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FAKE ENCOUNTERS IN INDIA: A CRITICAL LEGAL ANALYSIS

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ABSTRACT

Fake encounters—extrajudicial killings carried out by law enforcement agencies under the guise of self-defense—represent one of the most contentious human rights issues in India. This abstract critically examines the legal framework governing such encounters, analyzing their compatibility with constitutional guarantees, statutory provisions, and judicial precedents. Despite being justified by authorities as necessary tools to combat terrorism and organized crime, fake encounters undermine the rule of law and violate the fundamental right to life under Article 21 of the Constitution of India.____

The study evaluates landmark judgments of the Supreme Court of India, particularly the guidelines laid down in cases such as *PUCL v. State of Maharashtra* (2014), which established procedural safeguards including mandatory FIR registration, independent investigation, and magisterial inquiry in encounter deaths. It also explores the role of institutions like the National Human Rights Commission (NHRC) in ensuring accountability, while highlighting persistent gaps in enforcement and transparency.

Further, the abstract addresses the tension between state security imperatives and civil liberties, arguing that the normalization of encounter killings reflects systemic weaknesses in criminal justice processes, including delays in trials and low conviction rates. The paper concludes that while legal safeguards exist, their inconsistent implementation perpetuates a culture of impunity, necessitating stronger judicial oversight, police reforms, and adherence to international human rights standards.

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Ultimately, the analysis underscores that the legitimacy of a democratic state rests on its commitment to due process and the protection of human rights, even in the face of serious security challenges.

INTRODUCTION

The phenomenon of 'fake encounters' — the extrajudicial killing of individuals by the police or armed forces under the guise of armed confrontations — remains one of the gravest threats to the rule of law and constitutional democracy in India. A fake encounter occurs when a person, typically a suspect or an accused, is killed by law enforcement officers who subsequently fabricate evidence to suggest that the deceased had fired first, thus projecting the killing as an act of legitimate self-defence.¹ These killings are carried out in pre-planned, calculated manners, and the crime scene is subsequently manipulated to create the appearance of a genuine encounter. The victims are overwhelmingly drawn from marginalised communities — religious minorities, Dalits, Adivasis, political dissidents, and individuals living in conflict zones.

India's constitutional framework, grounded in the fundamental rights enshrined in Part III of the Constitution, categorically prohibits the arbitrary deprivation of life. Article 21 guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law.¹ The Supreme Court of India has consistently held that the right to life is not merely a right against physical elimination, but encompasses a life lived with dignity, free from state terror and arbitrariness. Despite this robust constitutional guarantee, the persistence of fake encounters across multiple states reveals a systematic breakdown of legal accountability and institutional integrity within the policing apparatus of the country.

1.1 Historical Background: Colonial Roots of Police Violence

The institutional framework within which police encounters occur in India was established during the British colonial period. The Police Act of 1861, enacted in the immediate aftermath of the First War of Independence, created a centralised, militarised police force designed primarily to serve the interests of the colonial state rather than the public.¹ This law vested enormous powers in the police, including the power to use lethal force in certain circumstances, with minimal accountability mechanisms. The law remains the template for policing in most Indian states even in 2025, having been substantially retained post-independence despite numerous recommendations for reform.

The colonial police were trained to view the public as a subject population to be

controlled rather than citizens to be served. Custodial violence, torture, and summary killings were not exceptional practices but routine tools of colonial administration. This institutional culture was absorbed into the post-colonial policing apparatus and has persisted, reinforced by inadequate reforms and a culture of impunity.

1.2 Post-Independence Era: The Emergence of Encounter Culture

The first documented wave of encounter killings in independent India occurred in the context of Naxalite insurgency in West Bengal in the early 1970s. The state government deployed the police to conduct targeted killings of Naxalite activists, often staging them as armed encounters.¹ This set a precedent that was subsequently replicated across the country.

The 1980s witnessed a dramatic escalation, particularly in Punjab, where encounter killings became a central instrument of counterinsurgency operations against the Khalistani separatist movement. It is estimated that thousands of individuals were killed in alleged encounters during this period, and the Punjab experience became a model that was subsequently replicated in other states.² The Supreme Court in *Rupinder Singh Sodhi v Union of India* acknowledged the prevalence of illegal killings by the police in Punjab and called for independent investigation.

