

# JUS CORPUS LAW JOURNAL

## VOLUME 1: ISSUE 1

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**JUS** corpus

## KANPUR ENCOUNTER CASE OF A DREADED CRIMINAL: REAL OR REEL?

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**Muskan Verma<sup>1</sup>**

Vikas dubey was one of the most wanted criminal of Kanpur. Approx. 60 cases were filed against him including the charges of murder, kidnapping, robbery etc. In 2001, Santosh Shukla, a BJP leader was murdered inside the police station and Vikas dubey was the prime accused of this grievous incident, still he managed to escape because of his strong political connections. After he killed 8 of the policemen in his house campus, he escaped somewhere. The policemen were fueled up with anger and started arresting his aides one by one. 5 of his gang member were arrested and killed in an encounter. In seven days, six encounters took place. It is expected that Vikas Dubey had a close nexus with the big names of the country including politicians, police officers of higher rank etc. it is also believed that for the sake of protection of the big names getting revealed, the police killed Dubey and his gang in the name of encounter. This clearly states the decreasing faith of people in our judicial system which eventually giving rise to police brutality often leading to custodial death of an accused.

### **BRIEF ABOUT THE INCIDENT**

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On 3rd of July 2020, the policemen went to Vikas Dubey's house in Uttar Pradesh Kanpur, to arrest him, where all the 8 policemen including the DSP of the state were killed by him. He ran away to protect himself from being arrested. During his escape, one by one the members of his gang were arrested and encountered. On 9th July, Prashant Mishra, a member of his gang was killed in the encounter and the police in their clarification said that he tried to run away while they were mending the puncture of the car. Ranbir Shukla, another member of his gang was killed and the police said that he was trying to escape, having a stolen car. Similarly Amar Dubey, Prakash Pandey and Atul Dubey were killed too in an encounter. The same story was repeated on 10th of July when Vikas dubey was encountered. He surrendered himself at a temple of Ujjain screaming "I'm Vikas Dubey of Kanpur". After his arrest in Madhya Pradesh, the next day he was been taken to Kanpur from Ujjain in a custody of police, and the police said that the car toppled on the highway and Dubey tried running away

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<sup>1</sup> BBA-LLB, SECOND YEAR, BHARATI VIDYAPEETH NEW LAW COLLEGE, PUNE.

by snatching a gun from the police and in that process he was gunshot and taken to the nearby hospital where he was declared dead. The police said that in this process other policemen also suffered several injuries.

## **GAPING HOLES OF THE ENCOUNTER**

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The story retaliated by the police had a lot of loopholes in it, discussing some of them below which creates suspicion-:

- If Vikas Dubey wanted to run from the police eventually, than why did he himself surrendered in the temple of Ujjain?
- The site where the car was toppled, it was a plain/flat surface and there was no such reason for the car to be toppled itself.
- A video emerged after the death of Dubey which was of around 4 am in the morning which shows Vikas Dubey was in some other car and not the one that actually toppled.
- Another video was emerged which was of 30 minutes before the encounter took place. In the video it is seen that the media was following the police but the police stopped them half an hour before the incident took place.
- After the incident, the localities of that area were interviewed in which they said that they did not heard any noise of overturning of the car but only the noise of gunshot was heard.
- He was such a dreaded criminal so was he not handcuffed? And if he was than how is it possible to snatch gun from the police being handcuffed?
- His one leg was injured, than how could he run so fast that the police couldn't catch him and had to shot, to stop him from running.
- If he tried to run than he must have been shot at the back but actually he was shot at the front. Is this make any relevance with the fact of the case?

## **DO THE EXTRA JUDICIAL KILLINGS NEED TO BE CELEBRATED?**

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According to a report by government, approx. 824 deaths due to police encounter was registered between 2014 and 2019, in which around 250 died in a fake encounter. According to Indian Express, Dubey was the 119th accused to have been killed in cross firing since the Yogi Adityanath government took charge. Many people on social media as well as in real life

applauded the government for this encounter but at the same time it was criticized because it was against the procedure established by law. It is the infringement of *Article 21* of our Indian constitution which states protection of life and personal liberty. Even the prisoners have their right to life and personal liberty. The law enforcement is taking the matter into own hands smirching the legitimacy of the Indian Judicial system. Encounter killing is being glorified in India nowadays because people are losing faith in our judicial system because it's always been delayed but at the same time we need to understand that eventually this is not the right way to deliver justice because in this process the innocent also suffers. Fake encounters are not just delivering justice to the culprits but also taking the lives of the faultless. In the case of *Nilabati Behara v. State Of Orissa*,<sup>[2]</sup> a boy of 22 years of age was taken into custody under the suspicion of theft in the village. The second day, police told his mother that his son was lying dead on the railway track and said that he ran from the lockup after eating food, he broke his handcuff and also broke the lockup to escape and while running he met with an accident on the railway track and was cut into pieces. His mother couldn't believe this and went to see her son's dead body which was lying on the track and there she realized that his son was not cut into pieces, he was just lying dead on the track with handcuffs which was still there at his body. She filled a case against the officials and later on it was discovered that the story made by the police was false and it was a clear case of custodial violence where the police intentionally killed the boy while investigation and threw him on the track. This way the custodial violence and fake encounter is being performed. We know that justice delayed is justice denied but to glorify state killing is also not justified as it hampers the lives of many.

### UNCANNY SIMILARITY WITH THE SOHRABUDDIN SHEIKH CASE

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In the case of *Sohrabuddin Sheikh v. State of Gujarat*,<sup>[3]</sup> Sohrabuddin was also an under gangster of Gujarat and was alleged to have connections with the big underworld criminals and mafias, who was also the part of the biggest chain of crime linked with Dawood Ibrahim. Police also found 40 piece of AK -47 guns from his village. He was the very important witness to reveal the big chain of criminals but before he could do that he was encountered by the police. The police said that Sohrabuddin tried violence against the police officials and was running away from their custody. So, the police shot him and he died in an encounter.

