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## Ubiquitous Fake Encounters in India: A Hitch for the Judiciary to Overcome

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*Fake Encounters are a form of extrajudicial killing and are considered to be a violation of human rights. They often occur in regions with high levels of violence or insurgency, where forces feel the need to take extreme measures to maintain law and order. In recent years, India has witnessed several high-profile cases of fake encounters that have sparked public outrage and demands for justice. This article throws light on the most controversial and spoken about cases which were inclusive of staged killings. By allowing such incidents to go unpunished, the public's trust in law enforcement is eroded, which is essential for maintaining law and order in society. In conclusion, the article underscores the importance of ensuring that all individuals are treated fairly and that justice is served in cases of extrajudicial killings. Governments and law enforcement agencies must work towards upholding the rule of law, even in the face of violent threats.*

**Keywords:** *fake encounters, nbrc, issue, human rights.*

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### INTRODUCTION

India, a country densely populated with over 142 crore people, leaves no stone unturned to flaunt its strategically trained, well-equipped, and able military, paramilitary and police forces. It won't be an exaggeration to say that, it's because of these heroes and their heroic engagements,

that Indians feel safe to stroll through the roads at midnight, live a peaceful life while keeping a check on daily crime and avoid mishappenings on daily basis. The Military Training provided to our policemen makes sure that they are the law-abiding citizens of India, who keep the capability in themselves to make this nation work on the laws and principles stated in the Constitution of India. But the question that calls an answer every then and now stays firm to date, 'What goes so unruly that these law-abiding citizens of our country, are forced to contravene the law and pin down those miscreants, who deserved to get Justice in the Court of Law.

To all those, who are new to this secretive world of our forces, such incidents are termed 'Fake Encounters' in the terms of Law. A Fake Encounter refers to the extrajudicial killing of people, who are in the custody of the police, and await the judgment of the law or have been sentenced a punishment. This act of theirs is carried out in such a way that it seems to be a crossfire by the police, but the actual story always says something else. Though they aren't new to the country, even after various endeavours and efforts put in to eradicate such pseudo-criminal activities, there hasn't been any positive news lately. As per an RTI request filed with NHRC, it came to light that between 2000 to 2017, 1782 cases of fake encounters were registered in India out of which the State of Uttar Pradesh made 794.

### **WHAT DOES THE LAW HAVE TO SAY ABOUT IT?**

According to Section 96 of the Indian Penal Code (IPC)<sup>1</sup>, any act done in the exercise of the 'Right of Private Defence' is not an offence. Also, Section 100<sup>2</sup> comes into play when the action of self-defence inflicts a fatal cause. For a case to fall under the jurisdiction of this law, certain conditions need to be fulfilled:

1. The accused has to be declared innocent while committing that act;
2. There shouldn't be any means of safe or reasonable escape, by backing off or retreating;
3. There must be an apprehension of severe Physical Injury or death by force; and

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<sup>1</sup> Indian Penal Code 1860, s 96

<sup>2</sup> Indian Penal Code 1860, s 100

4. There should be the necessity of taking away one's life.

When a police officer doesn't initiate an act of violence, but the same is done from the attacker's side, a police officer is liable to take any action to protect himself. But do the Fake Encounters happen this way or are they portrayed in a way that is subtle enough to bluff the common man? And if they're an act of Self-defence, then what's the point of this unending and conflicting debate going on everywhere?

Nevertheless, Section 99<sup>3</sup> explicitly presages that the Defence does not fall valid for the cases where more harm has been inflicted than it was necessary for defence. In other words, if the enemy tries to physically abuse or confront the police officer without the use of any weapon, the police officer is expected to tackle him in such a way, that he's able to protect himself and also gain back the custody of the attacker without the use of any weaponry. Yet, why does the common man result in losing his/her life?

It just doesn't stop here. To conceal the facts and strengthen their plot, sometimes even local autochthonous results in getting their hands off their lives, so that a planned killing can be depicted as an accident. The Supreme Court, in *Extra Judicial Execution Victim Families Association (EEVFAM) and Ors v Union of India and Ors*,<sup>4</sup> said that though the police have the Right to Private or Self Defence, in the cases where it is widely evident that the police went beyond the designated parameters, they become aggressors and commit a crime which is punishable under the Law. Similarly, in *Darshan Singh Vs the State of Punjab and Anr*,<sup>5</sup> the jury ruled that police get the right to only defend themselves and not retaliate; To take revenge is not a Right that has been conferred upon them.

