

**London School of Economics and Political Science**

**Police Use of Deadly Force: Analysing Police  
'Encounters' in Mumbai**

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## ABSTRACT

This study analyses the dynamics of the police decision to invoke deadly force in a particular situation called *encounters*, using the Mumbai police as a case study. Police *encounters* in India are officially portrayed as spontaneous, unplanned ‘shoot-outs’ between the police and alleged criminals, in which the criminal almost invariably is killed but there are hardly any injuries on the part of the police. However the ‘cover story’ is *always* the same raising the suspicion that it is a cover up for facts that might not be legally defensible or permissible.

The core of this study is to understand why in a free and democratic society like India, such abuse of police use of deadly force is not only tolerated, but also in many ways (both overtly and tacitly) encouraged. The study adopts a qualitative approach to understand police officers’ perspectives of the issues surrounding the use of deadly force and compares it with the perspectives of a few influential opinion makers via in-depth semi-structured interviews. A broader examination of media, social, organisational and governmental responses towards police use of deadly force helps contextualize police justifications within the Denial Theory framework and the study draws upon wider policing literature in the UK, USA, South Africa and certain Latin American countries to explain why this form of police violence occurs.

The abuse of deadly force has to be understood as not only a social problem, but also a sociological one. It gives rise to fundamental questions such as – what makes ordinary, ‘decent’ human beings do horrible things? What motivational techniques and justifications are used to override social norms governing moral conduct? This problem has received little attention in the Indian context, to that extent the research will fill a gap in the existing criminological literature and allow for a more comprehensive understanding of these issues. Also, by drawing lessons from the experience of other countries who have tackled similar problems, it will provide broad guidelines and recommendations for reforms in policing policy and practice.

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## INTRODUCTION

Police *encounters* are a peculiar feature of Indian policing. An *encounter* is a spontaneous, unplanned ‘shoot-out’ between the police and alleged criminals, in which the criminal is usually killed, with few or no police injuries. However the police ‘cover story’ (Hunt & Manning 1991) from official sources and cited in the media is *always* the same raising the suspicion that it is a cover up for facts that might not be legally defensible or permissible. The term *encounter* is not just police jargon but is part of everyday discourse in Mumbai, where my research was conducted and in the rest of India and is used by police officers, media and public to refer to police use of deadly force in circumstances described by one newspaper report as follows:

“*Mumbai Police pats itself as encounter deaths double*’

The Mumbai police call it ‘proactive policing’. In everyday parlance, it is referred to as an ‘encounter’ between policemen and gangsters that always results in the death of these gangsters.

That these encounters do not have a surprise element, instead are planned, to a large extent, by the police, no longer raises eyebrows. But even by their own standards, Mumbai police have been far too ‘proactive’ in 2001 compared to the past few years...In 2000, the total number of alleged gangsters killed in encounters was 49, and the year before that it was 60. The quantum leap to 94 has certainly sent shockwaves through the underworld. Extremely pleased at this leap, Police Commissioner M.N. Singh said: “Organised crime is well under check. This is the final blow”. (The Indian Express, Mumbai, December 29, 2001)

Of all types of force used by the police, deadly force is cause of most concern, not only because its consequences are irreversible and irreparable, but because it ‘affects citizens’ attitude toward the police and toward the government in general’ (Geller & Scott 1991), as does all inappropriate use of force. The core of my study is to understand why it is that in a free and democratic society like India, the abuse of deadly force is not only tolerated, but in many ways (both overtly and tacitly) encouraged. I set out to answer the question that has been asked by others - what makes ordinary, ‘decent’ human beings do horrible

things?; and how are such 'wrongdoings' on the part of state actors justified in a democratic society?

I worked as an officer of the Indian Police Service (IPS) in the state of Uttar Pradesh, which is one of the more backward, illiterate, densely populated, and crime-infested regions of the country. My experience, during training and subsequently in the field, led me to believe that the influence of the occupational subculture<sup>1</sup> is ubiquitous and tangible. There is formal emphasis on the rule of law and due process, but these are viewed by police officers more as obstacles to be overcome in the ultimate quest to tackle crime and law & order problems. The 'heroes' or 'model cops' to be emulated are those who have proved their 'bravery' or 'toughness' in the field through dealing with one or more 'dreaded criminals' in *encounters*. These messages are rarely articulated explicitly, but are disseminated in more subtle ways, that are nonetheless very powerful. A few young officers even join the police with the aim of joining the ranks of *encounter* 'heroes' and tend to use deadly force with less reservation than is mandatory<sup>2</sup>.

This pattern is not replicated across India as some states have a much better record on the use of deadly force than others. Areas facing serious challenges from Naxalites (communist rebel groups), organised gangs, very high levels of serious crime (for e.g. dacoit<sup>3</sup> infested areas), and separatist groups or terrorist operations, have a greater tendency to engage in *encounters* than others. Furthermore, the context and circumstances in which *encounters* happen are very different in all these different situations.

Certain states in India that were and some that continue to be affected by counterinsurgency, like Punjab, Kashmir, Assam and other North Eastern states have different experiences as compared to those affected by militant Maoist

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<sup>1</sup> Several studies have shown that the police organisation has a particular occupational culture, which is shared by almost all police forces across the world. It is characterised by mission, action, cynicism, suspicion, pragmatism, machismo, solidarity, isolation etc. (Reiner 2000a).

<sup>2</sup> Studies by Van Maanen (1973), Hunt (1985) and Harris (1978) found that a similar process of 'indoctrination' of new police recruits into the 'masculine ethic' and the regaling of war stories featuring violence by instructors was a feature of police training in the US.

<sup>3</sup> Dacoity is defined under section 391 of the Indian Penal Code as robbery committed conjointly by five or more persons.

rebels. Gossman (2002) describes types of 'death squads' that operate in various parts of India, differentiating between out-of-uniform police officers who form death squads in insurgency ridden Punjab; security forces (army, paramilitary forces, and the police) operating in Kashmir and in Assam, threatening and assassinating militant leaders and other opposition figures; and special police squads operating in Naxal infested areas. The Naxalite movement began in India in 1969 formed by radical Maoists, who believe that the enemy of class struggle, defined as power-wielders in the existing social order, have to be eliminated even if that enemy (state agents) may not have directly harmed them. States affected by the Naxal movement include Bihar, Chattisgarh, Andhra Pradesh, parts of Orissa, Maharashtra, Madhya Pradesh and is spreading to Uttar Pradesh. In these states, especially Andhra Pradesh, special police squads have executed suspected militants and prominent activists in custody and "claim that they have been killed in armed 'encounters'; for most of these routine killings, no elaborate cover-up was considered necessary" (Gossman 2002: 262).

Another pattern of *encounter* killings was well established in Punjab (during the days of insurgency in the 1980s and early 90s) where the 'victim' was detained, and tortured for several days before being killed. Gossman (2002: 268) suggests, "government practice of providing cash rewards for police who eliminated wanted militants encouraged the police to engage in extrajudicial killings".

*Encounters* may be considered by the police to be natural fallout of routine policing in these 'difficult' areas. However, it is my belief that in other parts of the country, especially in some large cities like New Delhi and Mumbai, *encounters* are used more as a deliberate, short cut method to bypass the delays and uncertainties of processing 'criminals' through the criminal justice system rather than being spontaneous shootouts between organised criminals and the police.

Police *encounters* are not only 'prized' internally by the police organisation and are sometimes rewarded by the government (either with one-rank-promotions, or bravery medals, and/or other privileges), but also enjoy some societal approval in Mumbai. There have been several examples when the police have been publicly

congratulated for 'acts of bravery' that have ridden society of a 'menace'. Most police officers<sup>4</sup> consider their work to be not just a job, but to be a 'way of life with a worthwhile mission' (Reiner 2000a; Skolnick and Fyfe 1993) - to serve the public and protect society against the forces of evil. Public adulation is a heady stimulant and combined with positive press ratings and organisational approval in the form of allowing such actions to continue unquestioned, can serve to demolish any moral compunctions that the police have towards depriving another person of life. All police officers are recruited from among ordinary citizens, (albeit at different levels and ranks) and are not inherently evil or natural 'killers'. The question that arises is how and why do ordinary people kill fellow citizens? The explanations might lie in their difficult working conditions, the demands of the socio-political milieu within which they operate, combined with a spiralling crime problem that have led to a situation where 'criminals' are seen to deserve executions. Or could it be the case that since most police *encounters* are not subject to detailed scrutiny, the decision to invoke deadly force maybe undertaken lightly, or without considering the full impact of the moral and legal aspects involved? The research focuses on these issues.

There is growing human rights awareness in India and a number of Non Governmental Organisations (NGOs) and pressure groups have over the past few years questioned some of these more dubious police tactics and actions. Over the past decade there has been some public outcry against *encounters* and criminal action has been initiated against some well-intentioned but misguided policemen who have been involved in *encounters*.

The main reason I chose to study the police use of deadly force is not only because it has a very significant impact on the right to life of the victim, but it also affects the life of the police officer involved, in many far-reaching ways - from being involved in criminal or departmental proceedings and inquiries to maintaining their moral well-being. Solving the moral dilemma of using 'dirty

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<sup>4</sup> In India a distinction is drawn between the subordinate ranks (men) and officers (called Gazetted Officers and are of the rank of Assistant Commissioner of Police or Deputy Superintendent of Police and above). However, I shall be using the term 'police officers' to cover all ranks of police personnel.



means to achieve good ends' (Klockars 1991) is something every police officer has to confront during his/her career in some form or the other. By undertaking this research I hope to explore the issues that contribute to *encounters* in a non-judgemental manner to enable other police officers, as well as myself, to better understand the truly complex nature of the issues that surround the police decision to invoke deadly force. This study is important in providing sociological insight into an area that has profound ramifications for policing, police malpractice, and the social and cultural context in which it takes place.

The aim of my research is not merely to uncover or describe police use of deadly force, but in order to understand the use of force,

“One must evaluate them [police accounts] from the point of view of the cops who succumb to these moral hazards of their occupation. Doing so requires that the cops themselves be permitted to speak at length and in intimate detail about these issues. As they do, they often advance extremely complex and sometimes highly seductive moral and psychological arguments for their behaviour.” (Klockars and Mastrofski 1991: 396)

Therefore, an important part of the research is to explore the different ways in which police officers and people whom I call 'claimsmakers' interviewed perceived and talked about issues around *encounters*. Various justificatory arguments used by officers and described in the following chapters clearly indicate that they used a discourse of denial to account for *encounters*, arguments that not only neutralised their actions but also served useful functions for the audience they were intended for. Thus the discourse of denial served two purposes: first, ameliorating guilt or culpability about the action itself; and second, enabled the public to respond to *encounters* not as cold-blooded police killings but as part of a justified war on crime.

*Encounters* have not yet been publicly perceived as a 'social problem' - 'a social condition that has been found to be harmful to individual and /or societal well being' (Bassis et al 1982: 2) - in India. It is therefore imperative to understand how the phenomenon of *encounters* is socially constructed by 'claimsmakers' asking the sorts of questions that Best (1995) explores: what sorts of claims get made; when do claims get made, and by whom; how are these claims received by

the intended audiences and under what conditions? By adopting a form of contextual constructionism in the research, I explore the claims made by those interviewed (officers and 'claimsmakers') in Chapters 4, 5, 6, and 7. In the final Chapter I reconcile the subjective construction of these claims about the social condition of *encounters* with my own evaluation of whether objective reality corresponds to claims made by the actors interviewed, drawing upon available literature and similar studies in other countries. This final chapter will use '*their*' (interviewees') reasons to extrapolate '*the*' (structural) reasons for why *encounters* happen (Cohen 2001:58), why they are tolerated, and identifies agendas for future research.

The Thesis is organised in the following manner:

I begin by reviewing the literature on police violence in chapter 1, concentrating on studies of police violence in some western democracies, especially the US, the UK, Canada and Australia; as well as in other less developed democratic countries, in Latin America and Africa. I situate the Mumbai police within this wider literature and discuss the various models (individual, situational, organisational and structural) put forward by criminologists and sociologists to explain the causes of police violence, that are relevant to the Mumbai situation. I then explore the 'moral dilemma' that arises in situations that call for solutions to a 'means-and-ends' problem. The content and nature of policing is intrinsically linked to the use of force, and in many countries has been associated with some form of racial discrimination. The situation in India, and Mumbai, in particular, is slightly different, in that, the use of deadly force by the police is allegedly not necessarily directed against members of a minority ethnic community or group, but against 'hardened criminals', who are not distinguishable as a visibly distinct group of victims.

In Chapter 2 I discuss the methods adopted to examine police *encounters* and discuss the methodological issues arising from this research including the ethical issues involved in researching a sensitive topic, as well as situating myself in the research process. The research is primarily qualitative as I was interested in understanding issues around *encounters* from the perspective of the police officers as well as 'claimsmakers' who were responsible for the public discourse.

The richness of the material is derived from delving into the individual's perspective and justifications of *encounters*. The question - how do 'they' explain these issues to themselves and to other public audiences could only be answered by adopting a qualitative approach based on semi-structured interviews.

In Chapter 3, I introduce Mumbai city and its socio-economic and cultural place in Indian life. The city, its size, population, ethnic composition, importance as a commercial trade centre, its manufacturing and service industries, and its special position as the capital of the film industry in India (Bollywood) all demonstrate that Mumbai is unlike any other city in India and has a unique social, cultural and economic position. The city's contemporary police force has grown out of a colonial legacy of policing based on the model of the Royal Ulster Constabulary. I describe the structure of the police service, as well as the administrative framework that provided the context within which *encounters* emerged and different power structures operated and influenced the politics of day-to-day policing. I also describe the growth of organised crime in Mumbai since the 1970s that led to the use of deadly force by the police, in scenarios constructed as *encounters*. I describe the growth and development of some of the leading gangs, and how their activities impacted on citizens of Mumbai. The twin processes of the politicalization of organised crime and the criminalization of politics in Mumbai are also discussed with reference to organised crime.

Chapters 4 and 5 focus on police officers' perspectives of *encounters*, their understanding of the term, and attitude towards the legality, morality, desirability and acceptability of *encounters*, individually and organisationally. Police officers' perception of their role and responsibilities are vital in shaping their attitude towards *encounters* and whether they are willing to adopt or condone these actions. Their perception of how the public respond to the use of deadly force is also important in understanding their justifications for *encounters*.

In Chapter 6, I put perceptions of police officers' perspectives on *encounters* together with Stan Cohen's Theory of Denial to demonstrate how officers use denial and justificatory accounts to explain the necessity and importance of

*encounters* in Mumbai. Police officers have to live with the fact that they used or condoned the use of deadly force as perpetrators or bystanders and that they act as judge, jury and executioners against alleged criminals. I suggest that classic denial mechanisms are used to justify their actions to themselves and to their audiences.

In Chapter 7 I explore the themes around *encounters* that emerged out of the interviews with ‘claimsmakers’ in Mumbai. I call the group of people I interviewed ‘claimsmakers’ because these particular individuals - lawyers, journalists, judges, politicians, Human Rights activists and representatives from the industrial associations - actually had made public claims about *encounters* over the period of study (1993-2003). These interviews were used to contextualize the conviction of police officers that society not only approved of and encouraged their actions in *encounters*, but that there actually was a vocal social demand for such proactive action. I describe that while there was no consensus on the moral or legal rectitude of police *encounters*, there was a common belief that *encounters* were very effective as a short-term measure to control spiralling organised crime. There was also a belief that even though police actions were suspect, there was very little anyone could do to prevent or punish ‘wrongdoing’. Furthermore, a striking feature of these interviews was the lack of consternation or protest that the police were involved in executing alleged criminals and this appeared to provide the moral impetus to police justifications of *encounters*.

In Chapter 8, I take one step back from these stories and explore ‘the’ reasons why police actions were not challenged. I look at the wider structural and systemic factors that create conditions where killing ‘hardened’ criminals seems to be the last resort for the police to gain some control in the fight against crime. I also examine the social and political situation in a commercial, crime-ridden city, preoccupied with protecting its businesses, manufacturing units and service industry as well as safeguarding the life and property of its citizens. I discuss the wider cultural and specifically police subcultural factors that made *encounters* both feasible and acceptable. Janet Chan’s use of Bourdieu’s concepts of *field* and *habitus* to provide a cultural explanation for the existence of police deviance

is explored in this context. I also compare and contrast factors accounting for police abuse of force in Mumbai with prevailing conditions in some other democratic societies where police executions feature prominently and examine how criminologists have accounted for police killings in these societies. I examine how different police forces and policy makers in other countries have sought to control police use of deadly force by introducing legal, procedural, cultural, and/or structural changes and whether these have proved to be effective in limiting that use. I also suggest possible ways in which favourable conditions could be developed in Mumbai to curb excessive use of deadly force by the police and protect the right to life of every citizen. The final part of this chapter summarises the findings of the research and draws conclusions about - what makes ordinary human beings abuse deadly force and how is such abuse justified in a democratic society.

## **CHAPTER 1: POLICING AND THE USE OF DEADLY FORCE: A REVIEW OF THE LITERATURE**

### **1.1 Introduction**

The use of force has always been an integral aspect of policing. Distinguishing between the use of justified, legitimate force and illegitimate force raises many complex and delicate moral, legal and sociological conundrums. Explaining variations in the use of force, legitimate or not, also requires understanding police actions and the exercise of discretion that have been at the heart of empirical and theoretical research on policing as it has developed in the Western world over the last half century.

Sociologists who have studied the police in various parts of the world have suggested that police work is characterised by similar features, such as danger, authority, and the mandate to use coercive force that is non-negotiable (Skolnick & Fyfe 1993, Bittner 1975). As the law enforcement agency of the government, the police see themselves as the ‘thin blue line’ that separates anarchy from order (Skolnick 1975). It is often when police act idealistically, with a ‘sense of mission’ (Reiner 2000a) to control a dangerous and unruly underclass, that the most shocking abuses of police power take place (Skolnick & Fyfe 1993). The police are armed and potentially dangerous in most countries and while protection *by* the police is generally assumed theoretically, protection *from* their misdeeds and mistakes is more problematic and less well-defined (Manning 2003). Studying police use of force is important not only because its proper execution is essential for maintaining state order and legitimacy, but also as it affects the public’s perception, attitude and behaviour towards the police and the government (Friedrich 1980).

In this chapter I discuss relevant theoretical precepts that have guided the study of police use of force in the literature, beginning with studies of policing in India. I then review the broader literature on the police use of force, especially the use of deadly force.

## 1.2 Review of Literature: The Indian Police

Research on the modern (i.e. post independence<sup>5</sup>) Indian police begins with Bayley's (1969) pioneering work that looks at the relationship between the police and political development in India. Its insights are largely valid even today and inform my research in mapping out the structure and role of the police organisation in India (Chapter 3). Since Bayley's study, there has been little rigorous academic research on the Indian police, especially on the use of force. Many books written on the Indian police are either personal accounts of senior and retired police officers about their own experiences (for e.g. Nath 1981; Rebeiro 1998; Singh 1999; Rajagopalan 2000; Vaikunth 2000; Subramaniam 2000; Bedi 1998, 2003; Khan 2004) or mainly descriptive studies or work located within the structural-functional theoretical school written by public administration scholars and criminologists (Mukhopadhyaya 1997). Most of the discussions appear to be armchair theorizing, that may be valuable but lack empirical grounding and there is very little written about the police from a critical sociological viewpoint (Verma 2005). This body of literature based on police officers' reflections on their own experiences and understanding of the socio-political situation is not necessarily either biased or inauthentic, but does lack a certain objectivity and appreciation of the complex dynamics of police decision making and actions. While there have been no studies directly related to the police use of force or deadly force, the studies referred to above and other studies identify problems with the Indian police (Mehra 1985, Ghosh 1993).

One of the most systematic and authoritative analysis in the field of policing and human rights is Krishnamurthy's (1996) study. Although his focus is mainly on the rights of the accused in pre-trial processes, he identifies some of the factors that are commonly used to 'explain' abuses of police power in India, many of which would apply to the abuse of deadly force too. These include: ego gratification of officers; corruption; police sub-culture; perception (of the officers and public alike) that the police have to be brutal to be effective; political and

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<sup>5</sup> India gained independence from British colonial rule on 15<sup>th</sup> August 1947 and became a Republic on 26<sup>th</sup> January 1950.

other group pressures; work overload; lack of scientific approach and training; lack of infrastructure and resources; lack of openness in police working; poor treatment of subordinate staff by supervising officers; and the belief that 'bad' means to achieve 'good' ends are justified. Nonetheless, after identifying these serious institutional and organisational problems, Krishnamurthy then dismisses them as being no justification for 'lawless actions'. However, some of the points raised by him recurred in my interviews with police officers and were part of their discourse on justifications for the use of deadly force.

There have been a variety of National and State Police Commissions set up since the early 1960s looking into the question of police reforms. The reports of the National Police Commission (1978-81) identify numerous structural and organisational problems faced by the police and have made recommendations to improve working practices and service conditions, including training, administration, and accountability structures. Even though the recommended reforms are comprehensive, Verma (2005) is critical of the recommendations of the National Police Commission for not proposing change incrementally, but because they advocated overhauling the entire system. The result would have tilted the balance of power away from the politicians and bureaucrats and in favour of the police and this, naturally met with severe resistance from the government machinery. Also, despite its sweeping mandate, the National Police Commission did not open its discussions to social scientists, other external consultants, and activists; did not involve the media or initiate a public discussion; and also did not take into account sweeping changes in policing around the world, failing to go beyond *managerial* changes (Verma 2005). Recommendations of subsequent committees, the Rebeiro Committee (1997), the Padmanabhaiah Committee (2000), the Soli Sorabjee Committee (2006), and various other proposals of expert bodies, outcomes of seminars, conferences, police workshops and State Police Commissions have all remained exercises in futility (Dhillon 2005) because they mainly recommend operational and administrative independence from political control. As a result, there has been little or no attempt made by any of the governments since India's Independence to introduce legal and administrative reforms, or training improvements, that are long overdue.



Given the little relevant research on police violence in the India, I have relied on accounts of police violence in countries as diverse as the USA, UK, Canada, Australia, Brazil, Argentina, Guyana, South Africa, and Jamaica, to inform this study. Issues of police violence in Latin America and South Africa and some other third world countries are similar to those in India given a common background of colonial imperialism, a culture of violence, developing economies, class inequalities, and widespread poverty that they share, though there are also admittedly some crucial differences between these countries (see Chapter 8).

I find that a lot of my work resonates with early studies on policing in both the USA and the UK. This could be due to two reasons: first, there are certain similarities between the conditions under which the police described in these studies were operating, especially as described by Bittner (1975), Skolnick (1963), Westley (1970), Holdaway (1983) and others on policing in the 1960s and 70s in the US and UK and those of the Mumbai police. The level of awareness on issues such as human rights and due process and rule of law are, if not identical, at least, comparable. The second reason could be that these studies are among pioneering works commenting on the working of the police. Thus, the methods used by these scholars to arrive at their analysis - primarily ethnographic, and incorporating qualitative methods such as participant observation and interviews - are similar to the ones used in this study. My study makes the modest claim of being one of the first qualitative studies on policing and use of deadly force in one city in India.

### **1.3 Police Use of Force**

Manning (1977: 40) suggests that British policing is synonymous with “legal monopoly on violence and is protected to the point of legal sanctioning for the use of fatal force”. There might be disagreements about the view, especially since the British police do not have a legal monopoly of violence – they have greater legal powers than ordinary citizens, but anyone is entitled to use violence in certain circumstances e.g. self-defence. Also the police are not necessarily protected for use of fatal force but their immunity is dependant on the

circumstances surrounding the particular incident. This is just one illustration of how issues around police use of force are fraught with complexities. However, the concept of ‘the capacity to use force as the core of police role’ (Bittner 1991: 42) is central to understanding police work. Police use of coercive force could be conceived as a continuum, “consisting of a range of control tactics commencing from body language and oral communication, through weaponless physical control, to non-lethal weapons, and finally to lethal measures” (McKenzie 2000:182). One way of defining force is, “acts that threaten or inflict physical harm on citizens”, which could be measured according to the “severity of harm it imposes on a citizen” from least to most harmful (Terrill 2001: 2). The terms ‘police use of force’, ‘police violence’ and ‘police brutality’ are often used interchangeably in the literature, though they could imply use of force that is either justified and/or unjustified, legally and/or morally. Public understanding of the words police brutality mean anything from the use of abusive language, commands to move on or go home, stop and search, threats to use force, prodding with a stick or approaching with a pistol or actual use of physical force (Reiss 1968). Bayley (1996) suggests an eight-point classification of ‘police brutality’: arrest related assaults, torture (or third degree), deaths in custody under suspicious circumstances, police shootings, police raids, riot and crowd control, intimidation and revenge, and non-physical brutality. However, police brutality is not necessarily synonymous with use of excessive force - it has more to do with perception of the observer of what is considered unacceptable behaviour. Thus, some of what may be considered police brutality (for e.g. use of abusive language) is not necessarily excessive force and in certain circumstances use of what the law defines as excessive force may be perceived by the observer as justified and thus not an instance of police brutality.

The term ‘excessive’ is problematic, and defining it involves value judgements. Various criteria could be applied to an instance of use of force depending upon who is making this judgement, for example, “Judges apply legal standards; police administrators apply professional standards; and citizens apply ‘common sense’ standards” (Adams 1999: 62) and human rights activists apply ethical standards. There is also the distinction between excessive use of force (‘using force in too many incidents’) and use of excessive force (‘more force than

needed to gain compliance in any given incident') (Terrill 2001: 22, citing Adams 1995).

Klockars (1996) suggests that the conventional understanding of the term excessive use of force (in the sense of being either a criminal offence, a civil liability, or a public scandal) is inadequate for identifying instances where excessive force has been used. Instead he proposes a new standard to judge extent of force used, "Excessive force should be defined as the use of more force than a highly skilled police officer would find necessary to use in that particular situation" (Klockars 1996: 8). Klockars (1996: 10-11) offers 5 arguments in favour of this definition over others: ontological (force that a highly skilled officer would not find necessary to employ in a given situation is not necessary force); personal (no citizen would like force used against them that a highly professional officer would not find necessary to use); professional (highest possible standard of skill acts as the benchmark); administrative (reduce criminal, civil liability and scandals); and utility (not its ability to punish officers criminally, civilly, administratively or politically, but its potential to help control abuses of authority by imposing the highest possible standard for measuring its necessity).

Police use of force is often not wrong or uncalled for. Policing engenders situations when the use of force or violence may become inevitable. For example, when confronted with situations they are unable to control through other alternative means, such as a riot situation, the police can be left with no choice but to resort to the use of force to disperse rioters and bring public violence under control. However, the amount and mode of violence used by the police in any situation is subject to debate. There will be conflicting viewpoints on the advisability and efficacy of police actions in such circumstances and whether the police did all that was necessary to avoid the use of force to control a situation. It is therefore difficult to predict whether a particular incident of use of force would be perceived as legitimate or as police brutality. As Bayley (1996: 277) notes, "brutality is in the eye of the beholder". This subjectivity makes defining the concept fairly contentious. In general, the only *principled*

justification for the use of force is that it is proportionate, i.e. necessary and minimal.

There has been little or no effort made to define what is meant by 'excessive force', although the police are accused of using it frequently. Bittner (1975) comments, "our expectation that policemen will use force, coupled by our refusals to state clearly what we mean by it (aside from sanctimonious homilies) smacks of more than a bit of perversity" (cited in Klockars 1996: 1) reiterates this point. Assuming, at least conceptually, that some police use of force is necessary and justified, Fyfe suggests there are two other kinds of force, which appear to be based on the *mens rea* of the police - extralegal and unnecessary; "Extralegal violence involves the wilful and wrongful use of force by officers who knowingly exceed the bounds of their office. Unnecessary violence occurs when well-meaning officers prove incapable of dealing with the situations they encounter without needless or too hasty resort to force" (1986: 207).

#### **1.4 Deadly Force**

This study focuses on police shootings, specifically shootings in a situation of direct confrontation between the police and 'criminals' (termed *encounters* in India) and not in a riot control or public disorder situation, where the circumstantial and situational factors precipitating the use of deadly force, are quite different. Whether such shootings are instances of legitimate use of force, or of abuse, or excessive, or illegal use of force is analysed in this study.

The fascination of police brutality or violence for criminological research in the USA goes back thirty or forty years when anyone doing research on the police, was assumed to be studying either police brutality or police corruption (Klockars and Mastrofski 1991: 394). Deadly force as the most extreme form of police violence has attracted its fair share of attention. Deadly force can be employed either through the use of firearms, other lethal and non-lethal weapons, or the improper use of holds or restraining techniques, in this research we limit it to the use of firearms. Police use of deadly force in a public order context (Waddington 1987, 1991; Jefferson 1987, 1990) is somewhat different from that used against alleged criminals. For example, Waddington suggests that the

policing strategy in most public disorder cases is 'to maintain or restore order' and the particular strategy adopted depends on the 'nature of the disorder, whom it involves, and where and when it occurs' (Waddington 1991: 145). In most riot situations the police primarily aim to disperse, or arrest, or (more rarely) incapacitate offenders (Waddington 1991) not just in the UK, but even in India. Maximum effort is made to issue warnings to the crowd and to give them ample opportunity to disperse on their own without a show of force. In the UK, police are deployed in public order situations, not as an assembly of individuals but in squad formation under a hierarchy of command similar to that in the military, theoretically making them a more formidable force (Waddington 1991). Policing civil disorders often engenders fear, anger and frustration; heightening anxiety for police officers who are too close to the action to be objective, and the heightened emotions on the part of the public makes the situation more volatile. Therefore stricter supervision, command and control of such operations are required (Waddington 1991: 137). Only when the mob is very violent or in an uncontrollable frenzy do the police resort legitimately to the use of deadly force, ideally, in a controlled, precisely targeted and methodical manner. This is the theory: in practice force may be misused. In contrast to this, a sudden confrontation between police and 'criminals' can be more fluid, with greater discretion on the part of individual officers to use deadly force, though admittedly some riot situations may flare up and some confrontations with criminals may be planned operations. However, principles that ought to govern the use of deadly force by the police are universal and not contingent upon the situation under which it has to be employed. Lessons can be learned from those police forces that have constructed policies and structured training promoting good practice in order to avoid excessive or unnecessary use of force (see Chapter 8).

In terms of deadly force that results from the use of firearms, Geller and Scott (1991) examine police shootings of civilians, and shootings of police officers by civilians and other police officers in the USA. They too acknowledge definitional problems associated with deadly force, such as: whether it refers exclusively to use of firearms or includes all force capable of causing death; whether incidents occurred while an officer was on duty or off duty; and whether they were

officially or personally motivated. If seen as deviant behaviour, then use of force can be perceived either as police crimes or state crimes (Green & Ward 2004). Geller and Scott's (1991) review of studies on police use of deadly force find that these focused on one or more of the following: *counting* (identify the incidence of police involved shootings); *describing* (characteristics of shooting incidents and their participants); *explaining* (why certain shooting patterns emerge); *controlling* (identification and assessment of strategies to reduce police shootings). Studies that *describe* and/ or *explain* the use of deadly force by the police are of particular relevance to my study as the aim is to explore whether there are any similarities or universal features that characterise the dynamics of such use. Green and Ward (2004) suggest that theories that explain police violence in the context of western countries such as the USA, the UK, Australia and Canada, seek common fundamental and apparently universal features of policing as the cause for police deviance, despite key differences in policing histories and styles. They should thus, be applicable in "widely different cultures, economies and political systems" (2004: 69). In the discussion below I discuss how these explanations apply in the Indian context.

### **1.5 Police Deviance or State Crime**

Of the four frameworks offered by Kappeler et al (1998) to understand police deviance (the statistical, the absolutist, the reactivist, and the normative) the normative definition comes closest to explaining the dynamics of the process by which behaviour is perceived as being deviant. The labelling perspective says "whether an act is labelled deviant depends on the response of others to the particular act" and is 'not the quality of the act itself but the consequence of it' (Becker 1964: 9). However, the normative definition goes further in suggesting that it is not just behaviour, but the social context in which the behaviour occurs, the formal and informal rules of conduct, and the perception of the behaviour as violating existing social norms that explains why an act is considered deviant. Therefore behaviour is deviant when it is perceived as such either by the victims, or because it outrages the public and its morality, or when the police cannot account for it in a court of law or inquiry. Behaviour that may be perfectly acceptable in terms of police culture and their codes of acceptable behaviour may be seen as deviant from the perspective of the outsider. Deviance can also be

addressed only when there are demands for change and greater accountability in police actions. Until such an acknowledgement is made and the desire for change is felt, either organisationally or socially, particular police behaviours cannot be addressed.

Punch (1996: 56) defines *organisational deviance* as one kind of deviance where “serious and deliberate practices conducted with a measure of deception, stealth and cunning...in order to achieve formal or informal organisational goals. These can be acts of commission or omission and they are frequently supported, overtly or covertly, by senior management”. Thus when the police organisation supports and promotes abuse of deadly force, it is a form of organisational deviance where job-related criminal activities during the course of their work are possible because the very nature of police work (individual discretion and low level visibility) supports it (Sutherland 1939).

In Mumbai, it will be shown, police use of deadly force in *encounters* was not widely perceived as a form of deviance, either by the police officers, the media or public discourse. Nor was it recognized as a state crime in the sense of being acts that are *mala in se* or *mala prohibita*. Although, *encounters* were not seen as a social problem, they are problematic in many ways and therefore need further analysis. Any analysis of police deviance involves distinguishing between actual misconduct and mere appearance of wrongdoing (Kappeler et al 1998). This would involve making a judgement about the apparent merits of the police action in every instance. However, my research concentrates on understanding the police and public’s perception of deviance and not on providing evidence of actual police misconduct in *encounter* situations. Making any judgement or accusations of actual police misconduct in particular cases would have to be based on a greater degree of proof about each one than was accessible to me. Given that there was little independent evidence to substantiate claims of actual deviance, I avoided travelling down that particular slippery slope. Besides, public perception of what was acceptable deviance in police conduct was of greater fascination in the Mumbai context. People appeared to know, or it was common knowledge, that the police used excessive deadly force against criminals. This was evident in public discourse, in the interviews conducted during the research,

and in the way that media portrayed such events, even bearing in mind the warning that “we have an obligation to guard against sensationalism and distortion often present in media accounts of police activities” (Kapperler et al 1998: 3). Evidently either people were unaware or did not want to know the actual extent and nature of the deviance involved in such *encounters* - and this study investigates why.

Ross (2000) defines state crime to include cover-ups, corruption, disinformation, lack of accountability and violations of domestic and/or international laws, carried out by the state or by any state agency on its behalf (Friedrichs 2000). The fact that the police in their capacity as state personnel violate the laws that are supposed to bind them in the pursuit of their job as representatives of the state makes abuse of deadly force a state crime (Chambliss 1989, Menzies 2000, Green & Ward 2004). My research suggested *encounters* incorporated all the elements described as state crime, though this was neither widely recognized nor condemned in official or public discourse. The research revealed that even when police killings in cold blood were deemed to be illegal and undesirable by those interviewed, this recognition did not prompt a public response decrying it. There were a few incidents when police actions were questioned by the media and even in the courts of law, but *encounters* were not seen as a social problem. Exploring whether a form of socio-political complicity existed in what appeared to be a state crime that sustained and encouraged *encounters* was a major object of my research. However, recognizing that *encounters* are state crimes would benefit the police organisation in reassessing their own actions and policies, especially in a climate of growing awareness of human rights issues. One of the officers interviewed recognized the proliferation of the use of deadly force as, “a ticking time bomb waiting to explode” and that it would cause a lot of damage (in terms of legal action against, as well as loss of public confidence in, the police) if allowed to continue unchecked (T 33: Senior Management Officer).

The main causes for a sustained pattern of excessive violence in the Americas appear to be corruption and political interference in the police (Chevigny 1995). According to Chevigny (1995) a particular kind of corruption in which predatory crime, being ‘bent as a job’ (predatory corruption- Punch 1985), fused with a



distorted sense of 'mission', being 'bent for the job' (combative or strategic corruption- Punch 1985), was responsible for most police violence not only in New York, but other cities he studied in the Americas. Instances where police abuse of force did not cause political ripples, but rather was the outcome of political directives, underline the importance of political backing for such abuse of force to be sustained and continue unpunished.

The police are often in effect allowed to get away with blatant abuse of force. Prosecutions of officers may be rare even in cases of excessive use of deadly force in many countries, and convictions rarer still (Blumberg 1989, Uldricks and van Mastrigt 1991, Geller & Scott 1992). Factors responsible for low rates of culpability for police officers in many instances of excessive use of force are: frustration with the criminal justice system which appears to provide a magical cloak of immunity for police officers; the relatively small number of complaints made against the police; difficulties in substantiating complaints; complete control of investigation by the police themselves; the 'code' of silence that ensures officers go to great lengths to protect fellow officers; the greater credibility commonly attached to a police officer's account of events as opposed to that of an accused criminal; jurors frequently feeling more sympathetic to an officer than the complainant, and sometimes even intimidation of witnesses, lawyers, magistrates. Thus there is often a lack of public accountability for police actions, (Muir 1977, Box 1983, Chevigny 1995, Klockars 1996, Cheh 1996). In Mumbai, the Srikrishna Commission inquiring into the police response to religious riots in 1992-3 found 31 police officers guilty of malpractice and excessive use of force but action was only initiated against a few (for further discussion see Chapter 3). Also no serious criminal sentence has been passed (until very recently, see page 205) against any officer in an *encounter* case so far, another instance where the police have been allowed to get away with excessive use of force.

## **1.6 Police Shootings**

Reviewing the literature on police shootings in the USA, Geller and Scott (1991: 453) suggest that, "the most common type of incident in which police and civilians shoot one another in urban America involves an on-duty, uniformed,

white, male officer and an unarmed black, male civilian between the ages of 17 and 30 in a public location within a high-crime precinct at night in connection with a suspected armed robbery or a 'man with a gun' call" (Geller & Karales 1981a). Clearly therefore gender, race and age of the police officer and of the 'suspect', as well as the situational factors and circumstances that lead up to the incident appear to be important. Also important are structures of race and class inequality and the culture of racial antagonism that flows from this.

That the police use violence as a type of informal punishment for defying police authority, or as a form of 'street justice' or vigilante justice has been reported by researchers in several places (Skolnick & Fyfe 1993, Chevigny 1995, van Maanen 1978, Westley 1970). Geller and Scott (1991) found that the most common reason given by police officers for shooting (ranging from 65 to 73 per cent) was self-defence or defence of another person's life because that is the only way of making it legally acceptable (they cite Fyfe 1978, Geller & Karales 1981a, Horvath 1987). However, while there have been substantial number of shootings when the victim was unarmed, this does not mean that the officers necessarily knew or believed that he was unarmed. Fyfe (1981a) describes a continuum from elective (the officer decides whether he wants to shoot or not) to non-elective shootings (where the officer has no choice but to shoot). Research also suggests that police have used deadly force in situations such as flight without resistance, warning shots, shots to summon assistance and felonious shootings (Geller & Scott 1991 citing Geller & Karales 1981a, 1981b; Meyer 1980). Geller's (1989) study found that officers' reasons for shooting ranged from gun use threat, to use of threat of other deadly weapons, fight without other resistance, other reasons for intentionally shooting, accidents, mistaken identity, and a stray bullet. However, Chevigny's (1995: 213) conclusion that the worst abuses occur when "the police, impatient with the workings of the courts, simply dispose of suspects in bogus 'shootouts'" comes closest to describing the actual prime motivation behind police *encounters* in Mumbai (See Chapter 6) though officers cited many of the other reasons stated above for shooting.

Studies of police shootings also found that virtually all the civilians shot at by the police were male (Geller & Scott 1991), but Geller & Scott do not mention

whether all the officers doing the shooting were predominantly male. Though they found that shootings seemed to occur “predominantly in public locations” this did not ensure that they were always witnessed by the public (1991: 462). Fyfe’s study of New York shootings found that uninvolved witnesses were rarely present at public locations when deadly force was used, perhaps in part because most of the shootings occur at night (Fyfe 1981a). Location was of interest in my research as often officers justified the legitimacy of an *encounter* by saying that it occurred in a public place, either in daylight or even if, as Fyfe’s research found, it was in the middle of the night.

Researchers have found that race was a crucial element in shooting incidents and that black people were more likely than their white counterparts to be involved in police related shootings (Geller & Karales 1981a, Fyfe 1981b, Robin 1963). Some research studies found this to be rooted in systematic racism (Takagi 1974). Others suggest the possibility that blacks and Hispanic minorities were disproportionately involved in violent crimes and therefore were represented in higher numbers in police shootings (Matulia 1985, Fyfe 1978, 1981b, Alpert 1989). They also were disproportionately more unemployed and likely to spend their time on the streets exposing them to confrontation with the police and involvement in shootings (Milton et al 1977). All these factors reflect wider structures of racial inequality. Other studies led researchers to observe that race was not a controlling factor in a patrol officer’s decision to shoot, nor were there significant differences in the race of the victim given similar situational factors (Brown 1984, Binder et al. 1982). Various findings regarding the connection between police shootings and race are highly contradictory and do not conclusively show any correlation between the two. I explore why research concerning race and police shootings is important to my research in the next section (also see Chapter 3).

### **1.7 Mumbai Police and Deadly Force**

Police use of deadly force through *encounters* in Mumbai is a special case. Not only do they seem to be cases of arbitrary street justice where the police act as judge, jury and executioner, deciding to do something about the ‘crime problem’ by eliminating alleged criminals, but they appear to do so with the blessing of the

general public, the media, and the political leadership. However, Mumbai is not unique. Chevigny (1995) and Mars (2002) found similar situations in cities in Brazil, Argentina, Jamaica and Guyana. Chevigny's (1995) research was conducted during a time when parent countries had (at least nominally) democratic elections; possessed a free press, but faced problems of immigration – forced or voluntary; rapid urbanization and industrialization; the after-effects of colonialism and serious problems of crime; which provoked outcries for repressive police action. He found that the fear of crime had become a governing political issue in these countries and there was a talk of a 'war on crime' with a corresponding conception of the police as combatants. There was universal lamentation about the courts not being tough enough and the need for tougher measures to control crime (rhetoric that also has resonance in many western industrialised countries). Chevigny calculated what he called 'disproportionate violence ratios' on three counts:

“If the number of killings by police is a large percentage of all homicides, that suggests that the police may be using a disproportionate amount of deadly force in relation to the actual hazards of their work and of life in the city; if the number of civilians killed is enormously larger than the number of police killed, that suggests that the police may not be using their weapons exclusively in response to threats from gunmen, as is so often claimed in official accounts of police shootings. Lastly, if the police kill many more than they wound, that suggests the use of deliberate violence against some of the victims” (Chevigny 1995: 15).

However, the city police in the countries studied by Chevigny (Brazil, Argentina and Jamaica) had emerged from serving under or still functioned under strong dictatorial or authoritarian regimes. Unlike these countries, India, though a former colony, has been a viable and functioning democracy for the past 60 years. Police killings have not been at the explicit political behest of dictatorial or authoritarian regimes. Indeed the dynamics of *encounters* have more in common with the way Skolnick & Fyfe (1993) describe the functioning of the Special Investigation Section (SIS) of the Los Angeles Police Department (LAPD) between 1965 and 1992: a period in which its tally reached twenty eight dead and twenty seven wounded in forty five separate shooting incidents. The targets or 'clientele' of this squad were an outgroup - robbers and burglars who had no defenders in the public. Descriptions of the detailed surveillance operations,

stories not tallying with forensic evidence, weapons planted on the suspects after the incident, excessive use of lethal force, bungled investigation reports, missing radio communication etc, seem to indicate that the main intention of the officers of this unit was to eliminate the suspects from the very beginning and to cover-up their mistakes or errors in the operations (Skolnick & Fyfe 1993). This is similar to the Indian and the Mumbai context. Just as officers in the LAPD, no officer in Mumbai has been criminally convicted for *encounters*.

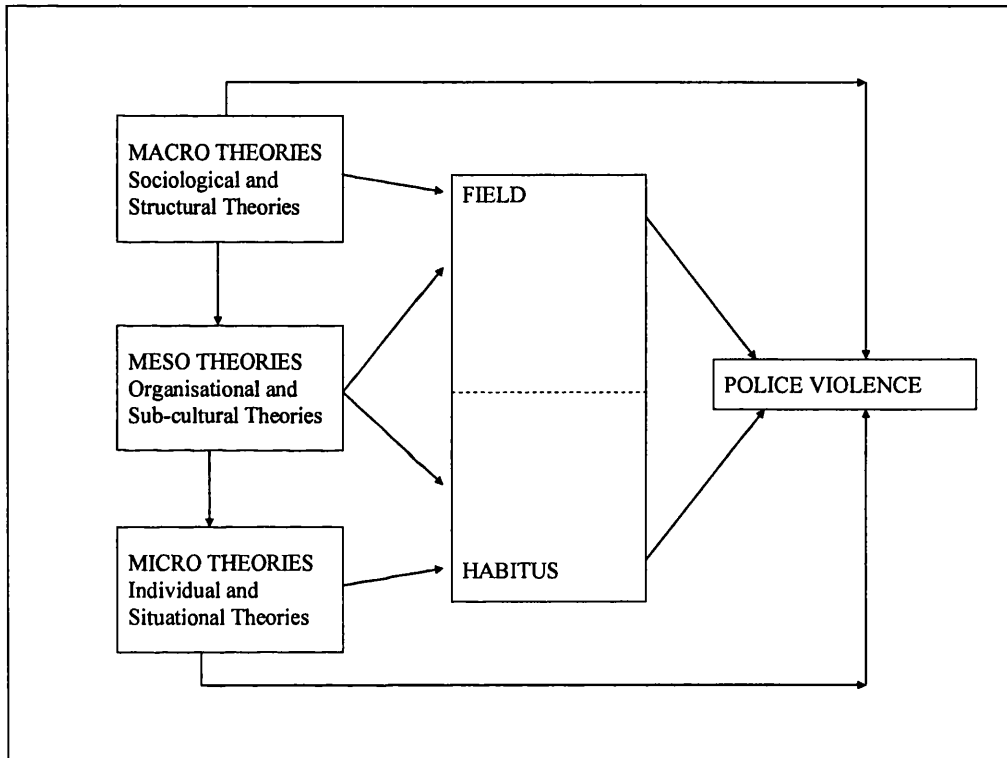
Despite similarities between Mumbai and the LAPD a variety of differences are also apparent: police in the USA based studies usually targeted victims belonging to a distinct ethnic minority or a lower social class. Chevigny (1995) concludes that racism was well and alive in LAPD in the aftermath of the Rodney King incident in 1991 and a majority of the city's populace had the police it wanted. Thus police violence has been held to be disproportionately racially oriented in Los Angeles than would appear at first glance in Mumbai. The population in India is largely undistinguishable in terms of racial characteristics, but is deeply divided on the basis of religion, caste and region. However, since information on the ethnicity or religious identity of the victims of police *encounters* in Mumbai is not openly available, it is difficult to arrive at any conclusions about their religious affiliations or social status. There appears to be a popular perception even in Mumbai that the police target youths belonging to the minority religious community (Muslim) and those who are socially disadvantaged (see Chapter 3). There is little available statistical evidence backing such perception, thus broader trends about the police organisation's tendencies to use lethal coercive power against socially, ethnically and politically disadvantaged groups remains relatively unexplored.

The situation in Mumbai was a complex matrix of factors, involving 'encounter specialists' who had celebrity status, a permissive police organisation, and a larger permissive culture that accepted and even encouraged violence. Making sense of this world required a combination of various theoretical approaches to understand this particular form of police use of deadly force. These are discussed in the following section.

## 1.8 Explaining Police Violence

I found that explaining police violence was like fitting together pieces of a jigsaw with various theories accounting for one or the other aspect of the phenomenon. I classify the various approaches to explain police violence as macro, meso and micro theories. Figure 1.1 diagrammatically represents the interrelationships between them and their place in explanations for police violence:

**Figure 2.1: Theories Explaining Police Violence**



The interconnections between the various theories put forward to explain police violence are such that macro-level theories which comprise of sociological and structural explanations take into account social, political, economic and cultural factors that create circumstances that allow the police to use force and legitimise such use. These factors, in turn have an impact on the development and ethos of the organisation and the subculture of the police institution, which though universal in some sense, is also influenced by local factors and conditions. These meso-level theories explain police violence in terms of the organisational culture that encourages and/or tolerates such use. In turn, the organisation, its culture, rules, procedures and allegiance to rule of law and accountability affect an individual officer's attitudes and 'dispositions' to act in certain ways, which have

a varied impact on the personality of the officer that he brings with him/her to the job. The officer then has to make a decision about whether or not to use force, given the immediate nature and factors present in each police citizen interaction. Thus, micro-level theories explain police violence in terms of individual officers' psychological make-up, and/ or the situational exigencies in which they have to exercise their judgement.

I discuss the three main types of explanations for police violence - individual and situational; organisational and subcultural; and sociological and structural (Green & Ward 2004, Terrill 2001, Worden 1996, Uldricks & van Mastrigt 1991) which form the building blocks for a fully social theory of police violence to account for *encounters*. As a synthesis of these theoretical approaches I finally discuss Chan's (1996, 1997) exposition of the theory of *field* and *habitus*, where she suggests that the interaction between the *habitus* and the *field* encompasses factors affecting police decision to use violence at all three levels, and is one among other approaches that provides a more rounded explanation.

### **1.8.1 Individual and Situational Theories**

There are two types of individual theories. The 'rotten apple theory' states that the attitudes and personal characteristics of some officers make them prone to use more violence than others, and it rests on the assumption that a majority of police officers are not violence prone but work within the limitations of law. The other strand of individual theories, the 'fascist pigs theory', suggests that only people with certain dispositions, such as authoritarian personalities, are attracted to police work due to its nature so that a majority of officers are violence prone (Uldricks & van Mastrigt 1991).

As an explanation, the individual theory which espouses that 'violence prone' or 'problem' officers who manifest a *propensity* to use force, and who could be expected to continue to manifest this propensity given invariant conditions are responsible for a 'lion's share of the use of excessive force', found empirical resonance in the findings of the Christopher Commission (1991) in diverse contexts as Los Angeles (Toch 1996), Newark (Scharf & Binder 1983), Jamaica (Chevigny 1995), and in Israel (Herzog 2000). In Mumbai also there were a few

officers, referred to as ‘encounter specialists’, who accounted for a disproportionately large number of *encounter* deaths (see Chapter 4).

Whether only a few officers can be blamed for using excessive force remains questionable. However, individualistic explanations find favour with the police and politicians as they enable them to narrow the focus on a few officers and obfuscate other more serious organisational and larger social issues that feed into the situation. It allows them the possibility of being seen as doing something about the problem (should it be socially desirable to do so) by either eliminating or retraining a handful of ‘problem’ officers - solutions that are economical, instantaneous and populist. In Mumbai, it was no surprise that some police officers were singled out as being ‘bad apples’ or ‘bent’, drawing away responsibility for the use of violence from the police organisation and structural, social factors that might encourage such behaviour. It also allowed senior management to be seen as doing something by disciplining and/ or punishing a few officers via departmental proceedings.

Huggins et al’s (2002) study of violence workers in Brazil identified three types of masculinities amongst officers - masculinities they term ‘personalistic’, ‘bureaucratic’ and ‘blended’. While they do not suggest that “masculinity itself caused violence or it structured certain kinds of atrocities”, they felt that it had a place in police atrocity studies (2002: 85). Officers possessing ‘personalistic’ masculinity saw themselves as passionate true believers, whose mission in life was bettering society and protecting it from criminals. They possessed an internal commitment to civilian communities but their feminine, caring side was balanced by their self-image as macho policemen who abhorred physical and mental weakness. Officers possessing ‘bureaucratic’ masculinity operated as if their masculinity was subordinate to and an extension of the needs and prerogatives of the internal security organisation. As ‘institutional functionaries’ they sought to compartmentalize work and self into separate categories and valued violence merely for its instrumentality in achieving the most appropriate and efficient social control ends. Such officers felt ‘good’ police were ‘professionals’ who know how to employ torture within proper bounds. Those officers who possessed a ‘blended’ masculinity showed signs of personalistic cops but did not identify



positively with the communities they policed, nor with the organisation. They shifted loyalties and were available for purchase. Such officers carried out off-duty executions, which they sought to present in terms of professional legalisms. A confusion of roles led these officers to believe that off-duty executions were legal acts of bravery and not illegal vigilantism at all. Huggins et al (2002) felt that the personalistic policeman epitomised by 'Dirty Harry' (see page 46) presents himself as acting independently of the police organisation and taking the law in his own hands to do 'good'. By taking personal responsibility he excludes the police institution, and by extension the state, from atrocities. The 'institutional functionary' erases personal responsibility by embedding violence within a complicated bureaucracy. His discourse about violence makes his role in the violence and his organisation's relationship to it, invisible by making it inevitable in achieving desired goals. Blended personalities drew upon first one and then the other kind of legitimation for their violence, switching easily between formal and informal control systems. As an explanation this approach to masculinity appears logical and I discuss it further in Chapter 8, but what remains unclear from this study is how much of this masculinity is brought into the job by the officer and how much of it develops as a result of the nature of the job and the organisational as well as social context within which the officer operates.

