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**ANALYSIS ON EXTRA-JUDICIAL KILLING DONE BY POLICE IN
INDIA & COMPARATIVE ANALYSIS UNITED STATES OF AMERICA,
UNITED KINGDOM & RUSSIA**- Shreyansh Chandra¹**Abstract**

Extrajudicial executions were labelled state-sponsored terrorism in the landmark judgment of *Om Prakash & Ors v. State of Jharkhand & Anr (Fake encounters)*, additionally referred to as extrajudicial killings, are deemed a contravention of Article 14, which guarantees proper equality, and Article 21, which ensures the safety of lifestyles and liberty, respectively. Articles 14 and 21 of the Indian Constitution guarantees that everyone will get a fair inquiry and trial. Police encounters or extrajudicial killings are a breach of a person's human rights since, unless guilt is shown, they cannot be considered an offender or a criminal. It is sometimes publicised and accepted that the information is false. If we look closely, there is a clear violation of the judiciary's authority by the executor. Since the executor would make all decisions regarding the punishment and release of any individual, there would be no need for the criminal justice system in India. This would severely violate the fundamental rights guaranteed by the Indian Constitution. So, the biggest democracy in the world, which will keep its reputation quo inside the truest feel feasible, ought to no longer come throughout with such violations of human existence and offer all people the truthful possibility and comply with the due technique of the law. However, it is also essential to analyse the situation of extrajudicial killing in those countries which enjoy the status of developed countries- USA, UK and Russia. In this paper, there is an attempt to analyse extrajudicial killings and the causes and consequences of these incidents in four countries.

¹Student at SOLJG, Gautam Buddha University.

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Introduction

Extrajudicial human rights violations by police forces have become a significant problem in several countries around the world, raising concerns about police accountability and the integrity of the criminal justice system. This study examines extrajudicial killings by the police in four different countries: India, the United States, England, and Russia. By comparing these countries, we aim to highlight the different factors that lead to extrajudicial killings, their consequences, and efforts to address this critical issue.²

- INDIA

Moreover, As the world's largest democracy, India struggles with a high number of extrajudicial killings. Deaths in custody, killings and false findings have raised questions about police misconduct, corruption and the lack of effective monitoring mechanisms. Understanding the prevalence and impact of extrajudicial killings in India is crucial to understanding the challenges that developing countries face in pursuing an effective criminal justice system.³

- UNITED STATES

The United States, which is often considered a beacon of democracy and the rule of law, has long witnessed the problem of judicial killings by law enforcement officers. The lack of force, particularly against racial and ethnic minorities, has sparked widespread outrage and calls for police reform. An analysis of extrajudicial killings in the United States reveals systemic racism, police militarisation, and inadequate accountability mechanisms in a developed country.

- BRITAIN

Britain, known for its robust legal framework and respect for human rights, has faced extrajudicial killings by police forces. Although small compared to other countries, these incidents have raised concerns about police tactics, misuse of firearms, and the balance between public safety and individual rights. Research into extrajudicial killings in the UK provides insight

²(1 July 2023, 11 A.M), Retrieved from - <https://www.amnesty.org/en/countries/asia-and-the-pacific/philippines/report-philippines/>.

³(1 July 2023, 11:39 A.M), Retrieved from - <https://www.legalserviceindia.com/legal/article-2777-a-short-study-on-extrajudicial-killings.html>.

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into the challenges facing a country with a historic legacy of law enforcement and efforts to uphold the rule of law.

- **RUSSIA**

Russia, with its complex political landscape and history, provides a unique context for investigating extrajudicial police killings. Political repression, state-sponsored violence, and organised crime have been linked to extrajudicial killings that have created a climate and restricted civil liberties. Understanding the dynamics of extrajudicial killings in Russia provides essential insights into authoritarianism, law enforcement, and human rights abuses.

History

India: Extrajudicial killings by police have long been a concern in India. The country is witnessing encounters or "fake encounters" where police officers are accused of arranging encounters to eliminate suspected criminals. These cases often raise questions about due process, human rights and abuse of power. The issue attracted considerable attention and led to public debate, legal intervention and calls for police reform.

