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# Human Rights Violation in Criminal Justice System: Fake Encounters

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## ABSTRACT

*Fake encounters, or extrajudicial killings by police, represent a serious violation of human rights within India's criminal justice system. These killings occur when law enforcement officers execute individuals without due legal process, often framing them as acts of self-defense or immediate justice. While the police are entrusted with maintaining law and order, the misuse of power in the form of fake encounters undermines the rule of law and erodes public trust in legal institutions. The right to life, guaranteed under Article 21 of the Indian Constitution, is frequently compromised in such incidents. Despite constitutional safeguards and judicial directives, reports of such encounters continue to rise, especially in states like Tamil Nadu. Victims' families often face intimidation, and investigations into these killings are rarely impartial. The lack of accountability and oversight enables impunity among law enforcement agencies. Addressing this issue requires comprehensive police reforms, independent investigations, and strict enforcement of legal procedures. Ensuring justice and upholding human rights are essential to preserving the credibility and integrity of India's democratic and legal systems.*

**Keywords:** *Fake encounters, Extrajudicial killings, Criminal justice system, Custodial deaths, Criminal justice system*

## I. INTRODUCTION

The police force holds a crucial role in society, acting as the visible face of the government. During times of trouble, danger, crisis, or uncertainty, citizens naturally turn to the police and police stations for assistance. They are expected to be accessible, responsive, and adaptable within society. The functions and duties of the police are multifaceted, encompassing the maintenance of both law and order. These duties lead to a complex array of responsibilities, roles, and powers for the police organization. However, granting diverse powers to the police can also open avenues for misuse, potentially violating human rights. This paper addresses the powers vested in the police, instances where power has been abused, the legislative safeguards, and the judicial oversight of police activities. The Indian Constitution guarantees a range of human rights, ensuring their justiciability. The Supreme Court plays a vital role in upholding

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these rights, with a strong human rights jurisprudence. Article 21 of the Constitution safeguards the right to life, which has been extensively interpreted by the courts. India has a robust press and an active human rights civil society, though it faces challenges like armed movements, insurgencies, terrorism, and organized crime. Despite these challenges, the country strives to protect human rights, yet the current situation necessitates more effective mechanisms to handle such issues. In recent years, there has been an increase in extrajudicial killings by government agencies in India. This alarming trend threatens the fabric of society, undermining the rule of law. It is crucial to prevent state agencies from taking the law into their own hands and acting as a parallel judiciary. The ongoing police encounter killings are particularly concerning in a democratic nation. To address this critical issue of human rights violations, the state must either utilize existing mechanisms and standards or implement changes in the criminal justice system and laws.

## **II. WHAT IS POLICE ENCOUNTER OR EXTRAJUDICIAL KILLING**

The research aims to examine the phenomenon of "police encounters" in Tamil Nadu from a human rights perspective. A police "encounter killing" refers to an extrajudicial killing, where government authorities are responsible for the death of an individual without following proper legal procedures. The study seeks to objectively explore and analyze how different stakeholders perceive such incidents, including law enforcement officials, the judiciary, and the families of the victims. The objective is to shed light on the underlying causes, characteristics, and consequences of these killings. The research focuses on gathering insights from three main groups: members of the victims' families, law enforcement officials, and individuals within the judiciary system. These stakeholders are directly and actively involved with the issue of police encounter killings, making them well-suited to discuss the implications associated with such incidents. Extrajudicial killings, also referred to as extrajudicial executions, involve the state or governmental authorities causing the death of an individual without adhering to proper legal procedures or court proceedings. Such actions are generally considered unethical as they bypass the established legal processes of the jurisdiction. Extrajudicial killings often target prominent figures in politics, trade unions, dissent, religion, and society. These actions are typically carried out by state entities like armed forces or police as a non-legal means of fulfilling their designated roles. It's important to note that this definition excludes situations where these authorities act based on personal interests rather than the interests of the state, such as eliminating their involvement in a crime or acting on the behalf of an external party.<sup>2</sup>

