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**CRITICAL ANALYSIS OF THE UNCONSTITUTIONAL ENCOUNTER
CULTURE PRACTICED TO CURB CRIMES¹****ABSTRACT**

A strange pattern is observed in criminal justice system i.e., illegal encounters being carried out by the Police authorities which is paradoxically accepted by the society as it seems to be providing justice in a faster way and punishing the hardened criminals in the harshest possible ways. This kind of revengeful justice is supported by the citizens with the increasing number of dreadful crimes and because of the slower justice system. Fake encounters defy the law and are exactly opposite to the theory of punishment acknowledged by the Indian Law. This article aims to criticize the ongoing encounter culture and bring out the actual layout of how the power vested in Police authorities is misused. This article conveys the unconstitutionality of the encounters and how it affects the procedure established by law. These encounters contravene the basic structure of the constitution and should be considered as foul rather than a robin hood mission.

Keywords: Criminal Justice system, Violation of Human rights, Illegal encounters

INTRODUCTION

As the saying goes, for every high there is a low and for every good there is a bad. The Indian Constitution guarantees the right to life and liberty as a fundamental right to every citizen of India, there are certain extra judicial activities which violate the basic human rights at the hand of people maintaining law and order. These activities are known as “Encounters” in common parlance whereas in legal jargon these activities are defined as extrajudicial killings. The term extrajudicial killing means killing of a person by Government authorities or individuals without the sanction of any judicial proceeding or legal process. Such encounters

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predominantly transpire with the full knowledge and consent of the top authorities. The targets for such illegal execution are mainly hardened criminals, gangsters, rapists, etc. These encounters occur as the criminals become hostile while trying to escape the police custody and create a chaos in the public. Although there are certain provisions in different statutory laws which stand as exception in the case of an encounter. However, there are certain ground rules which are to be satisfied in order to consider an encounter as a genuine one, in cases where such ground rules are not adhered to, the encounter is not considered as a genuine one but a “fake” one. There have been debates going on since a long time regarding the legitimacy of the encounters because of rapid increase in the number of fake encounters and it seems that the police authorities are resorting to retributive theory of punishment rather than following the legal procedure. With the increasing number of such encounters a question arises whether this kind of encounter culture is really what the society needs to repress the crimes?

VIOLATION OF HUMAN RIGHTS

The Universal Declaration of Human Rights (UDHR) is a document which outlined the rights every human being is entitled to and is binding on all the nations. Article 3 of UDHR says that everyone has the right to life, liberty and security of person. This right is available to EVERY human being including the criminals. Article 21 of the Indian constitution also guarantees right to life and personal liberty to its every citizen without any discrimination or classification. The extrajudicial killing is entirely unconstitutional as it violates the basic human right to life which is considered as a fundamental right of every citizen of the country. Such extrajudicial killings contravene the fundamental rights guaranteed by the Constitution to the Indian citizens. Principles of Natural Justice is considered as the basic structure of the Indian Constitution one of them being “*Audi Alteram Partem*” meaning “*let the other side be heard*” and thus, Indian statutory laws manifests diverse provisions for criminals as well in order to provide equal rights and opportunities to defend themselves.

Article 22 of the Indian constitution envisages various provisions for protection of criminals’ against unlawful arrest and illegal detention in certain cases. However, Section 46(2) of the Criminal Procedure Code allows the police authority to use all means necessary to effect the arrest, if the accused person forcibly resists his arrest. Furthermore, Section 46(3) of the Criminal Procedure Code puts a restriction on the authorities by stating that they do not have the right to cause the death of a person who is not accused of an offence punishable with death penalty or life imprisonment. Moreover, Section 96 to 106 of the Indian Penal Code

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enshrines the right of private defense of the body and property and according to Section 96 of IPC; nothing is an offence, which is done by exercising the right of private defense. The words “every person” used in these Sections imply that these provisions extend to the Police authorities as well and whereby, the action taken by the police authorities which causes death of the accused while exercising the right to private defense is not considered as an extra judicial killing. Nonetheless the encounters which do not fall under various provisions of law are considered as *Fake Encounters* and are to be condemned as they are nothing but illegal execution and it violates proper legal procedure established by law. Such encounters disregard the human rights and such contravention of law tends to affect the civilization. The total number of fake encounters registered in the time frame of 2002-2017 was 1782, out of which only 1565 cases were disposed off². With the increasing number of fake encounters the Supreme Court has time and again given due importance to right to life and liberty. In the case of *Prakash kadam v. Ramprasad Vishvanath Gupta*³, the Supreme Court held that, where a fake encounter is proved against policemen in a trial, they must be given death sentence, treating them as the rarest of the rare cases. In another case of *Om Prakash v. State of Jharkhand*⁴, it was held by the Apex Court that, it is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Such fake encounters must be deprecated as they are not recognized as legal by our criminal justice executive system.

