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Viewing Extra-Judicial Killings in Indian Cop Films through a Legal Lens

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It is obvious that police 'encounters' and other forms of extra-legal police actions like custodial violence have become frequent and, to a large measure, normalized; when perusing newspapers or watching the morning news, we pass by such articles with the same indifference we reserve for random commercials. In reality, the public frequently reveres the police for conducting encounters without considering the legal repercussions. However, the paper limits the present discussion to police encounters, as they have become a popular plot choice amongst filmmakers, and thus examines how the public response has gradually led to the normalization of police action that exceeds the constitutional limits of the police's preventative authority. It is seen that the same psyche is represented in popular Indian films, which garnered accolades from a population that views them in total disdain for the rule of law. As a result, there are now distorted concepts of justice, which are perpetuated by the films' celebration of extrajudicial violence. Thus, the paper further aims to scrutinize the sentiment behind the glorification of such films and also seeks to question the skewed ideas of justice. The deconstruction of these ideas through examples of popular cinema makes the arguments much more persuasive and thought-provoking for readers from a non-legal background or even for a layman.

Keywords: *extra-judicial violence, police system, encounter killings, police encounters.*

INTRODUCTION

There exists a duality within the Indian police system, as it incites both fear and admiration from the general public. On one hand, going to the police under any circumstances remains the last resort while on the other hand, extra-judicial violence and killings (commonly referred to as "encounters") have increasingly become acceptable to the same members of the public. In this light, it can be observed that this wide acceptance is not only visible in everyday conversation but also in how people react to the portrayal of real-life instances in 'cop films' i.e. a genre wherein the hero is a policeman who will go to any length to fight against crime, even if it means taking the law into his own hands.

The first section of the paper attempts to address this peculiarity within Indian society by using examples from "hit" cop movies such as Singham and analyzing their plots from a legal standpoint, thereby revealing and questioning the illegalities involved in them, in violation of the Criminal Procedure Code's[1] (CrPC) procedural law. It discusses the legal framework of the CrPC and attempts to clarify how the film's depictions conflict with the procedure outlined in the Code. It also discusses several loopholes in the current scheme of arrest procedure, which allow the police to conduct both 'genuine' and 'fake' encounters with an equal amount of impunity. It also addresses the greatest concern that depictions of utter lawlessness are never called into question, thereby normalizing extrajudicial killings. The second section of the paper examines Indian law and jurisprudence regarding police encounters. It attempts to illustrate how the Courts have frequently taken anti-police and pro-human rights stances in various judicial pronouncements, but these stances have proven ineffective in curbing the 'instant justice' menace employing police encounters. The third section of the paper proposes a solution to the lack of public debate on extra-judicial killings among citizens, the media, and government officials. It emphasizes the unfortunate reality that much-needed police reforms remain wishful thinking, which continues to jeopardize not only the credibility of the police but the Indian judiciary as well.

[1] Criminal Procedure Code 1973

DECONSTRUCTING THE ILLEGALITY OF POLICE ENCOUNTERS IN COP FILMS

The Indian Police has a colonial legacy, in which the police system has been a tool of oppression as opposed to a tool of governance under British rule. Nevertheless, even though the police's function has shifted from authoritative control to public assistance today, it has not yet been able to shed its authoritarian past, or what the ex-IPS officers and authors Arvind Varma and KS Subramanian have called, its "paramilitary"[2] character. The police encounters are one of the most primary and commonplace repercussions of this paramilitary nature – in a single year, the police encounter deaths surge beyond a hundred, and yet no prosecutions of the police personnel usually take place, the NHRC merely recommended disciplinary action against police personnel in only 25 cases of human rights violation (including encounter deaths).[3]

a. Reinforcement of police excesses in films

Every day police brutality is reflected in the films we watch, and neither is questioned nor has any chilling effect on the general public. The production of such films not only legitimizes the creation of a parallel criminal justice system based on violence but also perpetuates the narrative that police can engage in lawless violence in the name of "justice." The creation of this narrative is explained by Prof. Jinnee Lokaneeta in her piece in the following words[4]:

> *The use of third-degree methods by police is prevalent in society, and these scenes of torture by police in a film reinforce two notions in minds of the audience, especially the younger ones. Firstly, torture is a natural act, especially, if bad guys are beaten, and secondly flowing from the first, the legitimisation of the act of torture.*