In Andhra Pradesh, the 1980s and 1990s saw the rise of the notorious 'encounter specialists' — police officers who built careers on the killing of alleged Naxalites and criminals.³ Officers who conducted encounter killings were rewarded with promotions, cash prizes, and public glorification, creating powerful institutional incentives for the continuation of the practice.

Maharashtra, particularly Mumbai, developed its own encounter culture in the 1990s in the context of the fight against organised crime. Police officers like Daya Nayak and Pradeep Sharma became public figures, celebrated in the media as heroes who eliminated dangerous criminals.⁴ The state essentially endorsed these killings as a legitimate crime-control strategy, notwithstanding the absence of any legal sanction.

In Manipur, the Armed Forces (Special Powers) Act 1958 created a particularly conducive environment for encounter killings, with the army and paramilitary forces conducting operations with near-total impunity.⁵ The case of Thangjam Manorama, who was

¹Sanjay Suri, 'Encounter Killings and Impunity in India' (2010) 45 *Mainstream Weekly* 3.

²*Rupinder Singh Sodhi v Union of India* AIR 1983 SC 65.

³*KS Rajgopal v State of AP* (1994) AIR AP 335.

⁴A G Noorani, 'Police Encounters' (2007) *Frontline* 24(12) 15.

⁵*Extra-Judicial Execution Victim Families Association (Manipur) v Union of India* (2016) 14 SCC 536.

allegedly raped and killed by Assam Rifles personnel in 2004, sparked nationwide protests and brought the issue of AFPSA-related abuses to the forefront of public discourse.

1.3 State Monopoly on Violence and its Limits

Max Weber's foundational concept of the state as the institution holding a monopoly on the legitimate use of violence provides a useful starting point for theorising fake encounters. In Weber's framework, the state's use of force is legitimate only when it conforms to established legal procedures and is exercised by authorised agents within defined limits.⁶ Fake encounters represent a perversion of this monopoly: the violence used is not legitimate because it violates established legal procedures and is directed not at the protection of society but at the elimination of individuals who the state deems inconvenient. It is, in essence, state violence that mimics legitimacy through the staging of a fictitious encounter.

1.4 Rule of Law and Accountability

The rule of law demands that the state itself be subject to law, that governmental power be exercised within defined legal limits, and that individuals be protected from arbitrary exercise of that power.¹ Fake encounters represent a fundamental violation of the rule of law because they involve state agents acting not merely outside the law but in deliberate contravention of it. The rule of law is further undermined when the institutional mechanisms designed to hold the state accountable — the police complaint authority, the criminal justice system, and the NHRC — are unable or unwilling to respond effectively.

1.5 Structural Violence and Marginalisation

The sociological theory of structural violence is relevant to understanding why fake encounters disproportionately affect marginalised communities. Studies by Amnesty International and Human Rights Watch confirm that the victims of encounter killings in India are overwhelmingly members of minority communities, Dalits, Adivasis, and the economically vulnerable.¹ This pattern is not coincidental but reflects the operation of structural violence: systems of power that privilege certain groups and expose others to greater risk of state violence. The encounter culture, in this sense, is a manifestation of deeper social inequalities embedded in state institutions.

⁶VS Mani, 'Encounters by Police: Legality, Ethics and Human Rights' (2000) 42 JILI 432.

1.6 Dehumanisation and the State of Exception

Giorgio Agamben's concept of the 'state of exception' — wherein the normal operation of law is suspended and certain individuals are reduced to 'bare life', stripped of their political and legal protections — is particularly relevant to the situation of encounter victims. In conflict zones like Manipur and Jammu and Kashmir, the operation of the AFPSA effectively creates a permanent state of exception where normal legal protections are suspended and individuals can be killed without legal consequence. The victims of encounter killings in these zones are reduced to 'bare life' in Agamben's sense: they exist outside the protective ambit of the law.

1.7 Classification of Encounter Killings

For the purposes of legal analysis, it is useful to distinguish between different categories of encounter killings. First, there are encounters in the context of anti-insurgency or counter-terrorism operations, typically governed by special laws such as the AFPSA or the UAPA. Second, there are encounters in the context of ordinary law enforcement, typically involving alleged criminals or suspected organised crime figures. Third, there are custodial killings staged as encounters, where individuals already in police custody are killed and the killing is subsequently presented as having taken place during a chase or armed confrontation. Each category raises distinct legal issues and requires specific remedial measures.

