

The Celebration of Extra-Judicial Murders: Who's Watching India?

Saksham Shrivastav

2020-07-15T17:45:29

Less than 50 days after the brutal death of George Floyd took the world by storm, many Indians are [celebrating](#) the extra-judicial [killing](#) of Vikas Dubey, an alleged criminal. On July 10, Dubey was shot dead by Police officers of Uttar Pradesh (U.P.), an Indian state [infamous](#) for such killings. These extra-judicial murders are so prevalent in the country that they have acquired a colloquial name of 'fake police encounters', where the usage of the word "encounter" is far different from its usual understanding of a mere "face-off" or "meeting". It refers to a person being killed by the police. Since the killing of a person by the police may be lawfully justified in rare circumstances involving self-defense or effecting arrest, the police often stages 'fake encounters', by concocting the facts and circumstances to their will, in order to bring their blood thirst under the protection provided to them by local [laws](#). These deliberate killings, which lack the required legal elements of an 'encounter', are termed as '[fake encounters](#)'. Such extra-judicial killings have seen a rampant rise since the far-right nationalist party BJP assumed power in the state.

It has been [reported](#) that since Vikas Dubey, the victim of the extra-judicial killing was a local politician, had connections with various political parties, including the current ruling party; and was involved in a number of ill-practices that involved major politicians. He was also [accused](#) of more than 60 crimes, including 5 murders. After eight police personnel were [killed](#) when the U.P. Police tried to ambush him in his village on July 3, a relentless manhunt ensued. On his eventual arrest on July 9, he was shot dead by the police in an altercation when he allegedly tried to 'flee' from police custody after the car carrying him met with an 'accident'.

Since the police now [claims](#) that Dubey had snatched a gun from an injured officer and had started firing while trying to flee, this may seem as an act of self-defence on the part of the police. However, putting back together all the pieces tells a different story, as creation of such [flimsy](#) narratives involving the accused trying to flee from custody, is a [common](#) tool used by the police to justify or explain extra-judicial killings. That the incident was highly suspicious can be gathered from the sheer predictability of it. Predictions of Dubey's inevitable encounter were made by [journalists](#) and common [citizens](#) alike, while there also being a [plea](#) filed in the Indian Supreme Court a day before his death for securing him from the police. The intent of the police was to [silence](#) Dubey and exact revenge upon him as they also [killed](#) five of his associates in a similar manner and [unreasonably](#) went on to [demolish](#) his house and vehicles with an earthmover. The [Removal](#) of eyewitnesses from the scene and [restricting](#) the journalists, who were following the police convoy carrying Dubey, mere minutes before the incident, further adds up to the dubious circumstances of the shooting of Vikas Dubey.

While a shootout in broad daylight is surely a naked display of blatant power, the police in India also often secretly employs measures to atrociously brutalise the innocents in their custody. The recent [case](#) of Jayraj and Bennix serves as a prime example, where a father and his son were arrested for allegedly keeping their shop open a few minutes longer than allowed under Covid-19 restrictions. Once they were in police custody both men were subjected to inhumane physical and sexual [assault](#), leading to their death. However, this is just one of the [myriad](#) ways the Indian police unabashedly violated human rights in the recent past.

A Nation Unregulated

Police killing and brutality have become common news in India lately, with various cases where citizens were [beaten](#), and even [killed](#), on account of trivial violations of the nationwide COVID-lockdown. Instead of using its resources and manpower to gather evidence and bring the accused to trial, the police in India seems to [prefer](#) the easy way of extra-judicial killings. The incidents of these killings on the very face of it seem fabricated, as eerily similar narratives are given. Since the draconian Indian Criminal Procedure Code [allows](#) the police to fatally injure a person 'forcibly' resisting or evading arrest, if he is accused of an offence punishable with death or life imprisonment, [most](#) of these narratives [include](#) the accused trying to [evade](#) the police or firing at it. Such killings with deliberately concocted circumstances, are in common parlance termed as '[fake encounter](#)'.

The consternation becomes even more harrowing when unwarranted use of force by police is heavily normalized, and the citizens of the largest democracy [find](#) state-sponsored murder a better alternative than due process. This stems from the citizens' growing [discontent](#) with the criminal justice system, which they feel is excessively [slow](#) and ineffective in producing convictions. Though due process requires multiple checks and has to provide the accused adequate chances to prove their innocence, it has a heavy toll on victims, who have to slog through the judicial machinery for [years](#). A severe [inadequacy](#) of trial judges only [worsens](#) the excruciating process.

The frustration with how broken the judicial mechanism is, has [resulted](#) into the acceptance of extra-judicial killings in the society. Both popular and social media is complicit in this, as movies [glorify](#) instances of police brutality, and many [cheer](#) on their occurrences. It is the reason that terms like 'Encounter-Specialist' are [worn](#) like a badge of honour by police officers who are willing to pull the trigger in the extra-judicial killings. However, the fascination with 'Instant Justice' completely goes against the ideal principles enshrined in the Indian legal system.

The Indian [Constitution](#) provides, in the widest possible terms, the right to every accused to get a fair trial. While Article 21 protects the life and liberty of every person by establishing 'due process', Article 20 ensures that no person is punished beyond what is mandated by law; along with Article 22 which lays down absolute rights for an accused to be defended by a lawyer in a court of law. Along with this, Section 49 of the [Indian Criminal Procedure Code](#) grants several rights to arrested persons, as it specifically states that there shall be no more restraint than is justly necessary to

prevent escape. One wonders how this was respected in the recent case of Vikas Dubey, who was, in order to prevent escape, [shot](#) three times in the chest.