United States: In the United States, extrajudicial killings by police have also sparked widespread scrutiny and protests. Incidents of police violence, especially against marginalised communities, have raised concerns about racial discrimination, use of force, and systemic problems in law enforcement. Events such as the murders of George Floyd, Breonna Taylor and others have sparked widespread protests and debates about police accountability, racial justice and the need for police reform.

UK: Extrajudicial killings by the police in the UK are rare compared to some other countries. The police are governed by strict rules and guidelines on the use of force, and there are mechanisms in place to investigate incidents of police violence. However, deaths in police custody or as a result of police actions are well known, and each case is scrutinised and investigated to ensure accountability and transparency.

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Russia: Extrajudicial killings by police in Russia have been a source of concern and criticism from human rights organisations. The report cited examples of torture, excessive force and extrajudicial killings by law enforcement agencies. There is police impunity, lack of accountability and limited avenues for redress for victims and their families. These problems have led to calls for reform in Russia's law enforcement system.

Laws on Extrajudicial Killing in India

In India, extrajudicial killing refers to the unlawful killing of a person by a government official or law enforcement agency outside of court. Extrajudicial killings are considered a violation of the right to life protected under Article 21⁴ of the Constitution of India. India has several laws and regulations to deal with extrajudicial killings:

1. **Constitution of India:** Article 21 of India guarantees every person the right to life and personal liberty. Extrajudicial killing directly violates this fundamental right.
2. **Indian Penal Code (IPC):** The IPC includes murder and other offences against the human body. Unlawful killings by public servants or law enforcement officers can be prosecuted under section 299 (culpable homicide not amounting to murder) or 304⁵ (culpable homicide).
3. **Criminal Procedure Code (CrPC):** The CrPC provides guidelines for conducting criminal procedures in India. This includes investigating, arresting and trialling people accused of crimes.
4. **Protection of Human Rights Act, 1993,** established National and State Human Rights Commissions in India. It aims to protect and promote human rights, including the right to life. Complaints about extrajudicial killings can be filed with the relevant human rights commission.
5. **Judicial decisions:** Over the years, Indian courts have played an essential role in resolving cases of extrajudicial killings. The court emphasised the importance of protecting the right to life and taking strict action against extrajudicial killings. The court has provided guidelines and safeguards to prevent such incidents.

⁴21. Protection of life and personal liberty -No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁵CrPC 1973, 304. Punishment for culpable homicide not amounting to murder.

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How does Extrajudicial Killing violate the Fundamental Right of the Constitution of India

Extrajudicial killings are killings by government officials or individuals acting on behalf of the government, legally and without trial. Extrajudicial killings in India are a violation of fundamental rights enshrined in the Constitution. They are:

- **Right to Life:** Article 21 of the Indian Constitution guarantees all people the fundamental right to life and personal liberty. Extrajudicial killing directly violates this right by taking the lives of innocent people. Only through a fair and just legal process can an individual be deprived of the right to life as stipulated in the Constitution. People's Civil Liberties Union and the state of Maharashtra and others⁶, the writ petition is a petition filed by the Civil Liberties Union against the Mumbai police killings between 1995 and 1997. More than ninety accused were killed in the process. Sukabumi police force outside the meeting. The Supreme Court held that Article 21, as envisaged in the Constitution of India, has been amended. The Constitution of India provides article 21. Article 21 states that even the government cannot violate this country's citizens' rights.
- **Court and Fair Trial:** Anyone accused of a crime has the right to a fair trial and trial. Extrajudicial killings bypass the legal system by denying defendants the opportunity to stand trial, confront the evidence against them, and establish their innocence. It violates the principle of "innocent until proven guilty" and denies the accused the right to self-defence.
- **Protection from arbitrary action:** The Indian Constitution protects individuals from arbitrary action by the state. Extrajudicial killings are carried out without any legal sanction, which violates this protection. The right to suicide without due process can be easily abused, leading to violent actions by the authorities against the principles of justice and the rule of law.
- **Equality and Non-discrimination:** Extrajudicial killings often target marginalised communities, such as ethnic and religious minorities, lower classes and economically disadvantaged groups. This violates the fundamental right to equality and non-

⁶PUCL v. Union of India, (1997) 3 SCC 433.

