

# LEGALFOXES LAW TIMES

## Police Encounter: Meaning and Justification

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### ABSTRACT

The incidents of police encounters have become normalized and standard practice on the receiving end of popular support and political backing. While the idea per se justifies instant justice, it is contrary to the established principle of rule of law. The country has witnessed several police encounters, the most recent of which is Uttar Pradesh Gangster Vikas Dubey and his associates. The essay throws light upon the meaning of the term encounter, incidents of encounter that have attracted national media attention, the standard procedure laid down by the Apex Court, justification for the police encounter and scope of it and attempts to draw a fair conclusion requiring accountability for the police encounter and need for equipping police with the “encounter” as an emergency resort.

### 1.1. INTRODUCTION

The existence of rule of law substantially and not in mere supposition is a sine qua non for the governance of the democratic polity. The makers of the constitution treaded carefully while drafting the constitution so that the hopes and aspirations of the people are not stumbled in a vacuum of lawlessness. The just requirement of procedures laid down by the statutes cannot be dispensed with giving way to a personal fiefdom of authority plummeting the very essence of rule of law into utter despair. The law in its primary objective safeguards citizens, their rights, and liberties while taking care of the interest of the authorities having the duty or obligation to implement the rule. It provides for the sufficient scope of exercise of discretion either expressly or impliedly beaded in between the provisions with the sole aim of fulfilling the object of the legislation so that it is not prevented by the absence of express provision catering for immediately apprehended situations.

The Police are the muscles of the system fighting crimes in the society. The primary duty and responsibility inter alia include safeguarding innocents, apprehending criminals, and bringing them to the threshold of the justice system, investigating crimes and inquiries. To maintain discipline and efficiency, the system functions on the chain of command while giving room for individual action to the personnel of the force. The organization entrusted with maintaining law and order cannot be believed to work against it, no matter how much the means justify the end. This is the faith of the people, the establishment of the justice system, the future of it, and the present crisis which is at the stake. The police have gained a whole lot of infamy due to custodial

deaths recent of which is [gruesome killing in police custody](#) of one father and son duo in the Karnataka which has raised several question marks on the police credibility and accountability. The Police encounter as known conventionally is looked upon as a tool for cleansing of criminals and was therefore lauded and appreciated since it was started in India, but now the encounter actions of the police are stirring series of questions on the authenticity and justifiability of the acts. The recent encounter of Uttar Pradesh Gangster has brought forth a spate of questions inquiring about the validity of encounters and unfolding events that are in the clear violation of the guidelines laid down by the Supreme Court in this regard. It is in this light an analysis into the meaning and lawful permission of police encounter is detailed in the article.

## 1.2. ENCOUNTER: MEANING AND LAW

The term police encounter as such is nowhere defined in any statute dealing with powers of police or providing procedures. The term has garnered the meaning of confrontation of the persons accused of any criminal offense with the police. Going by the dictionary meaning of the term 'encounter' it means to unexpectedly meet someone. The police encounter as a phenomenon came to rise when police while apprehending accusers or escaped convicts or person absconding arrest puts up resistance with the police and thus endangers their life, to avoid which the police in response open fire or gun down the criminal in an act of self-defense.

The lawful police encounter is thus based on the self-defense (a right based on the natural instinct of a human being) which is a widely recognized principle of law and finds mention in International and Municipal law. In India, the penal statute (Indian Penal Code) provides for the right of self-defense and states that any act done in the exercise of the right of self-defense is not an offense (**Section 96**).

**Section 97** asserts that subject to the restrictions mentioned in **Section 99** every person has a right to defend his own body, the body of another person against any offense affecting the human body against the action of criminals or assailants which reasonably cause the apprehension of death or grievous hurt. By virtue of this provision, the right of self-defense is extended to every person to protect him or others in the circumstances giving rise to the imminent threat of life. Hence, the action of police encounter is very well covered within its purview and thereby lawful under such circumstances.

**Section 100** enumerates circumstances where the right of private defense of the body extends to causing the death of the assailant.

Any assault which reasonably causes the apprehension of death, grievous hurt or where assault is with the intention of committing rape, gratifying unnatural lust, kidnapping and abduction, wrongful confinement and against an act of throwing or administering acid or attempt thereof which cause the reasonable apprehension of hurt or grievous hurt. Here any assault giving reasonable apprehension of death or grievous hurt to the person of police from the offender, criminal, or assailant can very well be eliminated by the action of a police encounter. Since the code do not lay down as to the degree of assault or act which would be sufficient to give rise a

reasonable apprehension and fear in the mind of the person exercising the right of private defense, it varies on the case to case and judicial interpretations by the Courts.

