

## ARE ENCOUNTERS MASQUERADING JUSTICE?

---

**Kholi Rakuzhuro\***

**Swati Daga\***

### ABSTRACT

---

This article will proceed in the following manner. Firstly, we will bring out the difference as well as similarities between Encounters vs fake encounters and then will try to justify how both of these do not amount to justice in the true sense of the word. In doing so we will bring out the thin line of difference that divides Death sentence from Murder and try to determine in which category do encounters fall. We will also focus on how in such encounters we are unable to identify the real culprit. Moving on we will try to strike the right balance between the rational views of the general public coupled with the emotional response of the family whose member dies in the encounter. Further, we will talk about the role of politics in such encounters. Then we will highlight how such encounters pose a threat to the very foundations of democracy as the executive wing of the government also tries to become the judicial wing. In doing so I will admit to the fact that our judicial system does have several loopholes however the solution is not to altogether remove the judicial pillar but we need to focus on reforming the judicial system to prevent the executive from turning despotic. And finally, I will conclude with some suggestions on how should society and especially the judiciary work towards putting an end to such encounters to keep the institution of democracy intact.

**Keywords:** Justice, Encounters, Human Rights, Rule of Law.

---

\*BA LLB, THIRD YEAR, SYMBIOSIS LAW SCHOOL PUNE.

\*BA LLB, THIRD YEAR, SYMBIOSIS LAW SCHOOL PUNE.

## ENCOUNTERS V. JUSTICE

---

Encounter killings are extrajudicial killings carried out by the police or armed forces supposedly in self-defense with the absence of any judicial intervention in the determination of guilt of the person so encountered.<sup>1</sup> Many including the police department are a firm supporter of encounters as they believe that encounters cripple the underworld and break down extortion rackets. For many with the mob mentality, it is considered as a fast justice redressal mechanism owing to the concept of 'Justice delayed is justice denied. This perception was reinforced in the Telangana rape case where people celebrated and hailed the police for killing the suspects in an encounter<sup>2</sup>. Moreover, for most if not all the common people, the concept of justice is more of a revenge concept, an eye for an eye, but mind you that such a feeling makes the whole world blind.

Another problematic facet to such encounters is that such targeted killings violate the most basic and inherent Human Rights of a person that is recognized by Art. 21.<sup>3</sup> In the case of the P. U. C. L. v. Union of India, the S. C. was of the opinion that the state cannot violate the Right to Life. Further, it is pertinent to note that according to the same article, no one can be deprived of individual liberty with the leave of only those deprivations which are not against the laws enforced in the land. Accordingly, as can be attested to by the law that encounters is not the procedure established by law.

Further encounters give rise to several speculations. Say, for instance, criminals like Vikas Dubey who got out on bail for almost all the crimes he had committed, it is now safe to assume that he must have had strong political connections to back him up in the entire country to escape prison. If such a criminal is encountered, for any sensible mind it is prominent to think that the encounter was done to save many corrupt officials and the people in power. Hence, again I reiterate that encounter is not the answer as it masquerades the real picture.

---

<sup>1</sup> Justice V. Ramkumar, *Law relating to encounter killing by the police*, LIVE LAW (Jan. 09, 2020), <https://www.livelaw.in/columns/law-relating-to-encounter-killings-by-the-police-151457>.

<sup>2</sup> *Hyderabad case: Police kill suspects in rape and murder of Indian vet*, BBC (Dec. 06, 2019), <https://www.bbc.com/news/world-asia-india-50682262>.

<sup>3</sup> Markandey Katju, *The lawlessness of encounter killings*, THE WIRE (July 10, 2020), <https://thewire.in/law/hyderabad-police-encounter>.

Now addressing the same issue from a philosophical and moral angle, I believe that it is only natural and normal for the families of the people encountered to think emotionally about the issue. Similarly, it is natural for those people to hail such encounters, who were wronged by the person encountered as encounter appears to them as justice. However, we as the general public should not lose sight of the larger picture of justice. So, essentially I believe that very often things are much more than what our eyes meet or what we have been designed to listen to and think as individuals. Accordingly, one should not fail to listen to one's conscience and apply a logical mind to see what lies beyond such encounters.

Now we will talk about the principles that conceptualized the difference between murder and death sentence. Killings that are arbitrary in nature and constitute unlawful deprivation of life are characterized as murder whereas, death sentences are passed by the judiciary involving trials with proper analysis, investigation, and examination of the facts and evidence of the case by following the due process established by law. This was done in the Nirbhaya rape case where therapists were executed to death sentence after proper trial and application of law and by following due process of law. So, encounters and arbitrary killings may sometimes be thought of as the next best alternative punishment for the criminals but in the long run, it affects the credibility of law and justice.

Hence I believe that just like murderers are punished, the people involved in encounters especially fake encounters should also be punished in a similar if not same fashion as there is a very thin line dividing the two that should be best left to be determined by the judicious mind of a judge.<sup>4</sup>This belief of mine is further strengthened by the fact that the S. C. in the case of *P. U. C. L. v. the State of Maharashtra* held that the encounter philosophy is a criminal philosophy because it affects the fairness of the process enforced by the law of the land.<sup>5</sup>

### **ENCOUNTERS DESTROY THE WHOLE FOUNDATION OF DEMOCRACY**

---

Democracy in its idealistic sense means Government for the people, of the people, and by the people. The doctrines of the Rule of Law and Separation of Power are the two basic pillars of

---

<sup>4</sup> Puja Awasthi, *Explainer: what is an encounter killing?* THE WEEK, July 10, 2020.