Situational theories examine the characteristics of the situation in which the use of force has taken place, concentrating on the age, race, gender, class, of the 'suspect' and the officers involved. In some cases the demeanour, status and behaviour of the suspect, seriousness of the offence, the experience level, attitudes and disposition of the officer, visibility of the encounters, numbers of officers present at the scene, characteristics of the neighbourhood where the interaction takes place, also play an important role in analysing the outcome of instances where police have used of force (Sherman 1980). Force is used "in accordance with the dictates of an intuitive grasp of situational exigencies" (Bittner 1991: 48). These theories deal with the issue of who is more likely to be at the receiving end of police violence (minorities and people of lower class and status), under which conditions violence is more likely to be used (the nature of the encounter and the presence or otherwise of witnesses). Terrill & Mastroski's

(2002) research found that situational aspects of the police-citizen encounter along with other factors such as *who* the citizen is, and the officer's background characteristics influence police behaviour. Officers with higher education and or more experience were less likely to employ violence. However, poor, non-white, young males were treated more harshly, despite their demeanour during the encounter.

Many studies involving empirical research on deadly force concentrate either on the 'split second decision' (Geller & Karales 1981) or 'exit' decisions (Bayley 1986) made by police officers, analysing the entire nature of the police-citizen interaction in five phases (Scharf & Binder's 1983)<sup>6</sup>. Fyfe (1986) describes the 'split-second' syndrome that affects police decision making in crisis, which provides an after-the-fact justification for unnecessary police violence, and by its very nature and assumptions inhibits development of better techniques and expertise to take such decisions. The split-second syndrome is based on certain assumptions: no two police problems are alike, hence there are no general principles that can be applied to specific situations; given the stressful and time constrained nature of the problem, certain inappropriate decisions are to be expected, for which officers cannot be criticised, especially by outsiders who have no appreciation of the burdens upon officers; if the citizen intentionally or otherwise provokes a police officer, he and not the officer, should be held responsible for any resulting violence. Some of these were forms of post-facto justifications used by police officers who maintained that *encounters* were spontaneous shoot-outs and therefore some mistakes were to be expected (see Chapters 4 & 6).

Another way of looking at situational theories is by focusing on the victim, which rest on the presumption that certain individuals are more prone to be at the receiving end of police violence than others. Green and Ward (2004: 70) draw upon the work of Muir (1977) to explain that three of the four paradoxes of coercive power that frame Muir's analysis of policing revolve round the premise that "the harder it is for the police to threaten a person with some kind of non-

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<sup>6</sup> Also see Fridell & Binder (1992).

physical harm, the greater the likelihood that they will resort to physical force". Thus when confronted with the 'dispossessed' (nothing to lose), the 'detached' (who don't care about what they have to lose) and the 'irrational' (those who don't understand the threats they face) the police do not have to invoke violence, but they often do. Thus the paradox of dispossession means that the police believe that for people described as 'police property' (Lee 1981) 'persons of marginal status or credibility' (Skolnick & Fyfe 1993), 'marginais' in Brazil who are both socially marginal and outlaws (Chevigny 1996), violence is the only language they are said to understand. The fact that they are disempowered and lack the credibility or the 'political' clout to mobilise the media or petition the courts and challenge police actions, makes them more vulnerable to police violence (Chambliss 1994, Kappeler et al 1998). Officers' detachment and cynicism towards van Maanen's (1985) 'assholes' or Choongh's (1997) 'local dross' means that such individuals are perceived as beneath contempt where complaints made by them are not a cause for concern, thus making them the subject of greater violence than necessary. The paradox of irrationality means that not only are the police more likely to use force against those who resist their authority due to drugs, alcohol or mental illness, but also use of excess force or fatal shootings can be attributed to a temporary loss of control, adrenalin, heightened emotions or a 'combat high' (Chan 2000, Warren & James 2000, Hunt 1985).

In Mumbai, the 'victims' of police *encounters* were rarely top ranking bosses of organised criminal gangs, but tended to be mainly disempowered small ranking operators in the hierarchy, whose families rarely had the economic or political clout to question police actions. Such 'victims' were therefore, legitimate 'police property'.

Green and Ward (2004) suggest that another reason why police officers tend to use more force than is necessary for restraint or self defence is Muir's fourth 'paradox of face', where *the nastier one's reputation, the less nasty one has to be* (Muir 1977: 41). Defiance of police authority, especially in the presence of onlookers, provokes punishment, sometimes despite the threat of complaints (Chevigny 1995, Friedrich 1980). This contest over 'face' is presented in the

literature as not just a masculine phenomenon but as Hunt (1985) and Westmarland (2002) found, even women officers had to deal with it. In Mumbai, 'encounter specialists' thrived on cultivating a reputation for ruthless employment of deadly force in order to consolidate their self-image (see Chapter 6).

On the whole, situational theories are of limited value to my research, apart from being part of the justification put forward by some officers to explain use of force decisions. I do not explore the situational nature of the citizen-police *encounter*, especially as *encounters* took place, usually shrouded in secrecy, in circumstances where it was either not possible or not feasible to observe them, and also because they appeared to be pre-planned and pre-determined operations rather than the spontaneous result situational determinants.

### **1.8.2 Organisational and Subcultural Theories**

These theories are grounded in the explanation that the police, like other organisations, have their own subculture, which on the one hand can create a 'violent' officer, and on the other protect the officer's actions from external censure. Several police scholars have identified key cultural characteristics – mission, action, cynicism, suspicion, machismo, isolation, solidarity, loyalty, pragmatism, and conservatism (summarised in Waddington 1999a, Reiner 2000a). These characteristics are core elements of the central police culture, caused by the structural features of police work such as authority, danger, pressure for results, which gives rise to a certain 'working personality' (Skolnick 1966). It is the nature of the organisation and the emphasis on factors such as loyalty and secrecy that protects officers who are violence prone. 'Closing ranks' or erecting a 'blue wall of silence' are techniques by which the organisation protects its officers from being under scrutiny or being prosecuted or punished by outside investigating agencies. It can also be argued that certain police organisations appear to have either an overt or tacit policy, or have specialist units that support the use of force by police officers in certain situations, which would ordinarily be disallowed. Chevigny's (1995) study on use of deadly force by the police in parts of the USA, Brazil and Argentina is an illustrative example.

Chan (1997) suggests officers use a body of 'organisational knowledge', identifying four types, to help carry out their day-to-day activities. 'Dictionary knowledge', (schemas to rapidly classify people and situations), 'directory knowledge' (how such people and events are normally dealt with), 'recipe knowledge' (combining informal moral code of the police and pragmatic recommendations and strategies to stay out of trouble), and 'axiomatic knowledge' (operative goals and values of the organisation, which may differ for the senior and rank-and-file officers) are part of the occupational subculture. These 'simplified summaries of information about the social world' termed 'typifications'<sup>7</sup> by Holdaway (1996) can often harden into stereotypes. The fact that the police act on the basis of such knowledge is not unique to any particular organisation, but is part of a universal cop culture (Skolnick & Fyfe 1993, Waddington 1999b, Reiner 2000a). There may be such common themes in police culture in liberal democracies, but they vary in intensity and analyses have also found many intra- and inter-organisational and situational differences (Bowling & Foster 2002, Reiner 2000a, Waddington 1999a, Chan 1996). However, officers can choose for themselves how they resist or adapt to the culture up to a point. Like all actors, police have a degree of autonomy but act in structured situations and with particular predispositions (Chan 1996). Norms of the 'canteen culture' are not necessarily translated into operational practice (Waddington 1999b) but permit the use of force by providing techniques of neutralization to explain their conduct (Kappeller et al 1998), and the emphasis on solidarity and silence ensures that officers feel obliged to cover up and protect colleagues whose conduct they may otherwise disapprove of (see Worden 1996, Punch 1979, Holdaway 1983). The 'operational code' (Reisman 1979) that evolves in the police organisation enables officers to resolve dilemmas of this sort by constructing and reconstructing their daily reality with 'guile, craft and craftiness' (Punch 1985).

A systematic understanding of the organisation's operating code - a powerful normative order embodied in an "unwritten set of rules and procedures that prescribe what can or must be done and which are enforced by informal peer

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<sup>7</sup> A concept originally put forward by Sudnow (1965) to describe typical features of 'normal crimes', which provide some form of 'proverbial characterization' for the police.

sanctions and control” and how it subverts organisational goals and sanctions (Reiss 1977: Foreword) would be essential in understanding how it operates amidst the prevailing political culture to encourage deviant practices such as *encounters*. Police subculture, while not universal and monolithic (Reiner 2000a), was nevertheless ubiquitous in that “core elements of police talk remain recognizably the same” across jurisdictions (Waddington 1999a: 111). Countries that are socially, politically and culturally diverse, share significant features of the subculture for “what unites officers across so many jurisdictions is the experience of wielding coercive authority over fellow citizens and that...entails taking actions that would otherwise be considered exceptional, exceptionable or illegal” (Waddington 1999a: 112). My research indicates the presence of such a subculture in Mumbai, which to some extent not only valued police use of deadly force as a solution to the crime problem, but also the organisational ethos protected officers involved in *encounters*.

### **1.8.3 Sociological and Structural Theories**

Sociological theories aim to develop understanding of the problem of police violence beyond the micro processes of individual action and organisational culture that are limited to the question: ‘Why do the police do it?’ These theorists aim to answer the question ‘why are they allowed to do it?’ by referring to a broader socio-historical framework.

Box (1983) suggests that acts of violence or brutality cannot be carried out in isolation by officers, but by their very nature can be carried out (and concealed) with the active or passive support of peers and superiors. Also when officers’ acts of violence are seen as ‘defending society against bad elements’, it provides immunity from prosecution, or a ‘not guilty’ verdict in many cases. Box (1983: 85) goes on to say that a break-up of the victims’ social characteristics revealed that “the ‘target’ population is not random, but it is drawn from the economically marginalized, politically radical, and ethnically oppressed”. Thus, police violence according to Box (1983) tends to increase in proportion to the elite’s fear of disorder, and the more fearful the elite, the more likely they are to tolerate illegal violence against potentially dangerous groups. Thus societies with extremely unequal social structures, such as those in some Latin American

countries, the fate of the socially marginal (children, homeless people) is regarded with indifference by the state and the middle class public alike (Chevigny 1995, Green & Ward 2004). Even in strong democracies like the UK, Scraton (1987) and Jefferson (1990) found that dehumanisation and demonisation of dissident and marginal groups seeks to construct an 'authoritarian consensus' among the 'respectable majority', which allows them and the government to authorise or condone certain coercive measures.

Another social trend in some western democracies has been the growth of paramilitary policing to control social disorders. The demand for and the subsequent creation of specialist elite units, whose training and culture "heightens the very features of the police culture that are most conducive to violence: the perception of danger, fear of outsiders, isolation, secrecy, intense group loyalty and pleasure in 'warrior fantasies'" (Green and Ward 2004: 80, citing Jefferson 1990, Kraska & Kappeller 1997, McCulloch 2001). The increased threat of terrorism globally has meant that this trend has intensified. Historically it has been demonstrated that measures originally justified on the basis of countering terrorism are quickly absorbed and translated into everyday policing (Green & Ward 2004).

On the other hand, weak democracies (like Brazil, Argentina and Jamaica) are states that do not have an effective monopoly of violence. In such states corruption, combined with the public fear of high levels of crime resulting from desperate poverty and impatience with the criminal justice system "makes an explosive brew of state power and vigilantism". This results in police often acting like vigilantes themselves, using "violence, including deadly force against the merest petty criminals and those who are poorest in an effort to intimidate and deter crime and thus to create a semblance of order" (Chevigny 1995: 143). Skolnick & Fyfe (1993) also trace the source of police brutality in the United States to the American vigilante tradition. Bowden (1978) strikes at the heart of the matter when he suggests that "what might appear on the surface to be *spontaneous* acts of police vigilantism are often in effect managed, supervised, or condoned by governments for their ulterior political motives" (1978: 94). Bowden feels that the promise of a rapid return to equilibrium as the attractive

outcome of instant justice enables policemen to bypass the legal restraints upon them and rationalize the act of dispensing justice to “those whose guilt the police are sure of” as upholding the law (1978: 94).

Chevigny (1995) found in his study of police use of deadly force in the Americas that the police were aware of the illegitimacy of their actions and the international norms that bar it except as a last resort. The authorities invariably claimed all shootings were justified on the basis of self-defence or at least the suspect possessing a deadly weapon.

Mars’ (2002: 174) research on police violence in Guyana found that “the enduring influence of colonial rule remained a cogent factor in terms of understanding what appears to be a police occupational subculture of violence”. As a quasi-military arm of the state, the police force was encouraged and rewarded for the use of violence to quash internal disturbances. Even after independence in Guyana, the culture of violence was strengthened and legitimised by the state to further its political tyranny, preventing the development of the police as a public service. Brogden (1987) found that a colonial style of policing can be employed in cases of internal colonialism, implying that policing of particular ethnic or national minority groups within a society are subjected to policies similar to colonial exploitation and subjugation. Thus, minorities often experience harassment, intimidation, oppression and brute force, a situation that could be said to have arisen in the Deep South in the US, in Catholic ghettos in Northern Ireland, and in Britain’s inner cities (Brewer 1994). In India, Dhillon (2005: 45) suggests that post-colonial policing is different from the colonial version only ‘in design not in character’ (see Chapters 3 & 8).

### **1.9 Use of Force - A Moral Dilemma**

Another way of approaching the problem of understanding use of force decisions is by viewing it as a ‘classic police dilemma’- the ‘Dirty Harry Problem’ (Klockars 1991). The Dirty Harry problem originates from the film *Dirty Harry* (1971) where Inspector Harry ‘Dirty Harry’ Callahan is placed in a series of situations where he has to make decisions about whether ‘bad’ means can be justifiably used to achieve ‘good’ ends. The troublesome aspect of this problem



is not “whether under some utilitarian calculus a right choice can be made, but that the choice must always be made between at least two wrongs and in choosing either the policeman inevitably taints or tarnishes himself” (Klockars 1991: 415). Thus by choosing either to act or not act, the police officer is guilty of wrongdoing.

Policing involves situations where the use of force is legitimate and necessary, not only in the eyes of the police officer employing it, but approved of by the on looking public: legitimate means employed to achieve approved goals. However, there are other situations that call for the use of dirty means, including the use of force as a last resort in order to achieve a good end. A genuine moral dilemma results - genuine because it “is a situation from which one cannot emerge innocent, no matter what one does- employ a dirty means, employ an insufficiently dirty means, or walk away” (Klockars 1991: 413). Such a moral dilemma is a familiar and recurring one to police officers the world over, and the danger, according to Klockars (1991) lies not in being wrong (that will be the inevitable result), but in deluding oneself that one has found a way to escape an inescapable dilemma. The consequences for police officers could be: loss of sense of moral proportion, failing to care, turning cynical, or allowing their passions to lead them to employ force indiscriminately, crudely, or too readily.

If we say that the police in Mumbai were facing what they perceived to be a Dirty Harry problem, then what is actually implied is: given the perceived limitations of the criminal justice system in Mumbai and the wide-spread perception that organised crime groups were operating rampantly, the police were left with the choice of either taking drastic measures like *encounters*, or making ineffectual stabs at processing criminals through the criminal justice system. The latter would not impact on crime figures, and be widely seen as not addressing the crime situation at all. Whether their chosen method of adopting *encounters* as a dirty means has left them tainted or tarnished remains to be assessed. The problem of ‘means versus ends’ is the same in Mumbai as that described in the classic version of the dilemma, only the nature and scale of urgency is different. In Mumbai, officers’ decision to shoot did not appear to be

based on the need for immediate information to save other lives, but was done presumably in order to prevent potential loss of life in the future.

Another difficult aspect of the Dirty Harry problem is whether the 'dirty means' in fact work, and in what sense. In Mumbai, at least in the perception of the police, a majority of the 'claimsmakers' interviewed, and public opinion as gauged from media reports, *encounters* appear to have 'worked', in that the experience of fear of organised crime groups in the city apparently reduced. However, the danger of 'dirty means' becoming an end in themselves - a source of instant retributive justice to punish guilty people - is very real and cannot be discounted as not having occurred in Mumbai. Klockars (1991) comments that the occurrence of such a situation would eliminate the moral dilemma because it would no longer remain a question of bad means justifying good ends. However, if there were no public consensus that instant retribution as an end was good in itself, populist overtones to the debate would ensure that the moral dilemma did not disappear quite so conveniently.

The other dimensions that make the Dirty Harry problem more seductive, i.e.: that *only* dirty means will work and that the ends are unquestionably and urgently good, are questionable in Mumbai. Other effective 'means' (i.e. reforms in the legal and criminal justice systems) have not been explored fully to test their efficacy. Besides, the 'end' of controlling organised crime at the expense of violating a person's basic human right to life is debatable.

Skolnick's (1966) policeman as craftsman, who sees himself as a master of his trade, tries to solve the dilemma by denying the dirtiness of its means, justifying its use for achieving good means. This worrisome aspect of Skolnick's craftsman (Klockars 1991: 422) was what appeared to have been adopted by the police officers in Mumbai. The only way to put an end to the moral problem is by punishing officers who adopt dirty means regardless of the ends they aim to achieve. However, even while putting forward this solution, Klockars admits that insisting that policemen should be punished for having employed dirty means, which appears to be the only way to discourage inappropriate behaviour, creates

a Dirty Harry problem for ourselves and for those we urge to effect such punishments (1991: 422).

According to Miller & Blackler (2005), police use of deadly force in the USA may be morally justified under three conditions: self-defence; in defence of others; and to uphold the law (in cases of the fleeing felon or the armed suspect). However, they feel that while police use of deadly force to ensure that the law against serious crime is upheld may be morally justified in American society, it is problematic because the issue of which crimes are sufficiently serious to warrant police use of deadly force if the law is to be upheld has to be decided. Besides, it places a great deal of responsibility, not to speak of the opportunity for abuse, on individual members of the police to dispense punishment of death - a sort of justice without a trial. For these reasons Miller & Blackler (2005) feel that 'upholding the law' has neither moral nor legal justification for use of deadly force. Although the US Supreme Court decided in 1985 that shooting a fleeing felon who posed no immediate danger was unconstitutional (Chevigny 1995), it appears as if the moral justification for the same has led to the police perhaps continuing the practice, only now disguising or presenting it as self-defence.

### **1.10 Synthesis**

While the literature outlined above goes some way towards explaining police violence, most explanations provide a partial picture of why police violence exists and is tolerated in any society. It is difficult to separate the personality traits of individual officers from the situational and organisational influences that contribute towards creating 'dispositions' to act in certain characteristic ways in similar situations (Toch 1986). Just as it is difficult to separate out the impact of situational or sociological factors on the organisational subculture, it is also difficult to distinguish between factors that motivate behaviour, and those that are permissive and promote such behaviour, as well as help in justifying or rationalising it. Therefore a theory that combines all three approaches to explain police violence would be welcome for being more well-rounded and complete.

Chan's exposition of Bourdieu's theory of *field* and *habitus* (1996, 1997), drawing on Skolnick's (1975) work and building on the 'fully social' theory of

deviance (Taylor, Walton & Young 1973), provides a reformulated explanation for police violence. Chan (1996: 115) borrows Bourdieu's concept of *habitus*, "a set of 'dispositions' which integrate past experience and enable individuals to cope with a diversity of unforeseen situations" (citing Wacquant 1992:18). It is the 'feel for the game' (Bourdieu 1990:11) that enables social actors to act *as if* they were calculating rationally, even when lack of time, information etc make rational calculation impossible, as they typically do in police decisions to use force (Manning 1997). The context within which officers act as if they were calculating rationally constitute what Chan, following Bourdieu, calls the *field* of policing: the structure of social relations within which officers struggle to exercise power and authority, stay out of trouble with their superiors, and remain on good terms with their peers. The *field* includes "historical relations between certain social groups and the police, anchored in the legal powers and discretion the police are authorised to exercise and the distribution of power and material resources within the community" (Chan 1996: 115).

Chan (2000) describes police occupational culture as a 'penal culture' (Garland 1991) that constructs and supports a notion of justice that legitimates violence as a form of punishment. Garland (2001: 163) discusses the culture of control of 'high crime' societies (mainly the UK and the USA) and the 'crime complex' - a "distinctive cluster of attitudes, beliefs and assumptions" which produces a series of psychological and social effects that influence politics and policy. In such 'high crime' societies people exhibit high levels of fear and anxiety about crime and their irritation, frustration, and aggravation and the criminal justice's inability to deal with criminals appropriately prompts the demand for action and for greater punitiveness. Garland accepts that the instrumental and expressive nature of these punitive strategies differ according to national, historical, and cultural differences (also Sutherland 1939). Thus, allowing us to extend his explanation to account for the populist and politicized 'approval' accorded to *encounters* as punitive sanctions against hardened 'criminals' in Mumbai. However, Melossi (2004) argues that the cultural embeddedness of the discourse on penalty is confirmed by his analysis in the Italian (Catholicism) and North American (Protestant ethic) cultures, but in a way that appears different from any

cultural determinism, making this a more complicated argument than would appear at first glance.

Chan (2000: 105) suggests, “the three social dimensions - position (*field*), disposition (*habitus*) and interaction - combine to provide an explanatory framework for understanding police violence”. Adapting her approach, I suggest that police violence arises out of a combination of factors: at the conjunction between the point of interaction (situational factors), the police officer’s dispositions (a combination of personal traits and attitudes cultivated within the police subculture) and the context (structural, political and historical factors) within which they operate. This thesis is primarily an empirical analysis of the habitus of police violence in Mumbai, though it also considers the field that made this possible.

### **1.11 Summary**

In this chapter I have described the theoretical background to the study of police use of deadly force. Having reviewed the policing literature in India and its deficiencies in adequately addressing issues of police use of force, of deadly force, related issues of police brutality and police violence as a state crime, I discussed policing literature from other countries, especially the USA, UK, Australia and Canada. A review of research on police use of deadly force revealed three major approaches to explain police violence: individual and situational theories; organisational and subcultural theories; and sociological and structural theories. I explore the nature of police violence as a moral dilemma of the ends and means variety. I then argue that Chan’s (1996, 1997) use of *field* and *habitus* would help address the question of why police violence occurs.

In the next chapter I discuss the methods and methodological issues involved in my research.

## 2 CHAPTER 2: METHODS

### 2.1 Introduction

My research began in 2001, the year in which police *encounters* peaked in Mumbai, and police use of deadly force was in the forefront of media reports. Although *encounters* were not a new phenomenon in Mumbai, there was no deep examination into the issues involved in either police or public circles. Their existence appeared to be socially accepted and there was little or no impetus to explore their dynamics or impact. This research is an attempt to do just that, drawing on the accounts of some of the actors involved in *encounters*, those bystanders to them and those who influenced the social processes that contributed to making *encounters* both acceptable and desirable.

In this chapter I discuss the methods I used and the methodological issues involved in the research. I begin by reflecting on my own motivations and interest in the police use of deadly force and how I came to be involved in this research, and touch upon the various methodological and ethical dilemmas that arose as a result of researching an organisation like the police from the inside (i.e. as a serving officer). I then discuss the qualitative nature of the research, focusing on the process of conducting interviews with police officers and other 'claimsmakers' in Mumbai. I also discuss how the field data gathered were analysed and the theoretical underpinnings of the thesis. The concluding section of the chapter outlines ethical issues involved in the research process.

### 2.2 Reflexive Ruminations

At the outset, it is essential to discuss why I chose to study *encounters* and indeed why I chose to pursue an academic path in the first place. The reasons are embedded in my experiences as a police officer in the North Indian state of Uttar Pradesh. The state police were notorious for '*encounters*' of 'dreaded' dacoits and bandits, who had plagued the populace in the late 70's and 80's. At the time of the research, the Uttar Pradesh police held the dubious distinction of having

conducted the highest number of 'fake' *encounters* in the country in 2001<sup>8</sup>. At the National Police Academy and in the first few years of service the implicit values in the organisation stressed on machismo; hailing officers who had been involved in *encounters* as heroes or 'real officers', worth emulating<sup>9</sup>. Having faced the realities of the field, the inadequacies of Criminal Justice System, the lack of scientific training and infrastructure made available to the police, and the sheer volume of crime- I gradually came to believe that *encounters* were a legitimate way of eliminating hardened criminals suspected of having committed gruesome crimes.

However having observed in close proximity what actually went on behind the scenes in *encounters*, made me rethink my attitude towards them and their place in policing policy. I wondered whether other officers were also troubled by similar moral dilemmas. I felt certain that I, like many of my colleagues, had unconsciously and unthinkingly accepted the values that were upheld by the police culture and had moulded my attitude and work ethics around them. Given the cool response I received from the most senior officer in the state I was working in when I went to inform him of my decision to do a PhD here, he said 'Why do you want Study Leave? Don't you want to work? You should be out there, working, getting some more experience'- a refrain echoed by other senior officers, and an experience shared by other police officer researchers (Young 1991: 32). This response only strengthened my conviction that the best way forward to finding some solutions to the numerous problems facing the police was through research and reflection. *Encounters*, I was convinced, required deeper understanding and it was evident that there were some very strong forces at work- if they could turn an ordinary, middle class, idealistic, liberal individual (as I would like to think of myself) into condoning and even encouraging

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<sup>8</sup> National Human Rights Commission's annual Report for 2000-2001, indicates that "for several years Uttar Pradesh has outstripped every other state in the numbers of custodial deaths and extra-judicial executions with a total of 940 reported cases so far. During 2000-2001, the state topped the list of fake encounter deaths with 68 out of a 109 reported to the NHRC across the country" (Voice of the Asia-Pacific Human Rights network: [www.hrdc.net/shrdc/hrfeatures/HRF82.htm](http://www.hrdc.net/shrdc/hrfeatures/HRF82.htm))

<sup>9</sup> Studies by Van Maanen (1973), Hunt (1985) and Harris (1978) found that a similar process of 'indoctrination' of new police recruits into the 'masculine ethic' and the regaling of war stories featuring violence by instructors is a feature of police training in the US.

*encounters* as an acceptable means of dealing with fellow citizens. Standing back a little from the world of day-to-day policing, I was a little shocked at my unquestioning acceptance of the ‘herd mentality’- one which had serious life-and-death consequences and compelled me to want to understand the dynamics of *encounters* at various levels- individual, organisational and society-wide. I felt that broadening my understanding of how other officers perceived the situation and dealt with it would prove to be a fruitful starting point.

As a serving officer, I felt the need to seek a ‘deep understanding’ of the topic by speaking to other officers, in order to explore or check my understandings and whether they were shared by other members or participants; “to check, stimulate, or inspire” my own self-reflections and to “go beyond commonsense explanations”; in order to “grasp and articulate the multiple views of, perspectives on, and meanings of some activity, event, place or cultural object” (Johnson 2002: 106). In order to do so a qualitative approach to the topic seemed most relevant for the research. The focus of this research was on officers’ perceptions and accounts of *encounters*, ways in which they explained, excused, or justified their conduct, official and personal discourses through which they reconciled the arbitrary use of deadly force with their moral conscience and professional ethics. Only a qualitative account could reveal the richness and depth of the police and public discourse and how it contributed to making *encounters* a socially acceptable phenomenon.

Having such a strong personal and emotional motive for undertaking this research proved to be a great incentive to do the research itself, but at the same time created the potential for a flawed study. I needed to guard against what Lawrence (2000: 4-5) calls ‘selective observation’ and ‘premature closure’ during the course of conducting the interviews. I had to beware that I did not selectively focus on material that suited my hypothesis or shy away from exploring complex opinions and attitudes in greater depth. In order for the research to be credible, I had to adopt a stance of ‘empathic neutrality’ with a “commitment to understand the world as it unfolds, be true to complexities and multiple perspectives as they emerge, and be balanced in reporting both confirmatory and disconfirming evidence with regard to any conclusions



offered”, as well as be careful of avoiding “selective perception, personal biases, and theoretical predispositions” (Patton, 2002: 51). This was not particularly easy and the most difficult aspect of the research was writing about a world that I knew very well and took for granted but was probably very different from the experience of the audience it was intended for.

I had to think about the ‘interviewer effect’, and resolve issues around what Schwalbe & Wolkomir (2002:206) call ‘interview as threat’ situation, that is, *baseline threat* posed by the interview situation (giving up control) and *surplus threat* that arises because of who is asking whom about what. In my research, I, the researcher, was a senior ranking woman police officer and my interviewees were police officers of various ranks (subordinate, colleagues and senior ranks), as well as ‘claimsmakers’ who varied in the status and power they enjoyed in society. Thus each interview was unique in the personal dynamics and power relations that set its parameters. It was important to have the “awareness of the threat potential, alertness for problems arising because of the threat, and ability to respond in a way that makes the interview successful” (Schwalbe & Wolkomir 2002: 206). Apart from being aware that “gender filters knowledge; that is, the sex of the interviewer and that of the respondent do make a difference, as the interview takes place within the cultural boundaries of a paternalistic social system in which masculine identities are differentiated from feminine ones” (Fontana & Frey 2000: 658), I also had to be aware of the impact my being an Indian Police Service officer had on the respondents - police officers and others. I needed to be aware that this might constitute a barrier when I interviewed them (see Johnson 2002: 107). There was always a danger that respondents would tailor their responses to what they thought would suit my purpose. In practice, I had to face and negotiate around these issues that arose by basically trying to set the tone of the interview, especially with police officers such that it did not become one of interrogation, where the interviewees felt the need to be defensive about their actions but one of friendly discussion on difficult issues that people generally avoided introspecting upon. Most officers were flattered on being asked their opinion on a variety of issues and did not hesitate to speak out. However, there were a few officers who remained on guard, preferring not to have an open discussion. How these different responses informed my research is

discussed in Chapter 3. The 'claimsmakers' too felt flattered that their opinion was sought on important matters by such a high ranking officer, who also happened to be a woman.

### 2.3 Access

Before I went into the field I had to make a decision about how to present myself because I wanted to do overt research and was unwilling to undergo the stress involved in researching a manifestly sensitive topic covertly similar to that Holdaway (1983) discusses in his work. However, I wanted to use Punch's (1986) tactic of accepting the institution to be investigated as legitimate, with reservations, and openly seek access through the formal channels, with all the mazes and obstacles of research proposals, gatekeepers access issues, etc. While there were disadvantages of revealing my identity as an Indian Police Service officer, the option of presenting myself only as a student researcher was rejected at the outset for various reasons- primarily because it would be dishonest, unethical, and unfair to my respondents. I was also sure (and my hunch paid off, several times over) that my status as an officer would make access to organisation and to various individuals that much easier. And so it proved to be. I was given instant and unconditional access by the Commissioner (although this created its own set of ethical problems, see page 72). However, the disadvantage of this approach was the problem of not being treated as a 'naïve' researcher. There were occasions when officers said, "You know about [the issue under discussion], you are a police officer". I had to specifically counter this response with a request that they explain their viewpoint as I were a layperson. Most officers obliged, but some were more patronising.

Initial contact was made with the Commissioner's office in the form of an introductory letter explaining who I was and the purpose of the research. I was asked to meet the Commissioner the same day I contacted his office. This response was a result of professional courtesy as I had introduced myself as an Indian Police Service officer who was planning to do some research. The meeting with the Commissioner was formal, yet informal, in that it was characterised by a certain protocol and deference on my part and a kind of patronising indulgence on his. He listened to me as I described what the research

was about, glanced at the research proposal and agreed that the research could be done, no conditions or guarantees demanded. Once access was negotiated, I was asked to stay a few minutes while the regular evening meeting of senior officers present in the Headquarters was convened and he introduced me to them, requesting their full co-operation for the research. The entire organisation was to be accessible, including any statistics and information that would be required. This opened all sorts of doors for me as my work was seen to have received official sanction of the leader and there were no bureaucratic obstacles thereafter. However, once this access had been successfully negotiated, it was necessary to constantly “renegotiate access to the...individual members of the organisation” (Buchanan, Boddy & McCalman 1988: 59). Once the Commissioner had granted access, no officer refused to be interviewed, but their willingness to be open and honest during the interviews, depended heavily upon how well I was able to develop an interpersonal relationship with them. In most cases, my being a police officer provided a common ground for building these bridges. As there have been no ethnographic studies of the Mumbai police (to my knowledge), there was no evidence of suspicion towards research (either overtly or manifestly) by any of the officers, that I might be a ‘management spy’ or that the research had any hidden agenda.

It was almost as if my rank automatically established my legitimacy and credibility and I was viewed as ‘one of them’ and not as a potentially threatening outsider. The fact that the organisation and the force were virgin research territory meant that I was not asked any questions (in fact no one even read my research synopsis). I will never know what was being held back in the interviews, however, my opening remarks in interviews about confidentiality and anonymity were waved aside and most people seemed to take it for granted that since I was one of them, I would ensure that no embarrassing disclosures would affect them personally. This put me in a morally ambiguous position- while on the one hand it was enriching for the research to have frank opinions and perceptions revealed - but on the other, not having given any concrete undertaking about how the research material would be used made me feel even more obliged to treat the material with care. Throughout the research I have struggled with finding the right balance between revealing enough to make the

research unique and illuminating, yet at the same time being protective of the force's reputation and disclosing the involvement of officers in potentially illegal actions. Some of the officers interviewed were well known and it has been difficult to disguise their identity sufficiently, but I have done what I can to anonymize names, places and references to particular incidents.

I faced some of the classic problems of researching an institution - problems of negotiating proximity and distance from the interviewee; disclosure, transparency and negotiation of mutual expectations, aims, and interests (Flick 2002: 59); and in particular problems associated with researching the police as an organisation. My position as a researcher was what Reiner (2000b: 221) using Brown's (1996) original categorisation, calls the 'outside insider', but unlike his conceptualisation of this category, I was not an ex-officer researching his or her force, but was a serving officer, researching another force, through a foreign university. Jones (1980: 168) describes five problems of being an 'inside' researcher and serving police officer, i.e., difficulty in maintaining distance and objectivity from the organisational subculture, status problems within the organisation; resisting moral pressures to maintain the internal code of secrecy; avoiding threat to access during the research to sensitive material; and finally managing legislative controls placed on disclosing organisational information. Holdaway (1983) and Young (1991) suggested the main issues with being an inside researcher were around exposing the processes behind the 'secrecy' that shrouds police work and the apprehension of causing damage to people who had co-operated during the research if the findings were made public. These insider officer-turned-researchers had to contend with red-tape and restrictions on the publication of their work and Young (1991:33) cites other officers' experiences of facing the prospect of leaving the service in order to have their research published. The All India Service Rules place restrictions on the sort of material a serving police officer may publish, but places works of art or academic interest outside its purview. As an 'insider' I had my experience and knowledge of the culture to give me deeper insight into the topic, on the other hand, I was worried about accusations of whistle blowing, and betraying my fellow officers by discussing information revealed by them on the assumption that I would always protect them and the organisation. Ethical issues about which type of information

could be revealed and which were better left uncovered had to be resolved on a case-by-case basis<sup>10</sup>. Though I have made every effort to protect individuals, the fact that there have been abuses of deadly force by the police is something that cannot be brushed out of sight.

The other major issue that I struggled with during the field work and subsequently while analysing the interviews, has been detaching myself emotionally from the 'lot' of the police and guarding against the seductive pull of agreeing with some of the more contentious viewpoints of a majority of the officers as I shared many of their cultural assumptions. Having experienced the all-pervading frustrations and pressures of delivering results in a demanding socio-political milieu, it was only too easy to get carried away and lose any kind of objectivity in the face of some of the more 'legitimate' arguments', made by the officers about the acceptability of *encounters*.. These were arguments I had previously unthinkingly considered and accepted as legitimate – mainly in terms of the 'ends justify means' variety.

## 2.4 Interviews

The interviews were conducted against a background of 'contextualism' (Bryman, 1988), that is, the attempt was made to understand events and people's perspectives as they are situated in the wider social and historical context. Qualitative in-depth interviews seemed the obvious choice as the main aim of the research was "to derive interpretations, not facts or laws, from respondent talks"; and also "establishing common patterns and themes between particular types of respondents" (Warren, 2002: 84-85). Through the interviews, I was mainly interested in understanding how actors perceived the situation and constructed accounts about the issues around *encounters*; and not primarily in ascertaining facts or veracity of the opinions espoused.

The field research was divided into two sections: interviews with police officers conducted during the summer of 2002 and interviews with a group of people I

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<sup>10</sup> Reiner (2000b: 223) reveals his dilemma when in possession of politically sensitive information divulged to him during his work with Chief Constables and admits that "the likely sacrifice of the research, and the career of the chief constable who had confided in me (not to speak of my own) was too high a price to pay for the act of whistle blowing".

call 'claimsmakers' conducted over the summer of 2003. The interviews were semi-structured and open ended (See Appendices 1 and 2), generally ranging between 45 minutes to two hours. While the interview questions were used to structure the interview, in most cases the order of the questions was reshuffled, some additional questions were asked in some interviews and some questions were dropped in others. More often than not, the flow of the conversation guided the interview process as I was not keen to appear too intrusive and wanted to engender as much naturalness in the discussion of what were very sensitive and private issues, especially for police officers and public officials.

#### **2.4.1 Police Officers**

In-depth interviews were carried out with thirty-eight police officers (33 men and 5 women) from the Mumbai Police. These included 4 Senior Management (including the Commissioner and Joint Commissioners of Police); 8 Upper Middle Management (Additional and Deputy Commissioners of Police); 5 Lower Middle Management (Assistant Commissioners of Police); 10 Inspectors ; and 11 Sub-Inspectors.

10 Upper Middle Management (UMM) and all Senior Management (SM) belonged to the Indian Police Service, 2 officers (one each from the Upper Middle Management (UMM) and Lower Middle Management (LMM) levels) belonged to the Maharashtra State Police Service, and the others were recruited as Constables or Sub-Inspectors (SI) and had risen to their present ranks through promotion. The 5 women officers interviewed were mainly from the ranks of Sub Inspector, Inspector and Deputy Commissioner of Police.

The police interviews were geared towards understanding how they perceived their own particular place and role within the hierarchy; and how they felt the outside 'world' perceived it. Interviews included the following themes-

- What was understood by the term '*encounter*' and how was it defined?
- What were the general and personal justifications the police put forward to explain the use (or abuse) of deadly force?
- Perception of societal reaction (i.e. media, pressure groups, political actors) to '*encounters*'.

- Perceptions of government attitudes towards police use of deadly force.
- Perceptions of rules, regulations, and review mechanisms that governed the use of deadly force – whether these were fair and adequate or otherwise.
- Did they personally resolve the dialectical values of ‘professionalism’ (what they think as doing their job efficiently and effectively) and the protection of individual rights with the use of deadly force?

The initial and subsequent response I received from all officers was overwhelmingly positive. Useful as this was, I continually reflected on “ethical concerns over ‘consent’ to participating in a research study, (and)... how far those ‘volunteered’ by such gatekeepers can resist participation” (Miller & Bell, 2002:67). Access had to be negotiated with individual officers by explaining the purpose and aims of the research. A few appeared wary (body language and nature of responses) and questioned the purpose of my research, how and where it was to be submitted, who would have access to it etc. With the exception of one senior officer who avoided rather than outright refused being interviewed, every officer agreed to be part of the research. The interviews were conducted in their offices and police stations and though this meant there were some interruptions during the course of the interviews, most officers tried to reduce these to a minimum.

I also had to overcome formalities and barriers that are a natural outcome of the hierarchical nature of the police organisation - I spoke to officers of different ranks and this raised a number of issues about how they and I would respond to the interview situation. I made a conscious effort to create, a “relationship between two people where both parties behave as though they are of equal status for its duration, whether or not this is actually so” (Benney & Hughes 1984: 221).

#### **2.4.2 ‘Claimsmakers’**

18 in-depth interviews (14 men and 4 women) were conducted with a group of persons I call ‘claimsmakers’. Best (1991) calls promoters, activists, professional experts and spokespersons involved in forwarding specific claims about a

phenomenon ‘claimsmakers’, who do more than “draw attention to particular social conditions, they shape our sense of what the problem is” (Surette 1998). I have used the term because people interviewed ought to be critics, or ‘social conscience keepers’ on the issue (of *encounters*) and could potentially influence policy (‘policing policy shapers’). My sample included 4 journalists (representing the English broadsheets, Marathi broadsheets and the tabloid press) 3 retired judges of the Mumbai High Court and the Supreme Court of India, 2 lawyers (a public prosecutor and one representing the ‘encountered victim’), 2 political leaders (from the Ruling Party and the Opposition), 2 representatives of Industrial Associations, 3 Human Rights activists (representing Non Governmental Organisations), 1 Criminologist, and 1 Academic who was a member of the State Human Rights Commission. This group can be called ‘claimsmakers’ because the individuals interviewed had in some forum or other been part of the public discourse on police *encounters*.

These interviews were conducted as a sample of the formal articulation of public opinion on police *encounters*. I recognize that this sample is not representative of the general public, in fact they may be quite the opposite as they represent the opinions of ‘elite’ groups also called the ‘chattering classes’ or the ‘intelligentsia’ in India. Most of the ‘claimsmakers’ I interviewed were significant players in the political and social life in Mumbai and could be said to create, influence, as well as reflect the general public’s opinion. While I am aware that like any qualitative research it is difficult to make an authoritative generalised statement about what the public in Mumbai think about *encounters*, the interviews certainly gave a flavour of and in some cases, reaffirmed opinions that I had heard expressed in ordinary everyday conversations with friends, neighbours, shopkeepers, domestic help, doctors, taxi drivers etc. My interactions with citizens were also an informal way of triangulating and validating the interview data of this group.

Interview questions with influential opinion makers followed the pattern of the police interviews, including themes such as-

- How did individuals perceive the issues around *encounters*?
- How did they explain the occurrence of *encounters* ?



- What did they think were the public and political reactions to *encounters*?
- What did they think of the police force's image and performance?
- How and where did Human Rights (specifically the Right to Life) fit in within the discourse on *encounters*?

## 2.5 Sample Selection

The sample of police interviewees was selected using **quota** (various ranks), **purposeful** (those who had some experience of *encounters*) and **snowball** (being referred on to meet other officers who were considered 'experts' on some of the issues being researched) sampling (see for e.g. Lawrence 2000, Patton 2002, Warren 2002). Of the nine zones in the city (see Chapter 3), four were selected randomly and interviews were carried out with officers of different ranks, along with officers from the Crime Branch; added to these were senior officers in the Commissioner's office, as well as senior officers who had in previous capacities, been closely associated with police encounters.

Snowball sampling was used to contact most of the interviews with 'claimsmakers' interviewed. I started out with one contact (who was not an interviewee) and was directed on to others, and from then on other contacts flowed smoothly. I had an ideal list of people I would like to include in the sample and at the end of every interview, in the general discussion about the research that ensued, I would seek the interviewer's opinion about the people I wanted to meet and inevitably most individuals would give some contacts or leads as to whom I could approach and how to go about it. Interviewing 'claimsmakers' was a fascinating and very rewarding experience (see Chapter 7) and I was pleasantly surprised at how willing people were to co-operate with the interviews. Most interviews were conducted in the residences or offices of the interviewees (the choice was theirs).

## 2.6 Taping and Transcribing

At the beginning of every interview, permission was sought to tape record the interview. Only two police officers refused, and in another the recorder malfunctioned. Some interviewees said during the interview that they would prefer that the material they were just about to disclose was not used; others

asked me to switch off the tape for a few minutes while they said something which they thought was 'unsafe'; while others would reveal quite a lot of confidential information after the interview had officially terminated and the tape recorder was switched off. Notes were made both during the interview and during the informal discussions, with the permission of the interviewee. This 'unrecorded' data was as important as that derived from the tape recordings (Warren 2002: 91-2). Bulmer (1988: 154) also talks about the possibility of more interesting material being revealed when the machine is switched off. I found this was true in some cases, when interviewees visibly relaxed once the machine was switched off and were more open to discussion. There were times when interviewees were saying something, but their facial expression or body language was sending other messages. It was therefore important to note down in these situations what I thought interviewees were trying to convey along with the actual words being used by them. For example, when I asked police officers whether they thought that other agencies co-operated with the police in their investigation of *encounter* cases, one said, "Yes, other departments co-operate", (T 8: Sub Inspector) but he rubbed his fingers to symbolise payment, indicating that when the right price is paid, other agencies co-operate with the police.

Sensitive information including direct admission of police illegalities and discussion of the processes by which these were kept hidden from the public eye were revealed during interviews. It was understandable that some officers were concerned about the evidential value of what they were saying as well as the possibility that some of the research findings might be traced back to them and feared the consequences of whistle blowing. While some interviewees appeared to be aware of and uncomfortable with the taping as they spoke, others were quite unconcerned about the fact that they were revealing some very damaging and potentially dangerous information and opinions (for them personally and for the organisation at large). Taping did have some impact on the interviews. It made some officers self-conscious and close lipped; however, it did not pose as much of a problem as I had anticipated, mainly because as police officers, they

knew that the material could not be legally used against them in a court of law<sup>11</sup> and also did not think the I would actually pose any kind of threat to them. I cannot say with complete certainty whether this was because they ‘trusted’ me and thought that as a police officer I would not harm them, or thought my work completely inconsequential - so great was their contempt for, or lack of experience and knowledge of academic research.

The interviews were mainly conducted in English, however, some officers were more comfortable speaking in Marathi, and others interspersed Hindi in their comments. I transcribed all the interview data (a rewarding though painfully time-consuming process) and translated the original words used as accurately as possible - trying to avoid the temptation to smoothen the edges, neaten and correct the grammar, and to make it sound more self assured and clear (Allred & Gillies 2002). This has sometimes resulted in slightly strange phrases and metaphors that are alien to the English language, but make perfect sense given their vernacular origin and context. I wanted to preserve their original flavour because when interviewees used such metaphors and told stories describing past events they were performing what Coffey and Atkinson call:

“particular kinds of speech acts....locating their own and others’ actions or evaluations within particular frames of reference. They may use *vocabularies of motive* [a phrase they attribute to Mills, 1940] to account for social actions. They may be using kinds of accounting devices to produce coherent and plausible constructions of their world of experience.” (1996: 84)

Deconstruction of these stories and metaphors gives a better idea of what the interviewees’ world was about and how they saw themselves located within it.

## 2.7 Analysis

This study is a qualitative exploration of how officers understand the issues surrounding the use of deadly force and how they justify its use, either to themselves or to others, at an individual and organisational level. Having had some experience of these issues and having reflected on them for several years

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<sup>11</sup> Section 25, Indian Evidence Act 1872: *Confession to police officer not to be proved* - No confession made to police officer shall be proved as against a person accused of any offence. Since officers were aware that though I was interviewing them as a researcher and not as a police officer, the fact that I was a police officer meant that their statements had no evidentiary value. There are also several restrictions on the use and admissibility of tape recorded evidence.

before starting this research, I already had some hypotheses and assumptions about how officers and the organisation might feel about *encounters*. However, I did not want this to affect the way I analysed and interpreted the material and this presented me with considerable difficulty. It took a determined effort to let the theory evolve out of the interviews rather than selectively (albeit unconsciously) concentrate on those that fitted into my own preconceived framework and explanations.

Although the study is not intended to be a comparative one, the research outlined in this thesis is compared with studies on police use of deadly force in other countries, particularly the UK, the USA, Canada, Australia, Brazil, Argentina, Jamaica, Guyana and South Africa. However desirable, a systematic international comparison between the Mumbai police and any other force was not possible on methodological grounds as well as due to time and resource constraints. However, the comparative policing literature from other countries was a useful background and I refer to them to have a clearer understanding how other countries have grappled with and tried to solve the problem of police violence and the lessons drawn from their experience.

There were three main phases of the analysis: classifying the interview material into relevant codes or categories; identifying and exploring the links between interrelated categories; and, interpreting and analysing emerging links, generating explanations at a more abstract and generalised level.

The analysis was done mainly within the ‘constructivist-interpretivist paradigm’ (Denzin & Lincoln 1994: Introduction), which recognizes that social reality is constructed by social actors and in order to understand the world of meanings, one must interpret it. Thus the goal is to “understand the complex world of lived experience from the point of view of those who live it” (Schwandt 1994: 118). ‘Reality’ is socially constructed and those in power both create and can control perspectives on phenomena. “By exercising control over language, and therefore control over the very categories of reality,...those in power are served” (Patton, 2002: 99). Since the word/metaphor/euphemism *encounter* was at the heart of the phenomenon, I wanted to study the language and symbols being used in specific

and particular ways that conveyed a shared cultural meaning. Patton (2002: 98) citing Guba and Lincoln's (1988) primary assumptions of constructivism suggests that phenomena can be only understood in the context in which they are studied, and neither the problem nor solutions can be generalized across time and space. While this is true to a large extent, I also believe that there can be generalisations across contexts and countries and it would be possible to learn from the experiences of others.

To further explore these shared cultural meanings around language, '**domain analysis**' was used. This analytic strategy, according to Coffey and Atkinson (1996:90) "explore[s] the linguistic symbols or 'folk terms' used by social actors, both individually and collectively". The aim is to identify "patterns and systems of folk terms as a mechanism for understanding the cultural knowledge of a particular social group." Spradley (1979, 1980) describes a domain structure as having four characteristics- a core term or overall category title; two or more included folk terms that belong to the category; a semantic relationship that links the core term to the included terms; and a boundary or parameter, the terms of which should be defined by the native informant/social actor (Coffey & Atkinson 1996: 91). Coffey and Atkinson also suggest that Spradley's concept of the linguistic symbol having a triad of elements - the actual symbol, the referent, and the relationship between the symbol and the referent – helps in trying to explain the relationship between different labels attached to *encounters*, and how they are understood by different actors. In this case, *encounter*, is the symbol, representing police killing of criminals in self defence; the referent is the recognition of the fact that these killings are actually deliberate; and the relationship between the symbol and referent are the conditions under which a particular *encounter* would be accepted or rejected as justifiable by the one making this judgement. Thus according to Spradley's (1979, 1980) domain structure, the core term *encounter* includes three folk terms such as 'genuine' *encounters* and 'fake' *encounters* that are in common usage by the police and members of the public alike, as well as my own term 'bona fide' *encounters*. One of the aims of the research was to explore how these terms were semantically related in the perception of the police and of the public, and to determine the parameters by which the terms were defined by these social actors.

Further Coffey and Atkinson explain that, the symbols may be thought of as *organizing schemes* (Tesch 1990:139), and the analysis aims to identify the rules and relationships among the symbols. In this context a *domain* refers to a set of symbols that share meaning in some way.

Lyman and Scott (1970: 112) suggest that the construction of accounts as part of everyday talk is done by actors to explain unanticipated, untoward and unexpected behaviour - these explanations are situated accounts, dependent upon the status of the actors and the physical and social location, and are standardized within cultures and subgroups; hence, accounts can be useful in exploring the situated culture within which they are embedded. The discourses of various actors (officers and 'claimsmakers') and how they understood the issues surrounding *encounters*; their own, and the police organisation's role in the action involved; the overall responsibility society has towards the creation of this phenomenon; and the obligation to protect the Right to Life will be discussed in chapters 4, 5, 6 and 7.

An exploration of interview accounts would help get a better insight into not only how police culture engenders, but also how societal values and norms create conditions for the tolerance and acceptance of repeated occurrences of *encounters* in India. The ultimate aim of my analysis was to move from the level of distilling a 'substantive theory' (using Glaser and Strauss' (1968) distinction) accounting for the police use of deadly force in Mumbai, to linking this with the more generic 'formal theory' of the police use or abuse of force in a wider context.

The main theoretical orientation of my analysis was the **grounded theory** approach (Glaser & Strauss 1967; Bottoms 2000). This enabled me to draw my theory from the evidence I gathered in the field and it evolved through an inductive process, rather than either proving or disproving any pre-existing hypothesis that led the research process. (Creswell 1998: 241)

Reisman (1979) advocates that research into deviant behaviour should not be undertaken from a taken-for-granted worldview as this would involve implicit

judgements about the legitimacy of behaviour and would influence the types of questions asked. He feels that researchers should study deviant behaviour in a value-neutral manner because what appears deviant may actually be very rational or necessary to those being studied. Many officers in my study explained that the main reason why many police officers indulged in petty corruption was because there were many 'hidden expenses' that had to be incurred during the course of a normal working day, for example, paying the taxi fare while transporting a traffic accident victim to the hospital, paying the (paltry, but nonetheless, non reimbursed) hospital admission fee of 10 Rupees (equivalent to 13 pence) per victim, photocopying legal documents, paying for translation of these documents in many cases, funeral expenses of an unclaimed body, etc which are all technically liable to be reimbursed by the state, but due to practical difficulties, official sanction of inadequate amounts, and lack of state funds for the purpose these sums had to be paid by officers out of their own pockets. They could scarcely be expected to do so out of their own resources and thus had to recuperate their losses by other means. By assuming a taken-for-granted world view (that all police are corrupt) and supporting prevailing social norms, scientific objectivity is lost and one is liable to miss the point that the deviance may be symptomatic of a deeper social, systemic malaise that needs attention (financial mismanagement of working costs). While there could be another argument that scientific objectivity might neither be desirable nor achievable in social sciences research, it is true that by labelling police *encounters* as deviant at the outset, one may miss the fundamental point that there is a mismatch between society's expectations from the police force, legal provisions and the capacity of the police to deliver, given their limited resources and powers. Throughout the research I tried to approach the interviews and their analysis in a value-neutral way, i.e. trying to understand the perspective of the respondent without being judgemental or biased. However, it was not possible to view police abuse of deadly force as anything other than undesirable. The issues being studied are intrinsically linked up with one of the most fundamental of all rights – the right to life, and it is not possible to make any claim to value neutrality on my part. However I prefer a medical analogy here to explain the situation. The abuse of deadly force is like a disease that has to be studied and understood, in order to be cured. To that extent I have tried to record the viewpoint of interviewees without allowing my

personal convictions to interfere, and then trying to draw conclusions about how 'deviant' behaviour might be controlled or corrected.