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discrimination enshrined in Article 14 of the Constitution, which guarantees equal protection of the law to all people regardless of their origin.

- **Right To Remedy:** The Constitution gives people the right to seek remedies for violations of their fundamental rights. Extrajudicial killings are illegal and deny victims or their families the opportunity to seek justice through legal channels. This undermines the constitutional framework that guarantees the protection and enforcement of fundamental rights.

Impact on Society of Extrajudicial Killing

Extrajudicial killings affect various aspects of society, the legal framework and human rights. Here are some critical effects:

- **Loss of trust in Law Enforcement:** Extrajudicial killings undermine public trust in law enforcement and the justice system. When people think the authorities are acting outside the law and become complicit in their actions, it leads to a loss of confidence in the ability of the police and security forces to carry out justice and protect the rights of citizens.
- **Culture of Impunity:** Extrajudicial killings contribute to a culture of impunity where perpetrators of violence go unpunished. The failure to prosecute those responsible for these killings sends the message that human rights violations are tolerated, lawlessness is created, and principles of justice and law are tolerated.
- **Human Rights Violations:** Extrajudicial killings are clear violations of the right to life and personal liberty guaranteed by international human rights standards and many national constitutions. They deny people fundamental rights to due process, fair trial, and protection from unfair treatment. Such offences affect the victims and create an atmosphere of fear and insecurity.
- **Suppression of dissent and freedom of expression:** Extrajudicial killings can be used as a tool to suppress dissent and silence critical government or opposition groups. Fear of retribution and potential violence can have a chilling effect on freedom of expression, leading to self-censorship and reluctance to express opinions or participate in peaceful activism.

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- **Polarization and social unrest:** Extrajudicial killings, primarily when they do not target specific communities or marginalized groups, can cause social divisions and lead to increased social tensions. They contribute to feelings of injustice and discrimination, create anger and resentment among affected communities, and can lead to social unrest or violence.
- **Impact on Democracy and Governance:** Extrajudicial killings undermine the principles of democracy and good governance. They weaken the institutions responsible for protecting the rule of law, undermine public confidence in the democratic process, and hinder efforts to build a just and inclusive society.

Who is Accountable when Extrajudicial Execution is Committed?

When an extrajudicial killing is committed, multiple individuals and institutions can be held accountable based on their involvement and responsibilities. Here are some parties that may be accountable in extrajudicial execution:

- **Perpetrators:** The individuals directly involved in carrying out the extrajudicial killing, such as law enforcement officials or security forces, can be held accountable for their actions. They are responsible for complying with the law and ensuring that their actions are within the boundaries of legal authority.
- **Commanding Officers and Superiors:** If there is evidence to suggest that the extrajudicial killing was carried out under the command, orders, or oversight of superiors, they can be held accountable for their role in the incident. Commanding officers must ensure their subordinates act within the law and uphold human rights standards.
- **Government and State Institutions:** The government and relevant state institutions can be held accountable for extrajudicial killings that occur under their jurisdiction. They are responsible for ensuring the protection of human rights, the rule of law, and the proper functioning of law enforcement agencies. Failure to prevent or address extrajudicial killings can imply institutional responsibility.
- **Legal and Judicial Authorities:** If there is evidence of collusion, cover-ups, or failure to conduct proper investigations by legal or judicial authorities, they may be held

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accountable. Judicial authorities must ensure impartiality, fairness, and access to justice. Failure to fulfil this duty can contribute to a culture of impunity.

- **Oversight and Accountability Mechanisms:** Various oversight and accountability mechanisms, such as human rights commissions, ombudsman offices, or unbiased investigative bodies, are critical in retaining people and establishments liable for extrajudicial killings. These mechanisms are responsible for conducting impartial investigations, ensuring transparency, and recommending appropriate action against those responsible.
- **International Obligations:** If the extrajudicial killing violates international human rights standards, the government may be held accountable under international law. This can involve scrutiny from international human rights bodies, such as the United Nations Human Rights Council or treaty bodies, which monitor compliance with international human rights treaties.