**Section 102** of the Code states that the right of private defense of the body arises as soon as the reasonable apprehension to the danger of body begins by an act of offender and continues as long as that apprehension of danger to the body persists.

**Section 99** states that recourse to the public authority is an exception against the exercise of private defense. The public authority (police) cannot be supposed to magically dissipate the danger, crime or threat they are fighting against, they could face with a similar danger which a normal person could have faced, hence presuming that the police should eschew from use of any kind of force (in self-defense) is veritably prejudicial.

Further **Section 46** of the Code of Criminal Procedure (Cr.P.C.) in pointing out the methods of making arrest lays down that in the event of an accused person resisting arrest or attempts to evade the arrest, the police officer may use all means necessary to make the arrest and if the person is accused of an offense punishable with death or life imprisonment, such police officer can cause the death of the accused in apprehending him.

**Section 197** of the Cr.P.C. talks about the prosecution of the public servants and provides that where any person (public servant) not removable from the office save by or with the sanction of the Government is accused of any offence alleged to have been committed while acting or purporting to act in the discharge of his official duty, the cognizance by the court will be preconditioned by the sanction of:-

- 1) Union government where the person who is employed at the time of the commission of the offence in the connection with the affairs of the Union:
- 2) State Government where the person is employed at the time of the alleged commission of offence in connection with the affairs of the State.

Thus, in regard to the prosecution of police officers accused of committing an offence, where an encounter is found to be staged and the sanction by the appropriate government becomes statutory pre-requisite.

As rightly observed by the Supreme Court in Om Prakash & Ors. v. State of Jharkhand and Anr.<sup>1</sup>

“It is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. The police have to arrest the accused and put them up for a trial. Liquidating criminal and projecting the incident as an encounter is not recognized by our criminal justice administration system. Such killings must be deprecated. They amount to State-sponsored terrorism. The court further observed that one cannot be oblivious of the fact that there are cases where the police while performing their duties are attacked and killed. In such circumstances, while the police have to do their legal duty, they have also to protect themselves. The sanction must be a precondition to their

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<sup>1</sup> (2012) 12 SCC 72

prosecution. Unless unimpeachable evidence is on record to establish that their action is indefensible, mala fide, and vindictive, they cannot be subjected to prosecution.”

The aforementioned laws can be invoked to justify police encounter however in the absence of these, the police officer can be made liable for culpable homicide. The Hon'ble Supreme court and the National Human Right Commission (NHRC) taking note on increasing police encounters as extra-judicial killings which prima facie blatantly violate Right to Equality and Right to life enshrined under the constitution in most pious Part III, Article 14 and Article 21 respectively have laid down certain guidelines and procedures to prevent abuse of powers by law enforcement agencies hiding behind the veil of public demand and enthusiasm of instant justice and elimination of perceived criminal.

### 1.3. INCIDENTS OF FAKE ENCOUNTERS.

In a reply to the RTI filed, the [NHRC](#) has disclosed that it had registered 211 cases regarding fake encounters all across the country between January 1, 2015, and March 20, 2019.

As per [NHRC's](#) Annual Report of 2017-18, there were a total of 164 deaths from police encounters in that year. The Police encounter became trending during the apprehension of criminals linked to the underworld in Maharashtra and during the period of Punjab insurgency between 1984 and 1985 gunning down alleged militants of separatist movements. Following are some incidents of a police encounter that came into light for having the notoriety of being fake and staged while captivating the attention of national media.

- 1) Sadiq Jamaal (2003), a resident of Bhavnagar was branded as a terrorist of “Lashkar-e-Taiba” with a mission to kill the then Chief Minister of Gujarat Narendra Modi. He was arrested by the Mumbai Police on December 19 2002 and killed on 13 January 2013 in an encounter. The case was inquired by the CBI wherein it held that Sadiq was kept in illegal confinement and was killed in a fake encounter. CBI charge-sheeted Eight Police officers in December 2012 for conspiracy, kidnapping, and killing of Sadiq Jamal in a staged encounter on the outskirts of Ahmedabad. This was the first case wherein the officers of the Intelligence Bureau were found complicit in the staged encounter. The CBI questioned six IB officers and found that the intelligence report did not match the profile of Sadiq Jamal whereby it was intended that he planned to kill some top leaders of the country. The whole transfer of the detainee to the Gujarat Police was questioned as illegal even when he was given clean chit by the Senior IB officer.
- 2) Ishrat Jahan (2004) a 19-year-old woman from Mumbra, Mumbai was killed on June 15, 2004, in an encounter along with three others namely Javed Shaikh, Amjadali Akbarali Rana, and Zeeshan Johar, by the Gujarat police on the outskirts of Ahmedabad. The Police claimed that they were terrorists with links to LeT and were on the mission to kill the then Chief Minister of Gujarat Narendra Modi. The encounter invited outrage as a result the Gujarat High Court set up a special Investigation Team to investigate the case which established that the encounter was staged. The Hon'ble Supreme Court handed over the case to the CBI which filed a charge sheet against several Gujarat Police officers for their involvement in the fake encounter.