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<sup>2</sup> 1 Reyes, Ruben. "Extrajudicial Killings and Unexplained Disappearances". Court of Appeals. Accessed on

### **III. EXTRAJUDICIAL KILLING AND HUMAN RIGHTS**

The protection of fundamental rights such as the right to life, personal liberty, integrity, freedom from torture, freedom of expression, and the right to an effective remedy is enshrined in various international human rights agreements. These provisions impose a wide range of positive obligations on the countries that have ratified these agreements, as interpreted by human rights bodies. Notably, the right to life and the prohibition of torture are considered non-derogable, meaning they cannot be suspended even during times of war or emergencies. The remaining rights, which are subject to derogation, remain applicable alongside the principles of international humanitarian law in conflict situations. In the Indian constitution, there are no explicit provisions outlining the incorporation and status of international law within the national legal system. However, Article 51(c) of the constitution includes a Directive Principle of state policy that encourages fostering respect for international law and treaty obligations in the interactions between organized groups of people. International treaties do not automatically become part of Indian national law; they need to be explicitly incorporated through legislative measures. Customary international law has direct applicability unless it contradicts national legislation. The United Nations has recognized the necessity for addressing unlawful killings by state forces through a specific instrument. States are called upon to take necessary steps to end such violations by ensuring compliance with international human rights obligations through legislation, effective implementation, providing remedies for victims, and thorough investigations into threats and acts of violence, even during armed conflicts, to combat impunity. There exists a variety of international legal instruments, both binding and non-binding, addressing human rights in general. However, only a limited number of instruments specifically address the issue of unlawful killings by state forces. Recent trends show an increasing adoption of legal initiatives at both the UN and regional levels, aimed at responding to the specific violations experienced by accused individuals. These measures are generally non-binding in nature. In addition to the International Covenant on Civil and Political Rights, the UN system includes conventions like the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 and the International Convention for the Protection of All Persons from Enforced Disappearance 2006.<sup>3</sup>

### **IV. INTERNATIONAL INSTRUMENT AGAINST EXTRA-JUDICIAL KILLING**

Intentional unlawful killings perpetrated by state forces represent a clear violation of the core

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dated, 10 October 2015.

<sup>3</sup> Jean Kellaway, *The History of Torture and Execution* 10-18 (Warren Lapworth ed., 1st pbk. Ed. 2000).

principle in armed conflicts that dictates civilians and non-military targets should not be targeted, as long as they are not actively participating in hostilities. This principle is founded on the distinction between combatants and non-combatants, aiming to mitigate civilian casualties and preserve human rights even in times of war. However, the existing mechanisms to enforce these principles, as outlined in the Geneva Conventions and international humanitarian law, face certain limitations. One potential approach involves designating "protecting powers" which act as third-party observers to ensure that warring parties adhere to the laws of war and humanitarian regulations. This concept, while theoretically valuable, is infrequently employed in practical conflict situations, thereby limiting its impact and effectiveness. In instances where one party accuses another of violating their obligations under these international agreements, the available recourse typically involves traditional diplomatic dispute-resolution procedures. Regrettably, these methods lack the binding authority necessary to ensure compliance, leaving room for non-binding discussions that may not yield substantial outcomes. Protocol I of the Geneva Conventions introduces the concept of an International Fact-Finding Commission, composed of individuals of high moral standing and impartiality. However, the recognition and authority of this commission are at the discretion of states that have signed or ratified the protocol. Consequently, its reach is limited, and its role is primarily to conduct inquiries into alleged grave breaches of humanitarian law and facilitate efforts to restore respect for the underlying conventions. Furthermore, the United Nations Security Council possesses the ability to request the Secretary-General to establish an international commission of inquiry to investigate humanitarian law violations and identify those responsible. Nonetheless, the efficacy of this approach hinges upon the willingness of the implicated states to cooperate fully with the commission, potentially posing challenges to achieving accountability for violations.<sup>4</sup> In summary, while international agreements and mechanisms exist to address unlawful killings by state forces during armed conflicts, their actual implementation and effectiveness vary. These mechanisms, often reliant on non-binding diplomatic measures, underscore the need for further robust mechanisms that ensure accountability and prevent impunity for violations of human rights and humanitarian law during times of conflict.