In the case of Public Servants, Clause 3 of Section 300 of IPC<sup>6</sup> is taken into play which states that when a Public Servant or any person designated by a Public Servant outpaces his/her power and causes the death of a person, according to them was necessary at the instance for the protection of nation's Law and Justice, it won't amount to murder. While this law might seem

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<sup>3</sup> Indian Penal Code 1860, s 99

<sup>4</sup> *Extra Judicial Execution Victim Families Association (EEVFAM) v Union of India* (2017) 15 SCC 578

<sup>5</sup> *Darshan Singh v State of Punjab* (2010) 14 SCC 153

<sup>6</sup> Indian Penal Code, s 300(3)

to have a shiny glowing side, it has a negative one too. In special research, a plethora of cases were found where the Public Servant working was found to have a personal benefit in the death of the victim or a personal revenge that was unfulfilled.

The staged/ fake encounters go at odds with the indispensable fundamental provisions of Article 14<sup>7</sup> and Article 21<sup>8</sup> as stated in the Constitution of India. Article 14<sup>9</sup> speaks about the Rule of Law to be supreme and not to be differed by any means whereas Article 21<sup>10</sup> provides that every person in the nation is conferred with the Right to Life and Personal Liberty. The right to a fair trial is popularly said as the heart of Criminal Jurisprudence and the same finds its roots in Article 21<sup>11</sup> of the Indian Constitution. By all means, it's very evident till now, that the adverse and malign use of the political powers and constitutional powers by the police officers has resulted in the lives of innocent people, of whom some deserved to be punished by the Court of Law, whereas some were sacrificed for the sake of covering up a crime.

### **SOME FAMOUS FAKE ENCOUNTER CASES THAT SHOOK INDIA BY ITS ROOTS**

**Ishrat Jahan Encounter Case 2004<sup>12</sup>:** 19-year-old Ishrat Jahan, Javed Shaikh (alias Pranesh Pillai), Amjadali Akbarali Rana, and Zeeshan Johar were gunned down by police on the night of 15 June 2004 as they were suspected to be a part of the Pakistani Militant Group Lashkar-e-Taiba (LeT) and had planned to assassinate then Gujarat Chief Minister Narendra Modi. Soon after Special Investigation, it was found out, that this was a case of a fake encounter. Though to everyone's shock, within some months following the inquiry, the six alleged police officials were released and resumed duty, as they were reported to be following the official protocol.

**Ram Narayan Gupta Encounter Case 2006<sup>13</sup>:** Ram Narayan Gupta, an aide to famous local dacoit Chota Rajan, was picked up from his residence by the police forces without an Arrest

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<sup>7</sup> Constitution of India 1950, art 14

<sup>8</sup> Constitution of India 1950, art 21

<sup>9</sup> Constitution of India 1950, art 14

<sup>10</sup> Constitution of India 1950, art 21

<sup>11</sup> Constitution of India 1950, art 21

<sup>12</sup> *Shamima Kauser (Mother of Ishrat Jahan) & Ors v State of Gujarat & Ors* (2019) 14 SCC 466

<sup>13</sup> *National Human Rights Commission v State of Uttar Pradesh* (2019) 9 SCC 460

Warrant and shot down in an alleged State Encounter in Versova. Later in 2013, the Mumbai High Court sentenced 21 people, including 13 police officials to imprisonment.

**Saadiq Jamal Case 2003<sup>14</sup>:** A famous Gujarat-based gambler and Alternator, Saadiq Jamal was shot down by police in Ahmedabad when police suspected him to target, then Gujarat Chief Minister Narendra Modi and killed him. Later in an inquiry by the CBI, both the Investigation Bureau and the Gujarat Police Forces were found to have staged a Fake Encounter.

**Vikas Dubey Case 2020<sup>15</sup>:** A serial criminal with over 60 cases under his name, Vikas Dubey was gunned down by the police while he was being transferred to Kanpur Central Jail by the Uttar Pradesh Police. The UP Police is said to have stated that Vikas Dubey had allegedly tried to flee the police van, and while a counter fire from the police, Vikas Dubey was hit by a bullet and died on his way to the hospital. This case gathered a lot of media attention and the victim's parents, filed a petition against the UP Police for a fake and planned encounter, Though, in May 2021, Supreme Court gave a clean chit to all the police officials involved in this case. Again, this a Judgement, that many found hard to believe.