Role of the National Human Rights Commission of India

In India, the National Human Rights Commission (NHRC) plays a significant role in solving and investigating cases of extrajudicial killings. Here is a look at the role of the NHRC in such cases:

1. **Investigation and investigation:** The NHRC has been empowered to investigate allegations of human rights violations, extrajudicial killings, etc. It can conduct independent investigations, seek information from relevant authorities and visit the scene to gather evidence and ensure a fair and impartial investigation.
2. **Recommendations and Remedies:** The NHRC may recommend that the relevant authorities take appropriate action after investigating the case. This may include holding those involved accountable, taking full action against the responsible officials, or compensating the victims or their families. The recommendations of the NHRC are essential and are meant to ensure accountability and provide remedial measures to the aggrieved parties.
3. **Monitoring and follow-up:** NHRC continues monitoring progress even after the initial investigation. It ensures that recommendations are implemented and that the responsible

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agency takes appropriate action. This oversight helps maintain pressure on authorities to ensure accountability and prevent cases from being forgotten or ignored.

4. **Public Awareness and Advocacy:** NHRC plays a vital role in creating public awareness about extrajudicial killings and the need to respect human rights. Through reports, press releases and public advocacy, the NHRC draws attention to the issue, educates the public and promotes a culture of human rights and accountability.
5. **Policy recommendations:** The NHRC makes policy recommendations to the government to prevent and address extrajudicial killings, except in exceptional cases. These recommendations may include reforms in law enforcement procedures, training programs for law enforcement officers, strengthening oversight mechanisms, or improving the judicial system to ensure proper investigation and prosecution of such cases.
6. **Cooperation and collaboration:** NHRC collaborates with other human rights organizations, civil society groups and international organizations to share information, experiences and best practices. These partnerships help address systemic problems, share knowledge, and advocate for reforms to prevent extrajudicial killings.

Cases of Extrajudicial Killing

Here are a few notable cases of alleged extrajudicial killings in India⁷:

- **Batla House Encounter (2008):** The Batla House encounter occurred in Delhi in September 2008. Two alleged members of the Indian Mujahideen were killed, while two others were arrested. Some criticised the encounter, alleging it was a staged encounter or a case of mistaken identity.
- **Ishrat Jahan Encounter (2004):** In June 2004, Ishrat Jahan, a 19-year-old college student, and three others were killed in an encounter by the Gujarat Police. The police claimed that they were terrorists planning an attack, but subsequent investigations raised

⁷(3rd July, 2023- 04:34 P.M) Retrieved from-
<https://www.ijlmh.com/paper/extra-judicial-killing-and-the-human-rights-of-the-criminal-in-india-an-emerging-botch-on-criminal-justice-system/#>.

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doubts about the authenticity of the encounter and allegations of it being a staged killing emerged.

- **Manipur Extrajudicial Killings:** Over the years, there have been numerous allegations of extrajudicial killings by security forces in Manipur, particularly in the context of counter-insurgency operations. These incidents have raised concerns about human rights violations, lack of accountability, and the need for justice for the victims.
- **Kashmir Extrajudicial Killings:** In the context of the long-standing conflict in Jammu and Kashmir, there have been allegations of extrajudicial killings by security forces. These incidents have been the subject of scrutiny, investigations, and demands for accountability, with various human rights organisations documenting and raising concerns about such killings.

Comparative Study of Extrajudicial Killing in the United Kingdom, United States of America, and Russia

UNITED KINGDOM

- **Legal Framework:** In the UK, the Human Rights Act 1998 protects the right to life, incorporating the European Convention on Human Rights (ECHR) into domestic law. Article 2 of the ECHR safeguards the right to life and provides certain exceptions under which the use of force may be permitted, such as in self-defence or defence of others.
- **Police Use of Force:** The use of force by the police in the UK is governed by various guidelines and laws. The precept of proportionality is emphasised, which means that the pressure used needs to be essential and proportionate to the hazard confronted with the aid of the police officers. Unlawful killings by police officers would be subject to investigation and potential prosecution.
- **Independent Police Oversight:** In the UK, independent bodies are responsible for investigating deaths in police custody or following police contact. The Independent Office for Police Conduct (IOPC) is one such employer tasked with engaging in unbiased investigations into deaths or critical incidents regarding the police.