#### **A. European Union on Extrajudicial killing**

The European Union strongly opposes extrajudicial killings, viewing them as grave violations of human rights and principles of justice and accountability. The European Union's dedication

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<sup>4</sup> Pamela J. Stephens, *Spinning Sosa: Federal Common Law, the Alien Tort Statute, and Judicial Restraint*, 25 B.U. INT'L L. J. 1, 5 (2007).

to upholding human rights, democratic values, and international law is evident in its approach to tackling the issue of extrajudicial killings. The European Union's stance is evident in its foreign policy engagements and interactions with countries worldwide. The European Union consistently expresses concerns about extrajudicial killings in its discussions with partner nations, stressing the significance of adhering to international human rights standards and conducting transparent and comprehensive investigations into such incidents. To address the problem of extrajudicial killings, the European Union deploys various strategies, including releasing official statements, reports, and resolutions condemning these acts. The European Union also possesses the capability to enforce targeted sanctions, like freezing assets and imposing travel restrictions, on individuals and entities implicated in extrajudicial killings and other serious human rights violations. Furthermore, the European Union provides support for initiatives focused on advancing human rights, reinforcing the rule of law, and enhancing the capabilities of justice systems in partner countries. This support often encompasses training for law enforcement officials, judges, and legal professionals to ensure the proper adherence to legal procedures and the protection of human rights. The European Union is renowned for its highly effective system of implementing treaty obligations, which involves both judge-made doctrines and provisions within treaties themselves for enforcement. This effectiveness has been largely driven by the interaction between national courts and the European Court of Justice, facilitated by the mechanism of preliminary rulings. This mechanism allows national courts to refer questions of European Union law interpretation or validity of secondary acts to the European Court of Justice at any stage of proceedings. While the European Union has shown efficacy in enforcing obligations among its member states, there have been discussions about the European Court of Justice's commitment to protecting human rights, especially when these rights conflict with economic interests or face significant political controversy.<sup>5</sup>

Notably, the absence of a direct right of action for human rights violations is a point of consideration. Claims for human rights violations must already fall within the Treaty's scope of competence, and the Charter of Fundamental Rights does not alter this dynamic. In response to issues emerging in member states post-2000, the European Union introduced a network of independent experts on fundamental rights. Their role is to review the implementation of Charter rights within member states. Additionally, a new agency, the Fundamental Rights Agency, was established, although questions persist regarding its scope of authority and powers, as it lacks enforcement capabilities.

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<sup>5</sup> Nicholas J. Perry, *The Numerous Federal Legal Definitions of Terrorism: The Problem of Too Many Grails*, 30 J. LEGIS. 249, 249-50 (2004).

The European Parliament has set up a committee tasked with reviewing human rights, extending its scope beyond the European Union member states. While doubts surround its effectiveness as a mechanism, it can contribute to the European Union's process of negotiating trade agreements with third countries, providing input on human rights matters.

## **B. America on Extrajudicial killing**

Among the enforcement mechanisms, the institutions within the Organization of American States are considered highly developed, paralleling the European Court of Human Rights in terms of their effectiveness. The Inter-American Commission on Human Rights serves as a dual monitoring body with seven members possessing strong ethical values and recognized expertise in human rights. These members are appointed by the Organization of American States General Assembly. Operating under the framework of the American Convention on Human Rights, the Commission handles both individual and inter-State complaints. In regards to inter-State complaints, the Commission has the option to take on such cases. However, for individual complaints, its jurisdiction is compulsory. As per Article 44 of the American Convention, any person, group, or non-governmental organization can submit a petition to the Commission, irrespective of whether the petitioner is a victim. The admissibility criteria are akin to those of the European Court of Human Rights: the exhaustion of domestic remedies is required, petitions should be filed within six months of the final domestic decision, ongoing proceedings in other courts are not permitted, the petitions cannot be anonymous, and they must be supported by evidence. Should attempts at reaching an amicable settlement prove unsuccessful, a confidential report detailing facts and recommendations is sent to the concerned state. This report outlines suggested solutions to the matter. If, within three months from receiving the report, the Commission determines that the Court has jurisdiction over the state in question, the Commission can present the case to the Court. In cases where the Court's jurisdiction is not applicable, the Commission may decide to publish the report after the designated timeframe for the implementation of corrective actions has passed.

