

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

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Vikas Dubey was one of the most wanted criminals 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 the custodial death of an accused.

### **BRIEF ABOUT THE INCIDENT**

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On the 3rd of July 2020, the policemen went to Vikas Dubey's house in Uttar Pradesh Kanpur, to arrest him, where all 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 the 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 the custody of the police, and the police said that the car toppled on the highway and Dubey tried

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running away by snatching a gun from the police and in that process, he was a 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, then why did he surrendered in the temple of Ujjain?
- The site where the car was toppled, 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 around 4 am which shows Vikas Dubey was in some other car and not the one that toppled.
- Another video has 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 hear 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 then how is it possible to snatch the gun from the police being handcuffed?
- His one leg was injured, then 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 then he must have been shot at the back but 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 the government, approx. 824 deaths due to police encounters were 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 an infringement of *article 21*. Everyone

deserved the protection of the law. Law enforcement is taking the matter into its 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. After all, 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 were still there at his body. She filed 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 investigating 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. the 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 part of the biggest chain of crime linked with Dawood Ibrahim. Police also found 40 pieces 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. This was the story made by the police. Later it was discovered that it was a planned encounter. This case is similar to the Vikas Dubey case in many ways. Both of them were gangsters, both of them were allegedly having connections with big criminals, politicians,

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

<sup>3</sup> AIR 2005 SC

police officials, etc., both of them had their criminal 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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### KEY POINTS

- According to **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 H.R 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.
  - Moreover, the concepts of 'sickness' and 'sickness' are simply set down. The concept of 'sickness' doesn't entail psychiatric abuse. But Courts in our country have taken in overbearing and threatening techniques in the field of cruelty interrogation environmental intimidation tiresome accusative inelegance (unnecessary vocabulary).
  - Willingly inflicting harm and severe damage to extricate testimony, an improved penalty is also included in the Document.
- **CrPC** – the judicial magistrate inquiries into every custodial death.
- **NHRC** - lays down certain rules for organizing analysis and the report is required to be submitted within a month of the death.
- **SC Judgments** - The SC in *DK Basu v. State of West Bengal* was one that turned the tide in matters of violence and torture at the hands of police officials.
  - *Nilabati Behara v. the State of Orissa* is also notable. It meant that even the govt. could no further avoid public law responsibility which they were obliged to pay restitution.

- 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.
- **Constitutional and Legal Provisions:**
  - Immunity against abuse is a constitutional right in Art. 21.
  - Access to representation is indeed a constitutional right under Art. 22(1).
  - Sec. 41 CrPC was modified in 2009 to put in protections under 41-A, 41-B, 41-C, and 41-D to ensure that arrests and imprisonments for questioning have a legitimate cause and consistent with the requirements, that charges are pressed consistent to the relatives, acquaintances, and the community, and that safety is provided via access to a lawyer.

### WHAT IS TO BE DONE?

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- There is first the need to implement the existing laws and provisions in their true spirit.
- **India should ratify the UN Convention against Torture:** This would enforce a full examination of constitutional provisions of the British rule era, procedures, policies, and protocols for the care and care of individuals responsive to some sort of incarceration or confinement.
- **Law Enforcement Officials reforms:** recommendations on the education and preparation of personnel engaged in situations where abuse of liberty happens should also be established, as coercion can't be adequately avoided until the senior officers have wisely anticipated the gravity of such problems and a thorough reconfiguration of existing procedures has been conceived.
- **Access to Prison:** Unfettered and frequent admission to single and competent people to sites of custody for examination must be permitted too.
  - Cctv can be mounted in stations, even interview areas.
  - Unexpected audits by NOV's must be made obligatory to serve as safeguards from torture, which was also recommended by the SC **in the DK Basu Case in 2015.**
- **Implementation of Law Commission of India's 273<sup>rd</sup> Report:** The report advises that those convicted of custodial torture – be it cops, army, or militia – must be

charged properly in place of faced with mere disciplinary measures to create successful deterrence.

### **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 an 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 a fake encounter by killing the innocent for the sake of money. They agreed on 8 lakh rupees. Our constitution is based on three legislative pillars, the executive, and the judiciary. One will make law, the other will implement it and the Judiciary will interpret it. If only legislative and judiciary have to perform then 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 a check on each other so that all the pillars perform their task effectively and efficiently and deliver fair justice to the people of our country. Vikas Dubey was a criminal, therefore, we celebrated his encounter but many a time an innocent suffers which is not equitable and totally against the procedure established by law.