## 2.8 Reliability and Validity

Reliability and validity are important issues in any research. Following Silverman (1993: 146-149) reliability was addressed in this qualitative study in three ways. First, accepting Spradley's (1989) suggestion of systematising field notes, by distinguishing between *etic* analysis (based on the researcher's concept) and *emic* analysis (deriving from the conceptual framework of those being studied). During the entire course of the field work, notes were kept about the conditions under which the interview took place, the attitude and demeanour of the interviewees, their willingness or otherwise to discuss some of the more sensitive issues openly. While I shared a large portion of the conceptual framework of the police officers I spoke to, (after all I was indoctrinated and encultured in the same way as all of them), it was important for me to separate my personal attitudes towards issues related to *encounters* from those of the officers being interviewed. Awareness that 'claimsmakers' in the sample possessed varying world views and conceptual frameworks, and understanding the ways in which how these influenced their perception of police work was also important.

Secondly, reliability in interviews was ensured by asking broadly the same set of questions to the respondents. Most of the interviews were taped and in those rare cases when they were not, notes were taken meticulously to ensure that the respondent's views were recorded verbatim. Finally, transcripts for all the interviews were made and while these may not be perfect; the attempt was made to keep the translations and transcription as close to the exact words used by the respondents, as possible.

Reliability and validity were perennial problems as I recognized that the study could not be replicated and that other researchers in the field may not have the same access or response from the field. Undoubtedly the analysis was influenced to a large extent by personal experience and observation during my service. However I have tried to avoid the typical pitfalls that can be detrimental to the



validity of a study, i.e. a tendency to select field data to fit preconceptions of the phenomenon and a tendency to select field data which are conspicuous because they are exotic, at the expense of less dramatic (but possibly indicative) data (Fielding & Fielding 1986). I accept that *encounters* in themselves are a sensational and sensitive issue, and the more exotic data have been retained (but accepted as being exceptions) to give a flavour of the whole spectrum of perspectives on it.

Validation of the research findings has been attempted through the methods of **triangulation** and **reflexivity** (Silverman 1993, Sapsford 1996). Triangulation was sought through collecting data from several sources- interviews with police officers and with 'claimsmakers', media reports, official statistics, personal experience, observation and introspection. The broader conclusions that have been arrived at as a result of the analysis are based on representative patterns emerging from the data, and not on stray remarks or anecdotal evidence. However, anecdotal evidence has been used to illustrate points that have a wider consensus among those interviewed.

An important part of the research process was: reflecting on my personal experience that brought me to this topic; what I learned about myself and my emotional responses in the course of the interview; and/or how I used knowledge of the self or the topic at hand to understand what the interviewee was saying (Ellis & Berger 2002). Reflexivity reminded me to "be attentive to and conscious of the cultural, political, social, linguistic, and ideological origins of (my) perspective and voice- as well as- and often in contrast to- the perspectives and voices of those (I) observe and talk to during field work" (Patton 2002: 299). It therefore follows that, "the final product includes the cognitive and emotional reflections of the researcher, which add context and layers to the story being told about participants." (Ellis & Berger 2002: 854)

## **2.9 Ethical Issues**

There were numerous ethical dilemmas in my research including: consent, deception, privacy, identification, confidentiality and spoiling the field Punch (1986: 35).

### **2.9.1 Confidentiality and Anonymity**

One of the first ethical dilemmas I needed to confront was preserving the anonymity of the force and my interviewees. Given the fact that the subject under scrutiny was so local and specific to the city of Mumbai, it would have been nearly impossible to disguise the identity of the city and the force. Also it has been very difficult to cloak the identity of various officers, who might be easily recognizable by insiders (either correctly or mistakenly), or are such public figures that their identity might have been inadvertently revealed (Punch 1998: 176). Also troubling was the amount of very sensitive material that had been divulged during the interviews, with little or no demands for guarantees of confidentiality or anonymity by police officers. I was aware that my 'insider status', of being perceived as belonging to the community, being a part of the force, were factors that demanded the "constant re-negotiation and re-mapping of ethical judgements... when researching familiar, intimate and sensitive areas of social life." (Birch & Miller, 2002:102).

### **2.9.2 Power and Consent**

Although issues of consent, access and power with respect to police officers did not trouble me initially because I felt that though the 'gatekeeper' had left subordinate officers with little choice about participating in the research and in some cases officers were coerced into speaking with me- they still retained the power to talk as little or as much as they wanted to. Most of the officers I interviewed were not weak and powerless, on the contrary- while they were expected to be subservient to authority vis-à-vis their position in the hierarchy, they were still capable of retaining power in the interview situation. For example, there were instances when officers chose not to reply to a question; or their answers were quite unrelated to the question posed; or by focusing on issues they were comfortable with, they managed to control the direction of the questions. In most cases, I was aware of the diversionary tactics being employed by officers

and chose not to challenge them or pursue the line of questioning too intently. I was also aware that those who did want to talk and discuss very sensitive issues openly had their own agendas for doing so (see Chapter 4). Adler & Adler (2002: 523) discuss respondents they call- the nouveau-statused, the frustrated, the outsiders, malcontents, people out of power but still in the 'know', hostile subordinates - there were examples of almost all these types in my research. While a few interviewees were motivated by the prospect of contributing to academic enrichment, a few interviewees were terse and generally uncommunicative, yet a wealth of inferences could be drawn from what they didn't say or chose to leave out, as from what they did.

While I was more than happy to let officers who were defensive and hesitant to direct the course of the interview to make them feel more at ease, I was more challenging and demanding in the interviews with other officers who seemed willing to rise to the challenge. I was however, constantly aware of considerations of data collection boundaries (Patton 2002) - how hard should one push for data? The solution I arrived at was do a risk assessment and to push just a little more, those who were able to handle the pressure and were in a position of power to draw their own boundaries. Some of the Upper Middle and Senior Management officers were asked tough questions, for example, I asked one Senior Manager, who had admitted that the police sometimes went beyond the mandate given to them by the law in *encounters*, why he had not done anything to prevent this, since he was in a position to influence policy. He replied frankly that there was lack of political will as well as conviction and courage on the part of officers to undertake comprehensive reforms and address the situation. I decided to ask confrontational questions to those officers who had the 'power' to either make it clear that they thought my line of questioning was impertinent, or chose not to answer; and/or had the 'ability' to evade or avoid contentious issues.

### **2.9.3 Trust**

Researching the police is generally problematic, as the experience of past researchers has indicated (Reiner 2000b). This appeared to be true in the Indian context- "In general, Indian police officers are reluctant to be formally interviewed on matters pertaining to policing practices and strategies for

academic research purposes. This is because policing is seen as a matter of state security that may be compromised by revelations” (Mukhopadhyaya, 1997: 5). The culture of secrecy, distrust of outsiders, suspicion, and cynicism, (Reiner 2000a; Bowling & Foster 2002) are difficult barriers to overcome in any type of research, but when the issues under discussion were as sensitive as the use of deadly force I was aware that I would be given the standard, official views by the interviewees, and would have an extra hurdle to cross in trying to overcome their natural suspicions and get any kind of insight beyond the ‘official line’. However, my experience with the Mumbai police was in total contrast to what I had been led to expect, and as mentioned, being an ‘outsider-insider’ (Reiner 2000b) proved to be very useful in bringing down the barriers to some extent, with the officers and others.

All interviews raised a common ethical problem of creating a ‘real’ or ‘faked’ empathic relationship with the respondent, following which, the latter is encouraged or persuaded “ to explore and disclose experiences and emotions which- on reflection- they may have preferred to keep to themselves or even ‘not know’” (Duncombe & Jessop, 2002: 120). This research did generate feelings of guilt and betrayal in me until I realized at the end of the second phase of the field-work, that a lot of the ‘sensitive’ information was known to the public in its essence if not in the details, as there were open discussions in the public domain and media discourse<sup>12</sup>. I realized that nothing I talked about would reveal hitherto unknown scandals or shock the delicate sensibilities of the public at large in Mumbai.

## 2.10 Summary

In this chapter I have discussed the methods employed in my study and the methodological issues that related to my research. I began by reflecting on the reasons why I undertook this research and discussed why I chose a qualitative approach and used a grounded theory approach to the analysis of my data. I also discussed issues linked with sample selection and police officers and

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<sup>12</sup> The latest example is a popular television programme ‘We the People’ (NDTV), which ran a feature on “Licence to Kill?”. ([www.ndtv.com/convergence/ndtv/videos](http://www.ndtv.com/convergence/ndtv/videos)) aired on 6<sup>th</sup> May 2007, which discussed whether popular opinion sanctioned *encounter* killings.

'claimsmakers' interviews, as well as issues of reliability and validity of the research and ethical issues.

The guiding principle of my research was not to shock or reveal 'dark and murky' deeds of the police, but to explore an issue that is of social and sociological significance: i.e. how police use of deadly force goes unchallenged and is even tacitly encouraged in an open and democratic state like India, that would like to be seen as a champion of Human Rights in the international arena. In the next chapter I outline the history of the Mumbai police, to place its colonial antecedents in context and discuss how *encounters* emerged as a response to combating organised crime in the city. This 'sets the scene' for the following 4 chapters where the interview data is explored in depth.

### **3 CHAPTER 3: THE CITY OF MUMBAI AND ITS POLICE**

#### **3.1 Introduction**

In this chapter I briefly trace the history of the Mumbai police and its organisational and administrative set up. I situate the Mumbai police within the city that makes a unique contribution to the economic and national character of India. Like other major cities in the world, rapid growth in Mumbai was accompanied by a burgeoning in organised and other kinds of crime. Organised crime's pervasive grip on life in the city according to my interview data and anecdotal evidence in the mid to late 1990s appeared to be such that decisions such as the scale and opulence of wedding celebrations, the purchase of a new flat, a car, or even redecorating one's house were overshadowed by fears of threatening extortion calls from gangs operating in the city. In order to understand how this situation developed, I trace the growth of organised crime in Mumbai and the efforts made by the police since the early 1980s to combat it. This discussion provides the background for understanding how *encounters* employing deadly force were a particular form of police response dealing with organised crime that came to seem accepted in Mumbai.

#### **3.2 The City of Mumbai**

The city of Mumbai has a unique socio-economic status in India. It was originally an archipelago of seven islands whose inhabitants were mainly tribal fishermen. In the 16<sup>th</sup> century Portugal invaded India and seized control of the deep natural harbour "Bom Bahia" (Good Bay). In 1661, the island was given over to King Charles II of England in the dowry of the King of Portugal's sister Catherine of Braganza. From 1675, when the British East India Company moved its headquarters to Bombay, it became an important port and trading centre. With the introduction of the railways in the 19<sup>th</sup> century and the growth of the textile industry, Bombay also became an important industrial and financial centre. Since then, the city has generated immense wealth and has rapidly expanded, with migrants moving to the city in the thousands every day to seek their fortune. The

current population of Greater Mumbai is estimated to be around 18 million<sup>13</sup>. The city was officially renamed Mumbai (as it was always known in Marathi, the local language of the state) in 1995, a political move to ‘return to their roots’ on the part of the incumbent government. Despite the renaming, many residents including most of my interviewees use either Mumbai or Bombay to refer to the city.

Today, Mumbai is the financial hub of India and also the base for India’s leading companies, its largest banks, financial institutions and the National Stock Exchange. The textile industry as the engine of growth has given way to financial services, call centres, other business outsourcing services, information technology, and entertainment companies, and is home to the largest film industry in the world (‘Bollywood’). The construction boom has created a new skyline of high-rise buildings, shopping complexes, office complexes, and hotels<sup>14</sup>. However, rapid expansion of the city has brought in its wake, “blatant contrasts in housing and all other forms of consumption, the difficulty of maintaining services with an infrastructure that has become altogether inadequate, and the sordid nature of the city’s civic politics [which] add up to a situation of acute urban crisis” (Patel 1995: xii). This is the background within which organised crime thrived and came to dominate public consciousness in the city, inducing the police to devise innovative measures to deal with it.

### **3.3 Policing in India**

Early reference to the police in India is contained in “The Laws of Manu” (about 2000 B.C.), and through subsequent centuries in philosophical and economic treatises, travellers’ accounts, plays, classical texts, and records maintained by ministers of Moghul rulers (in the 16<sup>th</sup> century) and administrators of the British East India Company (Nigam 1963). Indigenous policing throughout Indian history has displayed two distinct systems: a rural village-based system organised on the basis of land tenure, and a more elaborate system for the towns and cities closely associated with the successive imperial powers that dominated. The rural

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<sup>13</sup> Source: The National Geographic website  
[http://www3.nationalgeographic.com/places/cities/city\\_mumbai.html](http://www3.nationalgeographic.com/places/cities/city_mumbai.html)

<sup>14</sup> See Cities Guide at [www.economist.com/cities](http://www.economist.com/cities), Harris (1995)

village based policing, where responsibility lay primarily with the headman, assisted by a watchman and sometimes by a police helper, continued unchanged by “the tides of conquest, consolidation, and anarchy that have swept over India in the past millennia” (Bayley 1969). City policing was headed by the *kotwal*, who was responsible for raising and maintaining a police force as well as carrying out all policing activities such as patrolling, surveillance, arrests, controlling prostitution, gambling, alcohol consumption etc<sup>15</sup> (Cox n.d).

Bayley’s (1969) account of the political context within which the Indian police operate remains the most comprehensive and relevant account of Indian policing. It traces the impact of British rule on Indian policing, dividing the history of its administrative development into two periods 1757 to 1858 (under the East India Company) and 1858 to 1947 (as a colony of the British Empire). According to Bayley, the first 100-year period was one of experimentation, with successive attempts to find a solution to the twin problems of law and order and revenue collection. It yielded systems that enjoyed limited success. However, the Indian Mutiny of 1857 jolted the British government into enacting the great Indian legal codes (The Code of Civil Procedure 1859, The Indian Penal Code in 1860 and the Code of Criminal Procedure in 1861), and the creation of a police commission to study the policing needs of the country for the British government in 1860. The result of the Commission’s deliberations was the Indian Police Act of (1861), which reorganised the police and introduced a uniform system throughout India and is the basis of the structure of the Indian police today (Nigam 1963). Recognizing that city policing had its own special requirements, a policing model influenced by the Royal Ulster Constabulary, was introduced in the three presidency towns of Madras, Bombay and Calcutta (Bayley 1969). This ‘Commissioner System of Policing’ was different from policing in rural districts, in that - the Commissioner of Police combined for law and order purposes the powers of the district magistrate (the administrative head of a district) and the Superintendent of police. These police forces were independent and the Commissioner reported to the provincial government directly, not through the Inspector General of Police of the state or province.

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<sup>15</sup> The clearest description of city policing can be found in the *Ain-e-Akbari* (Diary of Akbar, 1556-1605), though it was a system that dated back many centuries (Bayley 1969)



After Independence in 1947, India became a democracy with a parliamentary form of government with federal features. The Minister for Home Affairs at the centre and the Minister in charge of the Home Department of each of the 28 different states that comprise the federation, are responsible for police affairs<sup>16</sup>. The Commissioner of Police is accountable to the minister holding the Home department portfolio and ultimately to the chief minister of the state.

Bayley (1969) highlights three distinguishing features of the Indian police system:

Firstly, since they are “organised, maintained and directed by the several states of the India union”, they avoid the fragmentation of police under a system of local control into a number of tiny local units (for example, the USA) and the rigidity of a national police force (for example, continental police forces in France or Germany). Secondly, the Indian police are ‘horizontally stratified’, which affects not only the organisation of ranks and the distribution of power among them (called gazetted officers, non-gazetted officers, and the ranks) but also determines the relation between the state and central government with respect to police administration. Entry to the police service is at 4 levels- as a constable, as a sub-inspector (via competitive exams held at the state level); as deputy superintendent of police (via competitive exams held by the state public service commission as part of the State Civil Services); and as an assistant superintendent of police (via all-India competitive exams conducted by the union public service commission as part of the All India Civil Services). The latter officer cadre, also known as the Indian Police Service is recruited, organised, trained and disciplined according to national legislation and subject to central government authority for matters other than operational control when on duty. Movement within ranks is restricted and promotions are time-bound not merit oriented. So unlike the British police, where everyone is recruited as a constable, and theoretically anyone can rise to be a top-ranking police official, in the Indian

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<sup>16</sup> There is no national police force but there are several central police agencies, such as the Border Security Force, the Regional Armed Forces, the Central Bureau of Investigation, the Intelligence Bureau, Central Industrial Security Force, and the Indo-Tibetan Border Police. These are under the purview of the Ministry of Home Affairs at the Center.

police, officers can only rise up to a certain rank depending upon the rank they enter the system. Top ranks are reserved mainly for officers of the Indian Police Service. Thirdly, each state police are divided vertically into an armed and an unarmed branch. The unarmed branch or the civil police are responsible for day-to-day policing in the police stations and the armed branch assists the civil police in maintaining peace. Each state police also has battalions of armed paramilitary forces primarily to assist in law and order duties<sup>17</sup>. However, all officers above the rank of sub-inspector are trained in the use of and are entitled to carry firearms.

Bayley (1969:50-1)) suggests that apart from leaving behind the colonial legacy of the structure of the police forces, the British also “bequeathed a concept of the role police should play in Indian society. That is ‘proper’ police duties today are very much what were considered ‘proper’ police duties under the British”. While he does not explicitly say so, I presume he means that the ethos that drives policing in India is the same as that of the erstwhile colonial force, where ‘suppression of the ‘natives’ was its primary concern. Dhillon (2005: 23) describes the Indian police as being “tied irrevocably with long pre-colonial and colonial traditions of servility to the rulers and oppressive behaviour towards the masses” and suggests that because the Indian police have been unable to re-invent itself or keep in step with the pace of societal changes, they are faced with a “credibility gap and a performance crisis... creating a serious mismatch between police practices and people’s expectations” (Dhillon 2005: 26). Since Independence, there is a general feeling in India that the civil administration (of which the police are a part) consists of ‘brown sahibs’ replacing ‘white sahibs’, where “the IPS are the inheritors of the baton passed down by their British predecessors and the gulf between the ‘rulers’ and the ruled continues” (Verma 2005: 48). Thus a feeling of ‘us’ (police) versus ‘them’ (the ‘others’) appears to dominate administrative and policy decision-making. Whether this was actually the case in Mumbai will be examined when police perceptions of their role are discussed in Chapter 5.

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<sup>17</sup> These have different names in different states, for e.g. the paramilitary police in Maharashtra is called the State Reserve Police, but is called the Provincial Armed Constabulary in my cadre state of Uttar Pradesh and Uttaranchal.

### **3.4 Organisation of the Mumbai Police**

When the East India Company acquired Bombay in 1669, Gerald Aungier became the Governor of the City. He also founded the city's police force, the Bhandari Militia. The Commissioner system of policing was introduced in Bombay in 1861 and the first Commissioner of Police Frank Souter was appointed in 1864. After Independence from British colonial rule the Indian Police Act (1861) was adopted as the structural basis for the police in independent India and the Bombay Police Act (1951) reaffirmed the organisational and structural configuration of the Police Commissioner system in the city of Bombay.

The total strength of the present-day Mumbai police force is 40,967 officers, responsible for the safety and security of the 14 million people. Table 1 below illustrates the profile of the force. As is illustrated by the table, the number of women officers at all ranks is very low and like policing worldwide, Mumbai police is a male dominated organisation.

The rank structure and strength of the force is shown in Table 3.1.

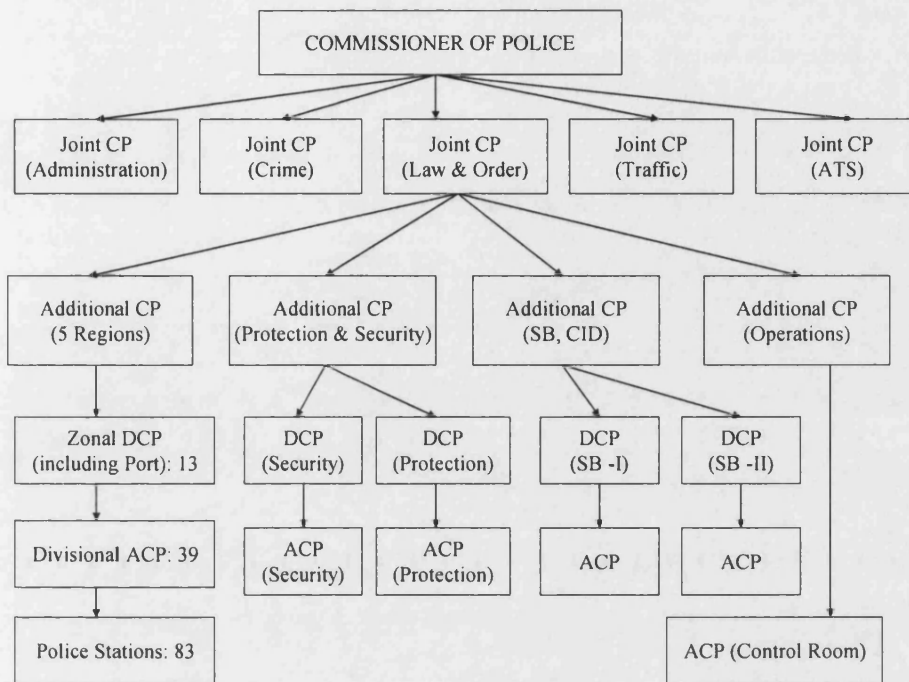
**Table 3.1: Rank Structure of the Mumbai Police**

<b>Rank</b>	<b>Male Officers</b>	<b>Women Officers</b>	<b>Total</b>	<b>Percentage of Total</b>
CP	1	-	1	0.002%
JOINT CP	4	1	5	0.01%
ADDITIONAL CP	12	-	12	0.03%
DEPUTY CP	37	1	38	0.1%
ASSISTANT CP	121	3	124	0.3%
INSPECTOR	966	11	977	2%
ASSISTANT INSPECTOR	743	13	756	2%
SUB INSPECTOR	2,751	99	2,850	7%
ASSISTANT SUB INSPECTOR	3,324	5	3,329	8%
HEAD CONSTABLE	8,018	128	8,146	20%
CONSTABLES	23,944	785	24,729	60%
<b>TOTAL</b>	<b>39,921</b>	<b>1046</b>	<b>40,967</b>	<b>100%</b>

*Source: Crime Branch, Mumbai Police*

83 police stations, grouped into 39 divisions and 5 policing zones manage day-to-day operational policing in Mumbai. The average police station has one Senior Police Inspector in charge of the station, 4 Police Inspectors, 6-9 Assistant Police Inspectors, approximately 20 Sub -Inspectors, 10 Assistant Sub-Inspectors, and approximately 300 Head Constables and Constables (Interview with Police Inspector, T1). There are also 15 special units, including the Anti Terrorist Squad and the Crime Branch. Figure 1 depicts the chain of command that facilitates day-to-day policing of Mumbai.

**Figure 3.1: Mumbai Police -- Chain of Command**



Source: official website of the Mumbai Police: <http://www.mumbai.police.org/special/>  
 (ATS: Anti Terrorist Squad, SB,CID: Special Branch, Criminal Investigation Dept.)

In order to give a sense of perspective for a reader in the UK, the London Metropolitan Police (the Met) compares with the Mumbai police as follows: The Met employs 48,000 police officers, staff, traffic wardens and community support officers to police an area of 620 square miles and a population of 7.2 million people. The basic street-level policing of London is carried out by 138 police stations grouped into 32 London Boroughs, and one operational unit at Heathrow Airport. They have 23 listed specialist branches and departments.

### 3.4.1 The Crime Branch

The Crime Branch's motto is 'Excellence in crime prevention, detection and investigation'. It is headed by the Deputy Commissioner of Police (DCP) (Detection) and is under the jurisdiction of the Joint Commissioner of Police (Jt.CP) (Crime). There are 6 Assistant Commissioners of Police (ACP) in charge of various regions (south, central, east, west, north) and a special ACP in charge of various units: extortion, MCOCA (Maharashtra Control of Organised Crime Act), central intelligence, property, computer, statistics, and anti-

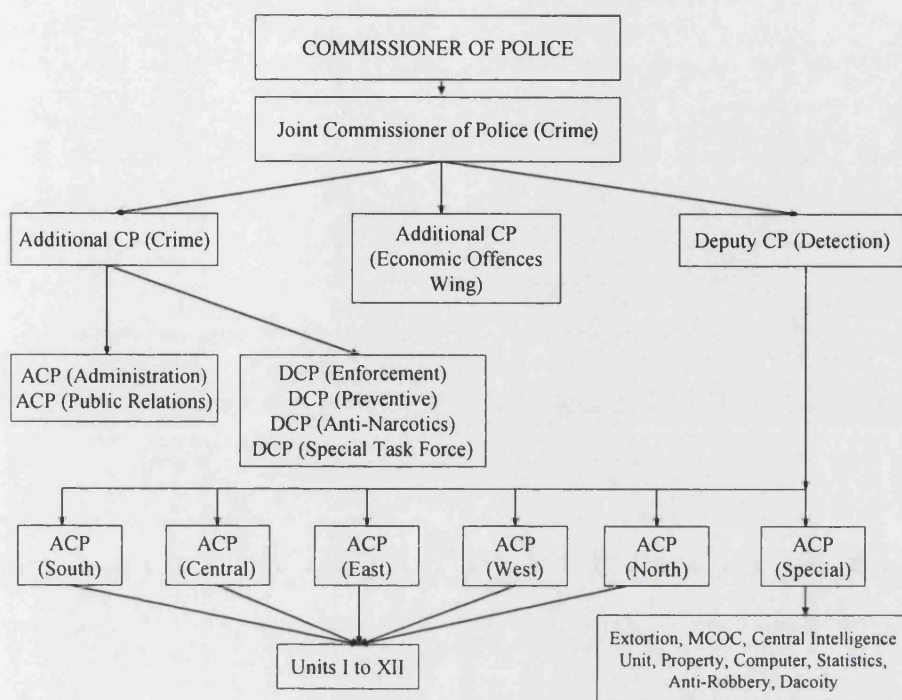
robbery/dacoity<sup>18</sup>. Each regional Assistant Commissioner of Police is in charge of two or three units individually headed by an officer of the rank of Inspector. The Crime Branch, headed by the Joint Commissioner of Police (Crime) is the hub of the crime fighting activities of the Mumbai police (see Figure 2). The DCP (Detection) is in overall charge of detection of crime, monitoring the investigation of serious crime and for formulating new strategies for combating organised crime. Inspectors head the various units and cells. Some of these officers along with their Sub-Inspectors were responsible for the majority of *encounters* conducted by the Crime Branch and have been labelled ‘encounter specialists’ by the media and the public.

Despite similarities, according to police officers interviewed, these cells were not styled along the lines of the ‘death squads’ that emerged in as many as 10 states in Latin America (Sluka 2000), but were mainly involved in intelligence collection, surveillance and monitoring organised gang activities. While involved in *encounters* especially in the decade between 1993-2003, these cells not only specialized in killing criminals but operated largely as intelligence gathering and crime fighting units. However, the numbers and frequency of *encounters* differed over these years (see Table 3.7).

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<sup>18</sup> Dacoity is armed robbery committed by 5 or more persons.

**Figure 3.2: Crime Branch -- Chain of Command**



Source: official website of the Mumbai Police: <http://www.mumbaipolice.org/>

Since the police consider crime fighting to be their prime task (Reiner 2000a, Waddington 1999a), and dealing with organised crime was a primary reason for *encounters* Table 2 outlines the Mumbai crime figures. Crimes are registered under the provisions of the Indian Penal Code (IPC), as well as under special local laws such as Arms Act, Gambling Act, Excise Act, Indian Railways Act, Narcotic Drugs and Psychotropic Substances Act, Prevention of Immoral Traffic Act, Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. For example in the year 2002 crimes registered under the special local laws accounted for 67.8% of all crimes as against 32.2% registered under the Indian Penal Code in India (Crime in India 2002).

Table 3.2 outlines the crime figures recorded under the provisions of the Indian Penal Code for Mumbai between 1993 and 2003.

**Table 3.2: Annual Crime Statistics for Mumbai City -- 1993-2003**

<i>Year</i>	<i>Murder</i>	<i>Robbery</i>	<i>Burglary</i>	<i>Theft</i>	<i>Rape</i>	<i>Extortion</i>	<i>All IPC Crimes</i>
1993	687	759	2852	9773	131	Not available	35687
1994	354	718	2707	9927	150	Not available	35375
1995	357	704	2,955	11,611	210	535	40,289
1996	327	584	2,554	9,924	153	333	32,484
1997	288	495	2,602	10,033	130	230	32,609
1998	365	470	2,472	8,020	118	341	29,869
1999	340	501	2,761	7,641	141	297	29,354
2000	311	569	2,838	7,561	124	309	29,238
2001	295	406	2,861	7,535	127	269	25,686
2002	252	291	2,596	6,181	128	175	26,275
2003	242	239	2,542	5,919	133	142	25,686

*Source: Mumbai Police Website and Crime Branch, Mumbai; Crime in India*

Table 3.2 suggests that overall the number of crimes registered under the Indian Penal Code peaked in 1995, and thereafter have been steadily declining - a fact that has not been adequately explained or discussed either in sociological or criminological terms in Mumbai.

Again, for a sense of perspective, comparing these with the annual crime figures for the financial years 1999-2000 and 2002-2003 recorded by the London Met Police reveals that there are wide discrepancies in the number of crimes registered by the two police forces. Even taking into account that the figure for total IPC crimes registered in Mumbai is only a portion (assuming it is only



32.2% of the total crimes registered) of all crimes registered, the discrepancy between the crime statistics of the two cities is remarkable.

**Table 3.3: Annual Crime Statistics for London -- 2000 and 2003**

<i>Year</i>	<i>Murder</i>	<i>Robbery</i>	<i>Burglary</i>	<i>Theft</i>	<i>Rape</i>	<i>Extortion</i>	<i>Total Crimes</i>
1999-2000	180	36,317	129,145	426,235	2,270	Not available	1,052,047
2002-2003	189	42,496	113,427	463,710	2,731	Not available	1,080,741

*Source: The Metropolitan Police website*

Making any judgements about crime, its overall incidence, patterns and trends based on the official crime figures is fraught with problems, even within one police jurisdiction. Cross-country comparison is even more difficult given that the recording of crime occurs in several different contexts: social, political, organisational and situational (Coleman & Moynihan 1996). Factors such as citizen willingness to report crimes, police decisions as to which kinds of offences to include in the official statistics, what counting rules apply, and police discretion about whether or how to record crimes contribute to the construction of official crime statistics (Maguire 2002, Farrington & Dowds 1985). To illustrate, the column showing figures for murder in Table 2 does not include *encounter* killings, which are not recorded as murder, but are generally registered as a crime under sections 307, 353, 34 Indian Penal Code, registered along with sections 3, 25, and 27 of the Arms Act<sup>19</sup>. An *encounter* case is usually registered on behalf of the police officer involved in the *encounter* against the alleged criminals who are accused of acting in furtherance of common intention (conspiracy to commit crime), attempting to murder the officer, and assaulting or using criminal force to deter a public servant from discharge of his duty (arresting the criminal), as well as illegal possession and use of unregistered firearms. Thus no criminal case is lodged against the police officers involved in *encounter* deaths in the first instance, rather the dead 'criminal' is accused of attacking with the intention to kill a police officer fulfilling his official duty.

<sup>19</sup> Source: Mumbai Police Crime Branch.

Another problem, especially in the Indian context, identified by Verma (2005: 93) was the practice of *correcting* statistics at a later date, upon the receipt of new information (changing 'attempt to murder' to murder) is rarely undertaken in most police organisations, but can minimize crime and distort the picture.

Official police crime figures do not include those crimes recorded by other agencies and are sometimes 'cuffed' to avoid work or improve the overall clear-up rates (Maguire 2002) and other practical techniques such as 'creating', 'keepy-backs' 'juggling', 'fiddling', 'bending' (Young 1991), what is known as 'burking' in India (Raghavan 2004) are adopted while recording crime statistics. However, in keeping with Bottomley & Pease's findings (1986) the general public's understanding of crime even in Mumbai was not so much influenced by the 'hard' data derived from governmental statistical sources, rather it was moulded and maybe distorted by the powerful messages sent out by the news media and political rhetoric, as well as by personal experience, anecdote and gossip, and fictional representation in books and films (Maguire 2002).

The Metropolitan Police website suggests that in 2007 for the fourth year in a row, overall crime was down<sup>20</sup>. The British Crime Survey 2005-6 shows that crime is stabilising after long periods of reduction. Police crime figures show a 1% reduction in crime figures recorded during 2005-6 following increases after the introduction the National Crime Recording Standards in 2002 and taking a more victim oriented approach to crime recording (Simmons et al 2003). However, these surveys report changing trends but do not explain why crime has been falling in England and Wales. The Home Office website suggests that focussing on specific problem areas such as drugs and alcohol related crimes, gun crime and youth crime via a multi-agency approach and by taking measures to improve community safety has led to crime reduction<sup>21</sup>. In contrast, there appears to be no official coherent policy or multi-agency approach in Mumbai to account for declining crime figures. When asked about declining crime figures in Mumbai, police officers felt it was the result of their efficient work and effective crime control measures.

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<sup>20</sup> [www.met.police.uk/crimestatistics](http://www.met.police.uk/crimestatistics)

<sup>21</sup> Source: Home Office Website; [www.homeoffice.gov.uk/crime-victims/](http://www.homeoffice.gov.uk/crime-victims/)

### 3.5 Organised Crime

In the United States, and in popular discourse the term organised crime is “generally applied to describe a group of people who act together on a long-term basis to commit crimes for gain using the threat of violence” (Levi 2002). However, as Levi (2002: 879) recognizes, it is problematic to discuss organised crime as if it were “a coherent common noun describing a well-understood set of arrangements to commit crimes” because it covers many different kinds of arrangements: a hierarchical organisation; an oligarchy of firms competing in action but in tandem; or, a network of arrangements to commit certain kinds of crime for gain. The form organised crime takes in the USA is different from that in the UK, Italy, Germany or the Netherlands, Russia, and other countries around the world (Hobbs 2004, Albanese et al 2003, Levi 2002, Rawlinson 1998, Fijnaut 1991).

In the UK context, Hobbs (2004: 421) suggests that traditional organised crime networks were “deeply entrenched in the locations, working practices, occupational cultures and very occasionally, oppositional strategies of the industrial working class” (citing Samuel 1981). However, Hobbs (2004) suggests that the impact of de-industrialisation in the UK has led to the disintegration of this community, with the result that “contemporary organised crime has become located within ad hoc trade based loose collectivities” that are unstable and even self destructive (2004: 421), but could be said to be anchored in local social systems that are not feudalistic. Though empirical evidence suggests that the traditional family firm has adapted to the contemporary cultural, economic, and geographic terrain, Hobbs (2004) suggests that the success of organised crime depends on the connectivity established between groups and individuals rather than the traditional familial or corporate connectedness that ensured success in the early 1950s and 1960s.

In the USA, organised crime was mainly associated with an Italian-American crime syndicate called the Mafia, La Cosa Nostra or Cosa Nostra, and was defined by Jacobs & Panarella (1998: 160) as referring “not to the conduct but to a crime syndicate: a type of criminal formation with an organisational structure, rules, history, division of labour, reputation, capacity for ruthless violence,

capacity to corrupt law enforcement and the political system, and the power to infiltrate labour unions and legitimate business” as well as “ the ability to become a significant political force through control of grassroots party organisation and campaign contributions”. While originally considered to be an un-American phenomenon that was confined to immigrants and outsiders, a version of the alien conspiracy theory (Hobbs 1997, Block & Chambliss 1981, Ianni & Reuss-Ianni 1972), since the 1970s, studies have demonstrated that organised crime fits completely into the American social, political and economic structures (Fijnaut 1991).

Though organised crime does not necessarily exhibit identical features across the world (Fijnaut 1991), the definition employed by Jacobs and Panarella (1998) to describe the American Cosa Nostra could apply to organised crime gangs known as “companies” in Mumbai. Kelly (1986: 25) suggests that indigenous groups similar to the Sicilian mafia that emerged in the rural, oppressed regions of southern Italy, have been identified in other countries and states, “where the processes of economic development and modernization have produced socially and culturally chaotic conditions for sizeable segments of the population”. He identifies conditions that provide ideal breeding ground for ‘mafias’ to proliferate such as: “the expansion of the economy; the criminalization of some of its products; and improvements in the technological base of the society which contribute to the efficient organisation of criminal enterprises” (Kelly 1986: 26). Similar conditions prevailed in Mumbai, which continues to be a rapidly expanding city, with a daily influx of migrants, deepening divisions within society, liberalisation of the economy, combined with improved means of communication. These have provided fertile ground for organised crime groups to develop and flourish. Besides, of the various factors that characterize organised crime in any country according to Bovenkerk (1991), the first three identified by him apply to the Indian context in general and pave the way for organised crime groups: the political system (one that emphasizes personalized election campaigns and ethnic group affiliations); the role of violence in society (spirit of vigilantism; unwillingness to co-operate with local authorities and resort to violence at the slightest pretext); and the appreciation of prominent

crime figures (mafia dons and master criminals glorified and romanticized by the media and films).

Deuskar (1999: 7) defines organised crime in India as “a business or an industry dealing in the supply of goods and services which are barred by law. The crime part is a by-product which is necessary to carry on the business profitably. The main aim of the business is to earn the maximum profits in the shortest possible time span”. In the 1960s and 1970s goods smuggled into India were gold, illicit liquor, and electronic items; and organised gangs provided services such as illegal evictions, protection rackets, money laundering, and loan sharking. Deuskar (1999) suggests that organised crime is associated with terror, violence and brutality, and he sees these as corner stones of any effective organised gang. The success and survival of a gang depends on its efficiency and ability to deliver the goods without failure. It is by employing terror that gangs are able to maintain control over their own men, deter competitors, and ensure compliance from their victims.

Verma & Tiwari (2003: 243) further suggest that, “organised crime in India may be defined as a group of criminals that are closely aligned with legitimate business, corrupt bureaucracy, and political leadership and are designed to make money or achieve power through violence, illegal means, bribery and / or extortion”. This definition introduces the political element in organised crime. The Maharashtra Control of Organised Crime Act (1999) outlines the legal definition of organised crime as any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such a syndicate by use of violence or threat of violence or intimidation or coercion, or other unlawful means with the objective of gaining primary benefits or gaining undue economic or other advantage for himself or any other person promoting insurgency. This definition includes insurgency and terrorist activities within the purview of organised crime.

Hobbs (2000) highlights the difficulties of conducting research on serious and organised crime. He describes how “archive data, such as police and judicial reports, economic evidence, pamphlets, diaries and biographies” were used by

historians to study the origins, growth and development of organised crimes (Hobbs 1998: 154). However, as he acknowledges such evidence presents one side of the story and may be biased in favour of the dominant narrative of the control agencies. Despite these difficulties the mentioned sources are major secondary sources for studying the rise of organised crime. Ethnographic work with criminals, let alone organised criminals, is generally difficult and in some cases impractical, involving issues of access, objectivity, and anonymity and confidentiality (Ianni & Reuss-Ianni 1972). Kelly (1986: 13) suggests research on organised crime groups is also made more difficult because police and law enforcers are inhibited by the law (especially if cases are sub-judice) and necessities of operational requirements that makes them reluctant to disseminate information; and the fact that organised crime groups are not easily penetrable. The fact also remains that what is known by the police, as a reactive institution, will always lag behind what is happening on the streets.

There is little official information about the nature and extent of organised crime groups in Mumbai (Verma & Tiwari 2003). However, newspaper reports, police stories, reminiscences of retired police officers, films, fiction and non-fiction accounts, and police records and statistics (which were not as detailed and informative as I would have liked them to be) help trace the history and development of organised crime groups.

Bollywood films, a popular source of information about gangs and gangsters have proliferated myths, but also attempted to treat the subject with some degree of seriousness, which doesn't necessarily make them accurate, but useful, nonetheless. Since there are very few in-depth studies of the subject (Deuskar 1999, Saraf 1999, Sarkar & Tiwari 2002, Verma & Tiwari 2003), there is little to cross check the 'authenticity' of these filmed depictions. However, since most of the popular representations of organised gangs in the media, via interviews with gang leaders, non-fictional and fictional accounts are roughly similar, and to a large extent reflect official perspectives on the topic, there is need for caution before accepting them as 'reality'. On the other hand, close nexus between gangsters and the film industry (see Chapter 7) could imply that Bollywood films may have an element of authenticity in presenting the story of the rise and spread

of organised crime in Mumbai (Thevar 2006). The film *Company* (2002), traces the rise and growth of a gang in Mumbai and the genesis of the term 'company' that came to characterize an organised criminal group or mafia gang, essentially because it allegedly operates like a company - demanding loyalty of its 'employees', possessing a hierarchical order, organised on the principles of division of labour, and having protection policies (good legal representation) and compensation (for the families) for its 'employees' should they be injured, arrested or sentenced in the course of 'company' business. Mehta (2005) in his non-fiction study of the city of Mumbai has also recorded the recognizably 'corporate' nature of these gangs and the fact that there are specialists storing weapons, supplying them, threatening witnesses, an elaborate support structure for gang members in jail, and the fact that there are "doctors, lawyers, sympathizers, foot soldiers, scouts and people who run safe houses" (Mehta 2005: 155). The main point is that there simply is no reliable information about 'organised' crime: only varying accounts of it, all of problematic accuracy.

### **3.6 Composition of Organised Criminal Gangs**

My research is focused on police perception of organised crime and their attitude towards *encounters*. My interest in organised gangs relates to the kinds of people (who happen to be predominantly young men) attracted towards a life of crime and in the process sometimes, becoming 'victims' of police use of deadly force. There have been very few studies on the composition and actual dynamics of Mumbai gangs. One reference I was able to find was Saraf's unpublished study (1999) tracing the origin of organised criminal gangs in the city, their criminal activities and the inter-gang warfare. Saraf (1999: cited in Sarkar & Tiwari 2002: 10) drew a profile of organised criminal gangs:

- Two thirds of the gangsters in his sample were in the age group 19-28 years and only 6.5 % were above 40 years of age.
- A third had received primary education, less than half had received secondary schooling, and 5% were university educated.
- A majority of the gangsters came from outside Mumbai and approximately just less than a third came from outside the state of Maharashtra (mainly from other parts of India).

- The gangs were not based on region or religion, but after the 1993 serial bomb blasts, Hindu gangsters have largely dissociated themselves from the Dawood Ibrahim gang (known to be a Muslim gang).
- The gang leader has a caring attitude towards members and their families are well looked after when members are in jail or killed.
- The gang leader is not an autocrat and tends to consult his experienced lieutenants.
- There are no initiation ceremonies, but gangsters are expected to display unflinching loyalty to the boss, lack of which could mean death.
- There is a loose confederation of gangs, with a smaller gang/s merging with a bigger one, but not losing its identity altogether, and which is also free to indulge in its own activities as long as these do not clash with the interests of the bigger gang.
- Gangsters are divided into three categories; sharp shooters, money collectors, and liaison agents who deal with criminal justice agents. There are also a number of auxiliary members who provide shelter, safeguard weapons, and facilitate operations in other ways.

Sarkar and Tiwari (2002) reach similar conclusions about the type of young men who get sucked into criminality and violence in Mumbai in the 1990s, based on Sarkar's field work, observations, interviews with 'criminals' and expert police officers on "Youth Anomie" exploring the role of youth in organised crimes in Mumbai city as part of her doctoral thesis. Pendse (2003) while discussing the film *Satya*, (Truth) which deals with the induction of a young man into the world of organised crime in Mumbai, comments that the film depicts what has been happening in the city, the reality of existence in Mumbai in the 1990s, where,

"An unorganised, unemployed insecure mass of youth in an ethical vacuum and cultural confusion constantly lured by consumerist glitter caught in the trap of a speculative economy is an explosive force. A vague discontent, a well-obscured system, indirect exploitation, and unfocused anger provide a congenial atmosphere for ideologies and movements of violence, direct action, spurious identity politics, and fundamental social irresponsibility. Communalisation<sup>22</sup> of society and politics then becomes quite easy in

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<sup>22</sup> Communalisation: a term used to mean deepening divisions based on religions- especially between Hindus and Muslims.



Indian conditions,...The Hindutva<sup>23</sup> of the communalised sections...is a socio-political position that seeks easy and visible (though imaginary) enemies and targets as an outlet for its envy” (Pendse 2003: 326).

The 1990s saw a large number of unemployed and unorganized young men who were attracted to a life of crime. The film subtly illustrates almost all the factors that encourage criminality and how they came together in Mumbai to create a cocktail of circumstances that were fertile breeding ground for organised crime groups to flourish.

### 3.7 The Rise of Organised Crime in Mumbai

Hobbs (2004) suggests that organised crime is a ‘wraithlike entity’ that exists mainly as a loose conglomeration of criminals that sometimes operate in isolation and at others co-operatively. While this characterisation may be partially representative of the organised crime groups in Mumbai, the popular perception is one of individual ‘dons’ around whom gangs have evolved, who are a law unto themselves, and have certain distinct styles of operation and areas of domination. Thus, while smaller groups might be involved in independent operations, there is a sense that they owe allegiance (and perhaps a share in the spoils) to one or other of the larger organised crime groups and to whom they can appeal to for succour and support in case of trouble.

The growth of organised gangster operations in Mumbai began in the 1970s dominated by Haji Mastan and Varadaraj Mudaliar and to some extent Yusuf Lala, who were involved in bootlegging activities and large scale smuggling operations, mainly gold, electronic items and drugs ( Ghosh 1991, Singh 2000, Blom Hansen 2001). Since the 1980s Mumbai witnessed the growth and proliferation of various gangs emanating from and branching out of these

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<sup>23</sup> The concept of Hindutva as elucidated by Savarkar (1923) stands for the quality of being a Hindu and is contrasted to *Hinduism* which is interpreted to mean Hindu *dharmā* and as relating to Vedic *dharmā*, the latter being a limited, sectarian term representing religious dogma (Lele 1995: 92). Lele (1995: xix) suggests that the modern project of *hindutva* is based on successfully persuading people to believe in two main premises:“(a) the anxiety and uncertainty that engulf their lives today ... is the product of a conspiracy of subtle and overt enemy forces which have been at work internally, regionally and globally and (b) that these forces have emerged not just in the recent past, but have been active for centuries, and against which the Hindu nation has waged heroic battles through its many heroes”.

original organised criminal groups. During the period I am interested in (1993-2003) media accounts and the officers I interviewed said that there were 5 or 6 major gangs in operation in Mumbai. Most of these gangs were known by the names of their gang leader. These were the Dawood Ibrahim gang (D Company), the Chota Rajan gang (Nana<sup>24</sup> Company), the Arun Gawli gang ('Chaddi'<sup>25</sup> Company), the Amar Naik gang, and the Manchhekar gang. In the late 1990s and early 2000, factions of the Dawood gang, led by Chhota Shakeel and Abu Salem became more active.

In the early 1980s Dawood Ibrahim Kaskar, the son of a Head Constable in the CID (Criminal Investigation Department) of the Bombay police, mobilised a group of essentially Muslim youth and engaged in activities of the older generation of mafia leaders primarily smuggling, bootlegging, and protection rackets (Nair 2002). The police officers I interviewed did not think his background gave him any special status or power, apart from perhaps insider knowledge of police working practices, but mentioned it as an example of how criminal gangs could attract youngsters from all sections of society. The gang emerged as the most dreaded in the city with Chota Shakeel and Chota Rajan as its lieutenants. In 1984 Dawood, pursued by rival gangs and charged with serious offences, fled the country when the threat of strong police action became significant. He continued to direct his smuggling and other operations in Mumbai from Dubai (Sarkar & Tiwari 2002), and was shortly joined by his lieutenants Chota Rajan and Chota Shakeel in directing gang operations from Dubai and later via remote control from destinations as varied as Malaysia, Singapore and Karachi. According to police officers I interviewed, the fear of police *encounters* prompted the flight of these gang leaders from Mumbai.

The nature of organised crime changed from the early 1990s onwards, when the Indian economy was liberalised and markets thrown open to goods and services. When gold and electronic items were no longer subject to import restrictions, the black market dwindled and ceased to be profitable for gangs. Smuggling drugs

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<sup>24</sup> So called because Chhota Rajan is 'nana' or elder brother to his troops (Mehta 2005: 144)

<sup>25</sup> Meaning either underpants or shorts; the gang is called so because of their preference for wearing shorts. (Mehta 2005: 153)

and arms and ammunition became the new sources of revenue. Extortion (*hafta vasooli*), kidnapping for ransom and contract killings (*supari* killings) spiralled. Increased gang activity in protection rackets, gambling, money laundering (*hawala*), and upscale prostitution, along with involvement in the building industry and the film industry became the primary profit earners for gangs, deprived of their traditional sources of profit (Ghosh 1991; Mehta 2005: 154).

Around the early 1990s events in Mumbai and elsewhere in India had a profound impact, both on life in the city, and the nature of organised crime. The demolition of the Babri masjid on the 6<sup>th</sup> of December 1992 in Ayodhya<sup>26</sup> by a crowd of Hindu activists and the subsequent waves of religious violence and riots in December 1992 and January 1993 shocked Mumbai and left hundreds dead and several hundred others injured<sup>27</sup>. This event caused a clear divide between the Hindu and Muslim communities who had hitherto lived in relative peace and harmony. Police action during these riots was perceived by many to be biased against the minority Muslim community (Blom Hansen 2001, Punwani 2003, Mehta 2005) with not only police control room communication recorded as clear proof of their contempt for and their unwillingness to provide adequate protection to Muslims (Agnes 1996) but also 31 officers (including some very senior officers) were indicted by the Srikrishna Commission that was established subsequently to inquire into the riots, “for killing innocent people, acting in a communal manner, being negligent, or rioting themselves” (Mehta 2005: 117). In India the term ‘communal’ is used to denote bias towards a particular religion, for example religious violence or religious riots are referred to as ‘communal’ violence or ‘communal’ riots and usually refer to tensions between Hindu and Muslim communities. In fact, the commission found that “the Shiv Sainiks and Hindu rioters had acted with the collusion and participation of officers in the

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<sup>26</sup> The masjid or mosque was allegedly built by the Moghul ruler Babar by demolishing an earlier temple which marked the birthplace of Lord Rama (Hindu deity) in Ayodhya, and was subsequently under dispute since 1850. The Bharatiya Janata Party and the Rashtriya Swayamsevak Sangh, following their Hindutva agenda reclaimed what they considered to be a holy birthplace and revived the controversy by beginning the construction of the Ramjanmabhoomi temple in 1990 (Engineer 1995). This set off a wave of religious riots and disturbances in various parts of the country in the period leading up to and culminating in the massive riots that followed the demolition of the mosque in December 1992.

<sup>27</sup> Official figures reported 900 people dead and 2036 injured in the riots. (Srikrishna Commission Report, Chapter 1, para. 1.24)

Bombay and state police. This included police murders of Muslims” (Srikrishna Commission Report: Section 1.30). The city police force remains overwhelmingly dominated by Hindu officers (Blom Hansen 2001), a mere 4.2% of the Maharashtra state police (including Mumbai police), and only 3.65 % of IPS officers were Muslim in 2002 (Kalidi 2003, also citing Rai 1998). Referring to the Mumbai police, the Srikrishna report confirmed “an alarming pattern of police indifference to, collusion with and active participation during Hindutva attacks on Muslim (and latterly Christian) communities.” (Bhatt 2001: 196-7). Whether as a result of the ‘politics of discredibility’ and/ or because the Mumbai police were indicted for being partisan in the communal conflicts that occurred in 1992-3, this image tainted the media’s perception of subsequent police actions against organised gangs.

On March 12, 1993 a series of bombs went off in Mumbai, killing 317 people in the city, in revenge for the anti- Muslim ‘pogroms’ that had taken place a few months earlier. The police subsequently charged Dawood’s Muslim criminal syndicate of masterminding and carrying out this deed with the help of Pakistan’s Inter Services Intelligence Agency. Punwani (2003: 253) who recorded the voices of those affected by the riots and bomb blasts suggests that Muslims in the city felt vindicated after the blasts, because “even the most communal Hindu began to realize that the Muslims cannot be beaten indefinitely”. Punwani suggests the police and the state reacted with vengeance and retaliated with arrests, clampdown on all illegal and unlicensed businesses (mostly small Muslim businessmen) allegedly engaged in custodial torture, and there were large-scale seizures of illegal arms and weapons. It is not certain whether police actions in all these cases were justified or necessary, but they were certainly perceived as being retributive and retaliatory by members of the Muslim community.