The Inter-American Court of Human Rights consists of seven judges who are individually elected by the General Assembly of the Organization of American States. These judges are selected based on their high moral standing and recognized expertise in the field of human rights. In terms of contentious jurisdiction, the Court's setup is similar to the European Court of Human Rights prior to Protocol 11: only the Commission and the member states have the legal right to initiate a case before the Court. Moreover, states have the option to decide whether or not they will accept the Court's jurisdiction. In cases where the Court possesses the authority to hear a case and determines a violation, it has the power to issue reparation orders, including

awarding compensation to the aggrieved party. The Court also has the capability to mandate states to take precautionary measures if an individual is at risk of grave or immediate harm.

### **C. Asia on Extrajudicial killing**

- **The South Asian Association for Regional Cooperation (SAARC)<sup>6</sup>**

The South Asian Association for Regional Cooperation, there is currently no specific human rights body in place. President Maumoon Abdul Gayoom of the Maldives proposed the establishment of an independent South Asian Association for Regional Cooperation Centre for Human Rights during the 13th South Asian Association for Regional Cooperation Summit in 2005. This proposed center would be based on civil society and aim to promote international human rights standards, facilitate collaboration among legal professionals, share expertise and resources, and advocate for human rights and democracy in the region. However, this falls short of the comprehensive organization envisioned under the Paris Principles. South Asian Association for Regional Cooperation, as an institution, appears to lack strong institutional support. While it has a Secretariat, the organization primarily operates in an intergovernmental manner and faces challenges due to inter-regional tensions. South Asian Association for Regional Cooperation's focus has traditionally been on core areas, and it generally avoids intervening in its member states' internal affairs. At the 13th Summit, member states reaffirmed their commitment to principles of national sovereignty, territorial integrity, non-use of force, non-intervention, and non-interference in each other's internal matters. The obstacles faced by individuals seeking international remedies vary depending on the mechanism considered. Some mechanisms lack direct access to courts, while others involve non-judicial bodies. The practical benefits of some procedures, such as those under the European Court of Human Rights, can be undermined by factors like lengthy proceedings, lack of awareness about legal options, costs, and intimidation of legal professionals. Impunity often occurs within the context of national legal systems. Understanding the circumstances that allow impunity to persist requires more comprehensive exploration. This goes beyond merely implementing international norms and compliance with reports and rulings. It involves delving into the functioning of domestic legal systems, the awareness of international norms within legal circles, the media, and civil society activists. Solely focusing on state-level compliance might miss significant aspects of the situation and opportunities for positive change within individual states. An incremental approach to addressing these challenges has proven inadequate, indicating the need for more direct and coordinated efforts.

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<sup>6</sup> The South Asian Association for Regional Cooperation.