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UNITED STATES OF AMERICA

- **Legal Framework:** In the United States, the Constitution provides various protections related to the right to life, due process, and equal protection under the law. The Fourth Amendment protects against unreasonable searches and seizures, while the Fifth and Fourteenth Amendments provide due process protections. The use of force by state actors, including law enforcement, is subject to constitutional limitations.
- **Law Enforcement Use of Force:** The use of force by law enforcement in the United States is governed by federal and state laws and departmental policies. The specific guidelines regarding the use of force vary across different jurisdictions. However, generally, officers are expected to use force only when it is objectively reasonable and necessary to protect themselves or others from imminent harm.
- **Independent Investigations:** The process for investigating incidents involving potential extrajudicial killings in the United States can vary by state and jurisdiction. In some cases, internal affairs units within law enforcement agencies conduct investigations. In other cases, independent agencies or special prosecutors may be appointed to oversee the investigations. Additionally, there have been calls for more independent civilian oversight of law enforcement.
- **Civil Rights Laws:** In situations where extrajudicial killings involve potential violations of an individual's civil rights, federal laws come into play. The Department of Justice can investigate and potentially prosecute cases under federal civil rights statutes, such as the Violent Crime Control and Law Enforcement Act of 1994 (also known as the 1994 Crime Bill) and the Civil Rights Act of 1964.

RUSSIA

- **Context:** In Russia, extrajudicial killings refer to unlawful killings or executions carried out by state actors or individuals acting on behalf of the state without due legal process. The country has faced scrutiny regarding human rights violations and allegations of extrajudicial killings in various contexts, including law enforcement operations, counterterrorism efforts, and politically motivated cases.

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- **Human Rights Concerns:** Russia has faced criticism from international human rights organisations and advocacy groups regarding its record on extrajudicial killings. Concerns have been raised about violations of the right to life, due process, and the lack of independent and transparent investigations into alleged extrajudicial killings.
- **Law Enforcement and Security Forces:** Extrajudicial killings have been reported among law enforcement and security forces in Russia. Instances of excessive use of force, torture, and unlawful executions have been alleged in the context of counterterrorism operations, protests, and the treatment of individuals in custody.
- **Impunity and Lack of Accountability:** One of the significant concerns raised regarding extrajudicial killings in Russia is the perceived lack of accountability for those responsible. Critics argue that investigations into such incidents are often inadequate, and there is limited transparency in holding perpetrators accountable, particularly when state actors are involved.
- **Journalists and Activists:** Russia has also faced criticism for extrajudicial killings targeting journalists, human rights activists, and political opponents. These cases have raised concerns about freedom of expression, freedom of the press, and the safety of individuals critical of the government.

Conclusion

Extrajudicial killings, whether in India, the UK, the USA, Russia or any other country, are grave human rights violations that violate the principles and practices of justice and the right to life. Unlawful taking of human life by an individual or individuals acting on behalf of the state violates human rights. Different jurisdictions have legal frameworks to protect people from extradition, including constitutional protections, international human rights standards and domestic law. However, the effectiveness and implementation of these legal protections can vary, raising issues of accountability and fairness.

States must have a solid legal framework that protects the right to life and provides clear guidelines on using force by state actors. This framework should emphasise necessity, equity and rationality in using force. An independent and transparent mechanism should be established to investigate extrajudicial killings and ensure integrity and accountability.

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This mechanism should include independent bodies responsible for conducting investigations separately from the organisations involved in the incident. Extrajudicial killings must be accounted for through fair and just courts.

This includes conducting thorough investigations, holding those responsible accountable, and ensuring appropriate punishment for wrongdoing. Continuous training and education for law enforcement and security forces can foster a culture of respect for human rights, emphasise the importance of protecting life, and ensure compliance with legal standards. Civil society organisations, human rights defenders, and the public play an important role in raising awareness, maintaining justice, and holding authorities accountable for extrajudicial killings. Public pressure and scrutiny can contribute to reforms and develop a culture of respect for human rights. Combating extrajudicial killings requires a comprehensive approach that includes legal reforms, institutional changes, public awareness and international cooperation to ensure the protection of human rights and the rule of law.

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