Hindi cinema thus reinforces all kinds of stereotype relations and acts of violence in society. This is probably one of the primary reasons why a full-fledged public debate has not been able to build around the issue of police brutality, let alone police encounters, whereas the media,

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[2] Arvind Varma & KS Subramanian, *Understanding the Police in India* (Penguin 2009)
[3] Suchutra Karthikeyan, 'Police encounters in India: cases, convictions and court orders' (*The Hindu*, 3 June 2022) <https://www.thehindu.com/news/national/explained-police-encounters-in-india-cases-conviction-court-orders/article65463140.ece> accessed 12 September 2022
[4] Jinee Lokaneeta, 'Defining an Absence: Torture 'Debate' in India' (2014) 49 Economic and Political Weekly

general public, and other stakeholders have successfully been able to question the prevalent discourse around issues such as death penalty. It is paradoxical that despite such a high incidence of extra-judicial killings as reported by human rights groups and other relevant reports, there is a negligible amount of development in public debates and it has been reduced to a topic of academic discussion. The glorified representation of films has further rendered them unworthy of any debate at all. In another article by Kiran Shaheen[5], she writes that despite the filmmakers' and intelligentsia's grave concern about the problem of torture, it was difficult to translate that worry into a cause of contention between the producers and the consumers.

b. (Un)accountability of the executive

The executive and other government authorities not only deny taking any responsibility but also manage to convince the public of their truthfulness. an Act. The sociologist Stanley Cohen has called it "legalism" or the very use of law to negate the presence of an act. He puts it as:

> *Then comes the magical syllogism: torture is strictly forbidden in our country; we have ratified the Convention against torture (or in the case of India - have a very strong jurisprudence and system of laws that prohibits the use of torture; therefore what we are doing cannot be torture.*

This also forms another way the cinema manipulates the public's psyche through the use of euphemisms - undeniably, "encounter" is a word invented for the convenience of committing wrongs with impunity and no consequences. The public mind has been conditioned to see shootings as part of the criminal justice system, rather than seeing them for what they are, i.e. extra-legal killings. It remains to be seen how the portrayal of such incidents falls outside the scope of the criminal justice system.

[5] Kiran Shaheen, 'Portrayal of Police Torture in Hindi Films and Television Serials and Its Impact on Children' (*CEHAT*, 1999) <https://www.cehat.org/page/pg_1491193449 > accessed 10 September 2022

c. Film portrayals in light of the scheme of the Code

It is a common occurrence in films for an arrested suspect to be completely dehumanized in the eyes of both the police and the audience, and hence the viewers find no conflict between the police actions and the constitutional values. The list includes films such as *Shootout At Lokhandwala* (2007*), Shootout at Wadala* (2013*), Ab Tak Chhappan* (2004), and most recently Batla House (2019). The majority of these films are based on true stories, but instead of depicting the tragic reality of the encounters, they make it the cathartic aspect of the story. Their traditional plots feature an honest, hardworking police hero and his proactive team, as well as a villainous anti-hero who is arrested and attacks the police officer. Then, a lengthy battle ensues, and the police officer eventually defeats him. Though this is far from the truth, the standard response of actual police officers, namely that the shooting was spontaneous and unplanned and that they fired in self-defence, remains the same. To understand how honest and valiant police officers like Bajrirao Singham in the movie Singham can kill with impunity, it is pertinent to discuss sub-section (2) of Section 46[6] CrPC read with Section 100 IPC[7]. The IPC section deals with the right to self--defence against one's body when faced with death or other extr-eme harm, and police officers are also entitled to the same. Police are also authorized under Sec-tion 46 CrPC to use "all means necessary" to conduct an arrest, if a target is "evading arrest" or "forcibly resisting" the arrest. Hence, a combined reading of these sections lays a safety valve for police officers to bypass the mandate of Article 21[8] of the Constitution.