- **ASEAN Intergovernmental Commission on Human Rights<sup>7</sup>**

The ASEAN Intergovernmental Commission on Human Rights serves as a consultative body with the primary objective of promoting and safeguarding human rights while fostering regional cooperation on human rights matters within ASEAN member states. Despite having held five meetings, the ASEAN Intergovernmental Commission on Human Rights primarily functions as an advisory entity rather than an enforcement body for human rights norms. However, concerns have been raised about the ASEAN Intergovernmental Commission on Human Rights 's membership structure. Each ASEAN member state appoints a Representative to the intergovernmental body for a renewable three-year term. This Representative is chosen by the appointing government and may be replaced at their discretion, potentially compromising their independence. Despite the obligation of the Representatives to act impartially according to the Terms of Reference, decision-making within the ASEAN Intergovernmental Commission on Human Rights relies on achieving consensus among ASEAN member states. This can be challenging due to the diverse political and religious stances of the members, especially when addressing effective or enforceable measures. The slow progress in the ASEAN Intergovernmental Commission on Human Rights 's development since its inception and the reluctance of certain Asian states to ratify international human rights treaties may contribute to limited enthusiasm for implementing ASEAN Intergovernmental Commission on Human Rights policies. Furthermore, significant disparities exist among ASEAN member states. Despite the perceived lack of enforcement power, it is noteworthy that the mere establishment of a human rights commission within ASEAN, agreed upon by all ten member governments, is seen as a significant step towards respecting and protecting human rights within the region.

In essence, while the ASEAN Intergovernmental Commission on Human Rights may not have substantial enforcement capabilities, its creation is regarded as a significant achievement in advancing human rights within ASEAN and represents an essential initial stride towards the broader goal of upholding human rights in the region.

#### **D. India on Extrajudicial killing**

The Constitution of India, enacted in 1950, holds supreme authority within the country and was deeply influenced by the aspirational ideals outlined in the Universal Declaration of Human Rights of 1948. Dr. Manmohan Singh (1993) acknowledged the Constitution as a strong testament to India's commitment to human rights. According to the constitutional framework,

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<sup>7</sup> ASEAN Intergovernmental Commission on Human Rights.

any legislation or executive action that contradicts fundamental rights is rendered null and void under Article 13.<sup>8</sup> This inconsistency with the Constitution renders such laws ultra vires, unconstitutional, and unlawful. Part III of the Constitution is often hailed as the Bill of Rights for Indian citizens, and these rights are seen as a natural outcome of the declaration presented in the Preamble. The significance of fundamental rights in India's democratic framework was emphasized by the Supreme Court in various cases. It stated in *Sajjan Singh v. State of Rajasthan* (1965)<sup>9</sup> that fundamental rights constitute the foundation and cornerstone of the democratic lifestyle fostered by the Constitution. These rights were characterized as sacrosanct, inalienable, and indivisible in *State of Madras v. Champakam Dorairajan* (1951).<sup>10</sup> Notably, the Constitution itself recognizes the right to enforce fundamental rights as a fundamental right under Article 32. In *I.R. Coelho v. State of Tamil Nadu* (2007)<sup>11</sup>, a nine-judge bench of the Supreme Court asserted that fundamental rights extend beyond narrow confines and serve as a broad safeguard against violations and abuses by state authorities. These rights have emerged as a significant check on governmental power, especially legislative authority, and offer comprehensive protection against arbitrary state actions. India's commitment to human rights extends to its international engagements. As a signatory of the UDHR and a participant in various international covenants, conventions, and treaties, India interacts with other nations and international human rights organizations. This engagement aims to reinforce the spirit of freedom and the country's dedication to its own set of rights. Despite these frameworks and mechanisms in place for safeguarding human rights, instances of large-scale violations, including police fake encounter killings and extrajudicial killings, have been reported from various parts of India. The UN Special Rapporteur on extrajudicial, summary, or arbitrary executions highlighted the widespread use of "fake encounters" by security forces in a 2012 report and recommended comprehensive actions to address this issue. India is legally bound under international human rights law, its Constitution, and Supreme Court directives to put an end to such practices and to thoroughly and impartially investigate and prosecute individuals responsible for such violations.

The provisions concerning Fundamental Rights hold a significant and esteemed position in the Indian Constitution. Article 21 of the Constitution declares that "no person shall be deprived of his life or personal liberty except according to procedure established by law."<sup>12</sup> This makes

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<sup>8</sup> Constitution of India, Art.13.