Various attempts at reforming the police system in India were made in the past, but given the stagnated legal ecosystem they unfortunately remained just that, mere attempts. The Supreme Court has time and again [criticized](#) unlawful use of force by the police to inflict torture or to conduct [fake](#) encounters and has awarded [compensation](#) to those who have suffered unjustly at the hands of police. It has also provided [guidelines](#) to provide effective remedy against unlawful police actions. For instance, in [2006](#) the court called to establish a non-partisan police force. It was advised that independent regulatory bodies be constituted, which were to lay down regulations governing police functioning, to determine the positioning of police officers and to enquire into the complaints made against the police. It also recommended minimum tenures of officers, separation of investigative and law and order functions, and an independent commission to recruit higher officers. However, a [report](#) of *NITI Aayog*, the central government's think-tank, revealed that even after 10 years of the ruling, only few of the suggestions were implemented. Not only that, the implemented suggestions varied from the Supreme Court guidelines. Another such suggestion was in the form of a Model Police [Act](#), which was [drafted](#) twice but never saw the light of day as a legislation.

While India has a National Human Rights Commission, which addresses various human rights issues including the [killing](#) by Police Officers, the commission [lacks](#) any power to initiate action against the police, and can only prescribe suggestive directions. The commission routinely comes up with data on the numbers of such killings, depicting the extent to which the practice has permeated into the society. The commission in 2009 [revealed](#) that during the period 1993-2009, every one out of two police encounters were fake. During 2015-2019, the commission had investigated 112 fake encounter cases, out of which 25 were clear human rights violations. It is [speculated](#) that owing to a lack of common awareness, this apparent complaint rate is much lower than the actual numbers. Another set of data, from the National Crime Records Bureau, paints an even darker picture. The Bureau in its 2018 [report](#) highlighted that a total of 89 human rights violation cases were registered against the police. This was a sharp increase from the 2017 [data](#) given out by the same Bureau, where a total of 56 cases of human rights violations were registered. The data, though not even close to what the actual numbers might be, still depicts the growing adversity in the law and order of the country. The U.P. police has itself [boasted](#) of carrying out a total of 5,178 engagements, killing 103 and injuring 1,859 in the span of two years from 2017 to 2019.

The notion of extra-judicial killings has been popularly associated with certain [groups](#) such as insurgents or gang-members. This however, has now a much wider ambit, as at present, the police is being [accused](#) of being [biased](#) against Muslims, who form a minority in India. This is perhaps exacerbated by the Hindutva-led BJP government, which quite openly [considers](#) encounters as achievement and improvements in law and order, despite the Supreme Court clearly [calling](#) it out as 'State Sponsored Terrorism'. This alarming situation has also been recognized by the UN, which has [expressed](#) concern over the growing encounters in Uttar Pradesh,

where most of the victims have been Muslims. Other accounts of police violence towards different minorities, such as [tribals](#) and [naxalites](#) are also commonly heard. At the receiving end of the brutality are also the [poor](#) which are routinely [targeted](#) by the Police. The lethargy of the government in implementing legislative and executive reforms to check human rights violations by the police has only given wings to the ongoing onslaught.

Oblivious to a hoard of International obligations

In addition to the disregard for the national obligations, India is turning a deaf ear to the [International Covenant on Civil and Political Rights](#), which it signed and the articles of which are [read](#) into the Constitution. While Article 6(2) of the Covenant mandates imposing death penalties only for the most serious crimes and pursuant to a final judgment rendered by Court, Article 9(3) obliges the police to bring anyone arrested “promptly” before a judge and ensure a trial is ensued within a reasonable time. It is also pertinent to note that almost all major cases of police brutality have been carried out on accused persons, which is even more disconcerting since the accused are accorded as “unconvicted” under Article 10(2)(a).

The United Nations has [framed](#) Human Rights Standards and Practice for the Police, which strives for inculcating the compliance of human rights norms in the actions of police officials. It heavily denounces unlawful killings, and asks the police to respect the human rights of every accused, treating them as innocent. Further, it encourages proper training of police officials so they learn interpersonal skills, communication, conflict-resolution and proportional self-defense.

Given all the flagrant aggression being displayed, it is obvious that the Indian police [lacks](#) sufficient sophistication when it comes to human rights. Torture is against the very soul of democracy as it is [used](#) as a device to curb dissent, and silence victims and witnesses from going against the powerful; but the government is not too keen on taking strict measures against custodial torture. India has not [ratified](#) the UN Convention against torture, its Draft Prevention of Torture [Bill](#) is yet to see the light of day, and the Supreme Court has [refused](#) to direct the Parliament to enact the bill. This reflects the blatant apathy of the system towards the plight of accused persons in India.

Conclusion

With the government giving the police unchecked power, and the nation celebrating, the story that is unfolding in India is far from pretty. With the highly [questionable](#) killing of Vikas Dubey, India has added another in a long [list](#) of controversial ‘encounters’. Not only is the police brutality on the [rise](#), but the citizens also [approve](#) of it. With no outrage, nationally or internationally, on the methods being employed by the government on its citizens, the plight of not only the accused but also minorities as well as the poor of India goes unheard while the world continues to mourn George Floyd. And so, the Indian police in its reign of terror

continues to flout Human Rights of innocents, while the Modi-led government fiddles like Nero in a distance.