Meanwhile, in 2004 LeT claimed Ishrat Jahan as one of their operatives, and the news was run by the media all over the country whereby the police claimed that the encounter was genuine. Later, the LeT apologized for their mistake of claiming Ishrat Jahan as its operative. Many events unfolded since then where affidavits were filed by the UPA government, four police officers were named in a report of Metropolitan Magistrate, the order of the High court was challenged by the Gujarat government and Supreme Court rejected the plea of State government. In the turning of events, IPS officers, D.G. Former A.D.G was arrested. Ministry of Home Affairs denied sanction to prosecute IB officers. Meanwhile, an American-Pakistani terrorist David Hadley's statement recognizing Ishrat Jahan as LeT terrorist gained Highlight, a plea based on his testimony was filed before the Supreme Court seeking closure of the case which was quashed. The CBI court later discharged former police officers and D.G. due to a lack of sanction by the government for their prosecution.

- 3) Sohrabuddin Sheikh (2005) was killed in 2005 and was charged as a terrorist is a member of LeT on the mission to kill top leaders. Police claimed that he fired on them when they were making arrest resulting in counter-fire by the police killing Sohrab Uddin sheik. His wife Kauser Bi had disappeared soon after his killing. The encounter and the disappearance of his wife accounted for a huge sensation hiding behind a false story. The Supreme Court ordered the investigation wherein it was proved that the encounter was staged and the motorcycle the accused was allegedly riding belonged to a cousin of one policeman. The State Government eventually admitted that the encounter was staged. In the unfolding of events, the case was investigated by the CBI which finds in its charge sheet that Sohrabuddin, his wife, and his companion Prajapati were killed cold-bloodedly by the Police. The CBI named Amit Shah (current Home Minister) in its charge sheet for being complicit in killing. However, his name was cleared when the court discharged him after examination of the charge sheet wherein the court found that he was framed due to political reasons.
- 4) Tulsiram Prajapati (2006) was killed on 28 December 2006. He was the only eye witness in the Sohrabuddin case. The police claimed that he was gunned down when he tried to flee. The investigation report of CBI revealed that he was killed on the Direction of Senior Police Officers one D.G. Vanzara and one S.P.
- 5) In 2016, eight student activists of the Student Islamic Movement of India were gunned down by the police in an encounter on the outskirts of Bhopal. The encounter took place when they escaped from the Bhopal Central Jail killing a security guard in the Process. The encounters raised questions while four Police officers were suspended by the State government. The police claimed that the activists were killed while they challenged police and raise their arms against them. The Inquiry Commission gave the police clean chit and found the encounter as "reasonable" and "inevitable" use of force. However, in the unfolding of events, the NHRC report confirmed the claims of torture by the Activist undertrials in the Bhopal Prison.