From then on the organisation of various gangs began to be drawn around religious lines and the underworld, which was perceived to be completely secular until then, was said to become communalised after the blasts. However, though many of the large gangs had Muslim leaders, they still did not appear to be

organised around religious communities, but rather on “criminal talent and ability” (Masselos 1996: 119).

In the early 1990s apart from concentrating on criminal activities for economic gains, gang activities extended into financing, arming, and facilitating terrorist attacks in Mumbai and other parts of the country, thus fanning communal hatred and inciting violence and reprisals. Masselos (1996:121) reports evidence suggesting Dawood and others planned a number of killings to provoke a communal reaction, and that the Shiv Sena (a Hindu political party) by responding in like to these killings unknowingly played into the hands of the provocateurs. Masselos (1996: 121) suggests, “the evidence seems to be sufficient to justify the idea of an extensive criminal gang conspiracy although support for the Pakistan connection is far less compelling”. The theory behind this allegation was that in the early 1990s Dawood was forced to flee Dubai and seek shelter in Karachi. Beholden to the Pakistani government Dawood presumably engaged in anti-Indian acts because it was essential for receiving continued shelter in Pakistan and also because it was financially profitable. He is said to have used his local contacts and knowledge of the city to mastermind the terrorist attack on the Bombay stock exchange and other important locations in the city in March 1993. Allegedly backed by the Pakistani ISI agency, the Dawood gang was believed to be responsible by the investigating authority<sup>28</sup> for planning and executing the bombings and supplying arms and ammunition that caused the destruction to avenge the demolition of the disputed Babri Mosque<sup>29</sup> (Deuskar 1999, Nair 2002).

Another explanation for the involvement of organised crime gangs in the riots related to the structures of power that operated with respect to unauthorised land ownership of shanties and slums throughout Mumbai. Masselos (1996) suggests that legal landowners and developers employed organised gangs to set fire to shanty settlements during the riots when the law and order machinery had broken

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<sup>28</sup> The Bombay blast cases were investigated by the Central Bureau of Investigation (CBI), the premier investigative agency in the country.

<sup>29</sup> See for example, ‘1993 Mumbai Blasts: Four Memons convicted’, *The Times of India*, Mumbai edition, 12 September 2006.

down in order to gain possession of such lands. While in some cases, the attacks were directed against particular religious groups by means of selective targeting of their dwellings, in other cases clearing occurred regardless of the religion of the occupants. The picture is unclear because there were several loci of power in these slums with interests that colluded or collided at times: the Sena branches, other politicised or active groups, slum landlords and bosses, the gangs, and the developers. Masselos (1996: 120) suggests that “when the attacks occurred there was not necessarily any clear communal antagonism at work, rather the communal situation was manipulated for ends that were not communal but economic”. This explanation puts the intervention of organised gangs in the communal riots in a different perspective by adding another economic dimension to their alleged communal activities.

Around 1994 Chota Rajan, a Hindu drug dealer and contract killer, broke away from the Dawood gang and created his own faction. He allegedly joined with the Hindu Arun Gawli gang and was said to be responsible for many retaliatory killings of Dawood’s chief men involved in the blasts. The Arun Gawli gang was organised by his predecessor Ramya Naik (Hindu)- who primarily amalgamated several smaller gangs with similar interests that were in opposition to the Dawood gang. The gang was composed predominantly of local Maharashtrian boys and its stronghold was concentrated locally around a particular area in Mumbai. Even after the arrest of Arun Gawli, the activities of the gang continued unabated, and in fact after the police *encounter* of Amar Naik (Hindu), his gang was also absorbed into the Gawli gang.

Another lieutenant of the Dawood gang, Abu Salem (Muslim), who went on to create his own gang, was considered a prime suspect for the Bombay blasts of 1993, and was wanted in more than 60 cases of murder, attempted murder, extortion and abduction. When he broke up with the Dawood gang over sharing the underworld earnings from the Mumbai film industry in the mid 1990s, he fled from Dubai to the United States and then later to Lisbon (Portugal). From there he continued to conduct his extortion campaign in the Mumbai film industry. His group was said to have been responsible for the murders of several film personalities and was a source of terror and fear in the film world (Katakam

2005). Involved in financing and distribution of films, his virtual presence in the film industry continued to be a source of threat and impediment to the autonomy of several filmmakers. He was also allegedly involved in the killing of several Shiv Sena and Bharatiya Janata Party (both Hindu parties) leaders (IPCS Report: 4). Suspected of being a part of the Al Qaeda network by Indian agencies as well as the FBI, Abu Salem was extradited from Lisbon in 2005 and was brought to India for questioning and prosecution (Katakam 2005). At the time of the research, the Chota Shakeel (Muslim) gang, that used to be a wing of D Company, was operating independently, though not in dispute with the bigger gang.

Apart from these major players, there were a host of other small, local gangs who specialized in terrorizing local residents, extorting money, and settling disputes by brute force who were constantly engaged in power tussles to protect their 'turf' from other gangs. As interviews with police officers and 'claimsmakers' revealed, most of the extortion demands or threats were made via the telephone, with the 'gangster' often claiming to be part of some larger organised gang. Ordinary residents could in no way ascertain whether the threat posed to them was by an actual organised gang or a small time operator. It appeared to the public as if there was an open season for anyone who wished to reap the benefits of society's fear of organised crime groups. This was how not just the rich and famous, but even ordinary, middle class people felt the widespread impact of organised crime.

### **3.8 Political Involvement in Organised Crime**

As in many other cities beset with organised crime groups (see for e.g. Anechiarico 1991), it can at least be surmised that these could not have existed, flourished, and operated relatively unhindered without some co-operation from the law enforcement agencies and political patronage. Verma & Tiwari (2003) describe the relationship between business, the bureaucracy and politicians in India as being one of reciprocity and mutual benefit: business people provide the capital in return for enhanced profits; bureaucrats misuse their authority in favour of racketeers, neutralize or enfeeble authority of official agents, and accept part of the profits as bribes; politicians, whose major motive is capturing power, act

as godfathers diverting attention from the criminal activities of these gangs and ensure that arrested gangsters are treated leniently by the state. “The results of such a powerful combination are deadly: the state stands compromised, the official agencies are demoralized and made ineffective, and the public exchequer is looted of huge sums of money” (Verma & Tiwari 2003: 243).

The connection between politics and crime is reciprocal - on the one hand, criminals are associated (overt participation and covert support via funds or muscle power) in the business of politics; and on the other, politics influences criminological discourse, affecting both perception of the ‘crime problem’, and the techniques developed to control it (Cohen 1996). The ‘criminalization of politics’ and ‘politicization of crime’ in this sense were in evidence in Mumbai as the following discussion illustrates.

The political location of organised crime in Mumbai was influenced by what Cohen describes as “the actual incidence, severity and risk of criminal victimization...the public perception of the seriousness of the crime problem... and the rhetorical manipulation of the crime problem and public anxiety in media and political discourse” (1996: 8). Embedding the crime problem into political discourse in Mumbai became more pronounced from the late 1980s when organised crime began to soar and its impact was perceived to be more widely felt. The power struggles between the major political parties in Mumbai may have been responsible for this development.

Indian multi-party democracy has given rise to a proliferation of parties at the national, regional and local levels. In Maharashtra, the Congress Party was the dominant political force till the mid nineties. Factions of this party jostled for power at the state level. This party calls itself secular but has had to defend itself against general allegations that it appeased Muslim voters. Since the formation of the State of Maharashtra in 1960, the Congress Party, or one of its factions has been in power at the State level except when it was out of power for the brief period between 1995 and 2000 when the Shiv Sena and Bharatiya Janata Party (BJP) won the State elections (Purandare 1999). However, it returned to power in 2004.



The other major political party was the Shiv Sena ('Army of Shiva'), set up in 1966 by Balasaheb Thackeray to promote local and regional interests. It also promised to wipe out gangsters and tried to gain sympathy from the middle classes. Lele (1995: 3) suggests that by the sixties "while publicly attacking the underworld, it [the Shiv Sena] managed to create within itself a strong and dedicated following that gave the organisation its muscle power and in return gave those in the underworld the benefit of its organisation and discipline". Thus the roots of their association with organised crime were sown in the slums and 'bastis'<sup>30</sup> of Mumbai where scores of dedicated young men formed the cadres of the Sainiks, as it gave them a sense of power and masculinity (Mehta 2005). The Shiv Sena joined the Hindutva brigade (comprising of the Jan Sangh, the Rashtriya Swayamsevak Sangh and the Bharatiya Janata Party) in 1984, at a time when its popularity was waning and its regional appeal had dramatically weakened. This led the Shiv Sena to look upon militant Hinduism as a possible alternate ideology to win back popularity with the masses (Lele 1995). Its association with Hindu dominated gangs meant that rival Muslim gangs were kept under check, especially in the years the Sena was in power.

Political involvement in gang wars appeared to be communal, with the Hindu Shiv Sena Party providing open support to the Arun Gawli gang in the early part of the 1990s. However, when Gawli floated his own political party in 1997, posing a threat to the Sena, it is said that Thackeray directed the police to come down hard on Gawli (Mehta 2005). A closer examination of the break up of *encounters* shows that in the years after the BJP-Shiv Sena government went out of power in 2000, the number of members of the Dawood gang who died in police *encounters* dwindled drastically.

Table 3.4 gives the gang affiliations of criminals killed in *encounters* in Mumbai.

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<sup>30</sup> Shanty towns.

**Table 3.4: Gang Affiliation of Criminals Killed in Encounters -- 1993-2003**

<i>Year</i>	<i>Dawood Ibrahim</i>	<i>Chota Rajan</i>	<i>Chota Shakil</i>	<i>Arun Gawli</i>	<i>Ashwin Naik</i>	<i>Others</i>
1993	15	0	0	0	1	21
1994	7	0	0	5	12	6
1995	3	0	0	1	2	1
1996	15	11	0	5	6	21
1997	20	22	0	12	3	11
1998	13	16	0	4	6	9
1999	35	7	0	10	12	19
2000	36	5	0	5	2	13
2001	0	44	20	0	7	23
2002	1	21	7	0	1	17
2003 (31.07.03)	0	14	2	3	0	18

*Source: Crime Branch, Mumbai Police*

It appears that while in the years when the Sena government was in power there were many more casualties in Muslim dominated gangs. Since then the focus of police encounters has perhaps shifted to rival gangs since 2000. However, drawing conclusions on the basis these figures is not without skepticism, for there are no independent methods to confirm or verify police statistics concerning gang affiliations. Mehta (2005) reports a conversation with Chota Shakeel, where the latter alleged that the police reported that all Muslim criminals killed or arrested belonged to Dawood's gang, regardless of their actual affiliation with any gang. Furthermore, the police have not made public the religious affiliations of the 'criminals' killed by them, it cannot be assumed that all those encountered and said to belong to a Muslim gang were actually Muslims themselves and vice versa. Whether the police maintain such records was unclear, as these were not made available to me.

Most of the media and public discourse (see Chapter 7) revolved around the communal nature of organised crime gangs and the fact that the police took discriminatory action against particular communities in the course of dealing with organised gangs. In the USA it was earlier thought that ethnic or racial identity were key factors in determining organised group membership, but

empirical research had shown that “although preference may be given to kinship in some crime organisations, recruitment of and interaction with ‘outgroup’ criminals is based primarily on need, availability, and cost effectiveness” (Potter 1994:16). Similarly, in Mumbai organised group affiliations were perceived by the public to be based on communal grounds (not ethnicity or race). But there was a noticeable absence of such a discourse in either the police or criminal milieu. In fact leaders of organised gangs have asserted that their organisations did not make distinctions between Hindu and Muslim members in interviews given to the media. For example, Chota Shakeel was reported denying that gangs are formed along communal lines, “ ‘Many Hindu boys are with us’, he says, putting the ratio as high as fifty-fifty... ‘Our motto’, he declares, ‘is insaaniyat<sup>31</sup>, ” (Mehta 2005: 265).

One of the main reasons why criminal organisations would emphasize the ‘secular’ nature of their gang would be to disassociate themselves from accusations of terrorism, which they realized would be less tolerated than their criminal activities. In fact one gang leader recently claimed in an interview to a newspaper that they were gangsters, and not terrorists, and that Dawood or his gang had no involvement in the bomb blasts either in 1993 or in July 2006 (Balakrishnan 2006). On the other hand, the police alleged that they had evidence of definite involvement of criminal organised gangs in the terror attacks, and clearly felt that ‘Muslim’ gangs had aided and abetted the terrorists. However, police officers in their interviews and in public statements, maintained that their war was against criminals and organised crime in general, not against members of particular communities. A few officers who referred to the communal aspect seemed to suggest that if it appeared that stricter action was being taken against some gangs (which happen to be dominated by ‘Muslims’) as opposed to others, it was because of the heightened activities of Islamic terrorism that had threatened the democratic world since 2001. It was interesting to note that the rhetoric against war on organised crime had changed to the rhetoric justifying war on terrorism, with the defining lines between the two becoming blurred in the process. There were two aspects to differentiating between gangs based on

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<sup>31</sup> Ironically- Insaaniyat means humanity or humanism

religion: the first was to link certain gangs (Muslim) with anti-national activities; and the second was to underscore the speculation that some gangs with a majority of their members belonging to one particular community received political patronage from particular political parties. Thus, it appeared as if the gangs that supported the party in power got some form of limited immunity from police actions.

The increasing inclusion of the 'crime problem' in political discourse meant that successive governments as social control agents tried to come down hard on these organised crime groups (by encouraging *encounters*) or at least appeared to do so. While criminological discourse has recognized that crime control is beyond the state (Garland 1996) in Mumbai (as in other places) there was no acceptance of this 'well known' fact in either police or government circles and as my interviews revealed. In fact Cohen (1996) recognized "the short-term political costs of admitting the futility of these [crime control] methods are unacceptable", as a result, governments continued to persist in devising newer, more punitive sanctions against criminals, which, in Mumbai included *encounters*. Rustamji (1992) comments that traditionally in India the wrong tests are applied to policing - if crime figures rise, it is not as a result of good registration practices, but because the police are ineffective; if a few murders occur, crime is said to be out of control and police are urged to stop it with stern measures; if an officer wants to use legal methods only, he is considered weak and inefficient. Denying the state's systemic inability to control crime, especially more complex organised crime, political and media discourse hailed police efforts as being masterful and effective in the 'war on crime', even if as a result "we [Indians] have come to believe is that the country needs a police force that is dreaded by the people, with officers on the top who have been selected for their ability to wink at brutality and corruption" (Rustamji 1992: 48). This formal crime control oriented discourse is just as evident in media and political discussions here and elsewhere. Cohen's (1996: 8) question whether, "Is this public discourse really 'about' crime or rather a metaphor for expressing a wider sense of social dislocation and disorder?" appears apposite in the Mumbai situation.

Political machinations in Mumbai were not restricted to the politicization of crime, that is political patronage to criminal activities, but the trend was increasingly changing towards criminalization of politics. The democratic process has turned violent where virtually every political party has encouraged an active role of known 'mafia dons' and criminals with long police records in the elected offices of the state. Also elections to municipal bodies, state assemblies, even the parliament have been marred by 'booth capturing'<sup>32</sup> and intimidation of voters by every political party. The criminalization of politics has been recognized but "none of this information gets officially recorded in any systematic manner" (Verma & Tiwari 2003: 246). Gangsters such as Arun Gawli have not only contested local elections, but actually won. This situation created a unique dilemma for the police, who were then obliged to provide security for the very man they were hunting, as the greatest threat Gawli allegedly faced was from police *encounters*<sup>33</sup>. Other reputed criminals such as Pappu Kalani (who is said to lead his own mafia group) and Ibrahim Kaskar (Dawood's brother) have also contested elections, sometimes while incarcerated<sup>34</sup>. This situation caused considerable pressure on the police and the criminal justice system as the very elements they were supposed to fight could become their political masters and to whom they would be accountable.

### 3.9 Policing Organised Crime in Mumbai

Policing a large city like Mumbai is challenging, but dealing with large-scale organised crime groups involved in terrorism along with a host of other criminal activities, adds another dimension of difficulty to this task. Levi & Maguire (2004) have identified that the lack of 'systematic before-and-after comparisons-based studies' makes it difficult to draw any conclusions about the impact of law enforcement measures on organised crime even in Europe. In Mumbai, the task of measuring the efficacy of policing organised crime is made even more difficult given the lack of officially published coherent government policies to tackle the problem as well as lack of official statistics on the impact of strategies

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<sup>32</sup> This refers to the process whereby thugs acting on behalf of a political party actually take over an entire election centre and forcibly stamp all the ballot papers in favour of their own party or destroy ballot boxes if they feel the majority of voters might have voted against their party.

<sup>33</sup> *The Times of India*: (2004), 'Arun Gawli shoots down encounter fears', October 19th 2004

<sup>34</sup> See for e.g. *The Times of India*: (2004), 'City gangs enter political fray', September 21<sup>st</sup> 2004; and *The Times of India*: (2004), 'Dawood brother to fight polls', September 21<sup>st</sup> 2004

other than *encounters* (even if ad-hoc) adopted by the police. Law enforcement rather than prevention has dominated crime reduction strategies and practical responses of the police in most countries, as in Mumbai. A move from a “reactive and repressive approach towards long term preventative strategies is a paradigm shift for law enforcement that is very much a ‘work in progress’” in Europe (Levi & Maguire 2004: 457), but has a long way to go before it is made in Mumbai, where the police, it would appear, still prefer short-cut, instant solutions to the problem of organised crime.

The following account of policing organised crime in Mumbai is based on print media reports, interviews conducted during the research, memoirs of police officers (Khan 2004) and other secondary sources (Mehta 2005, Davis 2001, Virani 1999).

In the early 1970s and 1980s, the police had to deal with gangsters who used knives and daggers as their weapons of choice and police officers I interviewed said deadly force was not that common, (relevant statistics were not maintained by the department during those years). Officers mentioned that the first officially recognized *encounter* occurred in 1982. However, the entry of smuggled sophisticated weapons especially since the early 1990s changed the scenario dramatically. Table 3.5, for example, shows the number of arms recovered by the police after the bomb blasts in 1993. Not only were arms smuggled illegally in the country in large quantities, but the types of weapons used by organised groups became more sophisticated and dangerous and posed a greater threat than before.

**Table 3.5: Arms Recovered by the Police in the Immediate Aftermath of the Mumbai Bomb Blasts of 1993**

<i>Types of Arms</i>	<i>Amount</i>
RDX (explosive)	3.5 tonnes
Hand Grenades	459
AK 56 Rifles	63
9 mm Pistols	12
Detonators	1,150
Delay Switch No.10	03
Ammunition	49,000 rounds

*Source: Crime Branch, Mumbai Police, cited in Sarkar & Tiwari (2002: 16)*

Comparative statistics for weapons and ammunition recovered for earlier years are not available, but police officers assured me that this haul was the largest recovered in Mumbai. It could be the case that prior to the bomb blasts, the extent of the terrorist threat, and the stock-piling of weapons and arsenal had escaped intelligence analysts and was not a police priority. Since 1993 the Mumbai police have recovered large quantities of firearms from ‘criminals’, for example, over a three-year period (1998-2000) the police seized 1662 illegal weapons (Sarkar & Tiwari 2002). The influx of sophisticated arms made the task of policing organised crime groups far more difficult and dangerous according to the officers interviewed. It was their opinion that emboldened by the possession of better weapons, ‘criminals’ were more likely to attack police officers or shoot their way out of a tight corner when confronted with the possibility of being arrested. However, the official statistics in table 3.6 do not support this contention. The fact that so few police personnel are killed or even injured in raids or by criminals does raise a few questions about police assertions that the job has become more dangerous over the years.

**Table 3.6: Police Personnel Killed on Duty in Mumbai**

<i>Year</i>	<i>In Dacoity Operations or Other Raids</i>	<i>By Riotous Mob</i>	<i>By Other Criminals</i>	<i>On Border Duties</i>	<i>In Accidents</i>	<i>Total</i>
1993	1	0	0	0	2	3
1994	0	1	0	0	1	2
1995	0	0	0	0	3	3
1996	0	0	2	0	0	2
1997	2	0	0	0	1	3
1998	0	0	3	0	3	6
1999	0	0	0	0	0	0
2000	0	0	0	0	0	0

*Source: Crime in India 1993-2000. From 2001 onwards figures were not reported for individual cities*

According to the police version, *encounters* were occurring regularly in Mumbai by 1993 mainly out of self-defence. Officers felt they were already overburdened with everyday policing activities, including narcotics, anti-piracy, protection of Very Important Persons and sensitive installations, crowd management, ensuring peace during numerous religious festivals and processions, and were working 12-hour shifts without regular days off. A very senior police officer writes, “no western country places such a tall order or expects so much from its police force” (Khan 2004: 108). The criminal justice system was also dangerously overloaded. In 2001 nearly 5,117,864 cases were pending trial in the higher courts, amounting nearly 82.3% of the total caseload for the country (Crime in India 2001). As crimes committed by organised gangs allegedly rose sharply, the procedures for processing ‘gangsters’ through the criminal justice system: arrest, investigation, charging the accused under appropriate sections of the law, prosecution and finally sentencing, began to be by-passed more often in favour of quick and instant ‘disposals’ in the form of *encounters* (see Chapters 4 & 5). There were no ostensible public protests or demands for accountability and the media appeared to applaud and encourage these police actions. There were even public calls for felicitation of ‘encounter specialists’ on occasions.

How did such a situation arise? The answer could lie in the fact that crimes purportedly committed by organised gangs were spiralling rapidly upwards, and



people were feeling increasingly insecure. The number of registered crimes committed by organised gangs, (apart from smuggling of arms and ammunition that are registered separately under the Arms Act), extortion (*hafta* or protection money), shootouts as part of contract killings, and kidnapping for ransom (shown in Table 3.7) reveal an interesting story.

**Table 3.7: Registered Indian Penal Code Crimes Suspected to be the Work of Organised Gangs**

<i>Year</i>	<i>Shootouts</i>	<i>Extortion</i>	<i>Kidnapping for Ransom</i>	<i>TOTAL</i>
1993	34	728	Not available	762
1994	28	588	Not available	616
1995	24	535	16	575
1996	48	333	17	398
1997	38	230	10	278
1998	93	341	16	450
1999	41	297	11	349
2000	24	309	25	358
2001	18	269	25	312
2002	13	175	14	202
2003	10	142	12	164
<b>TOTAL</b>	<b>371</b>	<b>3,947</b>	<b>146</b>	<b>4,464</b>

*Source: Crime Branch, Mumbai Police.*

Statistics show that organised gangs were very active in 1993, the beginning of the period I am interested in. Thereafter, crimes committed by these gangs steadily declined because, as officers explained, *encounters*, the main weapon in their arsenal, were effective. However, these figures and trends are based on police recorded statistics, which carry all the attendant problems associated with them. Table 3.8 shows that there was a steady increase in *encounters* between 1993-7. In 1998 there was a sudden drop in the number *encounters*, followed by a sharp rise in their numbers 1999, 2000 and 2001, when they reached a pinnacle and the police acknowledged killing 94 criminals in one year. Since then the figures have declined.

**Table 3.8: Official Figures for Police Encounters**

<i>Year</i>	<i>Number of Incidents</i>	<i>Police Stations</i>	<i>Crime Branch</i>	<i>Number of criminals killed</i>
1993	28	Not available	Not Available	37
1994	26	“	“	30
1995	10	“	“	07
1996	45	34	11	58
1997	49	21	28	72
1998	39	25	14	48
1999	65	35	30	83
2000	59	23	36	73
2001	70	09	61	94
2002	35	04	31	47
2003	27	07	20	40
<b>TOTAL</b>	<b>453</b>	<b>158</b>	<b>231</b>	<b>589</b>

*Source: Crime Branch, Mumbai Police*

I have distinguished *encounters* in which officers posted in police stations were engaged, from those the Crime Branch officers were involved in to highlight my point that *encounters* were not only done by ‘death squads’, but emerged out of a more widespread practice within the organisation. However, it is interesting that officers involved in *encounters* had at some point in their career been associated with or posted in the Crime Branch. Thus, while *encounter* squads or ‘special operations’ squads did not have a monopoly on using deadly force in *encounter* situations, the Crime Branch played a major role in these incidents. Interestingly, while the number of *encounters* by officers posted in regular police stations generally declined over the period of study, the number of Crime Branch *encounters* increased, with the exception of 1998, when a judicial enquiry into two *encounter* cases found Crime Branch officers responsible for fake *encounters*. At that time, the entire department was under tremendous stress and anxiety as the actions of some of their officers were under scrutiny.

The above-mentioned judicial inquiry into two separate *encounter* cases (involving Javed Fawda in one case, and Vijay Tandel and Sada Pawle in another) created considerable controversy and led to a temporary hiatus in police *encounters*. The Mumbai police later appealed against the conclusions of this

inquiry to the High Court, which returned a verdict in favour of the police. (See following section).

The reduction in police *encounters* in 1998, according to officers, caused a sudden and sharp rise in organised crime activities. Emboldened by the self-imposed shackles on the Mumbai police, the number of shootouts (non-police involved shootings) and other crimes increased dramatically<sup>35</sup>, creating a panic situation in Mumbai. Media accounts suggested increased feelings of insecurity among public and industry alike (see Chapter 7). Faced with growing pressure, the government and the police appeared to be under tremendous strain to take drastic measures in controlling sensational crimes. Innes and Jones (2006) suggest that certain ‘signal crimes’ and ‘signal disorders’ like violent muggings or vandalism of public property are indicative of presence of other risks and threats which have a particular potent impact on local perceptions of neighbourhood security, and generate feelings of insecurity about people, places and events. Their research on ‘Neighbourhood security and urban change’ in the UK found ‘signal crimes’ aroused fear and alarm even amongst those who were unlikely to be their victims. Similarly, in Mumbai extortion threats, shootings, and kidnapping for ransom could be considered ‘signal crimes’ indicative of the presence of the increased threat and risk posed by organised criminal gangs. Innes and Jones (2006: vii) suggest that “perceptions and beliefs about disorder and crime may be as important as actual crime and disorder rates in terms of how they function as risk factors”. Therefore managing people’s perception about such ‘signal crimes’, as well as actually trying to control them became a priority for social control agents and the government in Mumbai.

In 1997-8 there was increasing pressure to change the law to enable the police to tackle organised crime more effectively. New legislation, the Maharashtra Control of Organised Crime Act (MCOCA) was passed by the State Legislature

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<sup>35</sup> Figures range from the official figure of 93 cases (see Table 6) to 150 people killed in shootouts as reported in the media. See for example Shrivastava S.: ‘Bombay Gets tough on gangsters’, BBC News, 4 November 1998. There is no way of estimating which figures are closer to the ‘truth’, and the discrepancy in reported figures only adds to the controversial perception of *encounters*.

in 1999. This Act provided for special courts; speedy trials of those charged with offences related to organised crime syndicates; special public prosecutors to try these cases; and more stringent powers to the prosecuting agency under the law. Additionally, whereas under the Indian Evidence Act (1872) confessions to a police officer are not admissible in a court of law, under the MCOCA confessions made before an officer of the rank of Deputy Commissioner of Police were made admissible as evidence. Other special rules of evidence such as authorized interception of wire, electronic or oral communications were also made admissible as evidence. Provision for forfeiture of property of the accused in case of conviction was another feature of this Act. In their interviews, police officers said they approved of this new Act as it addressed some of the original problems officers faced when trying to process 'organised criminals' through the usual channels of the criminal justice system.

Statistics reveal that the MCOCA may have been effective to a certain extent in enabling more criminals to be tried and for speedier disposals than through the regular channels of the criminal justice process.

**Table 3.9: Cases Registered and Gangsters Arrested Under MCOCA 1999**

<i>Year</i>	<i>Total cases registered</i>	<i>Dawood</i>	<i>Chota Rajan</i>	<i>Arun Gawli</i>	<i>Ashwin Naik</i>	<i>Others</i>	<i>TOTAL</i>
1999	19	33	13	6	0	12	64
2000	14	54	4	0	0	7	65
2001	20	51	18	0	4	11	84
<b>TOTAL</b>	<b>53</b>	<b>138</b>	<b>35</b>	<b>6</b>	<b>4</b>	<b>30</b>	<b>213</b>

*Source: Crime Branch, Mumbai Police.*

Between 1999 and 2001, 53 cases were registered against 213 'criminals' and over half of these, i.e. 27 cases were finally disposed of by the special courts within this period, a remarkable achievement, considering that if these cases had been tried in the regular courts they would have been under trial for anywhere up to 12 years. It is interesting however, that 84 'criminals' were charged and tried under the MCOCA in 2001, but 94 were killed in police *encounters*, perhaps implying that the police preferred a speedier version of justice than the special courts.

Speedier justice of the kind the police preferred, was facilitated by the High Court's ruling in late 1999 that Javed Fawda's death was not a false *encounter*, but there were procedural inadequacies. The High Court laid down guidelines for police actions in *encounters* that have been used ever since as a checklist by the police to ensure that at least the paperwork conforms to them. Cleared of the charges of conducting false *encounters*, the Mumbai police appeared to have been given a free hand to conduct *encounters* and indulged in a spree eliminating alleged criminals in larger numbers than ever before (Zaidi 1999). Since 2003 the number of *encounter* cases and media reports sensationalising them have dwindled. Perhaps the disenchantment with *encounters* was linked to the influence of new police leadership on the use of deadly force as a policy objective (see Chapter 8).

### 3.10 The Case of Javed Fawda

In 1997, alarmed with a growing number of *encounters* two civil rights bodies, the People's Union of Civil Liberties (PUCL) and the Committee for the Protection of Democratic Rights (CPDR), along with the Samajwadi Party<sup>36</sup>, petitioned the Mumbai High Court to conduct an inquiry into these *encounters*. The High Court found prima facie evidence of a disturbing pattern in police actions in *encounters* and ordered an inquiry into two of them (the killings of Javed Fawda, and Sada Pawle and Vijay Tandel in 1997). Judge A.S. Aguiar, carried out the inquiry in 1998. His report was made public in September 1998. The Judge found the *encounters* to be fake. One of them, he said, may never have taken place in the way described by the police, and in the other, the victims appeared to have been unarmed.

Javed Fawda's case is pertinent to the discussion in Chapters 4, 5 and 6. There were two parts to the case of Javed Fawda: first, of mistaken identity, and second, deliberate police murder. It was alleged that the police killed Abu Sayama, alias Javed Abu Talib Shaikh, a humble peanut vendor, mistaking him for some other notorious gangster Javed Fawda; and that the police in a stage-

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<sup>36</sup> A political party that purports to promote interests of the Muslim community, but which does not have a very strong support base in the state of Maharashtra or in Mumbai.

managed *encounter* deliberately killed Javed. The judge ruled that there was no case of mistaken identity and that the person killed, Abu Sayama, was also perhaps known as Javed Fawda (The Aguiar Commission Report 1998, paragraph 68: 16). However, the inquiry into this allegation and its subsequent dismissal makes interesting reading as it showed the complex conditions in which the police had to, and continue to, operate in establishing the identity of a person under difficult circumstances. Circumstances such as absence of centralised personal criminal or DNA records, a huge city characterised by a large floating population where fake identities can be purchased easily, where births and deaths are not necessarily registered in the municipal offices, where ration cards<sup>37</sup> of dubious authenticity (the main document establishing identity and residence, especially amongst the poorer and illiterate classes and slums) proliferate unchecked, where no social security records are maintained for the population, where enrolment in compulsory education is not enforced, and where police registration of criminal cases is often haphazard and misleading at times.

However, the inquiry found adversely against the police that “the deceased Javed Fawda, alias Abu Sayama, alias Javed Abu Talib Shaikh was not killed in the encounter as claimed by the police. It is doubtful whether any such encounter took place” (The Aguiar Commission Report 1998, paragraph 148: 30). The commission found several weaknesses in both the documentary and forensic evidence, raising serious doubts about the authenticity of the police account. The police claimed Javed Fawda was killed when the police fired at him in self-defence at a deserted spot, around midnight, where they had gone to arrest him. They had acted on a tip-off that Javed Fawda and his associates were likely to visit the spot for committing some crime. Cross examination of the police officers revealed that when they went to allegedly arrest Javed Fawda, they were unaware that he was a known gangster or dangerous criminal, which meant that there was no reason for them to be waiting at that spot for the deceased. Examination of the subsequent police investigation revealed that the officers had not taken steps to preserve the fingerprints on the pistol allegedly recovered from

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<sup>37</sup> These were issued to families to enable them to purchase government subsidised essential commodities such as sugar, kerosene, oil, rice etc in the years after Independence when such commodities were in short supply.

him, raising doubts whether Javed Fawda had actually fired at the officers, or indeed whether it was in his possession at all. Though several rounds were allegedly fired, only two empties were recovered from the spot, and none from the vehicle whose windshield was supposedly shattered by one of the shots fired by Javed. The windshield itself had been replaced and the car put to use without facts having been recorded satisfactorily. The vehicle in which Javed Fawda was said to have arrived was allowed to get away despite the fact that the police had prior information and its description. The most damaging fact for the police case, however was the absence of blood stains or pool or blood at the scene of offence where the injured and profusely bleeding Javed Fawda was lying and also the absence of blood in the car by which the injured was taken to the hospital. There were no independent witnesses to support the police version and one of the officers involved in the incident who had a previous history of violence, was described by the report as “a trigger happy cop” which lent strength to the commission’s conclusion that Javed Fawda was killed in cold blood.

The matter did not end there, shattered by the adverse finding of the Aguiar commission, the Mumbai police then sought to appeal against this finding by applying to the High Court. A division bench of the High Court consisting of two judges not only ruled that the police *encounter* of Javed Fawda was true and genuine and took place in the exercise of the right to private defence of the officers concerned, but also criticised Judge Aguiar’s earlier report and findings. This bench felt that the police had not questioned any independent witnesses during the subsequent investigation because there could not have been anybody present as the *encounter* had taken place at midnight and at a deserted spot, to substantiate the police version. Also since a lot of blood had been found in the chest cavity and pericardium area, it was clear that the deceased had bled internally and there was very little oozing which accounted for not much blood being reported on the spot. The evidence provided by the post mortem and ballistic experts on behalf of the police were also found to be acceptable. The Judge was also criticised for calling one of the officers involved, a ‘trigger happy cop’, as the latter had been acquitted by the High Court and the appeal against

the acquittal was still sub-judice in the Supreme Court<sup>38</sup>. The High Court bench proceeded to lay down guidelines for good practice to be followed by the police in all future instances of *encounters* (See Appendix 3).

### 3.11 Summary

In this chapter I have described the context for my research on the use of deadly force in *encounter* situations. Understanding the nature of Mumbai, the history and organisation of its police force, the socio-political milieu, and the growth and interplay of various organised criminal groups and how the police sought to tackle organised crime over the decade between 1993 and 2003 is vital in understanding police perspectives on *encounters*.

The emerging picture of Mumbai was that of a prosperous megapolis, where the pace of life was hectic, where people were drawn in thousands every year to make their fortune, and which was a rapidly expanding financial and infotainment growth centre. The growth of various organised crime syndicates and their inter-rivalry for supremacy as well as their criminal activities spread panic and insecurity through different sections of society. The growing menace of organised crime syndicates provided one of the biggest challenges for the police force, which sought to counter it with the use or abuse of deadly force in the form of *encounters* of alleged hardened criminals, as one form of rough and ready justice. However, the story was just not a simple case of cops-and-robbers. The injection of the politics of Hindutva, growing communalism, terrorism and associated violence, and alleged interference from outside forces into Mumbai's socio-political landscape, combined with an already overburdened criminal justice system to make the task of policing organised crime groups far more complicated.

In the next 3 chapters I analyse police perceptions of *encounters* and how they accounted for and justified the use of deadly force in Mumbai.

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<sup>38</sup> 'HC gives police clean chit in Javed Fawda shootout case', *The Times of India*, Bombay edition, 25 February 1999.



## 4 CHAPTER 4: OFFICER PERCEPTIONS OF *ENCOUNTERS*

### 4.1 Introduction

In chapter 3 I traced the growth of organised crime in Mumbai from the early 1980's. I also examined evidence showing a growing conviction in the collective social conscience of a clear cause-and-effect relationship between increased gang activity and rising police *encounters* in response. In the 1990s there was a proliferation of shootouts, extortion cases, kidnapping for ransom cases and this was accompanied by rising number of *encounters*. While *encounters* unquestionably exist; how an act, which appears from many accounts to be suspect and arbitrary, has escaped demands for greater scrutiny or accountability remains unexplained. Part of the answer involves police officers' explanation of why deadly force is acceptable and public perceptions of the issues involved.

This chapter examines how police officers understand the phenomenon of *encounters* and the legal, moral and humanitarian issues related to it: exploring questions such as 'How do ordinary, decent people commit such acts?'; 'Why do ordinary men torture and murder for their state?'; and 'How do they justify their deeds to themselves, their colleagues, the organisation, the criminal justice system and, society as a whole?' (Cohen 2001, Huggins et al 2002, Browning 1993).

The chapter is divided into three parts: the first focuses on the definition of *encounters* and its associated terms. I distinguish between 'bona fide' *encounters* and 'fake' as opposed to 'genuine' *encounters* using the Human Rights and legalistic perspectives and the perspective of officers. In the second part of the chapter I explore officers' definition of *encounters*. I discuss the role and extent of involvement in the *encounter* process of individual officers in my sample. In the third section I focus on officers' views on the legality of *encounters*, the effectiveness of *encounters*, and their personal attitudes towards *encounters*.

## 4.2 What is an *Encounter*?

In India, the term *encounter* is generally used by the police, the media and the public to describe a particular type of police use of deadly force. The focus of my research is *encounters* in the city of Mumbai; where *encounters* were seen as a police response to deal with a perceived problem of increasing organised crime. In the official reports and media versions an *encounter* is described as an exchange of fire between the police and alleged criminals, where the police shoot to kill in self-defence. While this was the ideal-type and widely accepted meaning of the term by all those I interviewed and in the media accounts, it was also generally believed that the reality of an *encounter* might be different. As a result of my own experience - as an officer, as a resident of the city, and during the course of my research, it became evident that the word *encounter* was a legitimised cover-up for what were essentially police killings of alleged hardcore criminals. There was also varying recognition of the existence of 'genuine' *encounters* as opposed to 'fake' *encounters* in police and popular discourse.

There are three angles from which *encounters* are described: the police officers' perception of what *encounters* are and the differences between 'genuine' and 'fake' *encounters*; officers' perception of how the public understands this difference; and finally, perception of members of the public, which includes the media and other 'claimsmakers'. This chapter deals with the first, Chapter 5 deals with the second, and Chapter 7 explores the last set of perceptions.

Although the meaning of the term *encounter* is somewhat negatively loaded, the addition of the label 'genuine' or 'fake' in routine use could only imply that the person suggesting such a distinction is actually making a value judgement about whether a particular *encounter* is considered justified or not. Thus, it is the label that demands a positive or negative response to the act - a 'genuine' *encounter* is to be lauded and a 'fake' one is to be criticised. As with deviance generally, 'genuineness' is not a quality that lies in the act itself, but in the interaction between those who commit the act and those who respond to it (Becker 1963:14).

Perception of *encounters* differs subtly when described with the terms 'justified' or 'legitimate'. While these are generally used interchangeably, I use them to

convey slightly different meanings - a 'justified' *encounter* is one that is acceptable to the person making the judgement, and involves subjective interpretation of the situation, which may have legal and or moral referents. On the other hand, 'legitimate' means that the *encounter* is acceptable on objective criteria, which include both legal and moral elements in it.

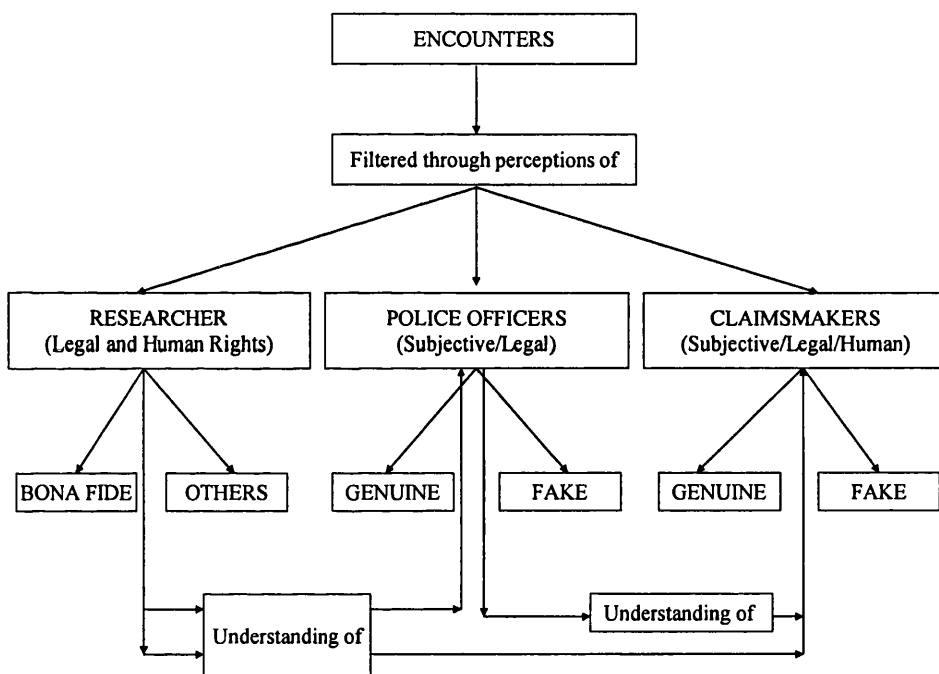
My own perception, which incorporates the legal, human rights and ethical viewpoints of what is justified and legitimate police use of deadly force needs to be articulated; the construction of an 'ideal type', invoking Max Weber's argument that such 'purely mental constructs' enhance our 'conceptual precision about meaningful action' (Whimster 2004: 305). This is also essential as "all knowledge of cultural reality is always knowledge from a *specific point of view*" and since value-freedom or objectivity is never possible for a person, it is necessary to make one's standpoint explicit so that readers can interpret one's arguments in the light of it (Weber 1904, reprinted 2004: 381). It is important to acknowledge that there are incidents where the police have actually fired in self-defence and this has resulted in the death of an alleged criminal. I term this a 'bona fide' *encounter*, to distinguish it from the terms 'genuine' or 'real' that are in common usage. Thus a 'bona fide' *encounter* is an 'ideal type' where police use of deadly force is, in some abstract and impersonal sense, legitimate. However, even 'bona fide' *encounters* are deeply problematic because those incidents, which in my perception and/or in an abstract, pure sense (what accords with law, ethics and human rights) are 'bona fide', may not be universally regarded as such. . Even more acutely, as I show, police and others often see as 'genuine' *encounters* that are not 'bona fide' in the sense I understand the term.

It could be possible that an incident which is 'bona fide' (in my perception) may be perceived as being 'genuine' by both public and police; or it may be perceived as being 'genuine' by the police but 'fake' by the public; or vice versa; or both the public and the police might perceive it to be 'fake'. Since there is so much secrecy, lack of credible information and even misinformation surrounding *encounters*, it becomes difficult to ascertain how particular incidents would be perceived by different audiences. The secrecy that normally surrounds police work was taken to an extreme in cases of *encounters* especially since it aimed at

self-protection. By keeping the public at a distance to maintain their power, the police aimed to retain the “mystification” that sustains “respect and awe” (Manning 1997: 125) with respect to *encounters* by strictly controlling the flow of information. How far they succeeded is debatable.

A diagrammatic representation of the various terms associated with *encounters* and their relationship to the people making a judgement about them would look somewhat like this:

**Figure 4.1: Diagrammatic Representation of Terms**



#### 4.2.1 Definition of a ‘Bona fide’ Encounter

My conception of a ‘bona fide’ *encounter* is encapsulated in this officer’s definition,

“Police encounter means- when the criminal has come in order to commit a crime and at that time police get definite information - and on this definite information, police lay a trap and then we try as far as possible to arrest him. But while arresting, the criminal fires in the direction of the police, to avoid his arrest, and with the intention of killing the police. At that time for our own defence, even after giving him a warning the criminal does not heed it, then there is cross firing and he gets injured and dies in the hospital, or even before that.” (T20: Inspector)

This definition includes all the requirements of a legitimate *encounter* in both the legal and moral senses, covering all aspects that could be questioned or examined in an inquiry or by a court of law. I therefore call it, 'bona fide', and when broken down, its elements include -

- The 'criminal' had every intention of committing a crime at the point of contact.
- The police had authentic and reliable information about the activities of the 'criminal' to counteract any accusations of mistaken identity.
- The main intention of the police in laying a trap was to arrest the 'criminal'.
- The attack was initiated by the 'criminal' with the twin intentions of escaping and killing the police (thus laying the grounds for self defence on the part of the police).
- In spite of this provocation, the police gave due warning to the 'criminal', which was not heeded and the police were forced to fire back in self defence. (The police are thus protected under section 100 of the Indian Penal Code, which refers to 'when the right of private defence of the body extends to causing death').
- The fact that the person died in the resulting cross fire allays suspicions that there was any preplanning or targeting of the 'criminal' in order to shoot him dead.
- The 'criminal' was injured and died either on the spot, or on the way to the hospital, despite the police having made every effort to provide immediate medical assistance.

This is a 'textbook version' of a bona fide *encounter*, which may, or may not coincide with what individuals or institutions choose to consider a 'genuine' *encounter*. The reasons why this particular *encounter* story is constructed for the consumption of all audiences will be analysed in detail in the following sections.

#### 4.2.2 Distinction between 'Fake' and 'Genuine' Encounters

There are three main interpretive frameworks through which the different meanings of the term 'genuine' *encounter* can be understood. The first is the Human Rights interpretation where an *encounter* could be considered 'genuine' if it is enacted in self-defence, as a last resort, and without impinging arbitrarily on the Right to Life of the 'criminal'. This is an essentialist viewpoint that considers the actual circumstances of an *encounter* situation and comes closest to the 'bona fide' *encounter*. In India the National Human Rights Commission oversees matters pertaining to human rights violations by state agencies, including the police. However, this quasi-judicial body bases its findings primarily on legalistic grounds.

From a legalistic interpretation, an *encounter* would be 'genuine' when it is presented as having fulfilled all the legal requirements that justify the use of deadly force by the police; and/or met the exacting standards of required paperwork; and/or which had been adjudicated as being genuine in a court of law. However, since this study is not based on observation of actual *encounters* but on perceptions of them, I chose to adopt a formalistic legal perspective, whereby the interpretative framework limits itself to an examination of whether the formal records show that all actions and procedures in an *encounter* are in accordance with the law.

The final interpretive framework adopts a more subjective, individualistic value judgement of whether the *encounter* is justifiable, and therefore 'genuine'. This framework suggests that it is for individuals to perceive a particular incident as a 'genuine' *encounter*, based on subjective criteria that are relevant to the individual making the evaluation. For example, 'necessary evil' may be a rational justification for some in order to consider an *encounter* to be 'genuine', but may not appeal to others.

The three approaches outlined above use different criteria for establishing whether an *encounter* is evaluated as being 'genuine'. What may be a 'genuine' *encounter* in a Human Rights framework (i.e. actually done in self defence, after all due care and consideration has been taken by the police) may not be

considered to be legally 'genuine' if there are shortcomings in the paperwork or procedural formalities (for e.g. if there are problems in the way the panchanama<sup>39</sup> was drawn up; or if the mandatory hand wash<sup>40</sup> of the criminal was not taken on the spot; or if a witness turned hostile). An individual applying subjective criteria may not perceive an *encounter* as being 'genuine' if the *encountered* person did not have an established criminal record. My research cannot ascertain whether *encounters* are actually 'genuine' or not from either the Human Rights or the legalistic perspective. It is concerned with understanding police and other people's perceptions (individually and collectively) of what constitutes an *encounter*, and how they distinguish between a 'genuine' and 'fake' *encounter*.

#### 4.3 Police Officers' Definition of *Encounters*.

All officers were asked, 'What do you understand by the term *encounter*?' The answers I received could be broadly classified as: Standard; Incident Specific; Unusual; and Definitions that elaborated upon the distinctions between 'genuine' and 'fake' *encounters*.

A 'standard' definition is the classic, textbook definition. One officer, for example said, "Encounter means we go to catch him, he fires, and in self-defence we kill him" (T 26: Upper Middle Management). On being asked what they understood by the term *encounter*, a majority of officers (28 of the 38 officers) responded by giving the standard, almost textbook definition. These officers stressed that self-defence was the main factor for legally justifying *encounters*. (Chapter 6 discusses other justifying factors).

The stories given out to the press, and the First Information Reports (FIR) lodged at the police station, largely followed this standard format of police firing in self-

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<sup>39</sup> A 'panchanama' is a legal requirement to be filled in by the police at the scene of a crime in the presence of five independent witnesses. Often it is difficult to find independent witnesses at encounter spots (lonely and late at night), or those who are willing to be drawn into police business of their own accord. As a result police officers often have to resort to 'creating' panchas (as they are called) or calling upon the services of 'professional' panchas, who have made this their livelihood.

<sup>40</sup> The hand wash taken immediately after a shooting has taken place would show residual traces of gunpowder on the palm and fingers, of the criminal if he had just fired a weapon. This would help in proving that the criminal had attacked the police and they retaliated by shooting back in self-defence.

defence. In Mumbai, it appeared as if the repetitive *encounter* story had become part of police lore, to be accepted uncritically by all the officers. Holdaway (1983: 138-9) describes 'folk narratives' and 'keeping the tradition alive', and adds that although the stories are frequently "exaggerated, highly dramatic and probably inaccurate, their power is considerable". He cites Hannerz (1969:111) - "An individual's vision of reality is often a precarious thing; we can find comfort in the knowledge that it is shared by others, thus acquiring social anchoring in an objective truth", which explains how the *encounter* story became 'official' in Mumbai.

An 'incident specific' definition sought to explain what an *encounter* was by describing a particular incident or experience. One officer said,

"Encounter means- I had gone to investigate a murder. I learned that somebody has killed a person and left the dead body in a certain place. When I went there, the people who had killed him had come there to take the body for disposal. They did not know that the police were going to come there and suddenly it all happened. Then they attacked us, we did cross firing, in which I killed two [people]. I did not have much idea, in Mumbai city. It was my first experience, why mine, anyone around that time had very little idea about it. It was the first encounter in Mumbai city in (A date in the 1980's)<sup>41</sup>. That time (XYZ)<sup>42</sup> was the Commissioner, he was very much pleased. Then we recovered bombs from there, recovered the dead body, one accused escaped. We had no idea how to conduct the case. Now *encounters* have become very regular- there is a standard procedure to be followed. That time, I did not know much, no experience, not many had any experience, but we somehow got through it. Then the CP<sup>43</sup> was very pleased, he said put this up for a medal... that is how I got my first Gallantry medal". (T 7: Lower Middle Management)

This story gives the first hint that with increased experience, the police from the latter half of the 1980s onwards arranged events and appearances so that they could be represented as completely justified *encounters*. The minority of officers who used stories to explain their understanding of an *encounter*, lends strength to Shearing and Ericson's contention that "police references to 'experience' as the source of their knowledge, and their persistent story-telling, appear as glosses

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<sup>41</sup> The date is not mentioned as it might compromise the identity of the officer concerned.

<sup>42</sup> The name of the Commissioner is deliberately anonymised.

<sup>43</sup> The Commissioner of Police is generally referred to as CP by officers and citizens alike.



that arise from their inability to identify and articulate the rules that generate their actions” (1991: 321). Perhaps this indicates that either there are no fixed rules, or that the rules are very crude, or the officers do not think the rules and principles that actually guide police actions in *encounters* are legally or morally acceptable, or that the rules are such that they are either unable or unwilling to articulate them<sup>44</sup>. It could also be the case that these officers could not think nomothetically in terms of patterns but only ideographically in terms of individual cases. On the other hand, these officers might have used stories from personal experience as illustrations to explain what *encounters* were.

Alternatively, officers may have described their own experience in response to questions about *encounters* as a safe way out of answering what they might have perceived as being a tricky question. By doing so they could avoid making the distinction between genuine and fake *encounters*. Their stories almost always involved a ‘genuine’ *encounter* that occurred in the pursuance of self-defence by the officer. By telling a ‘thrilling’ story of their chase and hunt of a ‘wanted’ criminal, they relived an exciting moment in their career and also, by restricting their answers to personal experience, they sought to avoid speaking about *encounters* in general terms and comment on their perception of *encounter* experiences of others.

Yet there were some officers who deviated from this general pattern and defined *encounters*, in what I thought were, ‘unusual’ ways. This indicates that there wasn’t total connivance on the part of all officers to cite the standard story, but officers did improvise, and in some cases, openly discussed what actually happened in *encounters*. These officers gave creative answers to the question and in doing so diverged from the above two kinds of responses. Examples of unusual definitions were, “Aborted Arrest” (T 28: Inspector), indicating that it occurred as a result of a failed arrest operation. Another example that was reminiscent of the ‘Dirty Harry’ talk was,

“That criminal, who has been committing as many crimes as possible by using the loopholes in the law, if he is not stopped now or jailed

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<sup>44</sup> Indications that there are corrupt and unethical reasons why some officers are more prone to ‘doing’ *encounters* were evident in many interviews. (See Chapter 5)

now, then he will become a great burden on society. To act against him, whatever steps we take are known as encounters” (T 14: Lower Middle Management).