The use of the phrase "all means necessary" in Section 46(2) confers, in a sense, unrestricted preventive powers on the police to effect the arrest of the accused, and the police may take any action short of them causing death. According to section 46(3), however, even death may be caused if the accused is to be arrested for a crime for which the IPC prescribes life imprisonment or death as one of the punishments. Now, this explains why most encounters occur in cases of serious crimes such as rape or murder and also why the public fails to find any wrong with the

[6] Code of Criminal Procedure, s 46
[7] Indian Penal Code 1860, s 100
[8] Constitution of India, Art 21

vengeance-based model of "justice" run on police encounters, without proper recourse to the Court for establishment or non-establishment of guilt.

d. The emergence of 'instant justice' films

This mode of so-called instant justice, on the contrary, placates public outrage and it is interesting to see how cinema makes the idea of instant justice much more emotionally appealing to the public at large. For instance, the opening scenes of films such as Simba establish the story's plot by depicting gruesome crimes and establishing the criminals' guilt beforehand, so that the film not only views the criminals from the perspective of the police officer but also transforms the case proceedings into a suspenseful thriller in which the criminal's fate is predetermined. Instead of depicting a police officer attempting to uphold justice within the confines of the criminal justice system, the film transforms the plot into a struggle between the hero and his adversary. Similar to how Lord Rama is lauded for killing Ravana, the hero, in this case, the police officer, is praised for killing the criminal. Then, it becomes irrelevant whether the depicted encounters were real or staged.

One of the very obvious examples is Ajay Devgn's Singham, which involved a war between an honest, valiant police officer and the gangster-turned-politician who eventually accepted defeat after being caught, but the police officer shot him in the head either way to effect immediate justice. It is not surprising that this film was a "blockbuster" and spawned additional sequels. Another film with a similar plot was Shootout at Wadala, in which the criminal surrenders but the police officer still kills him. However, so-called thrillers such as these are unquestioned, and nobody investigates how law enforcers can take the law into their own hands. The common thread among these films is their ability to depict orchestrated encounters with no repercussions, thereby adding fuel to the fire.

INDIAN JURISPRUDENCE ON EXTRA JUDICIAL KILLINGS

a. The conflict between reality and film portrayals

From the preceding discussion, it can be deduced that the majority of so-called cop crime thrillers propagate the narrative that every situation in a serious criminal case s the use of extraordinary force, and thus an encounter is justified in the interests of justice. However, the Indian encounter jurisprudence reveals a stark contrast between reality and the film portrayal. A classic example is the Vikas Dubey encounter case, in which it was alleged that the gangster Vikas Dubey was killed in an encounter after a police vehicle transporting him from Ujjain to Kanpur was involved in an accident and he attempted to flee. He was shot repeatedly and later succumbed to his bullet wounds. However, the encounter left several questions[9] unanswered and several holes were discovered in the police account, resulting in the formation of a three-member inquiry panel of the Supreme Court to investigate the matter. In the end, the panel's report exonerated the police officers because neither the public nor the media presented evidence refuting the police claim, nor were any counterarguments submitted[10].

The police officials were acquitted due to a lack of evidence, but the case reignited the debate over why encounters continue to play a role in the criminal justice system. In furtherance of the events, former Supreme Court Justice Deepak Gupta stated in an interview[11] that condoning encounters is a "disservice to the constitution" and that encounters have no place in a country governed by the rule of law. The notorious case also raised several other questions, such as why the Supreme Court's guidelines[12] recommending an independent investigation for encounter killings were not being followed. In this case, it was also noted that encounter killings necessitate an independent investigation because they undermine "the credibility of the rule of law and the administration of the criminal justice system." It was also noted that the right to life under Article

[9] Ashni Dhaor, 'Was Vikas Dubey killed in fake encounter, why were media vehicles stopped: Death raises several questions' (*India Today*, 10 July 2020) <https://www.indiatoday.in/india/story/vikas-dubey-encounter-questions-raised-why-media-stopped-1699002-2020-07-10> accessed 12 September 2022

[10] Kanu Sarda, 'Vikas Dubey encounter: Supreme Court directs UP govt to act on inquiry panel's recommendations' (*India Today*, 22 July 2022) <https://www.indiatoday.in/india/story/vikas-dubey-encounter-supreme-court-closes-plea-directs-uttar-pradesh-govt-act-inquiry-panel-recommendations-1978852-2022-07-22> accessed 12 September 2022

[11] Arfa Khanum Sherwani, 'Justice Deepak Gupta—Brazen Flouting of Law in Vikas Dubey Encounter Doesn't Portend Well for India' (*The Wire*, 1 July 2020) <https://www.youtube.com/watch?v=dwzQpHODHVE> accessed 11 September 2022