**Batla House Encounter 2008<sup>16</sup>:** The morning of September 19, 2008, didn't turn out to be a very common and ordinary one in Delhi. After getting a lead intelligence that some terrorists who happened to be Indian Mujahedeen and were solely responsible for the serial Bomb Blasts of Delhi on September 13, 2008, which killed 30 and injured over 100; were hibernating at a Place known as Batla House, the Police waited no further. An armed strike was successfully put into execution that morning by a team of brave and valorous policemen. In head-to-head firing from both sides, 2 terrorists were shot down, 2 were arrested while the brave police officer Inspector Mohan Chand Sharma lost his life. This again case is a media favourite case, which lasted as long as 9 years in the court trials, until when the Police again gained a clean chit. A movie starring John Abraham, named ' Batla House' has also been scripted on this incident.

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<sup>14</sup> *Saadiq Jamal v State of Gujarat* (2013) 16 SCC 20

<sup>15</sup> *People's Union for Civil Liberties v State of Uttar Pradesh* (2020) 11 SCC 1

<sup>16</sup> *Ariz Khan@Junaid v State (NCT of Delhi)* (2021) 2 SCC 571

**Hyderabad Gang Rape Case Encounter 2019<sup>17</sup>:** Whereas most of the encounter cases had an element of mischief and benefit in them, this case came to be a unique one. This encounter case was deeply enrooted into the public sentiments, where it is alleged that ten police officers shot down three rapists who were involved in a gang rape and murder of a twenty-seven-year-old veterinary doctor in Hyderabad in an inebriated sense. The public, as well as the police, had made up their mind to pin down these Miscreants in a subtle fashion because they felt that the Court of Law could not confer upon the rapists, the punishment that they deserved in the public's Opinion.

### **NHRC'S TAKE ON FAKE ENCOUNTERS**

As far as the NHRC is concerned, they have made it clear that no Public Servant or Police Officer has the authority to take away any individual's right to life, as stated under Article 21<sup>18</sup>. Additionally, manoeuvring force while arresting an individual, which may or may not result in fatal, may only be legitimate, if the individual had been accused of an offence for which punishment would have been life imprisonment or death.

Also, in any case, if these requirements are not fulfilled, a police officer may be liable for Culpable Homicide under Section 46 of CrPC<sup>19</sup>. Time and again, NHRC has adopted various steps and released varied protocols to keep a check on the increasing rate of staged encounters. First time in 1997, it was NHRC that designed a procedure of four steps to be acted upon in the cases of killings, which covered offence registering and case investigations being carried out by agencies like CID compensation granting to the deceased's relatives if the reports led to policemen's conviction.

Further revisions included the guidelines of 2003 and 2010<sup>20</sup>, where a magisterial inquiry is supposed to be conducted within three months of a case of civilian death by Police, the immediate response against the police officer, and no Gallantry Award or out-of-turn promotions until and unless he is proved innocent beyond a reasonable doubt.

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<sup>17</sup> *People's Union for Civil Liberties v State of Telangana* (2020) 7 SCC 535

<sup>18</sup> Constitution of India 1950, art 21

<sup>19</sup> Code of Criminal Procedure 1973, s 46

<sup>20</sup> National Human Rights Commission, *Guidelines on Public Encounters* (2003)

## **A BEFITTING CONCLUSION TO THE UNFATHOMABLE ISSUE**

Every day, we wake up to the horrendous and merciless crimes stated in the newspaper, but even then, deep down in our souls, we always keep our faith intact in the Police Forces, those police forces who give their heart out for the Nation's Service. Yet, there are times, when we are forced to point our fingers at these same bravados, and every citizen of the country loses trust in these heroes and leaves a scar on their reputation. Where a part of the Indian Constitution confers some exclusive rights upon the Public Servants to regulate Law and Order, the Indian Judiciary system also fails to punish those police personnel who wilfully take the law into their hands and act out of revenge and vengeance. It won't be suitable to say that it's unnatural in all cases, there have been incidences where police were bound to protect themselves and took action in that course, but then there are hundreds where police stage fake encounters to gain pseudo-popularity, early promotions, personal satisfaction and what not. Not stopping here, even the locals who become victims of such delinquent actions are used as Human props in such situations to make the crime look like a Natural Encounter.

Even after frequent efforts by NHRC, the criminal charade of fake encounters has no end to it. Fake encounters are the mere mockery of the Rule of Law. They severely affect the Criminal Justice system's working and leave a big mark on the eminence of Law and Order. In a cultivated and courteous society like ours, it's high time we understood that Fake encounters will never be a substitute for the process of justice through trial. The more such cases, just pose an everyday question to the common man of the country, "if this executive force of Government can maltreat their duties in mask and make their own Country's citizens insecure about their safety, then how one can be assured of the credibility that our Judicial System carries?"