Only six of the thirty eight officers talked about *encounters* without invoking self-defence. These officers also directly admitted that *encounters* involved some amount of illegality in police actions (admitted to wrong-doing on the part of the police in the legal but not the moral sense). Tensions between the moral, ethical and legal dimensions of *encounters* are discussed further in Chapter 6.

A few officers defined *encounters* by distinguishing between ‘genuine’ and ‘fake’ or ‘false’ *encounters*. As one senior officer explained,

“This word encounter has taken a big, devious meaning. Encounter is – it is an encounter between you and me today, ok? One-to-one. Police, for example, the way in newspapers it is printed that encounter has taken place, and this and that; and the way it is printed and the way the public also began thinking is- encounter is where a person is lifted, brought and shot, and put somewhere. I call that a fake encounter. An encounter is one where we go for a search or a raid on a place or premises - they attack us, they fire at us, and we fire back at them. In the process, the chances are we can get injured, they can get injured.” (T 24: Senior Management)

The distinction between ‘fake’ and ‘genuine’ *encounters* existed in most of the interviews; officers were equally certain that their perception of what constituted a ‘genuine’ (and by corollary, ‘fake’) *encounter* was different from what they thought was the general public’s perception of a ‘genuine’ *encounter*.

According to officers’ viewpoint, a ‘genuine’ *encounter* had the following features-

- It involved ‘hardcore’ criminals who had notorious criminal records. Officers used this term without recognizing or appearing to acknowledge that a person is only ‘allegedly’ a criminal, unless he has been convicted in a court of law of the crimes he is accused of or charged with. The police description of someone as a hardcore criminal was deemed to be accepted as uncontroversial and no officer even exhibited awareness that the use of such a term was problematic.

- Occurred in the presence of the public, or in locations with high visibility. An *encounter* in the presence of witnesses or in a very public place was considered to be genuine, even though there was no discussion about the extent and seriousness of the threat posed to the lives of officers or others, the proportionality of force used by the police and whether firing was the only or last resort.
- Occurred while chasing a dangerous criminal, or while responding to an actual crime in progress. Officers seemed unaware that even in these circumstances if the police had made use of unjustified excessive force or no one's life was endangered it was not a justifiable or legitimate use of deadly force. Since the police response depends on whether officers genuinely believed they or others were under threat at the time, and not on how reasonable this belief was when looked at after the event, officers felt that it is hard for courts, tribunals or anyone else to second-guess and find officers to have behaved illegitimately.
- A significant proportion of officers expressed the view that if an *encounter* was 'well managed' i.e. if the legal requirements were fulfilled, the paperwork was in order and no messy incriminating evidence was left unaccounted for, then the *encounter* was to be counted as 'genuine' (even if they knew it wasn't). Thus a 'good story' (Chatterton 1979: 94) even if the person offering an account may not himself regard it as true, will be accepted by colleagues and supervisors, because it is what 'everyone knows' and has accepted ( Scott & Lyman 1968).
- A majority of officers felt that an act committed in good faith, with good intentions, and in the interests of society, that involved controlling criminals, was legitimate. Therefore, if the acting officers' intentions were deemed to be good, then the *encounter* was considered to be 'genuine'. Delattre (2002: 201) echoes a similar sentiment when he claims that even if officers have employed illegal methods in 'hard' or 'Dirty Harry' situations, they are neither morally tainted nor necessarily to be condemned in any subsequent legal proceedings.

Officers were almost unanimous in what constituted ‘fake’ *encounters*, and acknowledged *encounters* occurred that possessed one or many of the following characteristics -

- Involved a person with no criminal history;
- Resulted from a mistaken identification of the person killed;
- Employed blatantly excessive use of force;
- Emerged from a ‘catch-and-kill’ policy - this involved the suggestion that the police actually place a target (the criminal they have chosen to focus upon) under surveillance, follow him for a few weeks or months, build up a case against him, he is then picked up by a unit of plain clothes officers, kept in a safe place overnight or for a few days, and after questioning, is taken to a lonely spot, late at night, and executed;
- Resulted from bad faith or malice on the part of the officer concerned. There were suggestions of corruption – of certain officers being hired hands for particular gangs, taking money from one gang to eliminate members of its rivals. It was alleged that some ‘encounter specialists’ specialised in eliminating members of certain gangs<sup>45</sup>. It was also suggested that under the guise of *encounters* some officers eliminated people against whom they had a personal grudge, or for revenge.<sup>46</sup>
- Involved personal gain for the officer doing the *encounter*, for example ego gratification, anticipation of gallantry medals, promotions<sup>47</sup>, or

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<sup>45</sup> This allegation was refuted by other officers, who explained that officers acted on the information of informants and sources, certain officers had links or contacts in certain gangs, which meant that their ‘operations’ were limited to taking action against those particular gang members only.

<sup>46</sup> Needless to add, there was no proof of any particular case of this kind, but there certainly were hints of murkiness of this kind in the narratives of more than a few officers.

<sup>47</sup> Some state police forces follow a policy of one *encounter*- one rank promotion. For example, in Punjab during the heydays of terrorism (in the 1980s and early 1990s) the government had announced a policy to this effect and there were some cases of officers who had risen from the rank of Sub Inspector to Deputy Inspector General of Police (something that is impossible under the usual scheme of promotions) depending upon the number of *encounters* they were involved in. States like Uttar Pradesh still follow this policy, though this has been much more restricted in recent years. The Government, however, still presents Gallantry Medals to officers who have been involved in acts of bravery, above and beyond the call of duty. One of the more noticeable things about this entire procedure is that a proposal for a Gallantry medal has to be put forward by the Department and goes through to the Government for its approval. It is significant that none of the *encounters* done by the officers of the Crime Branch in Mumbai are ever put up for Medals and so far only those *encounters* that were done in public presence or during an unplanned interface with criminals have been approved by the department for Gallantry medals. This, in my view, is tacit acknowledgement that the ‘operations’ conducted by the Crime Branch are

enhanced status within the department and in society, of the kind the 'encounter specialists' enjoy.

Despite their personal feelings and moral compunctions about illegalities and wrongdoings, officers generally agreed that if an *encounter* was well-managed and/ or was committed in good faith for noble ends, then even if it did not fulfil any of the other conditions, it would be treated as a 'genuine' *encounter*.

Officers tended to obfuscate the borders between what they personally considered 'genuine' incidents and what as an organisation, or in their official capacity, they would accept as 'genuine' incidents. For example one officer gave the standard definition of what an *encounter* was and then added, "That is what is said in the FIR (First Information Report) in these cases. And experts in this area will tell you that this is the only way you can justify an *encounter*" (T33: Upper Middle Management). When I asked if that is what actually happened in an *encounter*, he replied, "As I said, that is what the FIR says happened and that is what is relevant. However, in real life many times even the basic procedures are not followed". Since the First Information Report is legally a very important document, and the information contained in it is treated as sacrosanct by the courts in India, the police tend to be very careful while drafting it. The above comment of the officer suggests that while he personally did not think that most cases were 'genuine' *encounters*, but for the organisation, good paperwork would satisfy the criteria for being one. Good paperwork here included among other things the fact that the official police story, its timing and other details are corroborated by all the relevant police documents and wireless messages. It also ensures that there are no discrepancies in the various versions of the officers and 'independent witnesses' (if any) involved. A good paper trail would ensure that all the relevant procedures and follow up reports were filed on time and without flaws or unexplained gaps.

Another officer said,

"The basic point is not what actually takes place in an encounter situation- what is important is how it is represented on paper, because

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considered suspect even by the department and thus not deemed to be acts of bravery above and beyond the call of duty.

after all, all the inquiries, and all the courts, and all are going to examine the documentary evidence and all the paperwork done by the police. If you are careful then anything can be managed". (T 35: Senior Management).

It was clear that these officers were more interested in the 'recipe rules', which would guide a police officer on "how to get the job done in ways that will appear acceptable to the organisation... how to avoid supervisors and various organisational checks, and when it is necessary to produce 'paper' regarding an incident or complaint" (Ericson 1982, reprinted in 2005: 224).

#### **4.4 Officer Involvement in *Encounters***

This section examines to what extent officers admitted and/or were aware of serious issues concerning the legality of *encounters*. Rank, gender, and involvement in *encounters* were key factors affecting officer responses on this issue. Officers could be categorised into three types depending upon their role or involvement in *encounter* experiences - Active Participants; Facilitators and/or Supervisors; and Non-Participants. Huggins et al (2002: 1) have similarly categorised police officers interviewed as "*direct perpetrators*" (active participants) and "*atrocious facilitators*" (facilitators and/or supervisors) in their attempt to "reconstruct social memory about state-sanctioned violence in Brazil". However, they did not have the third category of officers (non-participants) who had no connection to 'violence work' in their sample of interviewees.

##### **4.4.1 Active Participants**

Fifteen of the thirty-eight officers interviewed had been active participants in *encounters*. They had 'done' *encounters* and grappled with the legal, moral, and ethical issues involved. Nine of the fifteen active participants were posted at that time of interview, or previously, to the Crime Branch. Only some of the active participants belonged to the select group of self-styled 'encounter specialists', who had made *encounters* the mainstay of their policing career; others had had limited experience and involvement in these operations. One of the 'specialists' said he had used firearms in over fifty *encounters*, most of them fatal, as casually as if he were discussing trips to the vegetable market. Active participants were concentrated in the Inspector rank (8), while some belonged to Lower (2), and

Upper Middle Management ranks (2), the remaining (3) were of the rank of Sub-inspector. Officers who belonged to Lower Middle Management at the time the research was conducted, admitted to having done *encounters* prior to promotion, i.e. while they were still Inspectors or even Sub-Inspectors. This is the cutting-edge operational rank at which officers actually carry out *encounters*. Active participants in the Upper Middle Management Ranks admitted to having been part of *encounter* operations, mainly during their posting in the Naxal prone areas of the State of Maharashtra.

#### **4.4.2 Facilitators and/or Supervisors**

Ten officers, including all the Senior Management officers, had at some point been involved directly or indirectly in the planning or aftermath, in ensuring that *encounters* were conducted with efficiency and minimum disruption to 'normal' policing. Five of the facilitators / supervisors were connected to the Crime Branch either in the past or were posted there at the time of the research. One officer (T 35: Inspector) described the type of facilitating he had been involved in, saying that he trained police officers in the police stations by making them aware of the steps to be taken and procedures to be completed when an *encounter* case is being investigated. He described himself as an expert on the paperwork in *encounters* and said he was consulted, particularly in complicated cases to ensure that all the correct paperwork was done, all the guidelines were followed (on paper), and no mistakes were made.

While the paperwork and procedural steps to be taken by the police that follow any action have to be correct and in accordance with the requirements, in this context, on the basis of what the officers said about *encounters*, it is my interpretation that this officer was trying to imply that regardless of the actual facts of the case, his job was to ensure that the paperwork reflected that all the proper procedures had been followed by the police. This manipulation of the 'paper reality' (Goffman 1961) is almost a universal feature of police work, which Manning (1997: 166) describes as, "writing the proper paper in order the construct the appearances". The officer went on to describe similar sorts of vertical and horizontal situational negotiations and collusions with supervisory officers and colleagues in order to manipulate written records to protect oneself

from superiors and legal proceedings that Manning (1997) describes in his work and which is part of the audit trail that officers have to ensure as protection from punishment.

#### 4.4.3 Non-Participants

Thirteen of the officers were 'non-participants', and had no involvement in *encounter* situations (all five women officers interviewed belonged to this category). As mentioned in Chapter 2, the significance of gender was primarily in the fact that all actors involved in *encounters* (police and 'criminals') were male. Why women officers were never part of the Crime Branch team of specialist officers, or why they were not included in police station *encounter* teams may be partially explained by the dominant male attitude towards women officers universally found that they are less likely to be suitable for certain types of policing tasks, especially in situations calling for violence. Boni's (2000: 89) suggestion that informal practices such as discouraging women candidates from applying for specialist positions and misplaced gallantry in protecting them could be applicable even in India as part of the explanation for why women officers did not play a significant role in *encounters*. Also previous studies in other contexts have suggested that women officers do engage in more ethical behaviour and one of the reasons for this could be "because male officers do not accept them - hence they are not incorporated into the male 'brotherhood' of officers" (Brown and Heidensohn 2000: 102, citing Miller and Braswell 1992). Brown and Heidensohn (2000: 102) cite other research where women officers were found to be no more virtuous than their male counterparts in the countries observed. In the context of the Mumbai police, either hypothesis remains untested as women officers had not yet been placed in a position where they had to use deadly force in an *encounter* situation. This is an area of the research that requires further exploration.

The majority of this group of non-participants were officers from the ranks of Sub-Inspector and Lower Middle Management. Typically a non-participant's attitude was, "I'm lucky, I've not had to use my weapon. Without firearms only, I could control difficult situations, and I could arrest many criminals with just a warning." (T 3: Lower Middle Management). The officer's comment gives rise



to the notion that non-participation could be a matter of choice or opportunity. Some officers may have deliberately chosen not to participate in *encounters*, others may just never have been in a position where they would have to resort to the use of firearms in any situation. As discussed in Chapter 2, the sample was skewed towards officers who had experience of *encounters*. However, non-participants represent the bulk of the police force who have had little or no contact with *encounters*. The only knowledge about *encounters* they possessed was second hand. Many among these said they had no information about what actually happens in an *encounter* and refused to speculate or admit that there could be any 'wrong doing' involved.

#### **4.4.4 The Crime Branch**

Of the thirty eight officers I interviewed, fifteen (all male) had connections with the Crime Branch and were at the time of the research, or had been in the past, active participants, facilitators, or supervisors. Four of the officers were 'encounter specialists' who openly acknowledged their special status. I got different versions of what these officers thought actually happened in *encounters* depending on their different roles, and in relation to the amount of trust and rapport I developed with them. There was often a difference between what officers initially said in response to the question- 'what do you understand by the term *encounter*'- and how they subsequently talked about it during the course of the interview about what they thought actually happened in such cases. When formally defining the term, the language used by most officers was careful, and the story constructed in a way that it could stand up under scrutiny in any inquiry. However, as some of the active participants and facilitators admitted, in most *encounter* situations the police ensured that there were no witnesses to contradict their account. A majority of the *encounters* were committed in lonely spots, in the early hours of the morning, with only two parties, the police and the criminals, involved. The police control on the narrative was maintained by ensuring that the 'criminals' involved in *encounters* did not live to tell their side of the story. The 'low visibility' of police work combined with the high levels of discretion vested in the cop on the street allows for opportunities for the police to control and transform the nature of any incident and its official accounts (Holdaway 1983, Manning 1977, Skolnick 1994).

During the course of the interview, I asked officers whether they thought the official story in the documents and in the press releases post-*encounter* reflected actual events. How it was possible that the same story was repeatedly put forward *encounter* after *encounter* with just the names, places and times changing in every incident? Did they think it was realistic that these accounts were identical? I got a range of responses from ‘there can be no other story’; to ‘that is what actually happens’; ‘how could there be any change since it is what happens every time’; and finally ‘there is this standard formulaic story which is carefully constructed and checked by experts to see that all the requirements and formalities are completed as per the directions of the High Court and the National Human Rights Commission’. However, the degree and extent to which officers were willing to admit that there was more to *encounters* than appeared on the surface, was largely dependant on the role they played, and the position they occupied in the organisation, as I describe below.

#### **4.5 Police Attitudes toward Legality of *Encounters***

An *encounter* has two components - the act itself, and the motivation (or moral force) behind the act. Any opinion on whether a particular *encounter* is ‘fake’, or not, could be referring to either the nature of the act (its legality), or the nature of the motivation behind the act (its morality). Illegality in *encounters* range from – excess use of force; ‘catch-and-kill operations’; mistaken identity or the wrong person being shot; and fudging official records and papers. Immorality of the act would refer to the intention behind the *encounter*, thus *encounters* that resulted from corruption (killing for a price), to killing for the sake of personal advancement, ego gratification, or simply excess use of force - are not only immoral, but also involve illegal or extra-legal actions on the part of the police.

Officers were asked directly, or subtly, whether they thought there were any illegality involved in *encounters*. While a majority of officers (25 out of 38) were willing to concede the illegality of the act, some of those were not willing to concede the immorality of the act. Thus, officers who accepted that an *encounter* was ‘fake’ in the legal sense, tended to justify it as being ‘genuine’ in the moral sense. Officers tended to merge themes of illegality with immorality

and separating the two was quite an analytical challenge. I found that largely when officers talked of acceptance of wrongdoing, they really meant acceptance of the illegality of the act. In many cases this might or might not have involved acceptance of the immorality of the act (moral aspects of the issue are discussed in Chapter 6). Officers tended to justify the appropriateness of *encounters* as a crime response putting forward one or more of several arguments discussed in Chapter 6, and that made it difficult to gauge the degree to which they accepted wrongdoing on the part of the police.

Officers' responses to the question of police 'illegalities' in *encounters* tended to fall into four categories: direct admission, indirect admission, denial, and evasion. However, the picture is not as clear-cut as appears on first glance, because apart from a few offices who took up entrenched positions of direct admission or direct denial, the vast majority of officers vacillated between admitting illegalities at one point and denying them at another. This confusion arose out of the problem discussed earlier of officers not drawing clear boundaries for themselves, about what they thought were 'bona fide' *encounters*, and what they considered 'justified' *encounters*. Officers tended to veer inconsistently between adopting various frameworks while talking about *encounters*, showing that their feelings on such a complex subject could scarcely be unambiguous and could not easily be compartmentalized into neat categories. Most *encounters* in the accounts fell into an intermediate grey zone - transcending, crossing and recrossing moral, ethical and legal boundaries.

#### **4.5.1 Direct Admission**

Fourteen officers said they thought there were illegalities in police *encounters*. For example, one officer said, "Last year alone, we killed nine people in my area. We got them, we picked them, they were wanted criminals- we shot them". T1 (Inspector, Active Participant). Another officer said that almost none of the *encounters* were genuine. In every case the 'criminal' was watched, his movements observed for many days, even months. The police then picked him up when it was safe to do so, i.e. no witnesses or other obstacles are present. Usually the 'criminal' was taken to a chosen place, usually secluded, and late at night, and killed. The officer added,

“Otherwise why would you find such a big criminal hanging around in these lonely places in the middle of the night, and many times, alone? In such cases the places are also fixed, every officer [‘encounter specialist’] has his own favourite spot in a favourable police station area. They have the whole system set up - they have their ‘setting’ with the doctors in the hospital where the post mortem will be conducted. Some of these officers have a lot of money to spread around- they can ‘manage’ virtually anything”. (T35: Inspector, Crime Branch Facilitator, from verbatim notes made during the interview)

As a police officer, I was aware of this behaviour within the police organisation but did not have any direct contact with *encounter* specialists; even so, actually hearing another officer openly declaring how these operations were conducted made me quite uncomfortable, especially since the admission was made in such a nonchalant, matter-of-fact way. This was one of the few interviews that was not recorded at the request of the officer concerned, who frankly told me at the beginning of the interview that if I wanted to hear the truth, I should not record the interview; otherwise he would give me standard, officially approved answers, which, he felt, would not help my research. The officer however, did not have any objections to my taking extensive notes as he was speaking.

#### **4.5.2 Indirect Admission**

Ten officers indirectly admitted to illegalities in *encounters*, for example a senior officer said,

“After all why give a weapon in the hands of the police? You want that in certain situations the police should use it, that is why you have given the weapon. I am not endorsing a police act of catching and killing- that is very bad and very dangerous. But, let me tell you why it has become necessary for the police to become proactive and aggressive- you may call it just a euphemism, this proactive and aggressive policing and all that. But this would not have been necessary if our legal system had worked effectively and was seen to be punishing the wrong doers...” (T 31: Senior Management)

The officer went on to list a number of reasons why the police needed to be ‘proactive and aggressive’. These included the negative impact of rising crime on the economic and social well-being of Mumbai; rising insecurity and fear of crime that was said to have gripped its citizens; pressures on the political party in power to remedy the situation, who in turn demanded and effective police

response to organised crime. It was clear that the officer was acknowledging excess use of force and other illegalities, while trying to minimise the negative import of the words by justifying why the police had to use these measures.

#### **4.5.3 Denial**

Twelve officers denied that there was any wrongdoing, but only three officers maintained denial right through the interview. The reason why officers denied any 'wrongdoing' could be partially attributed to what Reuss-Ianni and Ianni (1983) call cop's code, whereby part of the street cop culture is 'don't give up another cop', or what are considered to be key cultural characteristics of the organisation, secrecy, solidarity and the 'operational code' which enshrines the 'rule of silence' (Westley 1970, van Maanen 1978, Punch 1985, Reiner 2000a).

A majority of the officers initially denied 'wrongdoing' strenuously. They later modified their position saying though there were illegalities, these were 'minor' illegalities or mere technicalities (for e.g. use of excessive force), but that they did not consider these to be either serious or worth consideration. One officer said,

"Encounters - every person is not encountered. If only he attacks us too much or fires on us, only then an encounter happens. And normally if you feel that if a person can be subdued then he is arrested. But if you know that this person has a weapon and will use it, then we kill him." (T 19: Sub-Inspector, Active participant)

The officer did not specify which 'criminals' can be arrested and which 'have to be killed'. This talk is redolent of the notion of 'victim precipitation' or 'victim blaming' that was invoked not only in incidents of homicide and rape (Wolfgang 1959, Amir 1971) but a form of early 'proto-victimology' literature that discussed the functional responsibility of the victim (Rock 2002). Police officers in India have a tendency to blame the victim. It was my experience that the work load on police officers in police stations, be it the rural or urban areas is so high and there is so much pressure to respond to the large number of crimes, that the police have a instinctive reaction to blame everyone else, including complainants, for what they see as failing to take basic precautions against being victimized, leading to a worsening crime situation. This tendency to shift

responsibility from themselves onto others might have led the officer to suggest that when certain criminals 'had to be killed', it implied that it was their own conduct that led to a situation where the 'criminals' had to be eliminated rather than arrested.

In effect, this officer denied that the intention of the police was to inevitably kill criminals, but that arresting them was a viable and vigorous option exercised. However, just a few minutes later the same officer went on to say,

"Today those who are really hard core criminals and who are constantly committing crimes and are not reforming - then finishing them is the best. It is no point in keeping them around. It unnecessarily wastes the government's time, court's time and our time.... As a result there is a sort of terror of the police and the others do not have the guts to commit such crimes. So it is in the society's interests to finish them." (T 19: Sub-Inspector, Active participant)

Here the officer does not mention the possibility of arresting 'hardcore' criminals, instead, clearly shows his preference for extermination in the social interest. The contradiction and complexity of denial comes through in these two quotes, where initially the officer denies that killing criminals is the primary aim of the police, but later goes on to extol the virtues of a 'policy' of *encounters*. While this officer does not exemplify denial in the literal sense of the word, the justifications and arguments put forward by him fit into the wider denial framework (Cohen 2001) discussed in Chapter 6.

#### 4.5.4 Evasion

Two officers evaded giving any kind of direct answer to the question of police wrongdoing in *encounters*. These officers were uncomfortable in committing to any clear position. I took this to indicate that they actually thought there were illegalities involved, but just did not want to accept it, nor did they want to blatantly or self-delusionally say that all *encounters* were above board. There is also the possibility that an evasive response might be an artefact of the interview situation. I recognize that people often deal with morally difficult or incriminating issues by not talking about them. One officer gave an answer so as to neither deny nor acknowledge questionable conduct on the part of the police thus,

“Just because nobody questions, one would think that there would be a sort of a free situation of people getting knocked out, but I haven’t got the statistics offhand with me- but we have had less number of shootouts and encounters- which means obviously we are not talking about it as a policy- that we must kill so many this month and so many in the next, no, not at all. The reduction in the number of both (shootouts and encounters) itself shows that the problem has been contained”. (T 30: Senior Management)

This officer did not directly answer the question whether he thought there was police wrongdoing in *encounters*, but appeared to say that the police were not going berserk, killing ‘criminals’ randomly but were, carefully and in a controlled manner, striking at specific targets in order to reduce the number of crimes committed by the organised gangs. The officer seemed to suggest that since *encounters* were declining, it showed that the police were not killing for the sake of it (implying that there was no ‘wrongdoing’), but were doing so in response to crime trends, which vindicated any kind of ‘wrongdoing’ (if any) that might have occurred. Thus he did not answer the question of whether there was any wrongdoing in his opinion, but evaded commenting on it by saying that since they were effective crime control measures, *encounters* were justified. I also thought that the officer spoke about controlling the number of shootouts as opposed to other organised gang crimes like kidnapping and extortion, for they provided the clearest evidence of the activities of the organised criminals, and those which were also the most likely to be definitely recorded by the police<sup>48</sup>.

Table 4.1 shows the relationship between the active participants, facilitators and/or supervisors, and non-participants and those who admitted either directly or indirectly to illegal *encounters*, and denied or evaded the question of illegal *encounters* gives a clearer picture of the situation

**Table 4.1: Officer Involvement and Attitude Towards 'Wrongdoing' in *Encounters***

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<sup>48</sup> Levi and Maguire (2002: 804-5) suggest that cultural, legal, perceptual, and temporal factors affect the definition of violent crime. However, though problematic, homicide figures are still the most commonly comparable figures to make judgements about the ‘level of violence’ in a particular society and between societies. Thus implying that of all the recorded crime figures, homicide figures could be considered to be the most reliably recorded comparatively over time and culture.

	<b>ACTIVE PARTICIPANTS</b>	<b>FACILITATORS/ SUPERVISORS</b>	<b>NON-PARTICIPANTS</b>	<b>TOTAL</b>
<b>DIRECT ADMISSION</b>	7	3	4	<b>14</b>
<b>INDIRECT ADMISSION</b>	2	6	2	<b>10</b>
<b>DENIAL/ EVASION</b>	6	1	7	<b>14</b>
<b>TOTAL</b>	<b>15</b>	<b>10</b>	<b>13</b>	<b>38</b>

It is significant that around half the active participants (mainly from the rank of Inspectors) did not have any problems with making a direct admission and together with those who indirectly admitted to illegality on their part, constituted close to two thirds of the total group. On the other hand a majority of the non-participants (Sub inspectors, and Lower Middle Management) tended to opt for denial or evasion as a response to this question. This may have been because they did not have the experience to either confirm or deny illegalities in any authoritative way. The majority of supervisors and facilitators tended to indirectly admit to transgressions.

That almost half the active participants accepted wrongdoing was surprising, but perhaps it showed their confidence and belief in the 'correctness', or appropriateness of their actions. However, it was the strong element of moral rectitude, which allowed officers to have no qualms about accepting that there was overuse of deadly force because they were convinced it was done for social good and to fight crime. They felt that there were many limitations placed on them by the requirements of the law, their general lack of faith in the Criminal Justice System, and the sheer lack of resources, infrastructure and manpower to tackle large-scale organised crime (See Chapter 6).

Some of the active participants I interviewed did not see that there was any cause to question either their motives or actions as they were perfectly justifiable - from their viewpoint. According to them, organised crime could not be controlled through the legal means available to them; however, the police were



expected by society at large to deal with it effectively, regardless of the means adopted to do so. Foster cites Hunt and Manning's (1991) study which found, "police lying and how the nature of police work, and officers' responses to it, opens up a moral and practical minefield and, in so doing, creates the backdrop for a range of illegitimate behaviour and abuse of the rule of law" (2003: 205). Thus powerful forces that motivated officers in Mumbai to adopt illegal means to do what they perceived was their job, operate even in other police contexts and circumstances. Studies in the UK also revealed similar pressures on the police, especially the lower ranks to adopt whatever measures they felt they needed, even illegal ones to do their job (James 1979, Chatterton 1979, Settle 1990). Officers in Mumbai were remarkably confident that nothing could ever go wrong, that they could never make a mistake that they would get the 'right' man every time. They had spent so much time and energy on covert surveillance, collecting intelligence and keeping track of a particular individual that there were very little chances of any mistakes occurring. Also since the police controlled information about *encounters*, they did not feel threatened by media exposures or scandals.

The reasons why officers tended to deny any 'wrongdoing' were more straightforward. There must have been some amount of distrust not only of the researcher (me), but also of the purpose of the research and what the research material would be used for. In general it is part of the police culture to be suspicious and distrustful of others (Reiner 2000a: 91). This was especially understandable because the topic under discussion was so sensitive and any misuse of the information could have drastic consequences for the individual and the organisation (though I suspect they did not consciously think about the welfare of the organisation).

Denial of illegality also resulted because a large number of officers preferred to stick to the official police version of *encounters* as a matter of policy. This made them feel safe and they probably were not interested in either introspecting or discussing a topic in detail and honestly because either it was too sensitive for them or they felt guilt. There might have been an element of guilt on the part of the active participants – a feeling that despite all their bluster and justifications,

there was at another level, some recognition that what they were doing was illegal and tantamount to murder. As for the non-participants, I suspect there were feelings of guilt that they themselves were incapable or unable to take this decisive action, so they did not want to 'rat' on others who did. Some of the non-participants who did not have any direct contact or experience of *encounters* might have denied because of lack of adequate and reliable knowledge about what actually happens in these situations and may, therefore have refrained from making claims about 'wrongdoings'. Facilitators and supervisors may themselves be complicit in some 'wrongdoing', or may just have turned a blind eye to knowledge of some 'wrongdoing' being done in an *encounter* situation. For this reason they may be unwilling to admit their guilt. The police sub-cultural values of secrecy and loyalty to colleagues are "central to controlling the flow of potentially explosive material and hence each other" (Brogden et al 1988: 39). The sub-culture also fosters a group solidarity that punishes whistleblowing with a 'cold shoulder treatment', dismissal, demotion, discrimination, ostracism, even assault (Chan 1996: 121, Kleinig 1996: 187); and worse still, being set up in a shooting incident without back-up as alleged by officer Serpico who broke the 'rule of silence' and deposed before the Knapp Commission (1972) in New York (Maas 1974). alleges to have faced in life threatening situations. This has been well-documented in the UK and several other police studies across the world.

There also must have been an element of fear for the officers who refused to accept any wrongdoing for fear of the repercussions. They could not be sure that the material would not be 'misused' and used to implicate them in any legal or departmental action<sup>49</sup> as was evident in the reaction of some of the officers to their interviews being tape recorded, but did not mind discussing some of these issues openly once the recorder had been switched off. Some other deniers were perhaps careful enough not to commit themselves either on tape or off it.

There certainly was evidence that loyalty towards colleagues and the department meant people denied illegality *per se*, or even if they admitted illegality, tended

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<sup>49</sup> These last two factors are surmises and I don't really have concrete evidence from the interviews. However it would seem plausible that fear and guilt would be some of the reasons for their refusal to discuss this issue openly.

to support the action out of a sense of loyalty or duty for their colleagues or the department as a whole. As one officer put it,

“We are still a team.... We have been doing it [*encounters*] for the past 10 or 12 years and I think it is enough. But even then I will do whatever I can. I am not doing a favour to anybody – they are my colleagues- good luck to them! I am simply doing what I can to see that the department does not get a bad name. This department has given me a lot- status and respectability, and I will do whatever I can to protect the reputation of the department- not any one person or officer.” (T35: Inspector, Facilitator; from verbatim notes)

The denial mode was more in keeping with my expectations of how police officers would react before I started my field-work because they had no reason to trust me and no obligation to do so.

When I looked at the patterns of Denial or Admission based on officer ranks the majority of Upper Middle Management tended to directly or indirectly admit illegality. I suggest that it was easier for them to do so since neither the ultimate responsibility for formulating and directing policy, nor its actual execution was at this level, officers at the middle managerial levels could afford to criticise and question *encounters*. It is unclear whether it was easier to accept wrongdoing when the responsibility could be passed on to others. Alternatively, it could be that middle management officers were able to be more objective and think through the consequences of police actions as they were not directly involved in *encounters*.

Most Upper Middle Management officers were very unsure of the long-term effects on crime control and whether it would prove to be fruitful for the long-term control of organised crime. They were also unsure of what the consequences of such a policy would be, given the changing climate of growing human rights awareness in India. They did seem willing and able to reflect on the effects and consequences of a policy that was considered by all others as being very effective. Upper Middle Management, as future leaders of the force, were worried about the impact a policy of deliberate encouragement of *encounters* would have on the officers involved in particular and on the force in general. They were also worried about the impact ‘out of control’ officers, or the

'encounter specialists' could have on the general morale and reputation of the force in the years to come.

Finally, Upper Middle Management officers were directly recruited, young Indian Police Service officers with a more critical attitude towards the established attitudes of deference and unquestioning acceptance of 'tried and tested' standard police policy decisions made by the Senior Management. They were the proverbial 'piggy in the middle' (Punch 1985: 75), sandwiched between the lower ranks and the elite senior management. In Mumbai, I found that these officers like to think of themselves as 'thinking cops' who were (at least theoretically) open to new methods and ideas of dealing with traditional problems.

Senior Management took a different stance and opted for official denial, but diluted it with indirect acknowledgement of some transgressions. It is incontrovertible that as facilitators, if Senior Management had not been complicit in the actions or decisions taken by the lower ranks, or had not given directions to that effect in the first place, such a large number of *encounters* could not have taken place, without serious consequences for the active participants. However as facilitators (either directly, or indirectly by turning a deliberate blind eye to the actions of the subordinates) Senior Management were not in a position to openly admit any transgressions on the part of the police. The fact that they were ultimately responsible for all actions (*encounters* included) and inactions (disciplinary proceedings to discourage abuse of force) of their subordinates at a force-wide level, they could scarcely openly accept that there was any illegality being condoned or encouraged by them.

Also, being the highest authority responsible for formulating policy and taking the decision that *encounters* would be one of the measures used to combat organised crime, Senior Management could not then accept that there were any illegalities involved. The fact that a policy of *encounters* prevailed can only be inferred indirectly from the complete confidence the active participants seemed to have in the support and backing of their senior officers. There were obviously no written instructions or guidelines that openly articulated such policy.

Senior Management officers interviewed felt a compulsive need to justify their actions as being an effective response to the threat of crime out of control. It was their experience that *encounters* were one of the most effective responses to combat organised crime and this justified their use as a crime control mechanism. As one very senior officer admitted, while he felt that some *encounters* might not have been in accordance to the law in the strictest sense; however, as a leader, he needed to take effective action against crime that had spiralled out of control. He could not afford to be known as the officer during whose regime, crime reigned uncontrolled. This senior officer was influenced by the occupational culture, which also influenced Skolnick's patrolmen and led him to observe that they had an 'overwhelming concern to show themselves as competent craftsmen'; to being a 'skilled worker' as opposed to 'a civil servant obliged to subscribe to the law' (Skolnick 1966:231, 111). Senior Management needed quick and immediate results to prove their leadership capacities. As these officers had only a few months left in the job, it appeared as if they could not afford to think of the interests of the force, or society, in the long run. Several officers echoed the opinion, "senior officers feel that during my tenure, crime should be under control" (T 22: Upper Middle Management), as being responsible for the adoption of short cut methods like *encounters*.

It also seemed to me that Senior Management felt it incumbent upon themselves not to admit that their subordinates had been indulging in illegal actions; had abused the use of deadly force; and that they, in turn, had supported or encouraged this apparent abuse. Thus, they probably felt that it would be irresponsible on their part to openly admit that the force was countenancing such gross misconduct on the part of some officers, as they were the public face representing the organisation.

When I looked at gender as the defining feature for analysing officer responses to this question, there were no significant changes in the pattern of acceptance or denial. Of the five women officers - three opted for direct admission of, one indirectly admitted to, whereas one officer staunchly denied illegalities on the part of the police. There were also no significant patterns created across ranks of

female officers, in terms of their opinion. However, I must admit that the number of women officers in the sample was very low and thus was inadequate to make any kind of generalised extension of gendered patterns.

#### **4.6 Police Attitudes towards Effectiveness of *Encounters***

Despite any reservations officers had about the legality and morality of *encounters*, and in spite of disagreements over what constituted 'genuine' or 'fake' *encounters*, every single officer agreed that *encounters* were effective. There were no significant differences across either ranks, gender, or on officer involvement in *encounters*. There were however, different criteria by which effectiveness was construed.

##### **4.6.1 Crime Control**

It was universally held that *encounters* had a dramatic and instant impact on the criminal activities of gangs operating in the city.

"If a criminal is killed, then his followers or those crimes which he would have committed in the future, those would definitely be reduced...So many criminals have fled away from this Bombay city, they now have shifted their headquarters. Otherwise in Mumbai there would have been a great deal of unrest- gangsterism, extortionists, kidnappers- a lot of the percentage of serious offences has gone down". (T 17: Inspector; Non Active participant)

Newspaper accounts of the crime statistics for 2003 presented by the Police Commissioner to the media in January 2004 report "Murders dropped from 365 in 1998 to 242 last year, shootouts declined from 101 in 1998 to 10 in 2003 and extortion complaints came down from 987 in 1998 to 273 last year"<sup>50</sup>.

##### **4.6.2 Impact on Gang Activities**

Officers were convinced that *encounters* had a knock-on impact on recruitment, and movement of gang members within the city. As one officer explained,

"The fact is that if one encounter in one gang is done, then all the members of that gang in Mumbai ... in one encounter, for example, of the Abu Salem gang, we killed four people. Now for the next six months there will be no activities of that gang- because basically that

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<sup>50</sup> *Times of India*: (2004), 'I want more cops to be nabbed by ACB: Pasricha', January 15th, 2004.

Abu Salem is from Azamgarh (in Uttar Pradesh) and he mainly uses shooters from there... for some days people will not get recruited to that gang. And for some days he [the leader] will have to provide money to their families. In this a few days will pass, then he will recruit and train new people - that takes time". (T 27: Inspector; Active participant)

This is a very brutal form of disruption of gang activities. Perhaps the officer was speaking on the basis of insider knowledge about these gangs, but there is little independent evidence to support this viewpoint.

#### **4.6.3 Establishing Power and Supremacy of the Police**

Most officers felt that *encounters* had the power to create and establish the ultimate superiority of law enforcement over organised crime. This was expressed by one officer,

"It is my opinion that criminals, he could be a pickpocket or an organised criminal, or top gangster, criminals are not worried about courts- they are not worried about the system, or cases against them. They are worried only about the police and bullets. What hammering they get from the police and their bullets- they are only worried about those two things". (T1: Inspector; Active participant)

The conviction that criminals are only afraid of the police and not of the courts or the criminal justice system was widespread among the officers interviewed and also officers I have interacted with over my own police career.

#### **4.6.4 Reassuring the Public and Warning Criminals**

Most officers felt that *encounters* sent a clear warning and an unambiguous message to the public and criminals, that the police was taking 'proactive and aggressive' action to prevent crimes that were becoming the trademark activities of organised gangs in Mumbai. One officer expressed it as "the police send a message that if you do anything wrong there is no escape. You will be subject to the bullet." (T 7: Lower Middle Management). This ostensibly also reassured the public that the police were active and effectively tackling crime.

#### **4.6.5 Immediate Impact**

Officers believed *encounters* were an effective, shortcut method to get immediate, visible results for the public. In the words of one officer,

“Yes, it has an impact on crime. The only thing that the criminals fear is an encounter. They know that if they are caught, they can get the best lawyers, they can get bail, they can try to manipulate the system, they can even jump bail. But they are really scared of encounters, so it does have an impact. That is clear.” (T33: Upper Middle Management)

Officers’ opinions differed on the extent to which they thought *encounters* were effective and the time span for which it would prove to have a beneficial impact, but on the whole, apart from a few Upper Middle Management officers, not many officers actually considered the negative impact a policy of *encounters* would have on the organisation and society as a whole. These issues are explored in the next section.

#### **4.7 Individual Attitudes toward Desirability of *Encounters***

In this section I discuss what officers as individuals thought about the desirability of pursuing a policy of *encounters* as an organisational goal. Individual attitudes towards *encounters* have been categorised by me as - approval; disapproval; and neutral. A closer examination of individual attitudes towards desirability of *encounters* in terms of rank or gender did not reveal any distinct patterns. Of the five women officers interviewed, two officers approved, one officer disapproved, one officer denied any need for approval of, and the remaining officer did not offer any opinion on *encounters*.

Whereas all the ranks broadly approved of *encounters* as an organisational goal, the disapprovers were mainly from the ranks of Inspectors (two officers) and Upper Middle Management (three officers). Those officers who maintained a position of neutrality were actually the Deniers of ‘wrongdoing’ and were mainly from the ranks of Lower Middle Management (three officers), one Inspector and one officer from the Upper Middle Management. One Sub-inspector and one Lower Middle Management officer did not offer any opinion on the desirability or otherwise of *encounters*.

##### **4.7.1 Approval**

This was the most complex emotion officers had toward *encounters*. Twenty-six officers of the thirty-eight interviewees, approved of the *encounter* ‘policy’ since they thought it was an effective method of controlling crime. However, some of



these officers approved of *encounters* with certain reservations - i.e. they explicitly mentioned that they did not approve of 'fake' *encounters* (mainly implying killing an 'innocent' person). Even when officers acknowledged that corruption and ignoble intentions on the part of some active participants existed, they tended to approve of the action, as long as the target was a hardened 'criminal'. A few of the officers admitted that they would not themselves like to be active participants, but that they approved of the fact that others were willing to do this job. However, the picture was more complex than these numbers seem to suggest. Officers often expressed contrary views, and shifted perspectives and positions on this and other issues. For example, one officer (a Sub-Inspector with over 25 years of service, and a non-participant) whom I have classified as being one who indirectly admitted to illegalities, and who, I concluded, personally approved of *encounters*, held an interesting take on denial of agency when he said,

"Encounters are not conducted, police don't do them, they happen. Like how it is not in your hands whether it should rain or not – it is a natural phenomenon – like that whether *encounters* should be done or not is not in our hands – they occur! (T2: Sub-Inspector)

JB: "Sometimes *encounters* are done, aren't they?"

T2: "If they are done, then it is a crime". (T2: Sub-Inspector)

The officer seemed to deny that *encounters* were staged and felt that they were a crime, if not done in self defence. Just a few minutes later, the same officer while lamenting the ineffectiveness of the criminal justice system and the restrictions placed by the courts, Human Rights organisations and NGO's on the police, said:

"Nowadays the police no longer have an upper hand; there is no fear of the police. The reason for that is the increasing fear of goondas<sup>51</sup>. You ask me, why is this so? Because the goonda takes hold of you, breaks you hand, leg, murders you. So if a goonda demands anything, people comply. What can the police do if they pick you up? They cannot break your hands or legs, cannot do anything, cannot hit you, cannot even abuse you. He is like a bound down tiger, cannot even roar. The police are completely tied down, cannot do anything, cannot even stare intimidatingly at anyone- there will be an allegation that he was looking at me angrily! The policeman has become a blind, immobile, useless oaf – merely existing. But the goondas are not like that- they are very powerful and can do anything. In such a

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<sup>51</sup> Ruffians, or gangsters.

situation if *encounters* take place then they are good for the police and for society. It will give the bound down tiger an opportunity to strike!” (T2: Sub Inspector; Non Participant)

While on one hand the officer denied that the police engineered *encounters*, on the other hand, he felt that for the police to be in a dominant position against hardened criminals, *encounters* were not only effective but also ‘good for the police and for society’. The officer subsequently went on to laughingly recount an incident where he had the opportunity and the means to shoot a dreaded criminal, but had desisted. He also admitted that his senior officer had half seriously questioned him later, as to why he had missed such an opportunity. His explanation was that he did not believe in using unnecessary force, thus making his own moral views on the subject clear.

Though this officer said that if *encounters* were ‘done’, it was a crime; at the same time, he also felt that *encounters* would help re-establish the superiority of the police and restore their bruised and battered self-image. I could only conclude that the officer personally approved of *encounters* but realized that they could not be officially condoned, and certainly would not want to be personally involved in one. The same officer was also aware that *encounters* were not the chance happenings they were portrayed to be, but continued to maintain that they were not ‘done’. This was just one example of the kind of complexity and different levels of approval of and acceptance of wrongdoings in *encounters* exhibited by officers. Some of the non-participants approved of *encounters* as long as they did not have to do any ‘illegal’ or ‘dirty’ work. For example, one officer admitted,

“I cannot do it myself, my conscience does not permit that I should kill- but if someone else does it then it is a good thing as all the future procedures and complications are avoided- and it prevents another big criminal from being created”. (T 12: Sub-Inspector, Non-Participant).

Others, it appeared approved of *encounters* as an institutional practice, without really having thought deeply about what it entailed and the seriousness of the consequences for the alleged criminal, the organisation, and the faith reposed in the criminal justice system by society. It also appeared that some of the

supervisors and facilitators approved of *encounters* merely as an effective crime control measure, and did not want to reflect on its adverse implications for protecting the fundamental Right to Life, or how a police organisation that wields deadly force unethically would be perceived by society. Active participants, it may be deduced, approved of *encounters* to the extent of being able to pull the trigger on more than one occasion without qualms.

#### 4.7.2 Disapproval

As opposed to these officers, five officers in the sample disapproved of *encounters* on legal as well as ethical grounds, as they were unsure of the long-term impact of such a policy on the morale of the organisation as a whole and particularly on the active participants, in the long run. One officer said,

“After the last case, the Fawda case, we were in so much trouble and have just escaped narrowly. It was luck or the judges’ or God’s will, I don’t know, but we were very, very lucky. I don’t think these people know how lucky we were and this is so dangerous, it could turn on us at any time. As I said, it is like sitting on a time bomb which could blow up any minute.” (T 34: Inspector; Facilitator, from verbatim notes)

This particular officer had been closely involved with the fallout of the alleged false *encounter* case of Javed Fawda in 1997, and subsequent police efforts to contest the finding of the Augiar Commission. Thus, he was in the best possible position to comment on the panic that ensued following the adverse finding of the Commission. A few other officers also closely connected with the case mentioned the ‘narrow escape’ the police had at that time and disapproved of continuing along this self-chosen path strewn with landmines and pitfalls - ‘a ticking time bomb’.

It is significant to note that almost all those officers who disapproved of *encounters*, or whose conscience did not permit them to normalize these actions, were facilitators and supervisors (Inspectors and Upper Middle Management) who nevertheless said that they would continue to facilitate and provide support to the active participants out of a sense of loyalty for the department, or because they were afraid of whistle blowing, or turning traitor.

### 4.7.3 Neutral

Five officers, who strenuously denied that *encounters* were 'done', continued to maintain that they 'happened'. Thus, they felt that it was not for them to either approve or disapprove of any policy of *encounters*, because they denied that such a policy existed in the first place. These were the actual deniers in the whole sample, and as one of the officers said,

"Police is not, at no point of time, no police officer would like to kill a criminal because he is a criminal. Unfortunately in exchange of fire somebody dies, it is a totally different act. ...It is sometimes clear from the media or people speaking that police are killing the gangsters or police are killing criminals, but I don't think it is a permitted goal, or it is doing something for the sake of killing". (T 14: Lower Middle Management)

According to this officer, there was no question of him personally approving *encounters* as an organisational goal, because it was not deliberate police policy. Two officers did not express any opinion on whether they approved or disapproved of *encounters*, although they accepted *encounters* happened, but did not say whether they felt them to be either desirable or not, policy goals. They just did not answer this question. One of the officers just stared at me when I asked her whether she approved of *encounters* as a crime control measure and replied that she did not understand the question. Rephrasing the question was just met with silence from her. The other officer went on to talk of something quite irrelevant to the question, thus indicating that he was unwilling to comment on it. Refusal to answer the question was thus a different response from the position of the deniers, who maintained that *encounters* were chance happenings and thus the question of whether they personally approved or disapproved of them did not have any bearing. These officers might not have wanted to comment on what they saw as a potentially controversial issue or may have felt they did not know enough about it in order to express any opinion of approval or otherwise.

### 4.8 Summary

In this chapter I have described the complicated network of terms associated with the core term *encounters*, and the interrelationships that exist between them. From the police perspective, there were four different types of definitions of an *encounter*. There was recognition that there were 'genuine' *encounters* and

'fake' *encounters*, despite a general awareness that the term *encounter* itself had dubious connotations. This indicated that there were different situations and conditions under which particular incidents would be seen as acceptable or not by the officers and by the public. The research shows that police officers' perception that their own understanding of the difference between 'genuine' and 'fake' *encounters* is different from their understanding of the public's perception of the same. The confusion in the way in which particular incidents are viewed as 'genuine' or not by different social actors merely serves to indicate that despite the awareness that *encounters* are questionable police conduct, there is a lot of effort put into trying to put forward reasons and scenarios for justifying police use of deadly force against 'alleged' criminals.

It was also clear that there were differences in opinion about the degree, extent and indeed existence of 'wrong-doing' in *encounters* by officers depending upon their involvement in *encounters*, their rank, and the rapport I was able to establish with the interviewees. The research also produced evidence to show that despite differing personal attitudes towards *encounters* being an approved method of crime control, there was near universal unanimity in the perception of officers that *encounters* were effective in more than one way.

## **5 CHAPTER 5: OFFICERS' PERCEPTION OF THE PUBLIC MOOD AND POLICE ROLE IN SOCIETY**

### **5.1 Introduction**

In the previous chapter, we explored officer perceptions of the types of *encounters*, their attitude towards their legality and efficacy, as well as their personal preference for *encounters* as an organisational policy in the 'war on organised crime'. Bayley (1996: 285) puts forward examples of countries like Argentina, Brazil and Jamaica where 'police executions' of 'undesirables' has been justified by officials, elected politicians, media commentators and the public generally, thus consolidating public sympathy for police excesses which "creates a grim world of vengefulness in which persons accused of crime are literally outlaws, subject to execution by everyone, official or private" (citing Chevigny 1990: 412). Bayley's observations might apply equally to the situation in Mumbai, as the perceptions of the officers to the public's attitude towards *encounters* revealed.

The first section in this chapter examines officer perceptions of what they think is the public reaction to *encounters* as a phenomenon. The second section examines how officers viewed their role in society; what they expected of themselves and what they thought society expected of them as police officers. A clearer understanding of how officers perceived society's reaction to *encounters* and how they constructed their own roles provides the essential background to the analysis in the next chapter exploring police officers' articulated motivations and justifications in explaining *encounters*, and connected moral and ethical issues.

### **5.2 Officers' Perception of Reaction to *Encounters*: an Illustrative Case**

A first person account of one of the most talked about *encounter* cases in Mumbai (Khan 2004) is illustrative of officers' perception of reaction to *encounters*. This incident, which took place in 1991, and now the subject of a major Bollywood film (*Shootout at Lokhandwala* 2007), is of special

significance to me as I was living in the area at the time it took place, and was witness to the police presence and the immediate aftermath of the *encounter*, in which seven members of a gang were killed by a huge party of policemen. Little did I imagine on that day as I stood outside the police barriers, that I would be joining the police, let alone researching *encounters* and writing about this particular incident! Khan, a senior IPS officer, whose claim to fame, amongst other things, proudly proclaimed in the Endnote to his book being “the fact that 44 hardcore criminals had been slain by him, [but he] was not indicted by any commission of inquiry.” (Khan 2004: 136), describes this *encounter* and the political and public fallout of the incident. According to this account, the police received a tip-off from a ‘petty-gangster-turned-informer’ that Maya Dolas, alleged hit-man, extortionist and core member of the Dawood gang, who apart from committing heinous crimes had also assaulted police officers and escaped from police custody and his cronies were holed up in one of the flats in Lohkandwala complex (an enclave of closely spaced buildings) (Khan 2004: 69). The police surrounded the buildings in the afternoon and began a stake-out. When adequate reinforcements were in place they warned (through a bullhorn) the ‘gangsters’ and asked them to surrender. In return the police were attacked by a ‘strategically placed machine gun’ and were simultaneously fired upon by the gangsters. The police too returned fire and after a thrillingly described exchange of fire, lasting over four-and-a-half hours, all seven members of this gang were shot down by the police. Khan then describes the ‘bouquets and brickbats’ that followed in the aftermath of this operation:

“The initial applause was overwhelming. The Chief Minister of the State of Maharashtra, as well as a lot of political bigwigs, called to record their appreciation. We were congratulated, felicitated by the grateful residents, by the Lions, the Rotarians and several other social organisations. Warm letters poured in from unknowns, whose faith in the state machinery and its ability to bring offenders to book had been reinstated... Since the entire episode that been witnessed by hundreds of eyes, it was difficult to dismiss it as yet another staged encounter... Despite the presence of concrete proof, some accusations were hurled at us, even from within the force... jealous fangs were bared... A few of these debunkers actually implied that like Dolas or Buwa [his cohort], we too were on the don’s payroll, settling scores on his behalf because some goons were getting too big for their boots, Others hinted that it was the builders’ lobby which had hired us to finish off the extortionists... I requested the state government to reward my boys with some special compensation, and I am glad to

report that [they received monetary rewards and bravery medals]...in spite of all the positive reactions we got from the majority of the press, the public, and even the local political party in power, we still had to undergo a trial by fire before the fingers pointing at us were finally put to rest. We had to submit our self-esteem for cross-examination by the special enquiry officer who was appointed to investigate the legitimacy of our actions...During the hearing in court however, many senior journalists testified in our favour...both cases were eventually dismissed, but... this case taught me that you are forever guilty, until you are proved innocent” (Khan 2004: 73-76)

This account alludes to several themes of interest to this research, the vilification of the ‘gangsters’ and unquestioned acceptance of their ‘criminal record’ by all; the description of the *encounter* situation; the fact that thousands of bullet rounds were fired but there was no allusion to concepts of proportionate or reasonable force; the public outpouring of felicitations; political approval to police *encounters*; the outrage of officers at having to account for their actions; recognition of divisions within the organisation and envy of elite squads; accusations of police corruption; justification that presence of several witnesses meant that it was not ‘another staged encounter’; and finally officers’ sense of being betrayed by a system of accountability that is considered unnecessary and stressful and not a normal, procedural matter of establishing accountability. This incident is an example of how an *encounter* went well, was then considered to go pear-shaped when criticisms were made and inquiries instituted, and finally ended well.