[12] *PUCL v State of Maharashtra* [2014] Criminal Appeal No 1255 of 1999

21 applies to every individual and that the State has no authority to violate this right. It also prejudices the right of an accused to have a fair trial[13], which inherently flows from Article 21.

b. Critical examination of present law and jurisprudence on police encounters

Further, such encounters carried out under Section 46 fly in the face of Article 14 as they fail to distinguish between those accused of crimes punishable with life imprisonment and death, and those accused of crimes punishable otherwise, based on "intelligible differentia" because both categories of accused are ultimate to be held to the same standard i.e. innocent until proven guilty in a court of law. This has also been acknowledged by the Supreme Court in several judicial pronouncements that merely because a person is a dreaded criminal or is accused of an offence, the police officers cannot kill them in cold blood and must make all efforts to arrest them.[14] The police continue to conduct and justify encounters despite the apex court's observations and recommendations because, firstly, the section is susceptible to a way too liberal interpretation, and secondly, it can be easily misused with almost no accountability. Surprisingly, the Court has not yet attempted to read down the section or rule on its constitutionality, as it not only violates the "procedure established by law" test[15], but it is also highly improbable that the legislature intended such severe legal consequences, which squarely fall outside the scope of CrPC's purpose.

As has been seen, the core of section 46 is the right to self-defence, which extends to everyone, including police officers. In the case of an ordinary citizen, the court must determine in a trial whether the amount of force used in self-defence was proportional to the other party's actions; however, police officers are not held to the same standard of proof. Instead, even in cases of justifiable homicide, the police officer acts as investigator, prosecutor, and executioner all by himself. This way, when it comes to "encounter killings", they can evade a trial and themselves decide upon the question of the lawfulness of the exercise of their private defence. Due to the

[13] *Nirmal Singh Kahlon v State of Punjab* Civil Appeal Nos 6198-6199 of 2008
[14] *Om Prakash v State of Jharkhand* [2012] 12 SCC 72
[15] *Maneka Gandhi v Union of India* [1970] 1 SCR 457

high degree of overlap between the investigators and those being investigated, objective results are highly unlikely to be achieved.

Even though Indian jurisprudence has not been pro-police, it is evident that the police continue to exercise unjustified and arbitrary discretion when deciding how to handle a particular case. As frequently as not, police actions in encounters are motivated by political nexus or personal vindictiveness, and thus the police view encounter firings as an integral part of standard operating procedure. In some cases 'alleged perpetrators, belonging to the police or the armed forces, have been awarded out of turn promotions, or have in other ways been rewarded'[16].For instance, Dayanand Nayak, a police sub-inspector from Mumbai, reportedly killed more than 50 gangsters during his career–which is celebrated in several films, including *Aan*, *Ab Tak Chhappan,* and *Kagaar*[17]. Police Commissioner M. N. Singh reportedly praised the phenomenon for keeping organized crime in check. [18](Indian Express, 2001). Such police officers are declared "encounter specialists" and the appreciation they receive from the executive through promotions and transfers is further reaffirmed and augmented by glorification in the films. In this regard, the findings of empirical research[19] conducted by interviewing the Mumbai police officers suggested that they received a social consensus in support of extra-judicial force, even though counterclaims of media and activists held the legality of such actions questionable.

CONCLUSION AND WAY FORWARD

Ironically, the institution created to protect the life and liberty of the common man has degraded to the extent of posing a threat to the same. The numbers strongly suggest that Indian police frequently appear to resort to the use of deadly force. It has been continually reported that '35%

[16] OHCHR's Press Statement: Country Mission to India Christof Heyns, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions' (19–30 March 2012)
[17] 'A Heavy Hand: The Use of Force by India's Police' (*Indian Armed Violence Assessment*) <https://www.files.ethz.ch/isn/151470/IAVA-IB3-A-Heavy-Hand.pdf> accessed 12 September 2022
[18] Sukanya Shantha, 'Mumbai Police pats itself as encounter deaths double' *(Indian Express,* 2010) <https://indianexpress.com/article/india/india-others/mumbais-skewed-encounter-record-2/> accessed 12 September 2022
[19] Jyoti Belur, 'Why do the police use deadly force: Explaining Police Encounters in Mumbai' (2010) 50(2) The British Journal of Criminology 320–41

of complaints to the NHRC annually are against the police[20]. As has been established, the vast majority of these complaints result in no action against the offending police officer, and even if the matter is investigated, the legal framework makes it extremely difficult to prove or disprove the veracity of the encounter deaths. They have "virtually become a part of unofficial state policy,"[21] as stated by the NHRC. Therefore, independent investigations into these killings, free from police or political interference, are necessary if we are to assign responsibility to police officers and put an end to the pervasive culture of impunity. The police must be made more aware of their constitutional duties if the rule of law is to be upheld, so reforms in this area are also necessary.

