust in judicial institutions. Extra-judicial killings may appear to satisfy demands for swift justice, but in truth, they weaken the foundations of a fair and democratic society. True justice lies not in bullets but in due process, accountability, and the protection of human dignity.