On the other hand, there have been *encounter* cases that have run into trouble with the authorities and the media have raised questions and doubts. For example, one particular *encounter*, in which an officer gunned down 7 persons in an alleged *encounter* in Dombivili, a suburb adjoining Mumbai, raised a few questions even in police circles<sup>52</sup>. During my field work, officers cited this case as being excessive and discussed rumours regarding the criminalisation of the ‘victims’ and the previous history of the officer involved<sup>53</sup>. The case was

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<sup>52</sup> *The Times of India*: (2002), ‘7 gangsters gunned down in encounter’, February 27th 2002.

<sup>53</sup> Khomne R.: (2002), ‘Dombivili encounter deaths get curiously’, *The Times of India*, 23 March 2002.



referred to the Criminal Investigation Department for further investigation<sup>54</sup>. However, since then I have been unable to trace the result of this investigation and whether any official action was warranted or taken against the errant officers. Such information was not available or forthcoming. The important thing, as officers discussed, was not whether a particular officer had acted irresponsibly, but since no immediate accountability mechanisms kicked in automatically to ensure a scientific and thorough investigation into the case, the resulting systemic failure could lead to miscarriages of justice.

Recently there have been examples where legal action has actually been taken and officers arrested in 2003 to be tried in criminal proceedings for 'fake' *encounters* that occurred in 1992<sup>55</sup>. But this trial is still pending and the outcome might probably get buried under a fresh avalanche of disasters and scandals that periodically rock Mumbai. Interestingly in this case, one particular Inspector arrested, "has been conferred the best policeman award twice by the President of India"<sup>56</sup>.

The *encounters* described above illustrate the layers of complexity that surround them. Given the lack of reliable information, the dominant public perception becomes very important in determining how *encounters* will be viewed. *Encounter* cases have given rise to public outcries and demands for inquiries or judicial probes. These demands for accountability have not always resulted in successful criminal prosecutions of errant officers, but have succeeded in making officers aware of their own fallibility and in the importance of ensuring that the 'paper trial' is properly maintained. However, on balance none of the allegations and counter arguments really made any difference to the public perception in the Lokhandwala shootout case and other similar cases that since Dolas was a 'feared' criminal, there would be no sympathisers to support his case. Police conviction that this public perception will prevail every time gives them the confidence to repeatedly 'do' *encounters*.

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<sup>54</sup> *Indian Express*: (2002), 'CID to probe Dombivili police 'encounter'', February 27th 2002.

<sup>55</sup> *The Times of India*: (2003), 'Police official held in fake encounter case', January 15<sup>th</sup> 2003.

<sup>56</sup> *The Times of India*: (2003), 'Inspector arrested for 1992 encounter', January 17<sup>th</sup> 2003

It therefore becomes important to understand how officers' perceived the response of 'claimsmakers' (politicians, the media, the public) as well as colleagues, the police organisation, and other relevant agencies, whose opinions would have a bearing on *encounters* being an accepted response to organised crime. While analysing these officer perceptions, gender, rank and involvement in *encounters* have been mentioned only when I felt they were significant to the analysis.

### **5.3 Attitude of Colleagues**

Apart from talking about their own attitude, officers also expressed their perceptions of other officers' attitudes towards *encounters*. Sensitivity and awareness of other officers' reaction was important because of the negotiation required with colleagues and supervisory officers while creating the written records for 'situationally justifying action' (Manning 1997: 131) in *encounter* cases where 'management of appearances' was of vital significance. Of the range of opinions expressed, on the one end of the spectrum was the view that everyone in the organisation approved and supported *encounters* as they functionally contributed to maintaining and increasing solidarity within society. At the other end was the view of some disgruntled officers that just a few chosen individuals had monopolised the use of deadly force and were a highly privileged and pampered group who had gained undeserved recognition and position within the organisation and in society. A majority of the officers, however, held the moderate position that most of their colleagues disapproved of 'fake' *encounters* but on the whole supported actions that were deemed justified if not legitimate.

There was a distinction between how officers from the Crime Branch as opposed to all other officers talked and thought about *encounters*. Regardless of whether they adopted the position of denial, indirect, or direct admission, it was clear when I was speaking to them, that officers connected to the Crime Branch were in the 'know'- i.e. were aware of the exact nature and extent of the illegal and unethical practices involved in these operations. Officers gave more than a hint of the murkiness that lay beneath what was ostensibly portrayed as proactive action in the pursuance of social good. Active participants were proud of the image they had cultivated and fed the media image that portrayed them as

'cleaners of scum' One 'encounter specialist' is recorded as having claimed, "Criminals are filth. And I'm the cleaner" (Perry 2003); talk reminiscent of what Hughes (1961) has referred to as 'dirty work' in policing.

Officers boasted of the number of 'scalps' they had to their credit, one officer described his first *encounter* thus, "That was my first. Since that day I have not stopped killing...My name is a brand today. Prisoners stick my photos on the walls of their cells" (Lakshmi 2003). The 'active' active participants did not show much remorse or regret for the actions taken by them, which seemed logical when one considers that they were still managing to motivate themselves to continue this course of action. By comparison, a small majority of the 'dormant'<sup>57</sup> active participants, it seemed, had had more time to reflect on the implications of their actions and were more questioning of the 'policy' of *encounters*. Active participants enjoyed a special status within the organisation, and this was resented as well as coveted by other officers. The former were aware of this and had a somewhat patronising attitude towards the 'lesser mortals' who were stuck with the banalities of everyday police station routine duties. Some of these dynamics are captured in the police literature on what is considered to be 'real policing', the emphasis that officers like to place of 'action oriented', 'macho' aspects of police culture that has been documented in various studies (Reiner 2000a: 89: citing works of Holdaway 1977, 1983; Skolnick and Fyfe 1993, Geller and Toch 1996, Crank 1998) as opposed to routine and regular policing tasks that comprise of a majority of any police officer's job which is non-crime related. Morgan and Newburn (1997: 81) also cite that studies have shown that "this 'service' work is widely regarded by the mainstream police occupational culture as 'bullshit' and very much the poor relation of 'real' police work".

A large majority of the non-participants who had no connection with the Crime Branch, on the other hand, only had an inkling of the illegalities and corruption that existed in these operations. There was envy of their more flamboyant

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<sup>57</sup> Active Active participants were those who were then still actively doing *encounters* around the time of the interviews as opposed to the dormant ones, who had ceased such activity for a few years.

colleagues in the Crime Branch but there was also a feeling of 'better them than me' doing this dirty job! One officer, a dormant active participant with no connection with the Crime Branch, and who had run into legal difficulties during two *encounters* he had been involved with, added as a post interview comment,

"However having said that [encounters are effective] I feel that it is better that encounters are left to the Crime Branch rather than the regular police. They are better trained, they have the time and resources for the planning and cultivating their sources. This is their entire job so they are the professionals and should do it." (T 38: Upper Middle Management)

#### **5.4 Organisational Attitude**

While officers, by and large, felt that there was general organisational approval and support for *encounters* - "Our force believe that they are into encounters, I think, irrespective of the government support. There is no alternative to control crime in an effective manner" (T1: Inspector) - a few officers felt that this approval was not always to be taken for granted, but was conditional upon the merits of each individual case, and in some instances, upon the personal relations of the officers involved in them. It was generally felt that if the paperwork was in order, i.e. all legal requirements were fulfilled in the written documentation that followed an incident, and there were no major procedural lapses, the organisation tended to support *encounters*. However, a few officers mentioned that in case there were any problems, public protests, or inquiries ordered - the officers concerned would then be on their own - to defend themselves and their actions as best as they could. However the Javed Fawda case was an exception as the officers involved had full support from all elements of the hierarchy. Nevertheless, the officers actually involved in that operation still faced many months of agonising uncertainty and underwent tremendous mental stress and anguish for ten months in the year 1999. One officer said,

"When the Augiar Commission was supposed to look into 100 cases of encounters done by the Mumbai police, we had nightmares putting up those cases. The paperwork was incomplete, the formalities had not been followed and it was such a big problem. We could have been in very serious trouble, but we just managed to miss it because the High Court took a favourable view of the police action. The Fawda case was a terrible experience Mumbai police went through...People now just don't seem to appreciate what a narrow escape they had and they just don't seem to be learning their lessons" (T33: Upper Middle Management, verbatim notes from interview)

None of the officers talked about this stress openly, but experience of working in the police organisation made me sensitive to the unspoken trauma that the officers had undergone. Clearly, it appeared as if the effect of the Augiar Commission inquiring into the *encounter* of Jawed Fawda on the Mumbai police, was similar to the impact of the Macpherson Inquiry into the death of Stephen Lawrence, that had wide ranging repercussions on, and generated considerable negative feelings in, not only the officers indicted by the inquiry, but were more widely felt by officers of the Metropolitan Police in particular, and police forces in England and Wales, in general (Foster, Newburn and Souhami, 2005: 19-20). However, the above comments of the officer indicated that Mumbai police did not seem to have learned their lessons from this experience.

### **5.5 Attitude of Other Related Agencies**

I asked officers whether in their opinion other agencies, including medical departments (who play a vital role in producing the post-mortem report<sup>58</sup>), forensics (who produce the ballistics report<sup>59</sup>), the administrative bureaucracy (responsible for conducting magisterial inquiries- mandatory in every case of custodial or unnatural death) and the courts (conducting judicial inquiries and criminal cases against the police) supported the police in *encounter* cases. It was intentionally a loaded question, obliquely implying that the police needed 'extra support' to justify *encounters*. The aim was to elicit whether officers thought other agencies supported police 'wrongdoings' (for either moral or corrupt purposes), making it easier for them to get away with killing alleged criminals, and indicating wider support for such actions. A few officers (mainly the

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<sup>58</sup> The Post-mortem report is of the most vital significance in establishing the cause, mode and time of death. Any discrepancy in this report from the official account given by the officers, can land them in serious trouble. The courts tend to hold this document sacrosanct and thus undisputable. For e.g. if any signs of scorching or blackening round the wound are indicated in the report, it would be damning evidence that the *encounter* was conducted at very close quarters or point blank range and raises questions on the veracity of the self defence account given by the officers. One officer recounted his personal experience where the post-mortem report indicated such black scorch marks around the bullet wound and this created endless hassles for the officer and his team to get second and third opinions on this report that contradicted the findings of the original report.

<sup>59</sup> Forensics have to provide the hand wash report of the criminal, providing evidence that the 'criminal' had indeed attempted to fire on the police party; ballistic report on all the weapons used during the *encounter*, belonging to the 'criminal' (had been recently discharged) and to the officers (matching the bullets with the weapons and the number of shots the officers claim to have discharged) etc.

Deniers) spotted the trap and replied that other agencies did their job according to the merit of the case – so there was no question of ‘support’ of any kind. A typical Denier had this to say,

“There is no support as such from them. They have a very indifferent attitude. What the police have done, whether he [the victim] was a big criminal, a small criminal- they have nothing to do with that... And basically we [the team doing the *encounter*] don’t keep the case with us. Immediately we have to refer it to the nearest police station. Then they have all the control, it is not under our control.” (T 28: Inspector, ‘encounter specialist’)

In contrast to this, it was generally felt that the Crime Branch had good connections and requisite resources for the purpose of ‘managing’ the aftermath and subsequent investigation into *encounters* (see pages 138, 162). Another officer from the Crime Branch felt that other agencies were not providing as much support or co-operation as extraordinary *encounter* situations demanded. He felt,

“We have difficulties with them (other agencies)...They may not be doing it intentionally but it is our expectation that - we have done this for (the country). It is a unique occasion, it is a life and death situation for the policeman, so the reaction from other agencies should also be fast. But they treat us as a normal thing, ‘Let it be, leave it. Today the doctor is not there. It cannot be done today’. Magistrates ask them (encounter specialists) to line up, routine enquiries go on. This is, for the force, it is slightly demoralising.” (T26: Upper Middle Management)

This officer continued to make the extraordinary suggestion that specialist officers should be treated, “Like (in) the armed forces, where all their actions are in-house; in-house doctor, in-house court martial and where you have dignity as an officer. Here, you are exposed to civil agencies like doctors and magistrates - it is demoralising”. Given the general opinion that these situations could be ‘managed’ either on grounds of personal rapport between officers and other agency officials or as a result of money being exchanged, the officer wanted to take the level of management to a new dimension, where there would be no ‘civilian’ involvement in the investigation of *encounters* thus avoiding any accountability to outside agencies. The language of militarization, and the distinction between the police and ‘civilians’ (a term used rather disdainfully) by

this officer, is reminiscent of similar talk by officers in studies conducted in other countries (Chevigny 1995, Huggins et al 2002).

Other officers felt that relevant other agencies approved of police action and thus co-operated or supported in whatever way they could. Still others, honestly admitted that money ruled - and that if the authorities concerned were paid enough, they would write a report as per your specifications. Eleven of the thirty-eight officers said that these things could be 'managed', an opinion expressed unequivocally by one officer,

"They co-operate, but it all works on money. In the districts there may be a case of personal relationships and rapport making a difference but here in Mumbai only money speaks. So yes, they do help and co-operate, but it has to be managed. It has to be done by the people involved, co-operation is not assumed or automatic" (T: 38: Upper Middle Management).

As far as the attitude of the courts was concerned - officers tended to feel that while on the whole the courts were very tough on officers and came down hard upon them in other matters, they too tended to give a bit of space to officers in the matter of *encounters*. The Javed Fawda case clearly demonstrated the power of the courts and individual judges in interpreting events in favour of (or against) the police, as one officer said,

"Now if a sessions court convicts in a particular case, the High Court acquits, if the High Court convicts, then the Supreme Court acquits. The law is the same, the arguments are also more or less the same, they just study the papers ( in the Appellate courts) and decide and give different decisions... judges have a different viewpoint and they have different interpretations for the law...they have discretion...There are some judges who have this fixed feeling that they will trouble the police, then they do cause trouble. The doctors are also like that". (T 7: Lower Middle Management)

Clearly, officers were aware of the power of the courts to punish, if they failed to 'manage appearances' or slipped up in creating a credible 'paper trail'.

## **5.6 Attitude of Politicians**

Officers' perception of the political reaction to *encounters* in Mumbai was mixed. The majority of officers felt that while there was some interference in the matters of transfers and postings, there was no political interference in policing

operational matters. Sub inspector and Inspector ranks were mainly of this opinion, presumably because at that level they would not have been subject to political pressure of this kind, as one officer said, “In Maharashtra there is little political interference in general. They have to govern and by doing encounters if activities of criminal gangs are dampened, then in Maharashtra there is no political trouble about encounters. They support the police” (T 8: Sub-Inspector). Another officer felt, “Action is supported also (by politicians) and not also. Because they have to continue ruling, so from that viewpoint they do what is suitable. There is pressure to control crime” (T 15: Sub-Inspector).

There appeared to be political support for *encounters* in Mumbai<sup>60</sup>, as it did in some other states in India. For example, in my own state (Uttar Pradesh) erstwhile Chief Ministers have made public announcements on several occasions (some attended by me) that the police should control crime by increasing the number of *encounters*.

Almost all the officers believed there was political support, if not open encouragement for *encounters* as an effective policy to counter organised gangs. Senior officers admitted that at various points in time, especially between 1998-99 when heightened gang activity was apparent in the city, there was a lot of political pressure on the police to be seen as being effective and proactive in the war on crime. One officer said,

“When the situation became grim and things became uncontrollable in the city. Businesses started closing, the multinationals started packing up, capital inflow had stopped, share market had reacted, real estate collapsed, hotel industries, car purchases had stopped, then the whole thing had come to a grinding halt- obviously the society wanted some desperate help to be rendered by the police. The state government, no-confidence motion was brought; the traders called the Chief Minister and told him that we are not going to pay you taxes... Then they said we will celebrate black Diwali<sup>61</sup>, instead of bursting crackers in all the houses and business establishments we will all put up black flags and protest... Then the Government of

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<sup>60</sup> See for e.g.: Aiyar S. & Koppikar S.: (1997), ‘Triggering Controversy’, *India Today*, December 22, 1997, where the Deputy Chief Minister is reported to have “admitted that he favoured the policy of encounters”.

<sup>61</sup> Diwali, the festival of lights, is celebrated all over India. A Black Diwali, i.e. Diwali without lights is the ultimate form of protest, signalling society-wide unhappiness and resentment.



India was thinking of dismissing this government belonging to the other party and applying 356 [section of the Constitution of India] for collapse of law and order. So obviously under such circumstances, any measure which was legal, which was giving help, was all right - the press and the judiciary ...would welcome any medicine given to this uncontrollable, galloping disease.” (T 24: Senior Management)

The officer essentially described the state of law and order and the resulting economic and political crisis as the reasons for why the public, press, judiciary and politicians approved of *encounters*. Officers either did not perceive it as such, or did not want to admit that they were receiving direct political directives regarding *encounters*. However, in interviews with senior members of the ruling government and the opposition (see Chapter 7), they admitted in the conversation following the interview that they had given directives to Senior Management officers to ‘take care of’ members who were on the ‘wanted’ list of criminals and that they would monitor police action against such persons on a regular basis. The overall impression that I received was that officers were at pains to convince me that while they had no political interference as such, they had political support for these actions.

One senior officer remarked-

“The Law and the Constitution are like God, you cannot touch them, or see them, but they are there. The politicians are like priests and you do their bidding, that’s all. We should work according to the law - but we don’t – because of personal glory and somehow we feel obliged to please our political masters - that is how we are moulded or trained.” (T 6: Upper Middle Management)

Following this logic it becomes clear that the police would not pursue such a potentially controversial policy if it did not have the political mandate, as one Crime Branch officer clearly admitted that they would not be able to continue operating the way they had been, if political support were withdrawn. This is manifested in the fact that the state government has the power to order magisterial or departmental inquiries into alleged misconduct of police officers. Also, according to Section 197 of the Code of Criminal Procedure, no criminal proceedings can be brought against a public servant for alleged offences committed or purported to be committed in the discharge of his/her official duty

except with the sanction of the concerned Union or state government. Neither could the investigation of such cases be transferred to the Criminal Bureau of Investigation without the prior approval of the state government. Thus the political party in power wields considerable powers to either protect or prosecute police officers, making their approval for *encounters* of utmost importance.

## 5.7 Attitude of the Media

The attitude of the media towards *encounters* was summarised by one officer as: “Generally they are not adverse. After about 200 encounters somebody may complain about a single case or in one or two cases they make allegations, but basically they are not against” (T 1: Inspector). Another officer felt, “Encounters make good news and that is how the media looks at them” (T 32: Inspector). While a small proportion of officers felt that the media unconditionally approved of *encounters*, a majority of others felt that media reporting displayed a mixed attitude - approval if the *encounter* was perceived to be ‘genuine’ and criticism if the dead person was not a ‘hardcore’ criminal.

“In the beginning 1992, ’93, up to ’97, they used to feel that encounters are big news. Now encounters are not that sensational. There are some press people who are directly or indirectly connected with these gangs, their viewpoint is different, so there is a mixed reaction. But overall there is less criticism, for encounters”. (T 27: Inspector, Doer)

This officer recognized the ‘normalization’ of *encounters* by the press and alleged that the media had vested interests and links with gangs, which coloured their coverage of *encounters*. While a majority of the officers maintained that the press was neither prejudiced nor biased either against or towards the police and reported facts as they saw them, there was a subtext, which implied that the media reported events only to sensationalize, not as responsible reporting but as commercialised packaging of news. From the interviews it emerged that while the officers realized the importance and impact of the media on public opinion, they nevertheless did not consider it to be of any intrinsic value in itself, in fact there was more than an undercurrent of contempt for the media, their perceived irresponsibility, and lack of integrity. (See section on condemnation of condemners in Chapter 6).

Nearly 40% of the officers felt that the media was mainly interested in sensationalising the issue, and serving their own interests, as one officer said,

“There are categories in the press- you can read the same news in four different ways. Some newspapers are always publishing anti-police stories and they have a habit of printing everything negative in every matter... They have a habit of exaggerating... the journalists that I have come across, none of them have any professional knowledge of their job...Here the journalists are really petty and amateurish”. (T 20: Inspector)

When asked about the reports of the police achieving a set target of conducting 100 *encounter* deaths in one calendar year, a very senior officer felt that it was mere speculation on the part of the press; there were a 100 or just over, *encounter* deaths in the year 2001, and the 100<sup>th</sup> person being killed on New Year’s eve was a mere coincidence; however, the officer felt this was sensationalised by the press as being a target set by the organisation for itself.

Some of the officers verbalised the awareness that the reporting of an incident was largely dependant upon the reputation and personality of the officers involved and their personal relations with the reporters, in other words, “If your work is good and if you have good relations, good contacts with them then they publish favourable news.” (T 31: Senior Management). Other officers implied that that the so-called ‘encounter specialists’ had established good personal networks with media reporters and enjoyed a good rapport, ensuring that they did not get negative press coverage or elicit too close an inquiry into the background and circumstances of the incident.

“Press have both reactions- they are against it in some cases and in favour of others. But it depends on the officers who did it, how they ‘managed’ it. There is a group of officers, if they do it (*encounters*) then there is always a positive coverage for it, but if anyone else does it then they allege that the police picked them up and killed them”(Laughs). (T11: Sub-Inspector)

However underlying all these conflicting opinions was the firm conviction that the press and media on the whole approved of *encounters* and that this provided a morale boost to the organisation. One officer mentioned that in the 1980s a reporter had tried to probe into an alleged ‘fake’ *encounter* case, one of the

earliest in Mumbai. His editor was flooded with angry letters from the public and it had generated a lot of public anger against the reporter who dared to question the 'effective action' taken by the police! The reporter and the editor had to abandon their approach. Since then there have been articles and editorials questioning police *encounters* but on the whole these have not appealed to the masses and one can only infer that they have not made much of an impact on the general attitude towards *encounters* as there have been few serious investigations into these cases since. Officers remained secure in their knowledge that they could continue to manage appearance and ensure that there would be no danger of the media raising uncomfortable questions. (See Chapter 7 for further discussion on media presentation of stories).

### 5.8 Attitude of the Public

Twenty-five of the thirty-eight officers in the sample felt that the public attitude towards *encounters* was one of unconditional approval. Speaking of the 'extraordinary' situation that prevailed during the late nineties, and especially during the period when *encounters* were at a standstill while the Mumbai police appealed to the High Court against the Augiar Commission's verdict that the Javed Fawda *encounter* was 'fake', one officer said,

"See, till 1998, the general public was not very much concerned with these, what you call, police encounters. But when in 1998, these shootouts became on the higher side, when it started affecting the local masses... Because all these local henchmen also started extorting money from the people, there were calls in marriages, even when you purchased a new car you would get a threatening call, 'I am from this gang, or from that gang, give me money, and this and that'. Even people have cancelled marriage celebrations, in fear of these calls... Then people realized that someone has to do something. Then there were these shootouts, and escape from police custody, FK case, and other cases<sup>62</sup>: in courts also there were shootouts. People were reading that a lot of big fellows, builders and businessmen were getting shot dead, it created a lot of feeling among the people that someone has to deal very firmly against these gangs. These gangsters also, were freely moving around the city, extorting money, doing dadagiri and goondagiri<sup>63</sup> in local areas, using their weapons to threaten people...so after 1998, society in general, is supporting

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<sup>62</sup> Referring to certain celebrated cases where the accused person escaped under dramatic circumstances from police custody.

<sup>63</sup> Dada- means elder brother, hence 'dadagiri' implies bossiness or dominating behaviour. Goonda means ruffian or hooligan- so goondagiri refers to hooliganism.

police for taking this stern action against gangsters. If there is no stern action or proactive action by the police then questions are raised- 'what are the police doing'?" (T 26: Senior Management)

Describing the situation in the early 1990s, when the scope and extent of the activities of the big gangs and the menace created by small time operators riding on the coat tails of the established gangs was at a peak, this officer felt that the general public demanded stringent police action. In fact, the officer seems to be saying that if the police had not obliged with *encounters*, it would have created widespread dissatisfaction among the public.

Of the whole sample, ten officers felt that there was conditional approval on the part of the general public towards *encounters*, on a case-by-case basis. One officer said,

"General public don't support any kind of encounter deaths if they feel they are false or fake or that the person has been framed. But when there are genuine instances, which are 99.9% cases, they support the action by the police because... large number of these goondas have a very high criminal record, they are wanted for big crimes and in certain cases they are anti-nationals [terrorists] also".  
(T 37: Lower Middle Management)

Officers concluded that *encounters* perceived to be 'genuine' by the public were applauded. The lack of public outcry or sustained campaigns against this policy might have been the result either of public apathy or a sort of resigned acceptance of other 'fake' *encounters* as 'collateral damage'. There occasionally were some mutterings of dissatisfaction but rarely a public call for further inquiry or investigation into the matter.

Three officers interviewed were convinced that the common man was indifferent to *encounters*, as it did not affect him (the common man) personally and that he was too immersed in his own problems and with the day-to day struggles of surviving in the city. One officer said,

"They (the public) are in no way concerned. They are not interested, except the family of the person killed. It has become an everyday occurrence because, in general, the public has become insensitive towards others' problems in Mumbai. Insensitive. If it is my problem, it will pinch me - if it is somebody else's problem, it will not pinch me. I am not going to ponder over it because my life is so busy, I

don't have time for that. Bombay life is such - even if you ask a beggar how much time he can spare from begging? He will say, 'I have very little time'. (Laughs)." (T1: Inspector).

Some active participants and Deniers felt that the reaction of the public was immaterial to police actions, since *encounters* would occur regardless of public approval. However, they felt that it did help the police case if by and large the public approved of *encounters* and there was not too much organised opposition.

Significantly, officers felt that the only public opposition to *encounters* came from 'fringe' Non Governmental Organisations (NGOs) whose credentials, political affiliations, integrity and intentions were suspect. Officers, almost unanimously, regarded the few Human Rights organisations and NGOs working in this area with some degree of contempt and did not think that they had a wide enough following or sufficient popular appeal to make any significant impact on policing policy. However they were recognized as having sufficient 'nuisance value' to cause discomfort and inconvenience to officers, who would otherwise have gone about doing *encounters* with less hindrance and more efficiency. One officer (T1: Inspector) described NGOs as a 'hindrance', peopled by officers who had 'ample time but no knowledge of the system', and 'only causing nuisance' (see Chapter 6).

This contempt on the part of police officers for 'do-gooders' is reflected in wider policing literature and has been observed in various studies. Holdaway (1983: 71), for example, calls such people or groups 'challengers', consisting mainly of lawyers, doctors and to a lesser extent social workers, who offer a threat to the secrecy and interdependence of policing .

In conclusion, officers overwhelmingly believed that there was social consensus and approval for *encounters*. Officers accepted that there might be anomalies and mistakes committed, but these are largely accepted as by-products of human error, which are avoidable but inevitable, by the 'claimsmakers' and the public.

A very senior officer summed up the attitude of the majority of officers,

"There is a silent and now no longer silent, rather, vocal, acceptance of this police approach [encounters] from the public at large. In the debates in the State Assembly, the people's representatives have defended this, rather demanded it openly from the floor of the house.

The media has also supported it and the public at large feel relieved that these dangerous elements are given a dose of their own medicine”. (T 30: Senior Management)

Not only was the propensity for the police to use deadly force influenced by external situational determinants which included social approval of, as well as organisational attitudes towards *encounters*, but internal influential factors concerning how officers understood, perceived and internalised their role in policing society were equally important. The next section examines officers’ perception of their role, their attitudes towards their job and how they define the boundaries within which they operate. To what lengths police officers would go to do their ‘duty’, depended on what they considered to be their ‘duty’; how much responsibility they took upon themselves as the law enforcing agency; and how much responsibility they perceived society placed upon them to fulfil this function.

## **5.9 Police Perception of their Role in Society**

The following themes emerged as the most significant in response to my question “what do you think is the role of the police?” - Crime Control; Detection and Investigation of Crime; Crime Prevention; Law and Order; Maintenance of Security; Public Service; and Social Work. These themes were not pre-formed categories but largely emerged out of the officers’ responses to the question concerning their policing role. Police functions described by the officers, related to three main police areas – crime related, keeping the peace, and service related functions. The number of officers who mentioned one or more of these categories as being the role of the police is mentioned in brackets, and indicates the number of times each of these categories was mentioned by officers.

- Crime Related functions - Crime control (12), Investigation and Detection of Crime (16); Crime Prevention (5).
- Keeping the Peace functions - Law and Order (16), Maintenance of Security (6); and
- Service Related functions - Public Service (17) and Social Work (9).

It is essential to clarify that the officers’ conception of themselves as ‘social workers’ is not the same as what is traditionally understood as the role of a social

worker. Officers tended to categorise 'helping an old lady cross the road' or 'preventing a bullying landlord from forcibly evicting a poor tenant from a slum hut' as 'social work'. As one officer evocatively described,

"There is no other social worker like the police...If an unidentified dead body, or a beggar's body or anything is found then there is no person in society who will say that, 'Sir I will do his last rites, if it is a Hindu, then a cremation'. In the end this has to be done by the police. So in my opinion, there is no other social worker like the police". (T10: Sub Inspector)

When officers spoke of social work, therefore, they referred to an assortment of functions that were performed by the police when no one else could be held accountable for or volunteered to perform them. Westley (1970:19) refers to this as 'dirty work' that is "exceedingly unpleasant and in some sense degrading". Often, officers were referring to actions they thought were service functions, regardless of whether they were within their legal limits to carry these out. One officer talked about his work in the following terms:

"Police department does more than just enforce the law. I worked for the neglected and downtrodden people. I did a lot of work and helped the people and took decisions on my own which the senior officers would like. ... I did as much as I could, we are police officers but we are social workers. My reputation spread as one who would help the poor and not entertain all the other useless people, like fraudulent social workers and political people". (T17: Inspector)

The mixed bag of responses was perhaps because not only is the police role so diffuse, but also because officers' answers were very influenced by the topic under discussion just prior to the question, or the tone of the interview as a whole. Officers' answers were also clearly linked to the officer type as explained by Reiner (2000a: 102). Drawing parallels between 'officer types' analysed in the works of other police researchers (Muir 1977, Broderick 1973, Walsh 1977, Shearing 1981, Brown 1981), Reiner identified four basic types of officers from his own research: the 'bobby', who applies the law with discretionary common sense and is essentially a peace keeper; the 'uniform carrier', a cynical and disillusioned time server; the 'new centurion', a dedicated crime fighter and crusader against disorder; and, the 'professional', ambitious, career conscious and poised for largely public relations functions of a senior rank. In my own



work, the more 'action oriented types' talked mainly about crime prevention and maintenance of law and order; the more 'professional' officers responded in terms of 'investigation and detection of crime'; and the practical 'street cop' emphasised 'keeping the peace'. Those officers who emphasised values of care and service talked of 'service' and 'social work' as main functions. As with all other questions, officers mentioned one or more of these categories in direct response to the question but then elaborated upon, contradicted or retracted their opinions in response to other questions in the interview. For example, focusing on service functions, only nine officers specifically mentioned social work as one of the main roles of the police in direct response to this question, but during the course of the interviews a large majority of the officers said that their main role consisted of social service functions. This demonstrated the difference between service role as ideal versus service being the reality of police work.

In terms of actually how much police time is spent in service activities as compared to crime related functions, various observational studies in other countries have revealed patterns that are similar across different contexts (Punch & Naylor 1973, Ekblom & Heal 1982, Skogan 1990, Shapland & Hobbs 1989), as cited in Bowling and Foster (2002: 987). However police studies in the UK and the US concluded that despite the 'proportion of time spent on 'service' or order maintenance roles, these aspects of police work are devalued by the police themselves' (Bowling and Foster 2002: 988, referring to Holdaway 1983, McConville & Shepherd 1992, Fielding 1995, Waddington 1999b). Unlike Bittner's (1990: 268) conception of the policeman who believes that his real function is to pursue the likes of Willie Sutton, while feeling "compelled to minimize the significance of those instances of his performance in which he seems to follow the footsteps of Florence Nightingale"<sup>64</sup>, most officers I interviewed were actually proud to emphasise the service aspect of their job. I believe this might have been because the police in India have traditionally not been perceived as service providers but have historically been seen as the repressive arm of the state, the image lingering on as a colonial legacy that they are desperately trying to change. As this officer said,

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<sup>64</sup> Bittner (1990) explains in an endnote- "Florence Nightingale is the heroic protagonist of modern nursing; Willie Sutton... was in his day a notorious thief"

“From the times of the British, the police were seen as oppressors, and that image is fixed in the minds of the people. So once the image was spoilt, till the end the police image is tarnished. From British times, the police were considered to be bad. But even with today’s improved and reformed police, even when officers help and co-operate with the common man, help them... In those days it was the police of the rulers, so the same image continues... We have brought about an improvement. Now the police are co-operative and polite and help in every way”. (T5: Upper Middle Management)

Reiner’s (2000a: 112) conclusion that “most police work is neither social service nor law enforcement but order maintenance – the settlement of conflicts by means other than formal policing”, seems apposite even in the Mumbai context. However, although as he goes on to say that this raises important ethical dilemmas in terms of accountability, equity and fairness (Reiner 2000a: 114), these did not seem to trouble the Mumbai officers, who saw no conflict between their roles as crime fighters and service providers. In fact they tended to see their crime-fighting role (*encounters*) as contributing to their service role, as it provided instant justice and relief to the public. This contrasts with how service functions were perceived by officers for example, in Cain’s study (1973:74) as ‘being officious’ or in Bittner’s study (1970:42) as being ‘nuisance demands for service’.

It was clear from the interviews that the officers were passionate about their role and took their job very seriously. Reiner (2000a: 89) mentions that for the police, their work is not just another job, but a way of life, a vocation to be pursued with evangelical zeal (Mills 1973, Reisman 1979). Even in the Indian context we see that officers considered their role to be very important and took upon themselves a lot of responsibility to fulfil it. The ‘working personality’ of a policeman, sketched by Skolnick (1966: chapter 3) referred to a ‘socially generated culture’, which was in response to the combination of ‘danger and authority’ facets of the police role. This combined with the constant pressure put upon individual policemen to produce results, leads to policemen preferring to be “efficient rather than legal when the two norms are in conflict” (Skolnick 1966: 231). There is plenty of research evidence which shows that the police employ various stratagems like, “lying, perjury, undue violence, planting evidence,..., altering documents, manipulation of suspects and informants, falsifying

evidence, intimidation, and a battery of seamy tactics are resorted to by some policemen in some situations as legitimate techniques in getting their work done” (Punch 1985: 203, referring to the work of Ericson 1981, Skolnick 1975). Evidently, that Mumbai police officers also exhibited this pragmatic ‘working personality’, was suggested by the fact that a majority of the officers did not feel hampered by the restrictions placed upon their powers by the law and considered it fully justifiable that under the guise of helping people or solving problems, they could go beyond their legal mandate. As one officer put it:

“The police are the biggest social workers. He can give more justice than any other person. Any other kind of social work has limitations, that is not so in the case of the police. People bring grievances to us of all kinds, and we have the backing of the law and the authority of the khaki uniform, that is why people are afraid and they listen and obey, even though it may not be strictly within the framework of our powers. Anything done in good faith is accepted. If there is a dispute between two brothers, it is a NC [non-cognisable] matter<sup>65</sup>, we can just take down a report and send them away. But the quarrel does not stop. But if I call both of them and try to make them see a few points- I can do two things, either explain or threaten – this work can be done only by the police, to solve the issue” (T7: Lower Middle Management)

When I asked whether this approach went beyond the law, he replied:

“What is the aim of the law? To preserve peace and maintain order. If I can do something to preserve peace at my level only. That is why 100 Indian Penal Code is included as a section, which says anything done in good faith is no offence. If my intention is good and if no one has any objection to it, then why should I not do it?” (T7)

Here we can clearly see that the officer had no qualms about overreaching his mandate, or taking on a role that was beyond what was officially expected of him, all in the cause of being the best possible ‘social worker’. This officer’s comments were typical of those who believed their main role was public service- i.e. providing the public with the service they needed. It is unclear whether the officer invoked section 100 of the Indian Penal Code (IPC) as justification for *encounters* or generally to cover any acts committed ‘in good faith’. Incidentally,

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<sup>65</sup> The Indian Penal Code categorises most offences as ‘cognizable’ i.e. offences that the police have to take cognizance of and act thereupon; and some small, petty offences as ‘non cognizable’, which may be registered at the police station, but the police need not take any further action on it.

Section 100 actually refers to “When the right of private defence of the body extends to causing death”, under certain conditions<sup>66</sup>. The words ‘acting in good faith’ do not appear in this section but in Section 99 of the (IPC) which deals with “Acts against which there is no right of private defence” and refers to the fact that there is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous bodily hurt, if done or attempted to be done by a public servant or under the direction of a public servant, if the latter has been acting in good faith under the colour of his office, though that act may not be strictly justifiable by law. The officer had obviously (or conveniently) mixed up the wording and misunderstood the meaning of the two sections and drawn a totally erroneous conclusion that allowed him to exceed his legal powers and mandate. While police officers operate more by discretion than the letter of the law, they prefer to invoke the law and be seen to be working within its limitations.

The above quote also exemplified the spirit of the sentiments other officers expressed generally about their work, their role, and their attitude towards the law. It appeared as if officers felt that as ‘reproducers of order’ (Ericson 1982) their main task was to implement the spirit of the law, which was intended to ensure peace and security was maintained and that people’s problems were solved. Perhaps they believed that in the process of implementing the spirit of the law, if the law itself was infringed or set aside, then as long as the police action was in ‘good faith’, all would be forgiven and their actions would be accepted.

In the same vein, another officer saw his own role as that of the ‘elder brother’,

“People think that the police should help them in distress. Any man in distress will look to the police for relief. Police is the protective arm of the state... how a small child looks up to his elder brother to protect him from bullies or from being beaten up, in that way the common man looks up to the police to protect them from the bad guys”. (T29: Sub Inspector, ‘encounter specialist’)

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<sup>66</sup> Section 100 of the Indian Penal Code specifies these conditions as: when there is apprehension that death, or grievous bodily hurt will be the consequence of the assailant’s action; when the assault is done with the intention of committing rape; gratifying unnatural lust; kidnapping or abduction; or with the intention of wrongfully confining a person under circumstances that cause him to reasonably apprehend that he will be unable to have recourse to the public authorities for his release.

This attitude also extended to the use of deadly force. A large percentage of officers were convinced that since their main aim was to control crime and to ensure that the people received appropriate service, then, if eliminating ‘criminals’ was the best way to do what they saw as their job, and ‘if no one has an objection to it, then why should I not do it?’ typified their attitude. The connection between the self-image of ‘elder brother’ and the use of deadly force was clearly visible in another ‘encounter specialist’s’ views,

“In my opinion the main job of the police in society is to protect them [the public] from people with goonda<sup>67</sup> tendencies. Maintaining law and order etc. is the job of higher ups. Our job is to control the dadas<sup>68</sup> in the slums ... The main role of the police is that of a dada among these goondas. Now, I have done many encounters, more than 85, so these criminals are scared of me. If someone gets a [threatening] phone call and I go to his house, if that goonda gets to know that I had gone to this house then he will never phone that house again. So in my opinion protecting public from these goondas is the main role of the police.”. (T 27: Inspector, ‘encounter specialist’)

It was evident that this officer’s self image, of the policeman being a bigger bully than the criminal ‘goondas’ in society, clearly influenced his decisions and actions to invoke deadly force. The officer visibly revelled in his self-image as ‘one who struck terror in the minds of the criminal elements’, and the assumption that his mere presence in someone’s home was a guarantee of protection for that person, actually gave him a sense of power. Very few officers expressed this sentiment quite so openly, but it was clear from the interviews that most officers preferred to think of themselves as being more powerful than the criminals. There were repeated references to the perception that the police were, in a sense, official ‘dispensers of justice’ and ‘providers of relief’ to the common man. Given the failure of the criminal justice system there was also a tacit conviction among officers that there was nothing wrong in actively pursuing a policy of *encounters* as a popular crime control measure to secure the confidence of the public. Khan (2004: 74) expresses similar sentiments when he describes the aftermath of the Lokhandwala *encounter*, “These [positive] reactions from

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<sup>67</sup>Goonda meaning hooligan or ruffian.

<sup>68</sup> Literal meaning- Elder brothers, but the term is often used colloquially as a euphemism for big, bad guys and/ or bullies, a sort of ‘Godfather’.

grateful people more than made up for the trauma of being 'on call' day and night and living from moment to moment, while conducting dangerous operations like the grisly drama at Lokhandwala”.

It was ironic that while most officers were aware that people who were most affected by the rise of organised gang activities were a handful of rich, successful businessmen, building magnates, film personalities, or industrialists, and not the common man, only a few of them actually acknowledged that this was the case. Most officers glossed over this reality, suggesting that the common man was also affected, in that, they were the victims of extortion phone calls and threatening messages from groups of petty criminals, masquerading as the 'big boys'. However, officers did not attempt to make explicit the connection between how the *encounters* of a few criminals belonging to the big gangs would be reassuring for the multitudes that were far removed from the reach of these gangs. Presumably, the theory was that the atmosphere of terror and fear that *encounters* created in the minds of the criminal classes, would have an adverse effect on the desire of petty criminals to boast of their (mythical or otherwise) connections with the big gangs and thus control their criminal activities, in general. It was convoluted logic, but it appeared to work for this officer, who said,

“Encounters provide a good amount of terror. Everybody, in the lanes and by-lanes was wearing a white shirt and saying, 'I am from the Dawood gang'. That practice has stopped as a result of encounters, it is a big benefit... There is a good impact. Because these two or three boys, who have no work, are wandering around, wearing a white shirt, saying they are attached here or there. Locally, they used to extort from the small grocers and shopkeepers, all that has stopped. they were never attached with any gang, but just boasted about it..”  
(T21: Sub Inspector)

Officers judged their own policing performance by the impact it had on the activities of criminals. It seemed that if a particular police action created panic and terror in the criminal classes, and dissuaded them from further indulging in crime, then it was considered to be particularly effective and was valued that much more.

In the previous section I examined what officers thought the responses of various significant other social actors to *encounters* were and I have tried to draw indirect inferences about what society's expectations of police officers might be with respect to fulfilling their role specifically as law enforcement agents in a society perceived as riddled with organised criminal gangs. Thus, looking at how officers understood their role and responsibility in general, and taking into account how they interpreted the expectations that society placed on them, specifically with respect to dealing with organised criminal gangs, one can begin to understand the justifications the police in Mumbai put forward for the use of deadly force in *encounters*.

### **5.10 Summary**

The interview data made it amply clear that police officers were convinced that they had a mandate from and had the support of the press, politicians and the public, i.e. society as a whole (officers did not consider organised criminals to be part of legitimate society, hence their disapproval did not matter), for the measures they adopted to control organised crime. In their perception, however flawed, they felt justified that the strategy of combating the menace of increased criminal gang activities with *encounters* was just, fair, and correct.

In this chapter I also examined how officers perceived their role within society; their self-image; the expectations of others; and those they felt society placed upon them. That gave them a sense of righteousness in performing their role. Officers admitted that their actions were not always within the confines of their legal powers and obligations, but justified their actions by the belief that they were undertaken, for social well-being. Priding themselves on the 'social work' component of their role, they appeared convinced that there was no conflict between upholding the law and serving the public.

A closer examination of how police officers justified *encounters*, used techniques of neutralization, and employed denial tactics to explain, legitimise, and condone their conduct follows in the next chapter.

## **6 CHAPTER 6: JUSTIFICATIONS FOR *ENCOUNTERS*: DENIAL THEORY**

### **6.1 Introduction**

In the previous chapter I described officers' perceptions of outside attitudes towards *encounters*. In this chapter I explore, how police officers justified the use of deadly force. The analysis focuses on the way officers talked about *encounters* and put forward, what they thought were plausible accounts to explain their position on the issue.

Examining officer justifications for *encounters* involved distinguishing my views of the actual reasons why officers thought *encounters* occurred from the reasons that officers put forward for public consumption. Distinguishing between the actual and articulated reasons required drawing upon my own personal experience and knowledge of police working and culture, and relying on relevant police literature supporting the analysis. There was always an element of speculation in this aspect of the research. However, I found that analysing how officers articulated their reasons and justified the use of deadly force against 'criminals' using the Theory of Denial, provided an explanation of how officers explained to themselves and to others acts that were legally and ethically prohibited, and helped in understanding how a phenomenon like *encounters* remained relatively unchallenged in a free and democratic country.

### **6.2 Why *Encounters* Occur**

Research on police decision to use deadly force has identified various factors that influence police shooting behaviour, including: "environmental, organisational, and situational" (White 2001: 131). These factors comprise the 'external and internal police working environments': external factors such as crime rates, degree of danger to the police; situational factors such as citizens' demeanour, or the presence of a weapons; and internal factors such as administrative policy, informal peer group norms, policies and philosophies of the chief. (White 2001: 131-2, citing Fyfe 1987). White (2001) suggests that there are two types of police



shootings - 'elective and non-elective'. Non-elective shootings are influenced mainly by situational and environmental factors. On the other hand, as the amount of danger that the police officer has to face decreases, the decisions to use deadly force become more elective. Internal working conditions and culture largely affect such 'elective' decisions to invoke deadly force. They also affect perceptions of situational/environmental circumstances.

In my research, officers gave several explanations for why they thought *encounters* occurred, or were 'done':

- Social Good,
- Crime Control,
- Police Work, or part of job description,
- Faulty Criminal Justice System,
- Organisational Directives,
- Personal Responsibility,
- Hindu Philosophy and the Doctrine of *Karma*<sup>69</sup>,
- Personal Interest or Private Gain, and finally,
- Good Intentions on the part of the officer.

Using White's (2001) terminology, the first four reasons given by the officers for invoking deadly force can be termed as environmental factors. The next two are organisational factors. The only situational factor (self-defence) mentioned invariably as part of the standard self-defence story has already been examined in Chapter 4. However, in my data I found that officers articulated a new set of variables, what I call 'moral' (or 'immoral' as the case might be) factors, i.e. good intentions, Hindu philosophy, and personal gain or corruption, that influenced their decision to 'electively' invoke deadly force.

In-depth reading of the interviews revealed contradictions and confirmation of the opinions expressed overtly by officers in response to the question I asked

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<sup>69</sup> This doctrine says that you will get the appropriate rewards for your deeds, which, when intended for the 'criminal' means since the criminal commits bad deeds, he will meet a bad end, and that will be fitting. On the other hand the same doctrine for the officer could imply that he should continue to do his duty (karma) according to Dharma (the righteous deeds) and not worry about the consequences that follow. Further discussion on page 189.

them, ‘why do you think *encounters* happen?’ As with other issues discussed in previous chapters officers gave conflicting and contradictory opinions and justifications, some of which were not logically compatible. This made the task of analysing and deciphering how police officers as social actors and society as a whole understood and responded to *encounters*, more complex.

### 6.2.1 Social Good

This all-encompassing phrase was the dominant theme that ran through almost all justification accounts for *encounters*. ‘Social good’ was defined in different ways, one officer said, for example:

“Sometimes if a criminal is arrested, he is wanted for many murders and crimes and if he is not punished by the courts, or he is released early, or he kills others and though we try our best to capture him, but he escapes and runs away. In such a situation, keeping in mind the interests of society, of peoples’ lives and property, then you have to do encounters”. (T 9: Sub Inspector, female)

This quote shows the intermixing of two themes, the inadequacy of the criminal justice system and the resulting harm to society if the police do not take decisive action (i.e. *encounters*) to remedy the situation. Most officers tended to assert that police actions in *encounters* were selfless, were motivated by the desire to achieve social good, were in public interest, and to safeguard life and property. Officers invoked the utilitarian argument that in the interests of the society, in order to engender a sense of security and reducing fear of crime in the minds of people, the death of a few men was not a large price to pay. Thus, they spoke of the necessity of eliminating ‘hardcore criminals’ as ‘justified homicide’ and in the process, if by accident or mishap, a few ‘not so deserving’ people were killed, this ‘collateral damage’ to serve the interests of the larger majority was well worth the effort. This sentiment not only relates to policing culture in India (discussed in Chapter 3), which still follows the militaristic colonial model (Arnold 1986; 1992, Das 1993, Dhillon 2005, Verma 2005) and is based on an adversarial mode; but also reflects the social and political culture of the society within which such police actions are accepted, if not welcomed, as I shall discuss in Chapter 7.

Another way of understanding social good was in terms of responding to the demands made by the public, the representatives of the public, and the media. Officers felt that since the public, media, and politicians approved of and asked for more *encounters* in the public discourse (media reports, the state legislative assembly, public speeches) and in private communication with police officers, they obviously were beneficial to society as a whole. Reducing the fear of crime and boosting public confidence in the pro-activeness and effectiveness of the police were also considered to be contributing to social good by some officers.

### **6.2.2 Crime Control**

We saw in chapter 4 that almost all the officers interviewed were unanimous in their opinion that *encounters* were effective, in that, following these incidents, there was a direct, visible, and substantial impact on the criminal activities of organised gangs. None of the officers were able to quote exact statistics, but almost all of them were convinced that an increase in the number of *encounters* resulted in a proportional decrease in the number of shootouts, kidnapping for ransom cases, extortions, and other related crimes.

Following from the earlier discussion on how officers perceived their role, some officers felt that since crime control was their primary role, all actions taken in pursuit of fulfilling this duty were legitimate; hence *encounters* were justified because they helped fulfil one of the core police functions of crime control.

### **6.2.3 Police Work and Personal Responsibility**

As I described earlier, officers defined their role rather broadly and considered themselves to be solely responsible for dealing with crime and maintaining law and order. Thus, all measures taken in the pursuit of that aim were considered to be part of their job and were legitimate police work. There were officers who mentioned that *encounters* ‘happened’ in the course of their work. Others seemed to think they were personally responsible and accountable for the crime situation and that their own reputation as leaders and senior managers of the force was at stake if the police were not seen as being proactive and effective in controlling organised crime. As one senior officer described it,

“There is no escape. You are placed in a situation where you cannot say, ‘thus far and no further’. If there is a problem and people are

getting killed, and people are getting extortion threats, how can you say that I am doing my best, but beyond this I cannot do anything? You see you will not be spared. There is no running away from this situation. You, and only you are responsible for this...See, you may even be charged with dereliction of duty, cowardice, or maybe even prosecuted for deliberately neglecting your duty” (T31: Senior Management).

There was some amount of exaggeration in the rhetoric employed by the officer, but it served to underline the sense of responsibility he and others felt towards controlling the crime situation and the importance they placed on own role in this process.

#### **6.2.4 Organisational Directives**

Certain officers said in the interviews that even if it was not explicitly formulated, clearly, there was an organisational policy whereby *encounters* were encouraged and supported by senior officers as one of the crime control measures. The inference that senior officers’ approval of *encounters* motivated officers in actively engaging in them can be drawn from the periods of intense activity or inactivity in this field that followed regime change in the organisation, thus allowing for the possibility that certain senior officers approved of and encouraged *encounters* and others did not.

Since 2003, following a major overhaul in the senior ranks in the service and reorganisation of the Crime Branch, the number of *encounters* has drastically reduced, giving rise to the conclusion that subsequent police chiefs and senior officers were perhaps not in favour of encouraging such actions. However, officers, when questioned, expressed the view that the reason for a reduction in *encounters* even in the first half of 2002 was because they had managed to dampen the activities of organised gangs, and not because of some unwritten departmental policy. Interestingly, following the bomb blasts in New Delhi in November 2005, there has been resurgence in the demand for *encounters* and ‘encounter specialists’ in some official circles and sections of the media (Balakrishnan 2005). Such media reports could add pressure on the incumbent police leadership to rethink their policy on controlling the number of *encounters* when faced with increasing terrorist activities in Mumbai in recent years.