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<sup>2</sup> 1993 SCR(2) 581

<sup>3</sup> AIR 2005 SC

This was the story made by the police. Later it was discovered that it was a planned encounter. This case is similar with Vikas Dubey case in many ways. Both of them were gangster, both of them were alleged having connections with big criminals, politicians, police officials etc., both of them had their crime records in the court and lastly both of them were encountered in a mere similar way.

## **LAWS RELATING TO CUSTODIAL VIOLENCE**

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Custodial violence primarily refers to violence in police and judicial custody. It includes death, rape and torture.

### **KEY POINTS**

- According to **National Crime Records Bureau (NCRB)** data, between 2001 and 2018, only 26 policemen were convicted of custodial violence despite 1,727 such deaths being recorded in India.
- Only 4.3% of the 70 deaths in 2018 were attributed to injuries during custody due to physical assault by police.
- Except in Uttar Pradesh, Madhya Pradesh, Chhattisgarh and Orissa, no policeman was convicted for such deaths across the country.
- Apart from custodial deaths, **more than 2,000 human rights violation cases were also recorded** against the police between 2000 and 2018. And only 344 policemen were convicted in those cases.

### **WHAT ARE THE PROVISIONS IN PLACE?**

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- **IPC** - Torture is not defined in the Indian Penal Code.
  - However, the definitions of ‘hurt’ and ‘grievous hurt’ are clearly laid down.
  - The definition of ‘hurt’ does not include mental torture.
  - But, Indian courts have included among others, in the ambit of torture -psychic torture environmental coercion tiring interrogative prolixity (excessive wordiness) overbearing and intimidators methods
  - Voluntarily causing hurt and grievous hurt to extort confession are also provided in the Code with enhanced punishment.

- **CrPC** – Under section 170 of the Code of Criminal Procedure, judicial magistrate inquiries into every custodial death.
- **NHRC** - The National Human Rights Commission has laid down specific guidelines for conducting autopsy under the eyes of the camera and the report is required to be submitted within a month of the death.
- **SC Judgments** - The Supreme Court judgment in *DK Basu v. State of West Bengal* was a turning point in matters of custodial torture.
  - The Court's decision in *Nilabati Behara v. State of Orissa* is also notable.
  - It ensured that the state could no longer escape liability in public law and had to be compelled to pay compensation.
  - Therefore, there is *neither a dearth of precedents nor any deficiency in the existing law*.
  - It is not the law per se but the improper implementation that fails to deter incidents of custodial torture.
- **Constitutional and Legal Provisions:**
  - Protection from torture is a fundamental right enshrined under Article 21 (Right to Life) of the Indian constitution.
  - The right to counsel is also a fundamental right under Article 22(1) of the India constitution.
  - Section 41 of Criminal Procedure Code (CrPC) was amended in 2009 to include safeguards under 41A, 41B, 41C and 41D, so that arrests and detentions for interrogation have reasonable grounds and documented procedures, arrests are made transparent to family, friends and public, and there is protection through legal representation.

#### WHAT IS TO BE DONE?

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- There is first the need to implement the existing laws and provision in its true spirit.
- The investigations and the prosecutions are not fair; these must be rectified first.
- **India should ratify the UN Convention against Torture:** It will mandate a systematic review of colonial rules, methods, practices and arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment.



- It will also mean that exclusive mechanisms of redress and compensation will be set up for the victim besides institutions such as the Board of Visitors.
- **Police Reforms:** Guidelines should also be formulated on educating and training officials involved in the cases involving deprivation of liberty because torture cannot be effectively prevented till the senior police wisely anticipate the gravity of such issues and clear reorientation is devised from present practices.
- **Access to Prison:** Unrestricted and regular access to independent and qualified persons to places of detention for inspection should also be allowed.
  - CCTV cameras should be installed in police stations including in the interrogation rooms.
  - Surprise inspections by Non-Official Visitors (NOVs) should also be made mandatory which would act as preventive measures against custodial torture which has also been suggested by Supreme Court **in its landmark judgment in the DK Basu Case in 2015.**
- **Implementation of Law Commission of India's 273<sup>rd</sup> Report:** The report recommends that those accused of committing custodial torture – be it policemen, military and paramilitary personnel – should be criminally prosecuted instead of facing mere administrative action establishing an effective deterrent.

## OPINION ABOUT THE INCIDENT

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In my opinion, the encounter of Vikas Dubey was planned and intentional. It was discovered that he had close connections with many big people and if he had been alive, many of the faces would have revealed. Due to strong political connections he always managed to escape even after committing heinous crimes. Uttar Pradesh alone had registered more than 800 cases of fake encounters, a report revealed. Many of them have been done to extort money from the family of the innocent. The case of Vivek Tiwary would be a justifiable example of encounter of innocent for the sake of money. A sting operation was carried out by India Today, where it has been found that Uttar Pradesh police agreed to carry out fake encounter by killing the innocent for the sake of money. They agreed in 8 lakh rupees. Our constitution is based on three pillars which are legislative, executive and judiciary. One will make law, other will implement it and the Judiciary will interpret it. If only legislative and judiciary

have to perform than why the judiciary is in existence? Judiciary is required to avoid these fake encounters and deliver justice as fast as possible. They need to have check on each other so that all the pillars perform their task effectively and efficiently and deliver fare justice to the people of our country. Vikas Dubey was a criminal therefore we celebrated his encounter but many a times an innocent suffers which is not equitable and totally against the procedure established by law.