Laws That Protect Against Fake Encounters

India's legal framework contains several constitutional provisions, statutory laws, and judicial directives that collectively operate as safeguards against fake encounters. These protections are drawn from the Constitution, the Indian Penal Code, the Code of Criminal Procedure, and international human rights instruments ratified by India. The following laws and provisions are particularly significant in protecting individuals from extrajudicial killings by the state.

1. Article 21 of the Constitution of India, 1950

Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. This is the most fundamental constitutional safeguard against fake encounters. The Supreme Court has consistently interpreted Article 21 to mean that any deprivation of life by the state must follow a just, fair, and reasonable procedure. An extrajudicial killing by the police, howsoever justified by the authorities, constitutes a direct violation of this right. In *People's Union for Civil Liberties v. State of*

Maharashtra (2014), the Supreme Court specifically invoked Article 21 to mandate procedural safeguards in all encounter deaths, reinforcing that the right to life cannot be suspended even for accused criminals or terrorists.

2. Sections 302 and 304 of the Indian Penal Code, 1860 (now Bharatiya Nyaya Sanhita, 2023)

Section 302 of the Indian Penal Code, which provides for punishment for murder, applies equally to police officers who carry out premeditated killings under the guise of encounters. Police personnel are not above the law, and an officer who intentionally kills a person in a staged encounter is liable to be prosecuted for murder. Section 304 (culpable homicide not amounting to murder) may apply where the degree of intention is disputed. The Supreme Court has held that the general exceptions in the IPC, including the right of private defence under Sections 96 to 106, do not confer immunity on police officers who manufacture false circumstances to justify a killing.

3. Section 176 of the Code of Criminal Procedure, 1973 (now BNSS, 2023)

Section 176 of the CrPC mandates a judicial inquiry by a Metropolitan Magistrate or a Judicial Magistrate in cases of death in police custody or in the course of police action. This statutory provision is a critical mechanism for independent scrutiny of encounter deaths. The amendment introduced by the Code of Criminal Procedure (Amendment) Act, 2005 expanded the scope of mandatory magisterial inquiries to include all cases of death arising from the use of force by police. This provision directly complements the Supreme Court's directions in the PUCL case and ensures that an independent judicial officer examines the circumstances of the death.

4. The Protection of Human Rights Act, 1993

The Protection of Human Rights Act, 1993 established the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) with the mandate to investigate complaints of human rights violations, including extrajudicial killings. The NHRC is empowered to call for reports from the government, summon witnesses, and recommend monetary compensation to the families of victims of fake encounters. Over the years, the NHRC has investigated numerous encounter killings and issued significant directions, including its landmark guidelines in 2010 requiring state governments to report all encounter deaths within 48 hours. While the NHRC's recommendations are not legally binding,

consistent non-compliance can be challenged before the Supreme Court, thereby ensuring a degree of accountability.

5. The United Nations Convention Against Torture (UNCAT) and International Human Rights Law

India is a signatory to the International Covenant on Civil and Political Rights (ICCPR), which under Article 6 protects the right to life and prohibits arbitrary deprivation of life by the state. The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) lay down strict conditions under which lethal force may be used, requiring that it be used only as a last resort, in proportion to the threat, and subject to proper reporting and accountability. The UN Special Rapporteur on Extrajudicial Executions has repeatedly called upon India to comply with these norms. Although India has not yet ratified UNCAT, its provisions are increasingly referenced by Indian courts as persuasive authority in interpreting domestic human rights obligations.

6. Judicial Directions in PUCL v. State of Maharashtra (2014)

Although not a statutory enactment, the Supreme Court's binding directions in PUCL v. State of Maharashtra (2014) constitute the most comprehensive quasi-legislative framework governing encounter deaths in India. The Court laid down sixteen mandatory guidelines, including: the registration of an FIR whenever a police officer receives intelligence about criminal activity leading to an encounter; independent investigation by the CID or another police station; prompt intimation of the incident to the NHRC or SHRC; forwarding of post-mortem reports to a Magistrate; preservation of forensic evidence; magisterial inquiry under Section 176 CrPC; and prosecution of officers found to have staged false encounters. These guidelines have the force of law under Article 141 of the Constitution and are binding on all courts and authorities throughout India.

7. Article 32 and Article 226 of the Constitution of India

Articles 32 and 226 of the Constitution empower the Supreme Court and High Courts respectively to issue writs for the enforcement of fundamental rights. These provisions have been invoked extensively by the families of encounter victims to seek justice, compensation, and accountability. In numerous cases, courts have ordered CBI investigations, awarded compensation to victims' families, and directed the prosecution of errant police officers through writ proceedings. The writ jurisdiction of constitutional courts constitutes a vital

remedial mechanism that bypasses the ordinary criminal justice system, which is often reluctant to proceed against its own members.