### 6.2.5 Faulty Criminal Justice System

For a majority of police officers interviewed, one of the most powerful reasons for *encounters* was the inadequacy of the criminal justice system. Talking about its effectiveness, one officer's words summarized the feeling that prevailed in the force as a whole about why *encounters* were valued,

“It [crime control] depends on the whole criminal justice system and is not the sole responsibility of the police. Witnesses will not come, witnesses will turn hostile, documentation is faulty, whether he [the investigating officer] has collected ample evidence – there is not enough supervision... The delay between the crime and the hearing is so long that the complainant loses interest then there is no reason for the investigating officer to retain interest, because he has at least investigated 25 to 30 cases after that. At least if the courts accept that we have a pendency [sic] [meaning a huge backlog of pending cases] – that we must stop it now... When people's wounds are fresh- a person whose brother or husband or son has died will not feel anything about it 8 years down the line, frankly speaking. They get used to it and start living in the normal flow. So when they have to go to court after such a long time, it is more of a hassle than anything else.” (T 21: Sub Inspector)

Many officers provided anecdotal evidence of how witnesses were intimidated, or silenced into turning hostile, or had moved away, moved on, lost interest in or could not recall the incident, or in some cases had died in the many years it took for the cases to come up for hearing and the final judgement be reached. It was clear that officers thought that the cumbersome processes of the criminal justice system put a severe toll on the limited resources and manpower that could be devoted to successful prosecutions of cases. Officers bemoaned the quality of the public prosecutors and the way in which many cases were prepared and presented in court.

The judiciary in India, as also in Mumbai, is heavily overburdened with an excessive backlog of pending cases, which runs into tens of thousands as Table 6.1 shows.

**Table 6.1: Disposal of IPC Cases by the Courts for Country as a Whole**

Year	Total No. of Cases for Trial (Including Pending Cases)	Compounded or Withdrawn	Convicted	% Convicted	Acquitted	% Acquitted	Total Cases Disposed	% Disposed	Pending Cases	% Pending
1993	4,504,396	137,875	345,812	7.7%	407,040	9.0%	752,852	16.7%	3,613,669	80.2%
1994	4,759,521	148,231	316,245	6.6%	420,552	8.8%	736,797	15.5%	3,874,493	81.4%
1995	5,042,744	158,357	321,609	6.4%	442,335	8.8%	763,944	15.1%	4,120,443	81.7%
1996	5,297,662	201,156	318,965	6.0%	524,623	9.9%	843,588	15.9%	4,252,918	80.3%
1997	5,461,004	185,432	336,421	6.2%	543,507	10.0%	879,928	16.1%	4,395,644	80.5%
1998	5,660,484	179,511	335,036	5.9%	560,378	9.9%	895,414	15.8%	4,585,599	81.0%
1999	5,890,744	185,130	369,005	6.3%	561,724	9.5%	930,729	15.8%	4,775,216	81.1%
2000	6,023,134	168,938	390,223	6.5%	542,958	9.0%	933,181	15.5%	4,921,710	81.7%
2001	6,221,034	171,966	380,505	6.1%	551,388	8.9%	931,892	15.0%	5,117,864	82.3%

Source: *Crime in India 1993-2001*

From 1993 to 2001 (figures are available till 2001), the courts in India have on an average disposed of 15% of their trial cases (the average rate of convictions being 6% and acquittals being 9%), and carry over an average backlog of 81% pending cases each year<sup>70</sup>. As the officer's quote indicates, there is a long delay in cases coming up for hearing in the courts. Then there are many adjournments, delays, and a long appeals procedure. This means that it can take anything from 3 to 20 years for the courts to give a final ruling on any particular case. All these factors contributed towards an increasing sense of frustration and despair on the part of the police and the public with respect to the processes of the criminal justice system. However, this sense of the "legal order as too slow, too ponderous, too indolent, too unaware or too constrained to deal with 'the problem'" is not unique to Mumbai. In other countries too the police generally tend to view the administration of justice as "weak, inadequate or inefficient" (Skolnick and Fyfe 1993: 24-5). Given the inefficiencies of the system and the loss of time, energy, resources and manpower involved in vainly trying to prosecute criminals, there appeared to be a general gravitation towards adopting easier, short-cut and more effective methods of dealing with 'hardened' criminals or what Skolnick and Fyfe (1993: 25) call "taking the law into their own hands". Holdaway (1983:112-3) quotes a similar view of one officer in his work, "when you have a legal system that allows people to get off and makes you break the law to get convictions, then you have to be slightly bent". Thus, a majority of officers I spoke to justified their actions by attributing moral responsibility to a faulty legal system. Probably this struck a resonating chord in the audiences to

<sup>70</sup> Source: *Crime in India series, 1993-2001*, New Delhi: National Crime Records Bureau.

whom it was addressed and in the public discourse on the subject (see Chapter 7).

### 6.2.6 Hindu Philosophy

This was one of the more controversial reasons that officers articulated for the use of *encounters*. Four officers said that their job was to do their duty (and clearly their duty was crime control) and not worry about the consequences of their action. One officer quoted these verses from the Bhagvat Geeta<sup>71</sup>, to illustrate his point:

“I firmly believe in the Geeta quote. “Yada yada hi dharmasya...” There is a reason that my birth has taken place, there is a reason why I must have come into the police service. So if great injustice is going on, I am not going to sit and think about means and ends... I am not going to have a dilemma like this. I have to achieve at that moment of time and see justice is done” (T25: Upper Middle Management)

Another officer felt that Hindu mythology idealized their Gods and heroes as ‘vanquisher of the evil’. Most Puranic<sup>72</sup> stories have the theme of ‘good versus evil’, with the inevitable result of the ‘good’ triumphing over the ‘evil-active participant’ by killing him or her. The interviewee believed this to be the reason why officers were lauded by the organisation and the public as heroes, who, by killing evil, active participants, were ridding society of a menace and were, ultimately, righteous in spirit. One officer said:

“Some people do not deserve to stay on this earth, then by hook or by crook they should be eliminated in the interest of society. Sri Krishna told Arjuna during the Great War that he had to go out and fight and kill, even if the enemy were his own kinsmen”. (T7: Lower Middle Management, Active participant)

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<sup>71</sup> The Bhagvat Geeta contained within the Mahabharata is one of the oldest Hindu texts. A philosophical work, it “is the instruction given to the great bowman Arjuna by his kinsman and charioteer Krishna. Just as the great battle is about to begin, Arjuna feels unable to fight his cousins and teachers on the opposing side. Krishna teaches him that it is his caste duty to fight, and that in any case the self is eternal, and therefore no lasting damage will be done to the enemy”. (Smith 2003: 40).

<sup>72</sup> The Puranas are sacred repositories of story, legend and other religious information. It is believed that some of the Puranic mythical stories reflect historical events, and are the source of much of popular Hinduism as these texts codify practices, often incorporating local folk practices. (Smith 2003: 43)

Killing in the name of 'dharma' for the king (as protector of the people) or the ascetic warriors dedicated to the protection of the people has been an acceptable and revered feature of Hinduism (Vidal et al 2003, Biardeau 2003, Bouillier 2003).

The other strand of this argument stresses the concept of 'Karma' (or deeds) and it was the opinion expressed by some officers that bad deeds committed by the criminal were responsible for the bad ending that he deservedly got in an *encounter*. At this stage it could tentatively be said that the belief in the cycle of birth, death and rebirth that is the cornerstone of Hinduism, may contribute to the blithe disregard for human life that some officers expressed and that prevails in a large section of the society. This may be the reason police show disregard for the life of 'criminals'. Vidal et al (2003) allude to certain Hindu traditions, where violence is justified in terms of a global order and the resulting peace enjoyed by people. This, combined with the absence of the 'rights of man' in the Brahmanical tradition (Biardeau 2003) results in a situation where "violence is not so much thought of in universal, 'moral' terms in relation to its victims, but rather in the context of a problematic directed towards limiting its inauspicious consequences *for the perpetrators*" (Vidal et al 2003: 19).

As compared to countries that are predominantly influenced by the Christian ethic, where a person only has one life. That life is precious and has to be preserved and protected at all costs. Life in India, by contrast, appears to be cheap for a large majority. A few deaths shock and sadden, but do not rock either the system or the social conscience. It can be surmised that contempt for Indian lives and the repeated use of high levels of state violence sanctioned by departmental custom were entrenched in police procedures and mentality in the colonial era (Arnold 1986: 233) and this spilled over in police attitudes of contempt towards the 'others' (criminals) even in latter day policing. (See Chapter 8 for impact of India's colonial inheritance on the police).

The sense of calm and inevitability with which India responds to human fatalities resulting from disasters (earthquakes, floods, heat waves, landslides), accidents, terrorist attacks, communal violence and riots, contrasts sharply with the



demands for inquiries, commissions, changes demanded by groups and interested parties as well as the media attention that accompany similar events in, for example, the UK.<sup>73</sup> Whether the sheer volume of population has engendered an attitude that a single life is not all that precious and worth protecting under all circumstances, requires further investigation that is beyond the scope of this research. There is need for further research (of a more religious-philosophical nature) to comment on whether some lives are considered to be more worth preserving than others ('criminals') that are deemed less deserving; and whether this has made officers more blasé towards the loss of lives of 'hardened' criminals than would be expected. Since these arguments and sentiments were expressed by some police officers and were also reflected in some of the interviews with 'claimsmakers' (See Chapter 7) they merit further research.

### 6.2.7 Personal Glory

A few officers admitted that *encounters* were not necessarily altruistic, but were 'done' either in the pursuit of medals, promotion, status enhancement, or personal ego gratification, as the officer who articulated his self-image as being a bigger bully than any criminal illustrated. One officer unhesitatingly admitted police *encounters* were conducted,

"Because we are idiots. We are doing it for personal glory. We are neither doing it for the nation, nor for the state, we are doing it for personal glory- period! ...Other officers have two or three encounters to their credit. I have none, because it has never happened that somebody has drawn a pistol on me, and I am not going to get the man in the night and kill him... I am criticised in every meeting [by senior officers]. But how many people are like me to whom it makes no difference how much you are abused. I'll not do it. I am a rogue, I'll not do it, and you can go on criticising". (T 6: Upper Middle Management)

Although this quote suggests that the officer disapproved of the general organisational attitude of encouraging *encounters*, and was an individual who stood firm against the organisational pressure to conform, the same officer went

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<sup>73</sup> A striking example was the Hatfield rail tragedy, which is considered to be one of the worst in recent British rail history and continues to arouse passions and is commemorated three years after its occurrence. There have been several disastrous railway accidents in India within the same period (with a much higher fatality rate) that seem to have been all but forgotten by the collective social conscience.

on to admit, later in the interview, that when he had to supervise *encounter* cases that were done by other subordinate officers, despite evidence of ‘wrongdoing’, he did not officially, either condemn the incident or take action against the errant officers concerned. When asked why he did not do so, he replied frankly:

“I have no guts, it is cowardice. We are responsible for the decline in the system. We have lost the courage to stand up and say we will not do these things. We take a certain pride in being able to say we can manage under all situations and conditions... I will not quit the system because I do not believe that leaving the world and going to the forest or to the mountain will improve the system. If things have to change then I have to stay in the system to be able to effect any change. I could have got a job in the corporate sector at any time... But here I am able to do some good work rather than selling some useless thing to other people. Ninety per cent of my time I am working like a bloody pimp doing all sorts of dirty jobs that I don’t want to. But at least ten per cent of the time I can stand up to anybody and take some bold decisions. Even if I can prevent one old woman from being unfairly thrown out of her home in a year, it is better than selling thousands of Cherry Blossoms [shoe polish], isn’t it?” (T 6)

Basically the officer was saying that being within the system and doing some good (helping the weak) was worth having to bow down to all sorts of pressures in the organisation, and was preferable to working in the corporate sector, which he perceived as not contributing to social welfare. This officer sought to excuse his lack of opposition to *encounters* by convincing himself that if he chose to question *encounters* and the conduct of the active participants and ‘specialists’, he would be isolated and would perhaps have to leave the organisation in the end. He therefore was actually complicit in their continuance.

Very few other officers were willing to admit that *encounters* were the result of corruption, either moral or material. However, there were hints of this in many of the interviews and one Senior Management officer (T 24) actually listed out officers by name who had been involved in either “talking to Chhota Shakeel about killing some people on his behalf”; a constable who “was involved with the Arun Gawli gang”, another constable, who “used to go and kill people while serving on the police force and was killed in an encounter”, yet another officer “who used to be shooting people left, right and centre... the allegation was he had been doing it on behalf of some interested groups”, and elaborated upon the

kind of departmental actions he initiated against these policemen which ranged from being transferred out of Mumbai, unpopular postings as punishment, one rank demotion, and even dismissal from service in rare cases. However, he was also very clear that he did not believe criminal proceedings were necessary against these officers. When I asked him why in the case where clearly he believed one officer was acting as a 'hired gun', that officer had merely been posted out and banished from ever working in Mumbai, whereas an ordinary civilian would have been held up on a murder charge in a similar situation, he replied,

“My only point is a civilian is not supposed to have a weapon and supposed to shoot at people unless he is covered under 100 IPC. 100 IPC is equally applicable to the civilian also. Like the policeman doing it, the civilian also has to prove that he is doing it in the interest of saving somebody else's or his own life” (T 24)

The officer conveniently ignored the fact that he had just listed out the names and offences of officers who had killed for reasons other than self defence, and equally contradictorily went on to add:

“There is a kind of exceptional viewing a policeman's conduct comes in for, i.e. rape in custody, you are liable for more punishment than the normal other. So the policeman is kept under a scrutiny, or a microscope, or a glasshouse. You are under constant scrutiny of the law and you are treated in a different way of giving you exemplary punishment because you have additional responsibility.” (T 24: Senior Management)

It almost seemed as if the fact that policemen were under greater scrutiny than ordinary citizens, seemed to be justification for the officer to condone and minimize their offences in cases where this could be 'managed'. Cultural factors like 'solidarity', 'not spilling the beans' and 'sticking up for one another' seemed to operate to facilitate this kind of thinking (Reiner 2000a: 92, citing similar findings by Punch 1985, Skolnick and Fyfe 1993, Kleinig 1996, Newburn 1999). There was little evidence to show that the organisation or senior officers considered transgressions by officers under their supervision as liable for criminal prosecutions. Another reason for this reluctance to prosecute 'rogue' officers in a public forum like the courts would be the fear of opening up

Pandora's box of 'wrongdoing' at several levels, as well as admitting that there could be errors in the way *encounters* were conceptualised and conducted.

Three of the four types of corruption that Punch (1985) outlines existed in the context of *encounters* in Mumbai. I found evidence in my data and reports in the media of accusations of what Punch calls '*predatory corruption*', where the police stimulate crime, extort money and actively organize graft, i.e. the 'meat eaters' (Knapp Commission 1972) who exploit legitimate and illegitimate enterprises for pursuing illicit ends; '*combative corruption*', falsifying or creating evidence, involve accommodations with some criminals and certain informants and uses "illicit means for organisationally and socially approved goals" (Punch 1985:13); and finally, '*corruption as perversion of justice*', which involves lying under oath, intimidating witnesses, planting evidence on suspects, and involves "perversion of justice largely in order to avoid the consequences of serious deviant behaviour" (Punch 1985:14).

There is historical evidence to show that when the actions of special squads are left unsupervised and unaccountable, inevitably there is corruption and moral and ethical degeneration of work practices. Punch (1985) describes such corruption scandals that rocked the New York Police department (involving Serpico and the Knapp Commission, Leuci and the Special Investigating Unit); the London Metropolitan Police (involving the Times Investigation into the Criminal Investigation Department, the Drugs Squad, the Obscene Publications Squad); and the Amsterdam Police (involving the Plain Clothes Squad, the Drugs Squad etc.). Similarly it appeared that the actions of 'encounter specialists' in the Crime Branch were open to doubts and questions, which incidentally, no one was raising openly. Developments in Mumbai post 2003 showed that corruption had spread to the highest level and the rot had set in deep.

### **6.2.8 Good Intentions**

The all-enveloping argument that police officers only acted in good faith and with good intentions covered every other justification in the accounts. The preoccupation of officers of all ranks with the justification of good intention (in protecting the social interest) has been discussed in detail elsewhere (see Chapter

5). However, it bears an important influence on the overall discourse on *encounters* in police accounts and served as a catchall phrase to excuse all mistakes and excesses on the part of the police.

Overall, there were no significant differences between officers' justifications regardless of their roles or extent of participation in *encounters*. Broadly similar themes ran through all accounts across gender and rank - a significant finding because it implies that these accounts had become so internalised within the ethos of the organisation as to be accepted and retold by officers irrespective of rank, gender or status. Shearing and Ericson (1991, reprinted 2005: 231) cite Bayley and Bittner's work (1984) which concluded that "The same stories crop up too often, suggesting that they have become part of the mythology of policing passed on uncritically from officer to officer". On the other hand, one of the officers interviewed had a more practical explanation for why he thought the same *encounter* account was being re-used by the police:

"Sometimes you feel that ok, the last time this story sailed smoothly and then you are also under pressure of work. So when you want to file a case, make various reports which have to go to the government and all that, you tend to take the easier way out, a tried and tested method. Or sometimes a man thinks that this kind of story is liked by the press, so ok this puts me in a better light, makes me a hero... So a genuine thing gets distorted and as you rightly say people get into a right mess while trying to play around with the facts." (T35: Senior Management)

Hunt and Manning (1991, cited in Foster 2003: 206) found that not only do officers whose conduct is questionable, lie, but their colleagues are also expected to collude with the lies. When accounts are used retrospectively as justifications and excuses, it may facilitate them being used prospectively to construct new lies and it would take a lot of self reflection on the part of officers to "tell the truth, rather than to passively accept and use lies when they are taken-for-granted and expected" (Hunt and Manning 1991, 2003: 151). Even in my sample, I found that only a few officers were willing to reflect on the truth and deviate from the 'standard' *encounter* stories.

Although justifications used by active participants and facilitators were similar, there were subtle differences in the way they talked about *encounters*. Active participants openly spoke of *encounters* or (what they perceived to be) more politically astute term ‘operations’, to denote cases where more planned, controlled and meticulously conducted processes occurred rather than hot-headed, random violence by the police. The planning and meticulousness did not refer to cold-blooded plans for killing but were used to indicate that the police had identified and observed the target, convinced themselves of his ‘criminality’, had laid a trap to ostensibly arrest him, but had to unfortunately kill him in self-defence. There were no doubts; rather there was pride when they talked of *encounters*. The facilitators and supervisors, on the other hand, appeared more cynical about the use of the term operations, its implications and the underlying messages of professionalism that the use of the term was supposed to give out. This was indicated in the self-conscious way in which they used the term, as if not entirely convinced it was more politically correct.

### 6.3 The Denial Framework

In the previous two chapters I have looked at officers’ perceptions of a variety of issues and their understanding of the term *encounters* and its related ‘folk terms’. However, these need to be organised into a theoretical framework so that a coherent picture emerges to explain the existence of *encounters* in Mumbai.

It was evident to me that the main body of police justifications for *encounters*, and the overt, dominant public narrative, were one of **denial** of police excesses or wrongdoings. It is important to emphasise that despite growing evidence and awareness about the questionable and doubtful circumstances surrounding *encounters*, and the fact that *encounters* were a euphemism in many cases for police executions, police officers rarely accepted this overtly. Officers also used classic denial techniques (Sykes & Matza 1957) to account for and to justify their actions (Scott & Lyman 1968). Denial theory “claims to understand not the structural causes of the behaviour (*the reasons*), but the accounts typically given by deviants themselves (*their reasons*)”(Cohen 2001: 58). There are very few other sources of information to support my research on police *encounters* in Mumbai, for example academic studies, NGO reports and government reports.

References to police *encounters* occur only in media reports and Bollywood films. I therefore had to depend solely on my interviews to construct the world vision of Mumbai police officers and ‘claimsmakers’ to understand ‘their’ reasons. By doing so, I intend to show that in Mumbai denial on the part of not just the officers, but in some ways also on the part of the ‘claimsmakers’, paved the way for police deviance to exist unchallenged.

Cohen’s (2001) analysis of the Theory of Denial is particularly apposite to explain how not just individuals, but organisations, governments, media, and the public, can simultaneously know and not know about atrocities committed by state actors and to identify the mechanisms that operate in normalizing such events in the social consciousness to the extent that they are not even recognized as being objectionable in a democratic society. Cohen seeks to understand how actors, agencies, and states live with the knowledge of atrocities around them and how do they explain it to themselves and to others. He uses the term ‘denial’ to cover a whole range of phenomena - from lying, repressing, blocking or shutting out, wilfully misunderstanding, ignoring the implications of the knowledge of suffering or atrocities, or finding convenient rationalizations to explain themselves and justify their conduct. His experience of working with an Israeli Human Rights Organisation, and being drawn into the politics of denial of human rights abuses, led him to observe that the immediate official mainstream response to accusations of abuses was *outright denial, renaming, justification*, but there was no outrage even from the liberals. He further observed, that soon there was a tone of acceptance towards these abuses. As a result of the report published by the Human Rights organisation, “a taboo subject was now discussed openly. Yet very soon, the silence returned. Worse than torture not being *in* the news, it was no longer news. Something whose existence could not be admitted, was now seen as predictable” (Cohen 2001: xi). These words could equally be applicable to the reaction and attitude towards *encounters* in Mumbai. The theory of denial tries to make sense of this apparent ‘normalization’ of atrocities. “The most familiar usage of the term ‘denial’ refers to the maintenance of social worlds in which an undesirable situation (event, condition, phenomenon) is unrecognised, ignored or made to seem normal” (Cohen 2001:51).

Cohen begins his analysis by acknowledging that he uses the code word 'denial' to cover many different states and situations. Denial, he argues, occurs at different levels and on various dimensions. As in Cohen's work (2001: 3-20), denials (of 'wrongdoings') in my data on *encounters* were analysed along the following dimensions described by him: psychological status of the denier; content of denial; level at which denial is being made (individual, organisational or societal); the time scale of the phenomenon (recent or historical); the agent doing the denying, and; the space and place dimension of denial.

According to Cohen, (2001: 3-6) based on whether the denier is conscious or unconscious of the position he/she is adopting, there can be three possibilities about the truth-value of any statement of denial:

- *Either it is a true statement* - Thus, those officers who genuinely believed that *encounters* were chance occurrences and happened in self defence were telling the truth when they denied that *encounters* are 'done'; or
- *It is blatant falsehood or lying*- Those officers who were well aware that *encounters* were not quite the chance occurrences they were made out to be, but were the result of a deliberate strategy, were lying when they denied that *encounters* were 'done'; or
- *It is a strange combination of knowing and not knowing* - in this case denial is understood as an unconscious defence mechanism of coping with guilt, anxiety and other uncomfortable emotions, - i.e. when the psyche blocks off unpleasant and uncomfortable information, but whether this is conscious or unconscious is debatable as it could even be 'willed omission' or inattention. In such situations "we are vaguely aware of choosing not to look at the facts, but are not quite conscious of just what we are evading" (Cohen 2001: 5).

Cohen (2001: 6) suggests:

"Government bureaucracies, political parties, professional associations, religions, armies and the police all have their own forms of cover-up and lying. Such collective denial results from professional ethics, traditions of loyalty and secrecy, mutual reciprocity or codes of silence. Myths are maintained that prevent outsiders knowing about discreditable information; there are unspoken arrangements for concerted or strategic ignorance. It may



be convenient not to know exactly what your superiors or subordinates are doing”.

This could be accurately describing the situation in Mumbai. Unlike the few officers I term Deniers in Chapter 4, a majority of the officers, seemed to be resorting to this subtler version of denial, where either they deliberately did not want to know the details of the *encounter* but were vaguely aware that there were several lacunae in the official account given out in the press release or recorded in the First Information Report; or justified that the illegality was more than compensated by the ‘rightness’ of the action, leading to the conclusion that there actually was no ethical wrongdoing.

Cohen (2001: 7-9) explains that there are three possibilities as regards the content, i.e. *what* is being denied:

- *Literal denial*- officers (in possession of the facts of the case) denied that there is any sort of wrongdoing in *encounters*,
- *Interpretive denial*- officers did not deny that *encounters* could be more than just chance exchange of fire, but asserted that it was not what it looked like, or that the ‘criminals’ were a potential threat or were generally known to possess sophisticated weapons and hence were fair game to be eliminated first. Thus, by changing words, using euphemisms and technical jargon, officers tended to give the occurrence a more acceptable version (i.e. acceptable to the courts of law and the public).
- *Implicatory denial* - officers denied neither the facts nor the conventional interpretation of what an *encounter* actually was, but denied or minimized the psychological, moral or political implications of the act, for example, by saying that “the ‘criminal’ deserved it”, or that “the criminal justice system has failed” or that “the people and the politicians approve and demand police *encounters*”, or “what can I do about it?”

According to Cohen (2001: 9-11), denial occurs on three levels - personal, cultural or official. In my research data I found that denial was:

- *Personal*- when an officer denied any personal knowledge of ‘wrongdoings’ in *encounters*;

- *Official* or institutional- when the police organisation, or the government as a whole denied there was any ‘wrongdoing’ in police *encounters*. In this case denial was built into the ideological façade of the organisation and the state itself; and,
- *Cultural* - there was evidence of collective denial indicative of a broader, widespread failure by the public and media to openly acknowledge uncomfortable or discriminatory behaviour collaborated with official denial through the coverage of these events (see Chapter 7).

Cohen (2001: 12-3) suggests the time scale for the denial process can be either historical or contemporary. *Encounters* are a recent phenomenon, where denial can also be the result of information overload or compassion fatigue due to constant exposure to similar stories of atrocities within a short period of time. One officer said, “Initially encounters were few and there was media interest in them, but since then they have gone up, then the same-same news is repeated, probably they are not finding it newsworthy now”. (T28: Inspector: Active participant). Another officer said, “*encounters* are just one of the many problems around me, I cannot react to any more news items about yet another ‘hardcore criminal’ killed”. (T21: Sub Inspector). Some officers, on receiving news of yet another *encounter* tended to block it from their consciousness without really reflecting on the complexities of the situation.

Cohen (2001:14-8) recognizes that denials are part of the rhetoric not just of perpetrators, but of victims and bystanders too. However, my research deals with denial accounts of perpetrators (active participants, facilitators and supervisors) and bystanders (non-participants and ‘claimsmakers’). Denial accounts of both internal, immediate bystanders, for e.g. police officers not involved in *encounters*; and external bystanders: i.e. external to the organisation but internal to the society, for e.g. accounts of *encounters* of social actors are included.

Cohen (2001:10-20) suggests that the space dimension, i.e. whether the denial is of events occurring within the society or on external territory, is of significance to the way the account is shaped and understood by the actors and their audience. My study deals with understanding how officers denied the negative associations

of *encounters* as being atrocities committed by the state's law enforcement agents against its own citizens, and how the society where this was occurring responded to it.

Cohen (2001:51) also distinguishes between micro denial that takes place at an individual level and macro denial that takes place at societal level. The phenomenon of *encounters* was never hidden, or unacknowledged in the sense of being absent from official records or media coverage, but it was hidden to the extent that no one other than the officers involved either directly or indirectly (as supervisors or facilitators) were really aware of the actual facts - to that extent it was normalized, contained and covered-up. My analysis focuses on micro denials - at the level of individual officers and individual 'claimsmakers' (Chapter 7). According to Cohen, micro denials are the individual's way of being able to give, what they think will be acceptable accounts to victims, friends, family, journalists, other criminal justice professionals, public inquiries, human rights organisations, international queries, to the questions 'Why would ordinary, decent people do something like that, and how can they then live with their conscience?'

Cohen's model sees denials being part of wider motivational 'accounts'- these accounts being, 'not some mysterious internal states but typical vocabularies with clear functions in particular social situations'<sup>74</sup>. Agreeing with Cohen that "there is no point in looking for deeper, 'real' motives behind these verbal accounts"(2001: 58), I am looking at the interview material as '*initial* guides to behaviour', where the account given by the actor is "not just another defence mechanism to deal with guilt, shame or other psychic conflict after an offence has been committed; it must, in some sense, be present *before* the act. That is, to make the process sound far more rational and calculating than it usually is" (Cohen 2001: 58). It is difficult to distinguish between rationalisations (that take place *ex post facto*) and justificatory accounts that existed when the action (*encounter*) was being contemplated or occurred, and I am aware that there may be differences of opinion whether what I judge to be accounts are not in fact,

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<sup>74</sup> Cohen citing C. Wright Mills (1940), 'Situating Actions and Vocabularies of Motive' *American Sociological Review*, 15, 904-13

rationalisations. For example the justification that Hindu mythology and tradition eulogises ‘the good vanquishing the evil’, could be presented as a motivating, justifying factor to readily employ deadly force before the occurrence of *encounters*, or as a mitigating, rationalising factor, after the event in order to excuse it. It was also evident that accounts were used as devices *before* the act to lay the groundwork for making future *encounters* more acceptable and justifiable to the public, as well as *after* the act to protect the individuals from self-blame and blame from others. There could also be difference of opinion on whether certain accounts were justificatory devices presented *before* or *after* the act.

#### 6.4 Police Officer Accounts: Justifications for *Encounters*.

Cohen distinguishes between accounts as justifications and accounts as excuses: the former in which “one accepts responsibility for the act in question, but denies the pejorative quality associated with it”, whereas the latter are “accounts in which one admits that the act in question are bad, wrong or inappropriate, but denies full responsibility”.<sup>75</sup> Further the difference between excuses and justifications are that the former are, as Cohen (2001: 59) says, “passive, apologetic and defensive”, whereas the latter are “active, unapologetic and offensive; they deny pejorative meanings, ignore accusations or appeal to different values and loyalties”. However as Cohen found, this distinction does not always work and what may be considered to be an excuse, may actually be a justification. For example, one officer said,

“I am happy I am not part of that team that is doing the shooting. I am also glad I am not taking the decisions at higher levels- I am simply ensuring that the paperwork is done as best as possible to protect the department’s name. I am not doing a personal favour to anybody... I am doing what I can to see that the department does not get a bad name” (T34: Inspector, Facilitator, recorded verbatim in notes),

The sentiments expressed in this quote may actually be an active ‘appeal to higher loyalties’ – an active and vigorous justification. On the other hand, the same account may actually be an excuse, (the real reason for facilitating may be inability to challenge the system and organisation), but could be presented by the

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<sup>75</sup> Cohen citing Scott M & Lyman S (1968), ‘Accounts’, *American Sociological Review*, 33, 46-62

officer or interpreted by his audience, as justification, in order to establish and reinforce the cornerstone of all justifications - i.e. the action (*encounter*) was done in good faith and for 'noble' reasons.

I found that the arguments put forward by officers to justify why *encounters* happened, and were acceptable, were repeated often and sounded so well-rehearsed that they had become part of the whole myth of effective policing. Accounts aimed not only to make *encounters* acceptable but also to make them credible and reasonable, especially those that invoked the notion of 'self-defence'. As this officer explained:

"Always the question is asked when gangsters fire, why no police officer is injured? There are always two or three instances in a year when police officers are injured or they get shot in police firing. [Contrast this with statistics quoted by him earlier claiming that nearly 300 criminals died in encounters between 1999 and 2001] ...So for a gangster... when the police announce their presence, morally he is always down, he cannot concentrate on his target, and that has an effect [on his shooting]. Whereas, on the other hand, the police party go with the determination of arresting him and they are mentally also in an advantageous situation at that particular juncture when the exchange of fire takes place. Whereas that fellow [criminal] is always under tension, he cannot concentrate, he always shivers, there is less chance of him hitting his target. But the policeman, when he is trained and when he is tuned and mentally prepared, he can always hit a target". (T 26: Upper Middle Management)

The table 3.6 shows the official figures recorded by the National Crime Records Bureau of police personnel killed on duty, if we contrast these numbers with the statistics quoted by the interviewee earlier (also see Chapter 3) claiming nearly 300 criminals died in *encounters* between 1999 and 2001, we see stark disproportionality.

The small number of police injuries and virtual absence of casualties in *encounters* were explained with reference to superior firearms training and professionalism on the part of the police. However, almost all the officers interviewed felt that the firearms training given to officers and lower ranks was inadequate and the weapons and ammunition, antiquated. It may be the case that 'encounter specialists' received additional training, target practice, and protective clothing, and also that they were in a position of advantage as the 'pursuer' as

compared to the 'pursued. But there seemed to be little or no support for the claim that in general, police officers were better trained, prepared and equipped to react when under fire. On the other hand, many officers said that 'criminals' possessed sophisticated weaponry and methods of communication, which placed the police under an inherent disadvantage with dealing with organised criminals.

Cohen uses and expands upon Sykes and Matza's (1957) analysis of justifications for deviant behaviour based on the techniques of neutralization and suggests that political accounts of atrocities follow the same logic as those of ordinary deviance. In Mumbai too, there was public knowledge that *encounters* between police and 'criminals' occurred, but there was generalised refusal in narratives to accept that any of these were deliberately engineered killings. Even those who admitted to *encounters* being engineered sought to diminish their illegitimacy by using various justifying factors that made such actions, not only inevitable, but also acceptable, as we shall see later in this chapter. Various rhetorical devices employed by the officers could be categorised under Cohen's schema as:

#### **6.4.1 Denial of Knowledge**

The classic 'I did not know' defence was used by some officers, the Deniers, who maintained that only those actually involved in an *encounter* were aware of the facts of the case and were in a position to comment on whether a particular *encounter* was 'genuine' or not. Since they themselves had never been in an *encounter* situation, they felt that they did not have the requisite knowledge to say whether *encounters* were or were not deliberate police killings. As non-participant bystanders, they could legitimately use this argument to deny knowledge of *encounters*. It is possible that there might have been a few officers genuinely unaware of the realities behind *encounters*, or were not in a position to know the exact details of any particular incident, but given how the organisation operates it would be reasonable to assume that even an ordinary constable was aware of the fact that there was more to *encounters* than was put forward for public consumption, not least because of the large death toll. However, by not having either the position, power or evidence to be able to do anything tangible on the basis of such rumours or grapevine information, these officers preferred to

deny any knowledge of *encounters*, thus either suspending their judgement or avoiding facing any awkward issues of having to square their conscience with uncomfortable knowledge of ‘wrongdoings’. I am assuming that these facts would sit uncomfortably on the conscience of officers, but this may not be the case with all officers.

It was not just internal bystanders without any link to *encounters* who denied knowledge, but even some senior officers who acted as supervisors and/or facilitators also kept themselves shielded from the details of an *encounter*. Their arguments were akin to President Reagan’s classic defence of “‘plausible deniability’ in the Iran Contra case, which involved “giving general policy guidelines and letting the details without his specific knowledge be carried out by others” (Hagan 1997: 76, citing North 1991). Similarly, some of these officers were interested in the effective impact of police actions, and deliberately turned a blind eye to the exact nature of these operations just so they could soothe their own conscience about their lack of official sanction against illegal actions by their subordinate officers. Shielding themselves also meant that they were not lying when they said that they did not actually know whether any illegalities occurred during *encounters*. This is classic self deception at work - the officer obviously knows that something unsavoury is going on, but precisely because he knows it, he withdraws from asking for any details that would entail facing up to an unpalatable truth about the nature of *encounters*.

#### **6.4.2 Denial of Responsibility**

The classic denial of responsibility defence “It was an accident” or “ I don’t know why I did it” or “ I don’t know what came over me” were obviously denials officers could not use. They lack credibility and would not have been accepted or pardoned by the public, the criminal justice system nor the organisation itself. ‘Accidents’ that led to the loss of life at the hands of the police were just not acceptable. For example, even when there have been cases of mistaken identity or accidental shooting, the police invariably tried to prove otherwise - as the Rathi case in Delhi demonstrated. In this case, Assistant Commissioner of Police (ACP) S.S. Rathi, faced murder charges along with nine other officers in the Connaught Place (New Delhi) *encounter* case for allegedly

gunning down two businessmen in a case of mistaken identity in 1997. All 10 officers were found guilty under sections 302 (murder), 307 (attempt to murder) and 193 (punishment for fabricating false evidence), read with 120-B (criminal conspiracy) of the Indian Penal Code (IPC) by the Delhi High Court in October 2007<sup>76</sup>.

Officers were at pains to demonstrate that their actions were the result of deliberate planning and careful targeting, but denied responsibility for *encounters* in other indirect ways. This technique was the one employed for the most part in accounting for *encounters* where officers accepted that the action was taken with full cognisance, but the motivation for the action was provided by others i.e. they were either provoked by the ‘criminal’ (victim precipitation) or had employed deadly force in self defence, or were fulfilling the expectations that society placed on them in terms of crime control. The ultimate responsibility for the use of deadly force lay with others and not the active participants or facilitators. As an extreme example, one officer sought to deny responsibility by saying,

“If a man has to die, God has already written it. A man is by birth a normal human being; circumstances and God has confirmed him as a criminal and he is not going to change and he has to die and he will die. I am not going to bother about the consequences of that act because I have done what is necessary”. (T25: Upper Middle Management)

Thus the officer made *encounters* sound almost as if they were *fait accompli*, given that God and the deeds of the ‘criminal’ had condemned him to certain death at the hands of the ‘righteous’ police.

There was little overt articulation of officers doing *encounters* as a result of organisational directives - very few officers explicitly mentioned this as being one of the factors why they felt *encounters* were conducted. We can only indirectly surmise on the basis of statistical evidence that a tacit policy encouraging *encounters* was supported by some police chiefs (when *encounters* were high), and discouraged by some chiefs in the years there was a lull. One Crime Branch ‘encounter specialist’ had this to say,

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<sup>76</sup> See for e.g. *The Hindu*: (2007), ‘Shooting Case: 10 Policemen held guilty’, October 10<sup>th</sup> 2007.



“Now the DCP (Deputy Commissioner of Police) here is posted since two or three years and the Joint Commissioner has been here for a time. In eight or ten months these people will go away and new people will be appointed. There will be a new set-up, they will look at us [‘encounter specialists’] differently, they will put a label on us that we are these officers’ men, this Commissioner’s man...So for a few months we will have some hassle. Then somebody big will be killed, they will feel the need for us, they will call us and say - now do this job... What is our fault in that?” (T27: Inspector, ‘encounter specialist’)

This officer was aggrieved about his experience of being unfairly labelled as being more loyal to the previous incumbents of the office by the new set of officers replacing them. He spoke of the suspicion and lack of trust that ‘encounter specialists’ had to overcome before demonstrating that their loyalty was to the job and not to particular officers. The quote also revealed internal tension within the department where other officers tried to influence newly appointed senior officers against ‘encounter specialists’ who were presumably given special privileges. The officer appeared to be saying that *encounters* were ‘done’ when senior officers demanded a suitable police response to some sensational crime. Whether officers actually carried out *encounters* on the directives of senior officers, i.e. whether these were ‘crimes of obedience’ was analysed using Kelman and Hamilton’s (1989) model. They suggest that crimes of obedience result from the three processes of authorization, dehumanization and routinization, factors that are very evident in hierarchical organisations like the police and the military. A closer look at the implications in some of the articulations of the officers’ accounts revealed that all these factors were present in the Mumbai police and contributed to some extent, to the situation in Mumbai.

#### *Authorization*

Statistics may be used to show that that *encounters* were responsive to changes in police leadership and police policy. Since 2003, accompanied by changes in police leadership, the number of incidents has fallen and activities of ‘encounter specialists’ curtailed. However, only a few officers specifically mentioned that they were involved in *encounters* as a result of organisational directives, “If the CP (Commissioner) says do it, then we will do it. As I said, it is a policy

decision. It is not for me, it is the decision of the organisation” (T 27: Inspector, specialist).

I sensed during many of the interviews that officers were sure of their senior officers’ support and because the whole system tacitly encouraged *encounters*, this gave them the requisite backing to conduct these operations. One officer said, “In Mumbai our senior officers support us in a good way. In every case of encounter, they give us correct guidance and our colleagues also give help and it is considered good work” (T19: Sub-Inspector, Active Participant). The certainty that the organisation and senior officers sanctioned such actions, removed the moral element of decision making on the part of the individual officers: they were merely obeying orders of higher authorities and this was enough for officers to deny responsibility for the act. Even when officers denied responsibility, they remained aware of the moral and ethical dubiousness of the action. One officer claimed, “It hasn’t happened so far. I don’t think mistakes can happen, and even if they do senior officers will support us. So I am quite confident that we cannot get into any trouble because our intentions are not bad, we have no personal motives” (T29: Sub-Inspector, Active participant).

### *Dehumanization*

Dehumanization is the process whereby enemies or ‘victims’ are placed outside the one’s moral universe, thus making them fair game as victims of atrocities. When officers expressed opinions such as – ‘they deserved it’- or ‘ if they are criminals what else can they expect’ – they were effectively absolving themselves of the need to accord alleged ‘criminals’ normal human rights and obligations. Most officers suggested Human Rights organisations were, ‘only concerned about the human rights of the criminals’ and not those of the victims. Another viewpoint suggested was that supporting ‘criminals’ would only result in encouraging further criminal activity,

“Now Human Rights and other social organisations, they should really think about this- this particular criminal, of what value or worth is he, how many people has he harassed so far and whether he is capable of attacking the police in this manner, these facts they should take into account. If you are planning to promote the cause of such criminals, or if you are going to provide them with all facilities, by maligning the police or demoralising the police, then it is natural

that such criminal tendencies will be on the rise and the number of criminals will increase". (T 17: Inspector)

This officer was making a value judgement that 'criminals' were not worth being supported by Human Rights organisations at the expense of demoralising the police.

### *Routinization*

Once initial moral restraints have been overcome, it becomes easier to commit atrocities routinely. This was true of the 'encounter specialists', the number of 'criminals' killed by them is openly acknowledged in magazine and newspaper articles<sup>77</sup>. It was almost as if these officers did not think of their 'victims' as individuals with a personality and a life, but as one more notch on their belt. One 'encounter specialist' is quoted as having said, "I don't enjoy killing, but after we shoot some mobster, his victims look at me like God. That's the best part of the job" (*Time*, 'Urban Cowboys', January 06, 2003)

Cohen suggests two other processes that aid the denial of responsibility, appeals to **conformity**, and **necessity and self-defence**.

The appeal to conformity was not explicitly used by officers in general, but from my own experience and from the informal talks I have had with police officers of various ranks, it is clear that 'everyone else was doing it' is a powerful motivator for actions as extreme as the use of deadly force. One senior officer said,

"Sometimes, we have to win a very important case, where if we don't, the consequences can be disastrous. I find everybody else is doing it [using morally dubious methods]. In the sense all the other players in that game are doing it so the question is if you are bogged down by that then you are losing before your very own eyes...I go by the philosophy of the Geeta- even killing was advised if it was part of your duty... The police have not hesitated to respond to it [encounter situation] when dealing with criminals who are daredevils and are armed with firearms. So that is a need based response of the police. I

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11. See for example, Perry A.: 'Urban Cowboys', *Time*, Jan 06, 2003, Balakrishnan S.: 'Encounter Specialist on cops' wanted list', *The Times of India*, September 28, 2005; 'Cop on the run finds an ally in Bollywood', *The Times of India*, January 23, 2006

suppose it happens in America and a few other countries also which face a similar kind of problem”. (T 31: Senior Management)

The officer is using the argument that because (in his perception) killing in the line of duty is - prescribed some religious texts; police in other countries are doing so in similar situations; and fellow officers are gaining fame and reputation ('getting ahead') by using deadly force, it becomes a matter of conformity to follow where others lead even in the illegal use of deadly force. There was also a feeling, not expressly articulated but hinted at in the interviews that some officers felt persecuted for engaging in *encounters*, when others were getting away with similar actions. Since a number of 'encounter specialists' existed, picking on one particular individual for disciplinary action 'when everyone else is doing it' becomes very difficult for senior officers who want to control abuse of force.

One officer told me there had been an *encounter* in her jurisdiction (by the Crime Branch) and she had been very unhappy about it and had made it clear to senior officers that she did not approve of these actions. Since then, "they have ensured that there are no encounters in this area" the officer declared proudly. I wondered why the officer had not raised serious, official objections in that particular case in the first place but did not ask the question as I thought that it might be perceived as being judgemental. It could be either because she felt a sense of loyalty to the organisation, or because the officer just wanted to conform to the organisational culture and not rock the boat because she went on to say after the interview was officially over that she did often agonize over whether speaking openly about these issues was being disloyal to the organisation.

Another officer said,

"If I ever raised any objections to any of the actions taken while I was at the Crime Branch, they would have countered me with questions like- 'were you present there, then how can you say this?' At each stage they would come up with an argument that countered my point. You must know that senior officers do not appreciate it if a junior officer questions their policy or decisions. So I would be told to just shut up and stay out if I was not willing to be party to it. And as far as doing anything about it was concerned- it was not the 'done' thing. I did not think it was in the larger interest to speak out against what was happening. You just flow along with the system. You do it because otherwise you would not have got support for your

dissension or because there is some sort of loyalty towards your subordinates or the organisation.” (T 33: Upper Middle Management, verbatim notes from unrecorded interview)

The most common justification for *encounters* was the use of deadly force in self-defence. Apart from being the only legal justification for this action, it also takes away the responsibility for the act from the officer. By saying it often enough some officers believed that the mere fact that ‘criminals’ were in possession of a weapon, justified the pre-emptive use of deadly force. That almost half the active participants accepted wrongdoing showed their confidence and belief in the ‘correctness’ or appropriateness of their actions.

“If someone is caught with a weapon in his hand, then he is not keeping that weapon in order to go to the temple, is he? He is keeping it to murder someone. That is what our people say- if a weapon is found, then, it is not the case that he is an innocent person and you are planting a weapon and killing him, that is a personal issue. There is no question of making a mistake if they are carrying a weapon. Then there cannot be any ulterior motive. If we do anything in good faith then there will not be a mistake”. (T27: Inspector, encounter specialist)

The officer was establishing the ‘criminal’s’ guilt on the basis of, and also that acceptable ground for use of deadly force was, possession of a weapon, regardless of whether the ‘criminal’ had used it on that particular occasion. The use of deadly force against such a person was perhaps considered by the officer as justifiable. It was also my understanding of what the interviewee said that if any officer planted a weapon/s on the dead person then that was a personal decision or choice of the officer concerned, and might have been done to cover up errors that arose out of mistaken identity or excess use of force. The officer was merely engaging in what Young (1975) calls ‘negotiation of reality’ where the officer was jumping the gap between theoretical and empirical guilt by making assumptions, but what remained unarticulated was whether action taken in ‘good faith’ could be extended to actually planting evidence to prove what the officer was convinced of as the guilt of the *encountered* person. The justification cited by the officer is a travesty of the self-defence justification. Mere possession of a firearm, not use of it, and certainly not posing any hint of immediate danger

to the life of the officer himself or others, is no crime, but was considered to be so by the officer.

The other aspect of denial, that of necessity is the one where officers expressed their opinion that this was dirty work which someone had to do; the 'cleaning the scum off the streets' sentiment was expressed by some of the officers in their interviews, embodying Hughes' (1961) conception of police work being 'dirty work'. One 'encounter specialist' reportedly declared in an interview for an international magazine: "A bullet for a bullet...It's the only language they (criminals) understand...Criminals are filth...and I'm the cleaner" (Inspector Pradeep Sharma talking to Alex Perry, *Time Magazine*, 2003). Other officers interpreted that the action became a necessity because the police were perforce, solely responsible for crime control. The failure of the criminal justice system was the biggest factor contributing to the appeal of this argument.

Another mechanism described by Cohen (2001: 92) as aiding the Denial of Responsibility was: **splitting**. One of the ways an individual tries to deny responsibility is by 'means-end' dissociation, where individuals think of themselves as a cog in the machine, a cog that does routine tasks that may facilitate atrocities. However, not wanting to think of the resulting atrocities, they merely see it as doing one's job. Thus when an Inspector (T 34) said that he was not aiding in the facilitation of *encounters* for the benefit of 'encounter specialists' but for the sake of the organisation; and also that he was glad that he was not personally doing *encounters*, he was not merely appealing to higher loyalties (see below), but was also denying responsibility. He seemed to be saying that he did not pull the trigger, but just ensured that the paperwork was in order, or manipulated to be in order, thus implying that his role in the process was not as morally loaded as that of the officer actually doing the killing. This is denial of responsibility in atrocities by splitting up the self's contribution to the process as being that of a mere facilitator, a passive vessel obeying orders, and is one way of dissociating oneself from the process.

### 6.4.3 Denial of Injury

Gross political atrocities cannot easily allow for typical denial of injury justifications ('no one really got hurt', or 'that was ordinary business practice') used by ordinary delinquents (Cohen 2001: 95). However, the way perpetrators deny injury is by asserting that the victims belonged to a devalued group in society (usually an ethnic outgroup). In Mumbai the outgroup was organised criminals, who were perceived to deserve nothing better. Officers were obviously aware that their actions caused death but sought to neutralize this or turn it into a moral blind spot by emphasizing the beneficial aspects of *encounters* for the society. Getting rid of a few criminals brought safety and security to the larger society, and therefore, such an action was less injurious as they were acting in the common good.

Another officer sought to use the argument, "in the circle of life and death, this person's bad deeds brought upon this bad ending to his life and that he ought to be relieved of this sinful existence and be given a chance to start again in a new birth". (T 8: Sub Inspector). The Hindu doctrine of the cycle of birth, death and rebirth was effectively twisted around by this officer to give credence to his actions and deny moral injury to the victim from a broader perspective.

### 6.4.4 Denial of Victim

Cohen (2001: 96) describes the melodramatic discourse of political atrocities, where historically blaming the other is the dominant theme - "'history' proves that the people whom you call victims are not really victims; we, whom you condemn, have been the 'real' victims; they are, in the 'ultimate' sense, the true aggressors; therefore they deserve to be punished; justice is on our side". This could be the story of the Mumbai police, when they talk about the damage done by 'criminals' to the social fabric and how the rights of the people need to be safeguarded against the activities of these criminals. Thus, when one officer said that "some people do not deserve to stay on this earth" (T 7: Lower Middle Management), he was denying them their right to existence.

It is my belief that this is a double pronged denial mechanism, where on the one hand officers denied the victims by saying that they deserved to suffer because of

what they had done, and on the other hand skimmed over the number of 'criminals' killed; talked in terms of 'crime control' as a desirable goal; how effective their actions were; and how dramatically they had succeeded in reducing criminal activities. In this way officers were unconsciously or consciously removing the human element from the discourse, by not recognizing the fact that human lives were involved in the 'effective' actions taken by them.

#### **6.4.5 Condemnation of Condemners**

This technique of neutralization questions the critics' right to criticize. Perpetrators seek to neutralize the legitimacy and authority of critics by casting aspersions on the intentions and integrity of those who dare to question their actions. As Cohen (2001: 98) points out, "the wrongness of *others* is the issue" not the legitimacy of police actions. Officers strongly condemned the antecedents of the Human Rights activists and NGOs who campaigned against police *encounters* and questioned the integrity of journalists and legal practitioners who had in some sporadic cases, dared to raise questions about the correctness and proportionality of use of deadly force. Reiner (2000a: 94-5) categorises lawyers, doctors, social workers, journalists, researchers, NGOs and anti-police activists as 'challengers' and 'do-gooders', whom the police traditionally regard with hostility and suspicion. Some officers were contemptuous of the critics, media and NGOs. One said:

"Idiots, they are simply idiots and they are dishonest people. All media and all NGO's are dishonest. With due regards there must be some honest, well-meaning people, the rest are poor jokers. Media is business. They are only interested in publishing what sells. They are not interested in anything beyond that - they do no social service or take up social causes, they are no crusaders - they just publish what is salacious and what sells...What are the NGO's doing - nothing... They are interested in furthering their personal goals, and making a quick buck." (T6: Upper Middle Management)

Another officer questioned the commitment and knowledge of people working for NGOs that were critical of police work, implying that they were only superficially involved in protesting about issues they had little understanding of (see page 172). While some officers were willing to concede that there might have been some 'wrongdoings' on the part of the police, they were almost united in their contempt for the activists and NGOs who were working in this field. A



few officers even condemned what they saw as the hypocrisy of criminal justice practitioners, who were supposed champions of Human Rights but were more than willing to forget them, when they themselves had been victims of crimes.

“We have somehow double standards in society. If someone is affected, then he shouts. If my house is burgled and a suspect is arrested I will go and tell the police, ‘hit him, break his bones and recover my property’. But if it somebody else’s house and I see a policeman hitting, I will say ‘police are brutal’” (T18: Inspector).

Officers implied in their interviews that not only did biased individuals with an anti-police agenda use the rhetoric of human rights to further their personal or political gains and to discredit or humiliate the police; but that the discourse-makers themselves did not possess integrity or respect for rights. Officers clearly reinforced Cohen’s (2001: 98) contention that “External critics are attacked for being partial or are said to have no right to interfere”, to this officers added that only those who had criminal interests and benefited from the labours of criminals, could sympathise with their cause and question police actions. One officer had this to say about public reaction to *encounters*, “Generally society will not support such a man [criminal], but a person’s relatives or those who have got some benefit out of the criminal, then they will feel bad... to those whom he provides money by committing crimes, they will call it a bad thing and that the police killed him” (T10: Sub Inspector). Internal critics on the other hand were discouraged from speaking up against policies and forced into maintaining silence, as was the experience of one Upper Middle Management officer (refer page 210). The officer went on to add:

The greatest flaw with the police is that we think ‘wisdom goes with rank’. Here it is believed that the more senior you are, the wiser you are and anybody junior to you knows nothing. Since in the police, hierarchy demands that command comes from the top, if you contradict seniors in public, then it creates a bad impression. And this is resented. I have never contradicted my seniors in public but even in private it is not appreciated.” (T 33 Upper Middle Management, verbatim notes from unrecorded interview)

#### **6.4.6 Appeal to Higher Loyalties**

In police culture, more than other institutions, solidarity is a prized value. Additionally, since danger and isolation are regular features of the work (see for

e.g. Reiner 2000a, Bowling and Foster 2002) appeal to higher loyalties has a strong impact on the actions of officers. Mutual support and protection of and by fellow officers and the organisation is of overriding importance in police culture. During the interviews, for example, even when officers disapproved of *encounters*, they were very concerned about whistle blowing, or turning traitor on their colleagues. One officer was very dubious of even discussing these issues in the interview, though there was no doubt in her mind that police wrongdoing clearly existed. Another officer explained that the only reason he continued to support such actions was because of his loyalty to the department as he was grateful to the organisation for providing him with a job, livelihood and status in society (see Chapter 4, page 145). Another officer, who admitted to having a supervisory role in an *encounter* case that he disapproved of, said:

“For me the dilemma would have been an ethical one- not a legal one. [He added, contemptuously] Law changes and has no meaning so I have no obligation to that. But yes, it would have been an ethical dilemma. But if I had to take a stand, I would support my men...Also if I had betrayed them, I would have been a traitor to the organisation and no one, no subordinate would ever have any faith in me. The subordinates are only following orders, not doing anything for personal gain and they look upon their seniors to support them. It would not have been correct if I had left their hand [meaning ‘abandoned them’] when they were in trouble. But that does not mean that I approved of what they had done” (T25: Upper Middle Management)

The officer expressed his allegiance to the organisation in no uncertain terms. He saw his own role as that of a protector or guide for his subordinate officers and felt that his obligation to fulfil his role was greater than any obligation to the law or the victim, or indeed to what was ‘right’.