<sup>9</sup> *Sajjan Singh vs State Of Rajasthan*, 1965 AIR 845.

<sup>10</sup> *The State Of Madras vs Srimathi Champakam*, 1951 AIR 226.

<sup>11</sup> *Coelho v. State of Tamil Nadu* (2007), AIR 2007 SC 861.

<sup>12</sup> Constitution of India, Art.21.

personal liberty a revered and essential right under the Constitution. In the case of *D. K. Basu v. State of West Bengal* (1997),<sup>13</sup> the Supreme Court highlighted that the phrase "life or personal liberty" encompasses the right to live with human dignity. It also encompasses protection against arbitrary killing by the State or its agents.

Article 22 of the Constitution of India ensures safeguards against arrest and detention under specific circumstances. It stipulates that any person who is arrested must be informed about the grounds for the arrest and should not be denied the right to consult and defend themselves through a legal practitioner of their choice.<sup>14</sup> Article 22(2) mandates that a person detained in custody must be presented before the nearest Magistrate within 24 hours of arrest, excluding the time needed to travel from the arrest location to the Magistrate's court.

These constitutional safeguards are designed to shield individuals from unjustified killing and assault by the State. To align with these constitutional guarantees, various statutory provisions also aim to safeguard the lives, personal liberty, dignity, and basic human rights of citizens. One such statute is the Protection of Human Rights Act of 1993. This legislation serves as an additional layer of protection to reinforce the principles enshrined in the Constitution and secure the rights of individuals in the context of their life and personal liberty.

## **V. CONCLUSION**

The paper acknowledges the complexity of determining legitimate actions and the nature of killings by state authorities, state officials, or political organizations. It aims to narrow down the definition of extrajudicial killings to exclude killings governed by the laws of armed conflict, executions carried out through judicial processes, and killings undertaken for public safety reasons. While the first and last categories should be addressed under the specific legal frameworks governing them, the issue of procedural fairness deserves more attention. Many executions in transitioning or corrupt societies involve inadequate judicial processes that lack procedural fairness and due process standards. These murders are often politically motivated, but political motivation should not grant impunity. If anywhere in the world state officers are immune to executing people for non-political reasons, this impunity must be addressed. The paper focuses on politically motivated murders that are essentially a continuation of torture, addressing a notable gap in the enforcement of criminal sanctions against torture. However, more discussion is necessary. A treaty like the one proposed could leverage the established path of the Convention Against Torture, both at the international treaty level and within U.S.

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<sup>13</sup> *D. K. Basu v. State of West Bengal*, 1997 (1) SCC 416.

<sup>14</sup> Constitution of India, Art.22.

domestic law, to legislate against this emerging international crime. Through this approach, the international community or even the United States alone could work towards ending impunity for illegitimate, state-sanctioned, and politically motivated killings. The article concludes with suggestions and recommendations.

Unlawful killings by state forces, also known as extrajudicial killings or extrajudicial executions, involve the killing of individuals by government authorities without legal process or judicial proceedings. These punishments are often seen as unethical since they bypass due legal procedures. They frequently target political, religious, and social figures and are executed by state entities like armed forces or police, fulfilling roles outside the boundaries of legality. The article mentions major human rights issues, such as extrajudicial killings, torture, and rape by security forces, lack of accountability, poor prison conditions, and various forms of violence and discrimination. Independent investigations into encounter killings are essential to uphold the credibility of the rule of law. Ensuring that both State authorities and the public adhere to the rule of law is crucial. Measures should be taken to safeguard accused individuals in custody and reform the criminal justice system, including police reforms.

Extrajudicial killings undermine people's trust in India's judicial system and can be exploited by corrupt officials. Establishing an impartial criminal justice system that operates independently from political pressures is necessary. Effective laws should be enacted and enforced by the government to prevent such killings, with strict adherence by state governments. The "rule of law" must prevail over the "rule of the gun," emphasizing that police officers lack the right to take justice into their own hands. Unlawful killings by officers without proper authorization are unacceptable.

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