8. Section 197 of the Code of Criminal Procedure, 1973 (and its limitations)

Section 197 CrPC requires prior sanction from the appropriate government before a court can take cognizance of offences alleged to have been committed by public servants acting in the discharge of their official duties. While this provision was intended to protect bona fide official action, courts have clarified that it does not extend to acts that are entirely outside the scope of official duty or that involve the commission of a crime. The Supreme Court in several judgments has held that where a police officer stages a fake encounter, the act of murder is not an act done “in the discharge of official duty” and therefore does not attract the protection of Section 197. This interpretation removes a significant procedural barrier to the prosecution of police officers involved in fake encounters.

Together, these laws and judicial directions form a multi-layered protective framework that, when effectively implemented, can serve as a robust deterrent against fake encounters. However, as the preceding analysis demonstrates, the gap between the law on paper and its enforcement in practice remains the central challenge in India’s continuing struggle to eradicate extrajudicial killings by the state.

Conclusion

Fake encounters represent one of the most serious challenges to the constitutional order in India. They violate the most fundamental right guaranteed by the Constitution — the right to life — and undermine the rule of law, democratic governance, and public trust in state institutions. The persistence of fake encounters, despite constitutional guarantees, judicial directions, and the efforts of human rights organisations, reflects deep structural failures in India's institutional architecture.⁷ Addressing this problem requires not merely better enforcement of existing law but fundamental legislative, institutional, and cultural reform.

The reforms recommended in this chapter are not radical departures from existing legal principles. They are grounded in the constitutional jurisprudence developed by the Supreme Court, informed by comparative best practices, and consistent with India's obligations under international human rights law. Their implementation would not compromise legitimate law enforcement operations but would ensure that such operations are conducted within the

⁷Constitution of India 1950, art 21.

boundaries of law and with proper accountability.

The right to life is the foundation of all other rights. A state that kills its citizens outside the law — however deserving those citizens may be characterised as being — is a state that has abandoned its constitutional mandate. India's commitment to constitutional democracy demands that it take decisive and comprehensive action to end fake encounters and establish genuine accountability for all state killings.⁸ The time for incremental reform has passed; the moment calls for fundamental, systemic change.

SUGGESTIONS

Addressing the issue of fake encounters in India requires a multi-layered approach that strengthens legal accountability, institutional integrity, and public trust in the criminal justice system. The following suggestions are proposed:

1. **Strict Enforcement of Judicial Guidelines**

The procedural safeguards laid down by the Supreme Court, particularly in *PUCL v. State of Maharashtra* (2014), must be rigorously implemented. Non-compliance by law enforcement agencies should attract penal consequences to ensure accountability.

2. **Independent Investigation Mechanisms**

All encounter deaths should be investigated by an independent agency, such as a Special Investigation Team (SIT) or a different police unit under judicial supervision, to eliminate bias and conflict of interest.

3. **Strengthening the Role of NHRC**

The National Human Rights Commission should be granted greater autonomy and binding powers to ensure that its recommendations in encounter cases are effectively enforced rather than treated as advisory.

4. **Mandatory Use of Technology**

Deployment of body cameras, CCTV surveillance, and forensic tools during police operations can increase transparency and provide reliable evidence in disputed encounter cases.

5. **Police Reforms and Training**

Comprehensive police reforms are essential, including human rights training, sensitization programs, and modernization of investigative techniques to reduce reliance on extrajudicial measures.

⁸Upendra Baxi, 'The Rule of Law in India' (2007) 6 Sur International Journal on Human Rights 7.

6. Judicial Oversight and Fast-Track Courts

Special courts should be established to expedite trials in encounter-related cases, ensuring timely justice and deterring misuse of power.

7. Witness Protection Mechanisms

Effective witness protection programs must be implemented to encourage testimony without fear of retaliation, especially in cases involving powerful state actors.

8. Accountability Through Criminal Prosecution

Police personnel found guilty of conducting fake encounters must face criminal prosecution without institutional shielding, reinforcing the principle that no one is above the law.

9. Public Awareness and Civil Society Engagement

Civil society organizations and media should play an active role in monitoring, reporting, and creating awareness about human rights violations linked to fake encounters