<sup>5</sup> *People's Union for Civil Liberties v. State of Maharashtra*, C.D.J. 2014 S.C. 831.

our democracy since we have used and incorporated the phrase called “Procedures established by law”.

In India, The Separation of Powers doctrine applies to the partition of government duties and rights into separate divisions in order to prevent one department from performing the essential components of the others. In the case *Kesavananda Bharati v. the State of Kerala*, the court gave the orders that Separation of Powers is a part of the basic structure of our constitution and this structure shouldn't be violated or destroyed by any form of an amendment.<sup>6</sup> Accordingly, the powers and functions of the Executive and the Judiciary are two very different things in a democracy where the function of the executive is to execute the laws passed by the legislature and that of the judiciary to protect and uphold the laws thereby delivering justice. However, in recent years the executive is trying to control the judicial powers as well, as we have seen in the case of Vikas Dubey where the nature of his death was choreographed by the police with one of its police members who have been charge-sheeted for fake encounter in the past by the Central Bureau of Investigation, showing that India has broken the very spirit and foundation of its rule of law<sup>7</sup>. Further, in the Telangana rape case where all four suspects were killed in extrajudicial killings, the police alleged that the accused attempted to snatch the law enforcement officers' weapons and flee. VC Sajjanar, the officer - in - charge who had once been embroiled in an altercation, acted out both the occurrence in a comparable pattern<sup>8</sup> and the case of Raja Man Singh's murder intensifies the dark period of democracy.

According to the statistics recorded by National Human Rights Commission, India, 1,782 cases were registered of fake encounters between 2000 to 2017 out of which only 1,565 cases have been disposed of so far. According to N. H. R. C., Uttar Pradesh accounted for 44.55 percent (794 cases), Andhra Pradesh 5.27 percent (94 cases), Bihar 4.5 percent (74 cases), Jharkhand 3.87 percent (69 cases), Assam 3.87 percent (69 cases) and Manipur 3.53 percent (63 cases). According to the NHRC's monthly statistics as per 01.07.2020, 14 cases were

---

<sup>6</sup>*Kesavananda Bharati v. State of Kerala*, A.I.R. 1973 S.C. 1461.

<sup>7</sup>Siddharth Varadarajan, *UP Police Affidavit on Vikas Dubey Encounter puts Supreme Court Between Rock and Hard Place*, THE WIRE (July 21, 2020), <https://thewire.in/rights/up-police-affidavit-on-vikas-dubey-killing-puts-supreme-court-between-rock-and-hard-place>.

<sup>8</sup>*Supra* note2.

registered in that month, where 4 cases have been disposed and there are still 697 cases pending.<sup>9</sup>

Ultimately, I'd like to emphasize how well the infamous incident of Vikas Dubey's experience with U. P. police has rendered each one of us to understand the relevance of S. O. P. in India. Until present, there's been many false incidents and arbitrary arrests carried out by policemen that are under of the executive branch and lack adjudicative authority.<sup>10</sup> In contemporary India, it seems that the administrative division has started to exercise far too much authority and is thus becoming fascistic, posing a danger to personal freedom. Such experiences undermine the whole division of Powers and demonstrate how dangerous it could become when the president attempts to perform the task of the prosecutor. As a result, at that same stage, it is essential for the Courts to intervene to defend personal liberties and the philosophy of law and order in general.

## CONCLUSION AND SUGGESTIONS

---

To conclude this article, I would like to point out the fact that in India no law confers upon the police the right to take away another individual's life and accordingly any such act of police endangering the life of an individual surely amounts to the offence of culpable homicide whether amounting to the offence of murder or not, unless it is proved that such killing was done in exercise of private defence or is an exception under section 46 of Code of Criminal Procedure, 1973.

Now focusing on suggestions to improve the entire situation by combating the executive branch from becoming all-powerful in India and destroying the basic structure of the constitution, the following steps can be taken:

So, in the first point of what I'm concluding, in order to avoid dictatorship, one aspect of which is experiences, authority should be held responsible, which means that people in positions of authority must be accountable for and justify their acts in some other location.

Secondly, what greater reason to carry the executive branch responsible than to have it answer in front of a court of law? Nothing will excuse those executive experiences and,

---

<sup>9</sup> <https://nhrc.nic.in/complaints/human-right-case-statistics>.

<sup>10</sup> Markandey Katju, *Fake Encounters are Cold Blooded murders by the police*, THE WEEK, Dec. 06, 2019.

even though the individual is guilty of the most egregious offence, the justice system can't be manipulated by the authorities or someone else. So, even though the courts have faced significant issues in the previous years in upholding and protecting the fundamental framework of our Constitution by issuing historic decisions, I think it is time for the courts to act and discourage policemen from ever turning into judges.

Thirdly, to combat the role of politics in encounters, we need to increase the role of the public. As in India political views are inversely proportional to public opinions. Only if people raise their voices against such encounters will the scope for investigating into such encounters increase thereby leading us to find the real culprit and Punishing him.

Finally, we need to increase public awareness about such encounters, so that they can form a public opinion based on them. with the more and more public campaign, we will be able to pressurize the judicial system to Suo moto take the cases of encounters and deliver justice in the true sense of the term by stringent punishments to deter such encounters in future, as most of these executive officers can get away with impunity under the garb of power and authority. So, finally, at this point, it becomes important to understand that the police force is under any circumstance subject to the rule of law, rather than the wishes of a powerful leader or party and we need to ensure that it is at all times publicly accountable.

Last but not least, I believe that any act that challenges the law or affects its credibility must be dealt with sincerely regardless of who is committing it.