- 6) The questions were raised on the genuineness of the Batla encounter case wherein Delhi Police gunned down two alleged terrorists. The concluded report of the NHRC says that since the alleged terrorists resorted to firing, the action taken by the police in self-defense was justified.
- 7) In the series of questionable encounter cases, the recent one of the last year was the infamous Hyderabad case. In November 2019, a veterinary doctor aged 27 years was brutally gang-raped and murdered by burning her body shocked the entire nation, and sparked outrage all across the Country. Four suspects were arrested by the Police who confessed to having killed and raped the doctor. Meanwhile, the protests and demonstrations across the country demanding fast track trial and speedy justice for the deceased generated pressure over the authorities. All four accused were killed in a police encounter on 6 December 2019 under a Highway Bridge while they were taken to the location for reconstruction of the crime scene. The police claimed that the suspects tried to snatch the weapons and attacked police resulting in police firing. The killing was praised by many while criticized by some as extra-judicial killing. The incident resulted in widespread discussion in the Parliament and the Andhra Pradesh passed the DISHA Amendment Act, 2019 to award the death penalty to rapists. The NHRC has initiated an investigation to look into the killings. The Hon'ble Supreme Court has formed a three-member judicial commission to probe into the encounter and directed it to submit its report within 6 months.
- 8) More recently, an infamous gangster from U.P. Vikas Dubey accused of killing Eight Police Officers while they were making the arrest was killed in an encounter on 10 July 2020. Vikas had 60 charge sheets against him including murder, riot, attempt to murder, etc. The gangster was on run after brutally killing eight policemen and police were chasing him since then, the police had arrested many of his aides and encountered 5 among them. Vikas was arrested in Ujjain, Rajasthan at Mahakaal temple. He was handed over to the U.P Police and was gunned down while allegedly trying to flee from custody after an accident as he was being taken from Ujjain to Kanpur, the Uttar Pradesh police said. As usual, the killing of this notorious gangster with more than 61 criminal cases on him was celebrated by many as "instant justice" while criticized by some as "blatant extrajudicial killing". Vikas was the sixth person who was killed in the encounter since the eight policemen were killed by the gangster and his aides. While the series of questions were raised on the police making up the same old and outdated story to cover up and justifying the encounter, the State government has formed a Special Investigation Team to probe into the killing. Further, a single-member commission under a retired judge was formed by the U.P. government to probe into the killing of the gangster and his associates in a police encounter. Several petitions have been filed in the Supreme Court seeking independent investigation on the encounter. In the unfolding of events one Prabhat Mishra, an associate of Vikas Dubey was killed in similar circumstances during transit remand while his family claimed that he was killed ten days after he passed his class 12th exams.

#### 1.4. GUIDELINES

The NHRC on March 29, 1997, Justice M.N. Venkatachaliah (the then Chairperson of NHRC) in the backdrop of several complaints brought by people and Non-Governmental Organisations including Andhra Pradesh Civil Liberties Committee on November 5, 1996, where NHRC found that one deceased Shankariah's encounter was totally unjustified and awarded compensation to victim's family, issued directions to all states and Union Territories recommending certain steps:

- 1) Recording information in Register: Any Police Officer in charge of the Police Station on receiving information about deaths in an encounter between police and others shall enter that information in the appropriate register maintained in this regard.
- 2) Investigation: The information received shall be regarded as sufficient to suspect the commission of a cognizable offense and immediate steps should be taken to investigate the facts and circumstances leading to death and to ascertain what offense have been committed and by whom.
- 3) An investigation by Independent Agency: If the police officers belonging to the same police station are members to the police party in an encounter the case should be made over for an investigation to an independent agency such as CID.
- 4) Compensation: If police officers are convicted as a result of the investigation into police encounters, compensation can be considered to be given to the deceased family (dependents).

In 2010, the Commission added more to these guidelines to provide for a robust mechanism:

- 1) Magisterial Inquiry: A magisterial inquiry in all cases of death resulting from police action must be held expeditiously within 3 months.
- 2) Disciplinary Action: Prompt prosecution and disciplinary action must be taken against delinquent officers found guilty in the magisterial investigation report.
- 3) Stop Rushing to grant awards: The promotion and gallantry awards on police officers concerned in an encounter should be denied before the appropriate steps in investigations are completed.
- 4) Reporting of deaths: All cases of deaths in police action should be reported by Superintendent of Police to the Commission within 48 hours of the death in the prescribed format, explaining circumstances that led to use of force unavoidable and mandates the submission of post mortem report, inquest report, and findings of magisterial inquiry after every such death.

The Supreme Court in PUCL v. State of Maharashtra (2014), the question of the genuineness of 99 encounter killings by Mumbai Police in which 135 alleged criminals were shot dead between 1995 and 1997 came for consideration through a writ petition. **The Apex Court laid down 16-points guidelines as the standard procedure to be followed for the thorough, effective, and independent investigation in the cases of death resulting from police encounters:**

- 1) Recording Tip-off: Whenever police receive any intelligence or tip-off on criminal activity related to the commission of a serious criminal offense, it must be recorded in either written or electronic form. Such a recording does not need to disclose information about the suspect or the location the group is going to.