Further in the case of *Inder Singh v. State of Punjab*⁵, the Supreme Court while acknowledging the issue of increasing extrajudicial killings and breach of legal procedure stated that, the court has in recent times come across far too many instances where the police have acted not to uphold the law and protect the citizens but in aid of a private cause and to oppress the citizen. In 2014, the Supreme Court issued 16 point guidelines with the respect to the cases of encounters which were to be adhered strictly, in case of *PUCL V. State of Maharashtra*⁶. In this case, there were several writ petitions filed questioning the genuineness of 99 encounters by Mumbai Police between the time period of 1995 and 1997. According to the guidelines, as soon as there is any intell about any hardened criminal or an attempt of committing a grave criminal offence, the Police authorities are supposed to register the same in a written form or an electronic form and consequently an FIR is to be filed against the said person. A proper investigation is to be initiated and in case of encounter death, NHRC or State Human Rights

²www.nhrc.nic.in.

³Criminal Appeal No. 1174-1178 of 2011; 13 May, 2011.

⁴ 2012 (12) SCC 72.

⁵ 1995 AIR 312, 1944 SCC(6)275.

⁶Criminal Writ Petition No. 1255 of 1999.

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Commission is to be informed immediately. These guidelines covered all the possible aspects of an encounter, from initiating proper investigation for every encounter to providing compensation to the dependents of the victim of such encounter. The Bench of then Chief Justice RM Lodha and Justice RF Nariman highlighted that the right to life under Article 21 is available to every citizen and that even state cannot violate that right. The National Human Rights Commission has time and again issued notices in order to bring an end to such illegal execution in the name of encounter. The NHRC has said that “the job of the police is to apprehend criminals and bring them to book. If the police transgresses its limits and takes the law in its own hands, the security of the citizens is jeopardizing. Further it added that its not good for a civilized society to develop an atmosphere of fear, emerging out of certain policies adopted by the state⁷. In order to make sure that the state prisoners and criminals are given an equal opportunity of being heard, the Supreme Court took an extensive step in the administration of criminal justice system and suggested that the state prisoners should get free legal aid for representing them in the court of law in the case of *Hussainara Khatoon & Ors v. Home Secretary, State of Bihar*⁸. In another Landmark Case of *Maneka Gandhi v. Union of India*, it was established that personal liberty of a person cannot be cut out without proper and fair legal procedure⁹. To sum up everything that has been stated so far, even a criminal or prisoner cannot be deprived of his life and liberty without giving him/her a chance to present their case, extra judicial killings, deprives them of their fundamental right to life and liberty and it clearly contravenes the provisions of the Indian Constitution.

NOT A “ROBINHOOD MISSION”

This encounter culture is perceived as a Robin Hood mission by some of the citizens as it is believed as the fastest served justice. There are many encounters which are evidently illegal but not condemned by the society as the society seems to be blinded by the notion of revengeful justice. One of such illegal encounters includes the Hyderabad encounter case which recently took place on 27th November 2019; where all the four accused who were arrested for the offence of rape were killed in an encounter which was prima facie unlawful but was celebrated by the public rather than rebuking such illegal execution by the very police authorities who are suppose to maintain the law and order in the state. A similar incident took place when Vikas Dubey, a gangster from Uttar Pradesh was also killed in a similar kind of

⁷www.nhrc.nic.in.

⁸1979 SCR (3) 532.

⁹1978 AIR 597.

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illegal execution a petition in the Supreme Court has been filed against this illegal execution. Consequently an inquiry commission headed by Justice BS Chauhan has been constituted to probe the aforesaid illegal execution. Such encounters disregard our judicial system and make it difficult to have proper hold of law and order. Executing these hardened criminals without giving them an opportunity of being heard defies the Principles of Natural Justice enshrined under Article 14 and provisions of fair hearing of the arrested persons under Article 22 of the Indian Constitution moreover, depriving them of their fundamental right to life is completely unconstitutional. This kind of encounter culture should not be reckoned as a Robin Hood mission to curb the crimes and punish the criminals, as it certainly abuses the procedure established by law. Moreover, it is the earnest responsibility of the Police authorities to make sure that the power given to them is abused and equilibrium is maintained between punishing the criminals and following the law.

CONCLUSION

The ongoing encounter culture raises a big question on safety of the citizens of the world. The statistics regarding the fake encounters is high in most of the countries and it is mandatory to decrease this rate in every such country for protecting the human rights. Fake encounters completely efface the legal grounds by knocking someone without a trial which undermines the faith in our legal system. This “Encounter Culture” is a matter of grave concern for humanity. Each and every country should strictly follow the laws regarding the arrest of accused and in cases of encounters; a proper investigation should be carried out in order to protect the innocent citizens to avoid miscarriage of law. The criminals cannot be exterminated without proper legal proceedings just because they have committed an offence.

Furthermore, it is very important to make sure that, the procedure embedded by the constitution is followed by the police authorities in the view of the fact that the one who are supposed to maintain the law and order cannot be the one to disregard it. There is an urgent need to put an end to this kind of encounter culture; the guidelines issued by the Supreme Court as well as NHRC are proving to be insufficient to control fake encounters and thus, stricter provision of law is needed to decrease the number of illegal extra judicial killings. Altogether a specific Act with regard to extra judicial killing with proper and stricter rules and guidelines can prove to be a major turning point in controlling the current situation and for putting an end to this

destructive encounter culture. Besides, it is said that “However good a constitution may be, if those implementing it are not good, it will prove to be bad¹⁰.”



¹⁰ A quote by Chief architect of our Constitution, Dr. B.R. Ambedkar.

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