However, the possibility of independent investigations, if any, arises only after a fatal encounter, i.e., after the damage has been done! The emphasis is then solely on combating illegal deaths and not on preventing them. This does not prevent the propagation of the popular narrative that encounters are inherently unjustified, and thus, misrepresentation and glorification in the film industry continue to hijack the public's psyche– encounter killings fail to be officially labelled as 'deviant acts'. The overall public sentiment remains overwhelmingly in favour of the extrajudicial killings, and the little criticism coming from human rights groups is lost in the atmosphere full of outcry. This support rather emboldens the police and creates a slippery slope in which the police have no qualms about taking matters into their own hands. Nevertheless, acknowledging that "encounter" is in fact murder is undoubtedly a step in the right direction, and filmmakers must also attempt to debunk the current narrative by avoiding making films that are unjustifiably police-centric.

There is however another side to this coin – police excesses continue to rise in number due to public backing not only because the majority tends to believe in the retributive model of justice but also because they are gradually losing their faith in the judiciary. In 2018, Common Cause published a report[22] indicating that one in two individuals viewed the use of police force against

[20] *Ibid*
[21] National Human Rights Commission's Annual Report 2004
[22] Rahul Machaiah, 'The vicious threat of encounter killings' (*Deccan Herald*, 29 May 2022) <https://www.deccanherald.com/opinion/in-perspective/the-vicious-threat-of-encounter-killings-1113592.html> accessed 12 September 2022

alleged criminals as acceptable. Such acceptance is motivated by prolonged trials and slow disposal of cases that take years, and hence the people take refuge in lawlessness. In the aforementioned study conducted by interviewing the Mumbai police[23], even the police officers admitted that believed that eliminating criminals extrajudicially is better than judicial trials because the other judicially permitted methods proved to be ineffective and failed to instill deterrence in the minds of the offenders. They also lamented over the dilemma that if they use less force, they are accused of dereliction of duty; and if they use lethal force, they are accused of murder.

Therefore, simply probing the encounter deaths is insufficient; rather, the state machinery must take the necessary measures to eradicate the evil. In this regard, the 2019 Supreme Court Commission's recommendations[24] can be beneficial. The Commission categorically concluded that the story put forward by the police was fabricated and the encounter was staged. It thus recommended the installation of cameras in police vehicles, recording videos of witnesses deposing before police officers and magistrates, and the use of body cameras by the police. In addition, it recommended that even if the accused are incarcerated, they should be brought before the magistrate and informed beforehand whenever the police seek their custody. This is to ensure that law enforcement does not take the accused in custody secretly.

While the commission's recommendations may pave the way for policing reforms, it is equally important to debunk the current popular narrative surrounding the issue of encounter killings and to end the public discourse that views the extrajudicial execution of a suspect as instant justice. Cinema is indeed the reflection of social reality, but at the same time, it also holds the power to alter that reality by influencing minds the right way. It is both the artistic and social responsibility of filmmakers not to repeat narratives that create misplaced sympathies. Instead of reiterating the same plots by presenting skewed police accounts of encounters, the films should focus on depicting the tragic reality of police encounters. The films Ardh Satya and

[23] NHRC 2004 Report (n 21)
[24] Supreme Court of India, 'VS Sirpukar Inquiry Commission on 2019 Encounter Killing' (Supreme Court of India, 2019) <*https://main.sci.govin/supremecourt/2019/44208/44208_2019_1_6_19206_Order_12-Dec-2019.pdf* > accessed 12 September 2022

Aaakrosh, which deal with the dilemma of a police officer when he engages in violence and is torn between acting humanely and performing his duty, are excellent examples. Instead of mechanically depicting police brutality as part of a police officer's legal duties, these films call into question the inherent immorality of such actions. The lawmakers as well as the laymen need to remember that India is a civilized nation governed by the rule of law, and hence it shall be the courts that should determine guilt after scrutinizing evidence and according to a fair hearing for the accused.