- 2) Registration of FIR: If the police use weapons in search of a tip-off and this result in a person's death, then an FIR must be reported to begin proper criminal proceedings and forwarded to the Court without delay.
- 3) Independent Investigation: Investigation into such death must be under the supervision of a senior officer by an independent CID team or by a police team from another police station. It must meet eight minimum requirements for investigation, such as identifying the victim, recovering and preserving evidence material, identifying witnesses from the scene, etc.
- 4) Magisterial Inquiry: Mandatory magisterial investigation into all cases of death from encounter must be performed and a copy of it must be submitted to the Judicial Magistrate.
- 5) Reporting of the case to NHRC: The death of the encounter must be immediately notified to the NHRC or State Human Rights Commission (as suitable).
- 6) Medical Aid: The injured victim/criminal must be provided with medical aid and a Magistrate or Medical Officer must record his statement along with the Fitness Certificate.
- 7) The copy of FIR, Panchnama, sketch, and entries to Police diaries must be forwarded to the concerned court without delay.
- 8) Report to the Court: A report must be sent to the competent court after a full investigation into the incident ensuring expeditious trial.
- 9) Information to Family: In the case of the accused criminal's death, their next of kin must be informed as soon as possible.
- 10) Report Submission: The DGPs must send bi-annual statements of all encounter killings to the NHRC by a fixed date in a set format.
- 11) Action against erring officers: Disciplinary proceedings must be taken against the police officer found guilty of wrongful encounter as a result of an offense under the IPC and for the time being the officer must be suspended.
- 12) Compensation: Compensation to be given to the dependents of the victim as per the compensation scheme under section 357A of the Cr.P.C.
- 13) Surrender of weapons: The police officer(s) concerned shall surrender their arms for forensic and ballistic examination, according to the rights provided for in Article 20 of the Constitution.
- 14) Legal Aid: Intimation must be sent to the family of the accused police officer offering lawyer/counselor services regarding the incident.
- 15) Refrain from Promotions: No out-of-turn promotion or instant gallantry awards shall be given to officers engaged in encounter killings soon after these events occur.
- 16) Grievance Redressal Mechanism: If the victim's family finds that the above procedure has not been followed, then a complaint may be made to the Sessions Judge having territorial jurisdiction over the place of the incident. The Sessions Judge concerned must look into the complaint's merits and address the grievances raised therein.

The court directed that these norms/guidelines be strictly complied with (having force of law by virtue of Article 14<sup>12</sup> of the Constitution) in case of death or injury to an accused person resulting from the encounter.

### 1.5. NEED FOR ACCOUNTABILITY

The idea of instant justice as fascinating as it sounds can never be based on the extra-judicial killings which are akin to the demise of the rule of law. While the lauding and hailing of police officers some of which are unofficially designated as encounter specialist are astronomical, the generalization of encounters done in a secretive manner with a plot or story intricately spun to justify the action are overwhelming and the toll on the most sacred fundamental rights and Human Rights which cannot be looked away crushing under the high demand from public and political pressure upon police forces. Technically looked upon each case story put up by police for the encounter, accused trying to flee and snatching weapons has become a common refrain for the police officers to execute encounter. The encouragement is boosted by awarding or promoting the police officers whilst the inquiries and investigation remain pending and as impartially the investigation should be conducted, the state's refusal in granting sanction for prosecuting errant police officers proves to be a huge obstruction. The asking of questions and raising doubts on such killing through encounters should not be suppressed nor should it be treated with utter flak from the society within.

The political affirmation and connivance in the extra-judicial killings make it more iniquitous than ever while the popular support acts as a catalyst to fabricate ways to defy the rule of law and the principles of the criminal justice system. An impartial inquiry and investigation, therefore, becomes a need of the hour to delve into the truth of the police's narrative of the encounter.

### 1.6. CONCLUSION

If upon hearing news of police encounter, it gives us a well-preconceived notion that the encounter might be staged or fake, then we are failing as a nation which has always adhered to the norms of ever so reverential Constitution of India that preaches rule of law. The surfacing of objectionable encounters will diminish the importance of self-defense underlying the very idea of it. Notably, the fact that crimes and violence against policemen are on constant increase cannot be overlooked. [NCRB's report](#) reveals the figure of police personnel killed on duty all over India in 2018 is 555. While many of them are killed by riotous mobs, gangsters and terrorists, the numbers keep on rising which poses a bigger threat to the police force. Hence, police encounter as a resort cannot altogether be discarded but this power of police should not be used for dousing the protests, political pressure, incriminating innocents, and killing accused without the establishment of guilt to please political peers and bagging awards in the process.

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<sup>2</sup>. Law declared by Supreme Court to be binding on all courts The law declared by the Supreme Court shall be binding on all courts within the territory of India.