#### **6.4.7 Moral Ambivalence**

Cohen (2001:99) suggests that the moral indifference of the Perpetrators causes them to justify, not only to others, but also to themselves, the moral rightness of their actions. I found not indifference, but ambivalence on the part of the officers with respect to their understanding of the moral and ethical issues involved in *encounters*. Klockar’s (1980) classic ‘Dirty Harry’ dilemma that is inherent in police work, played itself out in this situation where an essential moral dilemma

whether dirty means (*encounters*) justified good ends (controlling crime and social good) existed. Some officers felt that means and ends discussions were for others, whereas they were 'men of action' and had to face the situation and be responsible for the state of crime situation, and thus had no choice in the means-end debate. As one senior officer explained:

"I have seen many things going on, many wrong things being done. But whenever, I mean, something, sometimes, we have adopted means, which are not exactly legal, but perfectly moral. So there is a difference. Everything, which is legal, is not necessarily moral and everything, which is illegal, is not necessarily immoral. Sometimes when achieving an end whether you adopt questionable means? I would not deny that yes, I had to sometimes resort to that - but never to serve my personal interest - strictly with a sense of duty" (T31: Senior Management).

It is evident that the officer, did not have any qualms in adopting means that were not strictly legal in trying to achieve what he thought were morally superior ends. Punch (1985: 13) calls this type of police deviance *combative (strategic) corruption* (see page 194). Numerous police studies have shown that such practices were standard procedure in many parts of the world.

Another senior officer reacted rather strongly to any suggestions that the police might be involved in 'illegalities' in these words:

"But again I would like to reiterate that I don't believe in *encounters*, I don't encourage *encounters*. But when bullets are flying all over the city, like in the Mahabharata<sup>78</sup> they say that somebody fired an arrow and all the whole sky was covered in arrows, if that kind of scenario you are living under and if you don't fire a single bullet and start giving lectures from your moral high pedestal, then you will be a nincompoop, you will be an ineffective, sermonising police officer and we don't want you. You have no place, no relevance in the system - that's it!" [T 24: Senior Management)

The officer seemed to be implying that the situation in Mumbai was extraordinary in the days when organised crime was at its peak, i.e. it was as if bullets were flying across the city and people were in constant danger. The

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<sup>78</sup> The epic Puranic text that is one of the cornerstones of Hindu mythology. The description is of the mighty war between the forces of good (the Pandavas) and the forces of evil (the Kauravas), where the allusion to the sky being thick with arrows indicated the intensity of the conflict.

appropriate police response in the circumstances, according to him, seemed to be the use of deadly force with equal and opposite intensity as the criminals.

I am unsure if this officer was talking of the generic 'you', or whether he was irked by my questions (and perceived value judgement) and had responded in terms of what he thought about my 'moral high pedestal'. The officer's irritated response may be indicative of my interview technique lacking polish, or his own overly defensive attitude towards the whole topic. On the other hand, the use of strong language made it clear that the officer did not have much respect for those who asked difficult questions and agonized over moral dilemmas, when 'decisive action' was required to face the threat of increasing organised gang activities. It also is indicative of the fact that the officer approved of and would authorise 'effective action' (regardless of the legality issue) under similar circumstances.

For others, dirty means were legitimate and justifiable if they provided a good end result. This stance was repeatedly stressed by the majority of officers interviewed, who emphasized the 'good intentions' of officers. In this context, Cohen argues that perpetrators' actions do not arise out of a state of mindless conformity, but that:

"During the event, these perpetrators seem not to have reflected on its meaning; years later they may still profess not to understand why the event was so condemned. This might be an obvious lie... or a form of self-deception... The more frightening possibility is that they really saw nothing wrong at the time and behaved, like everyone else, without reflection". (Cohen 2001: 100)

The situation in Mumbai seemed to link with Cohen's second possibility, and displayed Cohen's interpretation of Arendt's concept of the 'banality of evil'. He suggests that:

"Far from minimizing the evil, she (Arendt) warns that unimaginable evil can result from a constellation of ordinary human qualities: not fully realizing the immorality of what you are doing, being as normal as all your peers doing the same things; having motives that are dull, unimaginative and commonplace (going along with others, professional ambition, job security), and retaining long afterwards the façade of pseudo-stupidity, not grasping what the fuss was about". (Cohen 2001: 100).

In Mumbai, as in other places in India where *encounters* were a regular occurrence, the enormity of the moral and ethical implications of police executions were neither articulated nor understood by officers. So inured were officers in the macho police culture, which routinely condemned Human Rights and Human Rights activists as ‘trouble makers’ that they did not stop to think about what their actions actually meant and the extent to which they themselves had been infringing the law in the name of upholding it.

There are obvious important parallels here with other policing contexts in South Africa, Brazil, Guyana, Jamaica, which along with other social, political, structural and cultural factors is explored in Chapter 8. The situation in Mumbai and the attitude of officers towards *encounters* was aptly described by Cohen as:

“ Between those who actively refuse to see anything wrong and those who see everything as wrong, the vast majority in between can be nudged into acknowledging that something was wrong- yet *at the same time* sustain their denials. Cultures of denial encourage turning a collective blind eye, leaving horrors unexamined or normalized as being part of the rhythms of everyday life”. (Cohen 2001 : 101).

In Mumbai too, the police acted within a culture of denial and sought to normalize *encounters* as part of their jobs.

## **6.5 The Discourse of Official Denial**

Inferences about the official position on *encounters* have been drawn from the interview data, as senior officers often talked in terms of the official policy on these issues, and some middle and lower ranking officers also fluctuated between talking about their own understanding of *encounters* and the organisational discourse on them. I also draw upon media reports of *encounters*. I acknowledge that focusing on the interviews as the primary source within which to read the official or organisational discourse on *encounters* is fraught with problems - of selection, interpretation and of distinguishing between personal and organisational viewpoints. Others may take a different viewpoint from those presented here.

The police organisation's discourse on *encounters* generally mirrored the three types of official denial mechanisms Cohen identified, i.e. classic official denial, counter-offensive, and partial acknowledgement (2001: 101-16).

The *literal* component of classic official denial, i.e. *encounters* did not happen, was not the case in Mumbai. However, other strands of classic official denial - both *interpretive* and *implicatory* - are similar to the ones found in Mumbai. It was not denied that *encounters* took place, but that what happened was not a form of extra-judicial killing but officers responding bravely in a situation that posed danger to their own lives. As Cohen (2001: 101) suggests, "Harm may be acknowledged, but its legal or common-sense meanings are denied". Thus, the organisation, by employing a combination of clever use of *euphemisms* (the use of the word *encounter* to suggest a chance or unplanned face-to-face coming with hardened, firearms-wielding 'criminals'); *legalism* (ensuring that First Information Report describes the events in a certain sequence and all the subsequent paperwork is correct and accountable, thus implying that there can be no wrongdoings on the part of the police - what Cohen calls 'magical denial'); *denial of responsibility* (since there is no official policy promoting *encounters*, subordinate officers cannot be said to have been authorized to conduct such actions, but instead derived their impetus from public expectation); and *isolation* (certain mistakes are acknowledged but are brushed aside as exceptions rather than the rule), sought to convey interpretive denial of police executions of alleged criminals.

*Implicatory* denials in officer accounts involved an acknowledgement that, *encounters* happened, but they 'happened' because they were in the interests of society at large; were necessary to control spiralling crime that threatened law and order as well as citizens' sense of security and confidence in the system; were nothing more than what the victim deserved; and/or were not routine. Another way of strengthening *implicatory* denial was the use of "advantageous comparison" (Cohen 2001: 111). In terms of Mumbai, police actions (achieving the end result of making society safer) were asserted to be so much more morally superior to the actions of the 'criminals' (spreading fear and insecurity), as well

as the actions of the critics who had some personal agenda and political motivation in discrediting 'brave' officers' actions.

Classic official police denial is of mainly the *interpretive* and *implicatory* varieties, but there were elements of literal denial - denial not of the existence of *encounters*, but denial that there was any wrongdoing involved. As Cohen (2001: 103) suggests, literal denial is usually implied by attacking the reliability, objectivity and credibility of the observers, victim/s, witnesses, journalists, activists all of whom are in various ways biased, selective, politically motivated or else naïve, gullible and easily manipulated. As one officer said:

“NGO's vigorously pursue these cases. Why? Because they want to show that they have done some work. This because they get foreign funding- they don't get much funding from India. Indian people will not give them any money so lovingly.” (T4: Inspector, Active Participant)

The officer's perception seemed to be that issues of human rights of 'criminals' appear to be of importance to NGOs funded by the West, to propagate their (western) conception of rights that considers everyone has an equal right to life and liberty. He appeared to suggest that Indian donors would support more worthwhile causes than those upholding the rights of hardened 'criminals' or those who criticize proactive police actions against the latter.

This perception is in turn linked to the next kind of official denial, which is 'counter offensive' and calls into question precisely the above qualities in the condemners. As the quote demonstrates the officer concerned was dismissive and contemptuous of the efforts of the NGO that tried to intervene in a particular case. Similarly it was a generally held opinion that only those third parties who had a personal or political agenda in safeguarding the interests of a particular criminal or gang would question police actions in these cases, thus both dismissing the accusations as baseless and questioning the integrity of the critics themselves.

The third kind of official denial is 'partial acknowledgement' by employing a variety of techniques like 'spatial isolation' - there was grudging acceptance that

certain *encounters* might have been problematic, but that these were occasional. It was the general opinion that ‘false’ *encounters* happened in other parts of the country but officers pointed to the fact that no *encounter* in Mumbai had been subject to major public or legal scrutiny and criticism, with the exception of the Javed Fawda case, where police action was exonerated by the High Court (an assertion that was not quite true). Another technique of denial adopted by some senior officers was ‘temporal containment’, i.e. there might have been many *encounters* in the past decade or so, but as a result most of the gangs had been subdued and the number of *encounters* had gone down. Finally, even if some senior officers accepted that there might have been wrongdoing in these incidents, they asserted that they had taken stern action and disciplinary proceedings against the transgressors in an effort to ‘self-correct’ the situation. This final technique of denial was framed as a partial acknowledgement of existing problems but mitigated by the assertion that it was also being corrected. One senior management officer emphatically assured me:

“Certain aberrations which are committed by our own policemen, when it comes to taking action or not, there is a moral dilemma. As a force we defend, we do so much of defending [actions of subordinate officers], but when it comes to individual things, we pull them up hard, very hard, you know. We take action, we take various corrective steps”. (T24: Senior Management)

The officer then went to recount the number of cases in which he had taken official, departmental action against various errant officers, but did not favour criminal prosecution of the same (see page 193).

## 6.6 Summary

In this chapter I examined the language of denials and how the police, as individuals and organisationally, employed it to justify and present their actions as acceptable to themselves and to others. Denial theory was used to frame the analysis of the motivational and justificatory accounts of officers. Officer accounts of denial of *encounters* shifted along a spectrum, where on the one end they declared that all *encounters* were ‘bona fide’, so there was no wrongdoing; and on the other that *encounters* were justified on the grounds of being a ‘necessary evil’ and employed similar techniques of neutralization.



These accounts only partially answer the larger question - how do state actors commit acts of atrocities and how do they explain these to themselves and to others, and how do they get away with them? Wider situational, circumstantial, and cultural police related factors which led to *encounters* becoming a socially accepted phenomenon, will be identified and explored in Chapter 8. Drawing upon literature and theories related to police subculture, leadership, police brutality, and state violence, I attempt to present a wider picture of why and how a culture of police violence exists and flourishes in a democratic society. In order to do so, in the next chapter, I discuss public opinion on perceptions of *encounters* using a group I term 'claimsmakers'.

## **7 CHAPTER 7: A PERMISSIVE CULTURE: ‘CLAIMSMAKERS’ AND THE PASSIVE ACCEPTANCE OF *ENCOUNTERS***

### **7.1 Introduction**

The previous three chapters focused on police officers’ perspectives on *encounters* and their use of the rhetoric and mechanisms of denial that made it possible for them to accept and present *encounters* to outsiders as a justifiable tool for crime control. In this chapter I examine *encounters* from the perspective of a few socially significant persons, whom I call ‘claimsmakers’, in an effort to construct a backdrop of discourses on *encounters* outside the police organisation. The intention behind interviewing these few people was to develop a sense of whether people who were in a position to influence public opinion agreed or differed, either wholly or partially, with the police perspective on and justifications for *encounters*, especially the police perception that society approved of and encouraged police use of deadly force in certain situations. Although the number of interviews conducted (eighteen) was too small to be representative in any way of claimsmakers as a whole, let alone wider public opinion in Mumbai, the interviews illustrated the opinions of some people in positions of power and influence. Moreover, the ‘claimsmakers’ interviewed were drawn from groups that might be most likely to be critical of police *encounters*. To the extent that they were not critical is suggestive of a wider culture of complicity.

In this chapter I first examine perceptions of ‘claimsmakers’ on themes similar to those explored in interviews with police officers, focusing on - the individual’s perception of *encounters*; distinction between fake and genuine *encounters*; effectiveness of *encounters*; personal, social, media and political attitudes towards *encounters*. In the second section I focus on ‘claimsmakers’ perceptions of the wider social culture within which *encounters* occur and whether these are deemed acceptable; if so, why? Interviewees’ perception of the police image in Mumbai, and other related issues such as fear of crime, the rule of law, and attitude towards human rights are analysed. In the last section I briefly examine

the type of accountability structures that regulate police actions in Mumbai. However, I focus on perceptions of police officers and ‘claimsmakers’ about the efficacy of these structures, with the aim of demonstrating that not just the perception of public opinion favouring *encounters*, but also the perception that there is a permissive culture of accountability that together are partly responsible for the social acceptance of police *encounters*.

Finally, situating these *internal* bystander accounts – i.e. internal to the society where the alleged atrocities are taking place, within the framework of denial shows how similar processes are at work in Mumbai providing the support network for the police to use deadly force with impunity and without accountability.

## **7.2 The Construction of ‘Claimsmakers’ Opinion**

Measuring public opinion can be a tricky and often elusive process, and some feel that opinion polls generally measure an aggregation of individual elite opinions to give the illusion of ‘public opinion’, which merely serves to further the interests of the political and journalistic elites (Bourdieu 1979). Social scientists have grappled with the concept of public opinion, calling it at various times -‘fiction’, ‘mere phantom’, or an ‘abstraction’; a ‘journalistic fallacy’ that is ‘confusing public opinion with public presentation of opinion’; ‘a homogenized definition’; an ‘*artefact* produced by the public opinion industry’; and ‘figments of our imagination’ (Lippmann 1925, Allport 1937, Converse 1987, Bourdieu 1979 and Babbie 1986 cited in Bishop 2005). Aware of the difficulties in approximating public opinion, i.e. the public may be ignorant about the issue in question, the difficulties in the construction of the questions, and their form, wording and context being problematic (Bishop 2005), this research merely seeks to present a socially constructed view of *encounters* from the perspective of a few significant social actors and in no way claims to represent ‘the public opinion’.

What is most remarkable about the interviews with ‘claimsmakers’ is the virtual absence of critique from people who could be expected to be the most likely to oppose *encounters* as illegitimate. These ‘claimsmakers’, part of the

'intelligentsia', as they are called in India (Khare 2003), are popularly viewed with a certain degree of scepticism. They are generally not considered to have much impact "when it comes to help society acquire a sense of right and wrong", and also "neither those in power nor those aspiring for it are bothered about the possible condemnation from these classes", especially since they do not actually reflect the interests and concerns of the masses (Dhillon 2005: 101). Whether my interviewees were as powerless or marginalised as suggested by some is open to debate. It was nevertheless interesting that the interviews suggested that *encounters* took place in a highly permissive cultural environment in which groups of people that would in other countries and contexts question the 'dirty hands' methods of the police actually allowed such methods to be employed relatively unchecked in Mumbai.

The people I interviewed had constructed their perceptions and attitudes on the basis of the exposure they had to issues around *encounters*. Two interviewees admitted receiving extortion calls from gang members, and a significant proportion of them based their views on the policing of organised crime either as a member of the criminal justice system, the media, interested NGOs, or politicians taking direct decisions on related policy matters. I was convinced that with the exception of two interviewees, (a representative of an industrial association, and the criminologist), the other interviewees seemed to have the idea that something other than the public version of events might be going on behind the scenes in *encounter* situations, and the fact that the official police version might not necessarily be the correct one. But as the analysis shows, their understanding of *encounters* was neither uniform nor monolithic.

This group consisted of people who possessed the power, means, and resources to mobilise and influence public opinion. I suggest that the public in Mumbai were the backdrop audience to whom the accounts of the 'claimsmakers' were addressed. The main relevance of these accounts is as indications of elite intelligentsia opinion. Since such groups (the *Guardianista* in the UK context) are relevant to creating a climate of accountability for policing they are significant in themselves, even though the extent of their influence on public opinion is unclear.

I also drew upon media reports, journalistic accounts, academic work, popular fiction, and Bollywood or Hindi films, (all of which are admittedly socially constructed with all its associated problems), as illustrations of the general discourse on *encounters*. Bollywood films appeared to have a significant influence on the social construction of issues around organised crime and *encounters* because as Mehta (2005: 454) suggests,

“There is a curious symbiosis between the underworld and the movies...Hindi film-makers are fascinated by the lives of the gangsters and draw upon them for material. The gangsters, from the shooter on the ground to the don-in-exile at the top, watch Hindi movies keenly and model themselves - their dialogue, the way they carry themselves - on their screen equivalents”.

The sheer number of Hindi films made in Mumbai (around 200- 300 per year), their immense popularity, and the fact that many of them are largely financed by the underworld who have a substantial say in the contents and presentation of these films (Kripalani 2005) also make them interesting sources to draw upon to explore the ways in which issues around *encounters* are constructed. While there have been countless films revolving around the police, organised criminals and *encounters*, I have focused on a few examples whose popularity and critical acclaim might be indicative of a substantial section of the public’s appreciation of the way the topic had been dealt with cinematographically. This did not mean there was general agreement about their contents but merely that people had connected with them at some level.

Prior to commencing this research I anticipated a simple causal explanation for *encounters*: the police act as they are expected to. The police do not operate in a social vacuum, but most of their actions draw legitimacy and strength from public opinion or lack of it, i.e. people get the police they deserve. My interactions with a vast array of people from all walks of life over the many years I lived in Mumbai convinced me that the public approved of *encounters* and the police were able to operate with impunity because no one was interested in demanding accountability, especially in *encounters*. How else was I, as a police officer, exposed primarily to the dominant police discourse, to explain not just

the indifference in the media but the virtual celebration of *encounters* and ‘specialist’ officers in public forums?<sup>79</sup> However, a deeper examination of the discourse on *encounters*, while confirming my initial causal explanation, revealed some interesting insights into how people assimilated uncomfortable facts, how they could know and not know at the same time, and why particular denial mechanisms were employed.

### 7.3 What are *Encounters*: Genuine or Fake

All eighteen interviewees were asked to define what they understood by the term *encounter*. Responses could be categorised as Naïve (3), Realist (9) or Cynical (6). The Naïve response was to suggest *encounters* involved police shooting hardened criminals in self-defence, where there was no room to acknowledge the possibility of ‘fake’ *encounters*. One naïve response displayed a touching faith in the police and their intentions to control crime:

“You have to empower them [the police], to give them the power to use their own discretion. You have to believe and you have to have faith in the police official. I mean, out of a hundred, maybe one or two may be misusing it [their power], but overall I would like to believe that the person who is appointed by the government is a person we can believe in, who we can have faith in. So if he does something like that [talking about excess use of deadly force] I think it would be for the general good” (I 10, Public Relations Officer, Industrial Association).

One interpretation of this response could be that it was a cultural denial of the danger that police excess use of force could pose to the common man. It appeared as if the interviewee wanted to believe that the police were incapable of misusing their powers because they are there to protect the population and always act to promote social wellbeing. It might be an example of the manufacture of ‘convenient truths’ (that the police cannot misuse power, except in very few and rare cases), similar to that adopted by German Jews in the 1930s, who despite evidence to the contrary, did not believe the state to be capable of heinous acts. The explanation by Primo Levi in the German adage ‘Things whose

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<sup>79</sup> See for e.g. Najmi Q.: ‘Living on the Edge’, *The Week*, Feb 10, 2002; or Mark M. (Deputy Editor of *Afternoon: Despatch & Courier*- one of the two main daily tabloids in Mumbai): ‘Bombay Police...better than Scotland Yard!’, writing on the Mumbai Police for the Crime Prevention Week 2000, ([www.mumbai.police.com/markmanuel.htm](http://www.mumbai.police.com/markmanuel.htm))

existence is not morally possible cannot exist' (cited in Cohen 2001: 141), applied most appropriately to the naïve approach adopted by this interviewee.

Another naïve response to the same question was,

“Encounters, actually, when police get information that a particular gang is there or particular gang members are there, then they search for and you can say, lay a trap for them. Once they find them, then they actually fire and in most cases they kill them”.

When asked what fake *encounters* were, this person's response was,

“Fake encounters have not come to light. Fake encounters means they are running away and you kill them... So I don't think there are fake encounters, at least no fake encounters have come to light here in Bombay...When I was studying the problem of dacoity in Chambal valley<sup>80</sup> I found there were a number of fake encounters, and those fake encounters were done because the police were paid [by rival claimants] for the rifles that were left on the scene [by the dead 'dacoits'].” (I 15, Academic).

One can see denial at work at the outset, the interviewee stated that the police killed criminals on finding them (without any reference to self defence) and yet staunchly went on to maintain that there were no fake *encounters* in Mumbai, adding that none had come to light. In this he presumably took a formalistic legal perspective, i.e. if no incident was proved to be a fake *encounter*, then the latter could not exist. It could also be that he had formed a notion of what fake *encounters* were, based on his experience with a rural police force in another part of the country. The context and playing out of *encounters* in Mumbai would have been very different and perhaps the police had managed to maintain a tighter grip on the information flow making it difficult for this researcher to come across instances of blatant misuse of deadly force that his previous experience might have exposed him to. This individual was the only interviewee who steadfastly refused to accept any wrongdoing on the part of the Mumbai police and maintained that the police acted entirely within the bounds of law, even though he did not mention anything about them acting in self-defence. He justified his faith with the claim, “For the last thirty or forty years I am working with the police and I know what the situation is”. I strongly suspect that being closely

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<sup>80</sup> Dacoit infested ravines in the heartland of India, the state of Madhya Pradesh.

associated with the police had imbued this individual with a sense of responsibility to adhere to the official police story of denying wrongdoing. The other explanation could be the shifting, fluid boundaries of the term 'fake' *encounter*, which allowed this individual to change his definition to suit the occasion.

The third naïve response was from a politician belonging to the party in power, who, I suppose, had to stress (like the Senior Management Ranks of the police) that all *encounters* were 'genuine' as any other response would reflect negatively on his government, and be perceived as being openly supportive of illegal executions:

"Fake encounter? People call it that conveniently - say that the police caught him and then did this and that - they make up stories, but no one has till now spoken of fake encounters. Yes, sometimes in one or two places, there have been cases of mistaken identity. For example, in Bihar<sup>81</sup>, there have been mistakes on the part of the police, that happens, it is part of their job. But I don't believe in the talk that it is a fake encounter. If the person who dies is a saintly person, if a decent person is caught and killed then you can say fake encounter, that he was killed. Who is the person who dies - there was something to him, wasn't there? Otherwise why was he killed? Why don't the police kill ordinary people?...So those should not be called fake encounters" (I 7, Politician)

Not only was the interviewee refusing to accept that the Mumbai police were capable of making mistakes in *encounters*, but was also using justifications (denial of victim, emphasis on social good) to support police use of deadly force. Strictly speaking, his response could not be called naïve, but wilfully naïve in order to be politically opportune and selective.

The Realist, on the other hand, accepted that there were some 'genuine' cases where the police really did shoot in self-defence and in order to protect life or property, but that there was a preponderance of others where some measure of wrongdoing or excess use of force was involved. A typical realist response was:

"Genuine encounters? I think they are very few and far between. They take place in the mofussils<sup>82</sup>, where the police are usually out in

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<sup>81</sup> The state with arguably the worst crime situation in India.

<sup>82</sup> Rural areas are known as mofussils in India. (Oxford English Dictionary)



villages where they will not find a single supporter, they are terribly outnumbered and in those situations encounters take place and I would say that those are more or less justified. But in places like Bombay there are small localities, the persons wanted may number anything from one to ten, if you come with a police force numbering twenty or twenty five, there is hardly any reason to take recourse to firearms.... The resistance that they are likely to put up is not going to be really serious, then use of deadly force is not necessary” (I 3, Retired Judge)

The Realist was aware of some amount of police wrongdoing, but accepted that it was not blatant, random, or rampant misuse of force, i.e. it was perhaps excess use of force, or that those killed were in some way connected to organised gangs.

The Cynics, in turn, were convinced that all *encounters* were staged events and that the police managed to control the narrative and the evidence to suit their story in every instance. All the journalists and activists interviewed were cynical about *encounters*, as one of them described:

“They are rackets. There are no encounters, they are police killings... All those stories we hear, we hear that they are not killed in encounters but police killed them and to save their skins from the courts, they [the police] say that they [the ‘criminal’] died in encounters....A criminal is caught and when the police know that this man is likely to get bail or the court will not book him, then why take it up to court - eliminate, kill him.” (I 5, Journalist).

Another person described *encounters* as a ‘package’,

“Now encounter, as defined by the police, because that is how the whole society has accepted it. It is a definition given by the perpetrator, which everybody including the judiciary has accepted. It is a stereotyped definition... We go there - we challenge him - he fires - we fire back in self defence - he falls - we take him to the hospital - declared dead! The entire sequence and chronology, clubbed together as a package is called an encounter”. (I 2, Activist).

This interviewee used the concept of ‘interpretive packages’ to describe a police *encounter*, either intuitively or knowingly acknowledging the fact that this particular ‘package’ is the result of the use of particular frames by the media to make sense of the *encounter* story. A process in which, “media output may simply reflect the frames of the most powerful actors with little independent contribution from journalists” (Gamson & Wolfsfeld 1993: 119). At the centre of

the package is a core frame and a central organizing idea that gives meaning to a series of events or phenomena related to the social issue, and while (Beckett 1997) feels that such 'culturally available' descriptive packages (she uses the example of 'crime and drug issue') typically do not appear in the media in their entirety, in Mumbai we find that they are repeatedly being used to describe and define *encounters*. This interviewee made some interesting observations regarding the absolute control on the narrative and discourse on *encounters* by the police, who as institutional 'primary definers' (Hall et al 1981) have managed to make their version of events in an *encounter* the definitive and authoritative account, accepted by all others, including the judiciary. This demonstrated how structural processes combined to construct plausible accounts of *encounters*. (See also Chapter 8). The Cynics were convinced that the police misuse of deadly force was authoritarian, politically motivated, and not always in the interests of crime control.

Thus, even within the small sample interviewed, there was no clear consensus about what *encounters* were and while only a very small percentage of the sample expressed the belief that *encounters* were chance occurrences, (and it did appear some had chosen to deliberately adopt a position of denial) a majority of those interviewed were sceptical of the official police version of events. They acknowledged that there was lack of clear evidence about police wrongdoing, but various factors were put forward as indicative of police malpractice. These included:

“We have heard reports of police officers talking amongst themselves, constables and others and they say today we have to go for an encounter- so that means it is pre-planned” (I 8, Activist and Lawyer)

- indicating that these were not chance occurrences;

“Only once or twice I think a police constable is killed, but otherwise why nobody is even injured? Do you think that those criminals who otherwise shoot point blank, who are sharp shooters, they cannot hit even one police officer? So the criminal is caught, made to stand, and fired at!” (I 5, Journalist)

- implying that the lack of police injuries showed there was no cross shooting, but that it was a clear case of execution;

“They had killed this peanut vendor in an encounter saying that he is a criminal. I went to his house, I mean, he lived in a shanty in Bandra, where there is absolute poverty. Now how could he afford [the weapons allegedly found on him], he was selling peanuts. It was a case of mistaken identity” (I 1, Journalist)

- circumstantial evidence and the fact that the ‘victim’ was too poor to have been the ‘hardcore’ gangster he was alleged to be, was cited as being proof of mistaken identity;

“From the spot where he [the ‘criminal’] has done rampant firing with an automated weapon, which can fire up to 30 shots a minute, I mean, how can they not find empty cartridges in any of these instances? Why is the spot report not made that 40 cartridges were found?” (I 2, Activist)

- highlights that there was no adequate ballistic and forensic evidence to prove that the police were under attack at the time;

“More often than not, the information that so and so is coming here, is given by the rival gang [to the police]. So you have connivance somewhere. If one gang gives you information about the other gang, then you are doing that man’s job, and not your legal duty. So it has started becoming political” (I 4, Director Cultural Centre, ex-Commissioner); and

“Those big people who are abroad [referring to gang leaders who have fled to other countries], when people break away from their gangs, instead of killing them [the leavers] themselves, they [the latter] are made to be killed by the police... The police do encounters on behalf of some or the other gang or group”. (I 17, Politician)

- evidence of politicalisation and criminalisation of the force, and a general acknowledgement that rampant corruption existed had strengthened opinions of some people that the police were acting as hit men for rival gangs and politicians.

Similar doubts have been raised in other public discourses (such as media reports, fiction and numerous films) but somehow the overriding perception of *encounters* appeared to be that of the Realist, who despite being aware that there were police wrongdoings involved in *encounters*, was willing to accept these as ‘collateral damage’ in the ‘war’ on crime. (See Chapter 8).

#### **7.4 Are Encounters Effective**

Opinions on the success of *encounters* were grounded in opinions about the nature of crime in general and the incidence of organised crime in particular.

When asked about their perception of the general crime situation in Mumbai, a majority of interviewees thought that it had improved over the years, especially that organised crime had been brought under control. Interviewees' perception of effectiveness of *encounters* roughly correlated to their perception of the crime trend in general. Those who thought that *encounters* were effective felt that crime was going down, especially organised crime. However, those who thought they were ineffective said they thought crime was on the rise over the past 10 years.

In contrast to police officers interviewed, who shared a near 100% consensus that *encounters* were effective in controlling the activities of organised criminals at least in the short run, 'claimsmakers' were more divided on this issue. Ten of the eighteen interviewees felt that *encounters* achieved their intended effect of controlling crime; two thought they were effective only in the short run; whereas six felt they were ineffective. One interviewee articulated the reasons for their ineffectiveness:

"It is an admission of the failure of our professionalism. As a policeman everyone is trained to bring an offender to justice. And there is a legal system to do that. When we resort to the technique of encounter, apart from the fact that whatever it does to our psyche, it is also an admission that we have not been able to practice our profession properly...The question is, have we been able to put an end to the underworld and organised crime by resorting to encounters? The answer is no...and in the process you have dehumanised so many police officers. It is a pity that even politicians have said that this should be done... When the elected representative, who is also a Cabinet Minister says this is the only way we can deal with them - I think something has gone wrong with us. No government, much less a democracy can ever give a licence to anyone to kill, because this licence to kill can be very costly... The moment you give somebody the licence to kill, he can go and kill anyone for selfish purposes. [Also] in spite of encounters the underworld exists, we have not been able to eliminate it. You kill two people, there are four available to do the same job, because really speaking, you are killing menials. You are not attacking the source, no harm has been done to Dawood Ibrahim or Chhota Rajan. If they get killed, they will be killed by each other. Gangs after gangs after gangs... lots of gangs have come and gone, but other gangs have come up. So how do we say that this policy has succeeded? If it is a policy, even an unannounced policy, or a tacit understanding. The very fact that the problem exists is an indication of the failure of this policy" (I 4, Director Cultural Centre, and ex-Commissioner)

The interviewee (possibly on account of being a retired police officer) identified almost all the problem areas that resulted from unaccountable use of deadly force by the police. Themes mentioned as evidence of the problems with *encounters* centred around – the unprofessional nature of police practice; misuse of political and police powers; erosion of democratic values; adverse effects on individual officers and implicitly on the force; ineffectual culling of lower (and powerless) ranks of the gangs and inability to curb the real gang leaders; and finally, historical evidence showing that gang activities continued despite existence of tacit policy of *encounters*.

The perception of ‘the failure of this tacit policy of *encounters*’ was more prevalent among those who disapproved of *encounters*, again in contrast to police officers who, despite their personal opinion of the phenomena, nonetheless regarded them as very effective especially in the short run. This discrepancy arose perhaps because officers’ perception was influenced mainly by the operational and practical aspect of *encounters* as opposed to its long term ethical aspects. While admittedly, there appeared to be temporary gains in terms of their immediate impact on gang activities, (see Chapter 3) apart from a few Upper Middle Management officers most police officers were unable to assimilate the wider psychological, social and ethical impact of *encounters* extending beyond the boundaries of day-to-day policing. ‘Claimsmakers’, on the other hand, were not hampered by the expectations and restrictions placed upon police officers, and as outsiders were thus able to have a better appreciation of the overall impact of *encounters*.

### **7.5 Attitudes towards *Encounters***

When asked whether they personally approved of *encounters* as a crime control measure, eleven of the eighteen interviewees said they did not:

“My personal impression of encounters is that it is rough justice, which police are attempting to enforce. And rough justice must, in any case, be rough, and in many cases may not be justice at all...I don’t approve of them. And I am afraid that it will come around and hurt a lot of innocent people, it may already have.” (I 16, Corporate Executive, Representative Industrial Association)

Though expressed somewhat obliquely five interviewees approved of *encounters*. One interviewee said,

“Well, if breaking the law occasionally is the only way of enforcing the law, then you have to break the law. Supposing a person finds that his servant is committing theft, what will be the reaction? Will you not beat him mercilessly? If he feels that the servant has stolen some jewellery or money, do you think the man is going to say – ‘Oh, human rights - I will sit here and call the police’? He will first kick him, he will give him at least 10 slaps, even his wife will take the chance to beat him, which the woman would ordinarily never dare to do. But that is human reaction. Breaking the law occasionally is the only way, you know, to uphold the majesty of the law. That is why policemen do it - there is no other way”. (I 13, Retired Judge)

On the other hand, two of the interviewees said they disapproved, but made subsequent comments that suggested secret approval of *encounters* of ‘genuine’ ‘hardcore’ criminals:

I 3: “Desperate situations require desperate measures, but here the wrong people are getting eliminated- they are small time criminals. The real big ones are getting police protection”

J.B.: “So do you think if big timers were eliminated, it would, in a sense, be justified, given the prevailing situation?”

I 3: “Looking at the havoc they [criminals] are creating, I think it is perfectly justified”. (I 3, Retired Judge)

However this same person went on to object to *encounters* on the grounds that:

“If someone is eliminated today, tomorrow it will be your turn. So this [social approval] is an attitude which has been inculcated by brainwashing, brainwashing carried out by the media, by the politicians, by the so-called society leaders. That is incorrect; people should start thinking for themselves.... Not allow their prejudice to colour their opinion. This is a serious matter and if there is deterioration in police efficiency and integrity, it is society at large which will suffer”. (I 3, Retired Judge)

There were several important themes in this statement; strikingly, the objection to *encounters* was not on the grounds of protecting human rights, but on more practical issues like the need for accountability in police actions and the danger a ‘trigger happy’ police force may pose to ordinary citizens. Also the interviewee condemned what he perceived to be social approval for *encounters* arising out of a ‘herd’ mentality, which possessed people to be blindly led by influential public

opinion makers. What the interviewee criticised as ‘brainwashing’ is similar to the structural processes described by Hall et al (1978) when they suggest that the ‘mutually reinforcing’ relations between the primary definers (police officers, judges, politicians, spokespersons of associations) and the secondary definers (the media) reproduces and transforms controversial issues into a full blown social crisis, thus legitimising more authoritarian police actions. The interviewee also seemed to be referring to the possibility that a lack of accountability for such police actions would ultimately have a deleterious effect on the morale and professional efficiency of the force.

Though interviewees had different perceptions of *encounters*, there was a thread of consensus running through their discourse, that society appeared to regard *encounters* as a defensible crime control policy for the police. In the next section I look at ‘claimsmakers’ perception of others’ reaction to *encounters* in an attempt to draw out factors that might influence the wider social reaction to *encounters*.

### **7.5.1 Political Reaction**

There was a near unanimous perception among most of the interviewees that strong political support and encouragement for *encounters* existed. One interviewee described the political attitude as “Very conniving, patronising, approving” (I 2 Activist). Another response: “They support if it suits them, if it is the opposition’s gang which is being exterminated or whose numbers are being brought down, they support it. Contrarily [sic], if their interests are affected, they will criticize” (I 4, retired Judge). This raises the issue of criminalization of politics, where political leaders associated with certain gangs not only provided patronage to their favoured gang/s, but actively encouraged the police to target criminals belonging to rival gangs. However, whether political affiliations were organised around communal interests has not been clearly established (and is beyond the scope of my research). There were also allegations that certain governments were predisposed to allow one or other of the major gangs to operate relatively freely, provided they did not run amok and cause political embarrassment to their patrons, an allegation refuted by a member of the ruling party in 2003,

“Our government, we say that if the police are doing it [encounters], let them. We never interfere. Some people were alleging recently that people from a particular gang are being killed less, and more from the other gang, But it is not like that, if you see our record then you will find that only criminals have been killed, not really any particular group or community” (I 7, Politician).

This statement is an open acknowledgement of state sanctioned *encounters*, but when asked whether ‘false’ *encounters* occurred, the same interviewee said no incidents had occurred. This statement demonstrates my contention that even ‘claimsmakers’ understood and talked about *encounters* in different, inconsistent ways. On the one hand they admitted that deliberate, cold-blooded killing was forbidden, but on the other they felt that ‘hard-core’ criminals deserved to be justifiably eliminated, an opinion that embodied denial of the victim.

However, despite claims by the politician that they did not ‘interfere’ in police *encounters*, public discourse supported the perception that there was political direction in the way the policy on *encounters* was formulated and executed. The growing trend of politicisation of organised criminals was also evident in the fact that organised criminals are increasingly participating in local democratic elections (see Chapter 3). Thus social awareness of the close nexus between politicians, organised criminals and the police, who act as a liaison agent between the two was acknowledged by interviewees, but this has not been proven. This nexus between organised crime syndicates, politicians and the police was demonstrated in the Telgi Fake Stamp Paper scam involving high ranking corrupt police officers and politicians that enveloped the city in 2003 ( see for example, Chaturvedi 2004). Almost all Bollywood films centred around the theme of organised crime also unfailingly depict the nexus between criminals and corrupt politicians (films such as *Company*, *Ab Tak Chappan*, *Gangajal*, *Shool and others* ). Though fictional representations, such films could be said to have a considerable impact on the construction of social meanings and relations.

Some ‘claimsmakers’ recognized that there were vested interests in maintaining the status quo, so that the government controlled the police force. One interviewee ironically remarked, “Every political party wants an independent



police force, and an independent judiciary, which will have complete liberty to decide in their favour only. This is the definition of independence!” (I 11, Retired Judge). Police officers had expressed similar sentiments acknowledging subordination of the police to the ruling politicians in Mumbai. The National Police Commission’s Reports (1978-81) have recommended that the police be freed of control by the political executive, but there has been little political movement towards accepting and implementing these recommendations. Since Policing is a State Subject<sup>83</sup> implementing these recommendations is the prerogative of each of the 28 state governments. Even if the federal government at the centre were interested in implementing the recommendations of the seven National Police Commission Reports to reform and modernise the police, it cannot do so without the approval of every state government. Any such initiative to do so has met with resistance from state governments so far.

### 7.5.2 Media Reaction

In this section I examine media reaction as perceived by the interviewees and my own analysis of the media reaction to police *encounters* in Mumbai. I conducted a search on the words ‘encounter’, ‘encounter specialist’ and even names of some of the ‘encounter specialists’ on various search engines on the web and conducted an analysis of the kinds of reports generated that referred to *encounters* in Mumbai. I found three main types: the first, was a bare description of the ‘facts’ contained in the official police version; the second, was articles and editorials raising questions about ‘controversial’ police shootings, and reports of demands for inquiries and probes into some incidents, and the third, was the celebration of *encounters* and ‘encounter specialists’. This latter category is in a sense unique to Mumbai, in that it does not exist in the kinds of media reactions to incidents of police use of deadly force described by others in Western democracies (for e.g. see Lawrence 2000, Ross 2000, media reaction to the shooting of Charles de Menezes).

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<sup>83</sup> Article 246 of the Constitution of India distributes legislative powers between the Parliament and State Legislative Assemblies, and places police in the State List, whereby the State legislatures have exclusive powers to make laws pertaining to the police.

Most interviewees said that initial *encounter* reports were invariably of the first kind, which followed a standard format - described by Best (1999: 37) as, “reflect[ing] the conventions of contemporary journalism.... the standard formulas for news writing - that is, who-what-when-where presented with the story’s most important aspects first, followed by increasingly specific items as the story develops”. It was also observed by the interviewees that apart from media reports of *encounters* being routine and standardized, with very little analysis or in-depth investigation, they were also increasingly being relegated to the back pages as a tiny news item, perhaps because as Best (1999: 45) explains,

“Every news story runs its course: when there are no remaining facts to uncover or angles to explore, once there is nothing left to say, interest in the topic seems to die down; what once seemed novel becomes ‘old news’, boring; and coverage shifts to a different topic. By themselves, the media cannot and will not remain focused on a particular crime problem”.

The importance and extent of the role of the print media<sup>84</sup>, though vital in the social construction and acceptance of the *encounter* story, was not recognized or acknowledged by the ‘claimsmakers’ interviewed, almost all of whom, (including the representatives of the media themselves) were contemptuous of the quality and integrity of the media in the portrayal of *encounters*. Adjectives employed by the ‘claimsmakers’ describing the media ranged from - ‘poor reporting’, ‘non critical reporting’, ‘sensationalist’, ‘flippant’, ‘playing a dirty role’, ‘glorifying *encounters*’ and ‘specialist’ officers’, ‘glamorising crime’, ‘pathetic’, ‘irresponsible’, ‘populist’, ‘disinterested’, and ‘apathetic’. Evidently the media were not held in high esteem by those interviewed. One interviewee commented: “I suspect there is a certain degree of incompetence in the Indian media, every single person in the media can be bribed. I think that is the general problem.” (I 16, Corporate Executive)

Apart from incompetence, factors such as corruption and politicisation of the media led to the production of biased reports, not just by one particular newspaper mentioned by this interviewee, but by almost all newspapers:

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<sup>84</sup> I will concentrate on the print media as the number of electronic and broadcasting media in India have proliferated to such an extent which makes it difficult to conduct a systematic assessment of how they report on *encounters* within the constraints of this research.

“Media, unfortunately, take a hands-off approach. Not really concerned about it, they report the event without much research into the subject as to why the elimination [encounter] has taken place, whether it was necessary or not. Once upon a time the Saamna<sup>85</sup> was protecting people like Arun Gawli. Now because he has picked up a hassle with Bal Thackeray, he has become an enemy. So long as he was perceived to be a friend, doing anything against him or his gang was a crime in those people’s eyes. ... Media, by and large, is so apathetic and our reporters are so used to handouts that they don’t do any investigations... There is, in fact, an editorial policy that we should not get into a controversy...not get into the bad books of politicians or people who have any clout. We lose advertisements.... The better thing is to be inane and uncontroversial” (I 3, Retired Judge).

The journalists I interviewed acknowledged these problems, and not only recognized their own limitations, but also the limited sphere of their influence. “One should not have any illusions about the reach of the media. The [print] media has a limitation, given the levels of illiteracy, but maybe the electronic media may have a wider appeal and do more than the print media” (I 6, Journalist). This was recognition of what studies on the effects of media on public opinion have indicated, i.e. that the ‘hypodermic syringe’ effect (Reiner 2002: 399) rarely operates and also that there is little evidence to indicate that the consistently biased impression of events presented by the media “is very influential on public perceptions of, and opinions about, these phenomena” (Roshier 1981: 51). On the other hand, I felt that journalists downplayed the power of the media to “reinforce and reproduce” the culture of denial and specific motivational accounts which moulded the public’s attitude towards crime. The media also provided an “organizing frame, the narrative structure, the story line” consistently for a number of years and “hammered home the notion that crime was increasing, that criminals were... ‘wicked people’, and that the Government...could not protect the people” (Cavender 2004: 346). Further, Beckett’s (1997) research on the media coverage of the crime and drugs problem in America found that it could even influence policy-making independent of its potential effect on public opinion.

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<sup>85</sup> Saamna- a fiercely right wing Marathi daily newspaper, considered to be the mouth piece of the Shiv Sena (fundamentalist Hindu Party) and its leader Mr Bal Thackeray, and considered to be influential in some sections of the citizenry.

In Mumbai too, it could be said, that the media had an impact on perpetuating the police myth of what Reiner (2003) calls 'police fetishism' – the idea of police indispensability, in the absence of meaningful public discourse on alternate social and cultural changes as solutions to the crime problem. Reiner (2003) suggests that although the media highlight scandals and controversies about the police and policing, they propagate the idea that policing solutions are the only conceivable ones for the crime and disorder problem. Thus, the image of the police as protective shields ('thin khaki line') survives and is propagated by journalists in Mumbai (Blom Hansen 2001: 185) through the acceptance of *encounters* as a policing policy in the discourse.

Journalists interviewed also admitted that there was a general unwillingness to create controversy by raising uncomfortable questions, or to 'rock the boat' for the establishment, as this quote illustrates:

"[Media reaction to encounters] is generally – I would say, 'passive acceptance'. There is a sort of apathy also. See, in these cases, there is a lot of police co-operation. They take these journalists to the spot, show them the [encounter] scene, the weapons - two shots fired by the criminal, two bullets will be lodged in the wall somewhere. And then they also take the reporters into confidence – 'Why are you asking so many questions? After all it was Amar Naik<sup>86</sup>, or 'so-and-so', who was killed. Leave it be'. The journalist also wants to keep good police relations. He is thrilled that a senior officer is talking to him so nicely, so he also does not ask too many questions" (I 5, Editor)

The intermingling of the two themes of the police ability and power to control the discourse and the necessity for crime reporters to be in the good books of police officers, demonstrates what Crandon and Dunne (1997: 91) call 'symbiosis at least and vassalage [a position of subordination or subjugation] of the media at most' and has also been noted in the wider literature on policing and the media (Leishman and Mason 2003, Reiner et al 2000, Ericson 1989, Hall et al 1981). Research has shown that news media are often hesitant to report on systemic miscarriages of justice because of their heavy reliance on the law enforcement agencies for information and those papers who offer uncritical

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<sup>86</sup> A prominent gang leader, who was shot dead in an *encounter* by the Mumbai police in August 1996.

accounts of the police appear to have more inside information than others who are more questioning (Callanan 2005). Ross (1998, citing the research of Ericson et al 1989) draws attention to the fact that academic literature points to two major types of police reporters: those in the inner circle (who work in close co-operation with the police and therefore seek stories sympathetic to the police) and those in the outer circle (who are more likely to report police deviance and use a wide variety of police sources and units). From the accounts of the 'claimsmakers' crime reporters in Mumbai appeared to mainly belong to the inner circle and the few from the outer circle who raised questions about police deviance quickly found themselves marginalised (also see Blom Hansen 2001).

Another interviewee said:

"The first thing is that the Indian media, just like the Indian people, are great believers in the state and we tend not to oppose what the state says. We tend to accept what the state says, what the authorities say. Also, our notion of human rights does not extend to people we see as being grey or black. Thirdly, the quality of reportage in the Indian media is pretty low. So to expect us to stitch together and make a pattern, to join the dots out of something which is evident is expecting a little too much. We tend not to attack stories, we tend to wait for them to come to us and then maybe take them to the page"  
(I 14, Editor)

Several interesting themes were raised: comments on the nature of Indian society and its attitudes towards human rights, its subservience to authority, the extent of control that people in power and authority (police officers and political leaders) have on the discourse and construction of *encounters* in the social sphere<sup>87</sup>. In the interviews there was awareness of the poor quality of reporters and reporting and anecdotal evidence of how 'investigative' journalism on *encounters* was not just discouraged but positively frowned upon by the authorities, and in many instances even the public. One journalist narrated his personal experience referring to one of the earliest *encounters* in Mumbai:

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<sup>87</sup> A situation which, as Hall et al say "ensures that the media, effectively but 'objectively' play a key role in reproducing the dominant field of the ruling ideologies", thus they feel that the media play the subordinate role of *secondary definers*, reproducing the definitions of those who have privileged access, i.e. *primary definers*.

“I gave a story that this was not a police encounter, but that the police killed XYZ<sup>88</sup>, and not even one bullet was fired by him. But he was killed point blank by the police. There was a hue and cry, there were so many letters [to the editor] against me. My readers never approved this line that the police killed him... Absolutely not, I would have been stoned to death if people knew who was writing the story...As a journalist I thought my job was over the moment I gave the story. OK, now it was my responsibility to reflect public opinion on that, which was done. There was no clarification from the police... the police did not give their version because it was true [what I had alleged].” (I 5, Editor)

One of the police officers interviewed also referred to this incident, commenting that reports of ‘young, upstart’ journalists were disliked by the public (see pages 169-170). The comments above raised the question: how much responsibility lies with the media to inform and/or to mould public opinion? It is the classic dilemma of which theoretical model drives the media: the ‘market model’ (giving the public what it wants) or the ‘manipulative model’ (giving the public what the establishment thinks should be given) (Surette 1998a). There was a general perception among those interviewed that the media was populist, but there ought to be greater involvement of the media in raising awareness and mobilising public opinion against such illegal use of force. The media can play a crucial role through editorials, and by providing “a crucial link between the apparatus of social control and the public” (Hall et al 1981) they can either reinforce the dominant ideology or mobilise public opinion against police actions. In Mumbai media reporting of *encounters* appeared to slant more in favour of reinforcing dominant ideology and were perhaps less inclined to mobilise public opinion against them.

However, it was recognized by the ‘claimsmakers’ that there were other influences governing media attitudes towards *encounters*. Factors identified included- *sensationalism*, described by one interviewee as “Media is not interested in telling the whole truth, they are more interested in the news value... everybody wants to make money by showing extravagant scenes and giving extravagant messages. The very role of the media has become suspect” (I 11,

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<sup>88</sup> Identity withheld in the interests of preserving anonymity of the interviewee.

retired Judge). Another factor, *populism* was defined as, “At the end of the day newspapers tend to narrate the readers’ worldview more than their own” (I 14, Editor). Some suggested that perhaps *personal animosity* influenced the way *encounters* were reported, “Some people from the media play a dirty role in this...they lay the entire blame on the police, make it personal, then they talk of fake encounters” (I 7, Politician). Finally, one interviewee pointed to a *lack of journalistic integrity*, “It is just ineptitude or laziness. [For raising awareness] you would have to create the situation and the space to write it... It would require a much sharper focus on the issue that I would have. I should be doing it, it is wrong for me not to do it”. (I 14, Editor).

The media in Mumbai had what Young (2003: 43) describes as an “institutionalized focus on negative news”, where the fear of crime was highlighted and public opinion whipped up in favour extraordinary powers for the police. This role played by the media was similar to that reported by Young (2003: 41) in the UK context, “given the direction of political leadership and the prevalent mass media coverage of crime, (that) public opinion is pushed in a pessimistic and vindictive direction”. Perhaps it might have been the case that in India the media, taking their cue from political leaders, exaggerated fears of crime during the nineties and beyond, but downplayed the abuse of deadly force by the police. One interviewee summed up what he thought the media’s attitude was towards *encounters*:

“I have a very strong feeling that the media has become very flippant, the media has stopped doing its homework, they are the yuppie types, who have no social concerns and no social obligations, who are the prime movers of the media circuit. All the pages can be called Page 3 [society page] so whether it is the sports page, or obituary column or even the front page, everything is the projection of personalities. But issues are not debated or discussed. I have not seen a free and frank debate in this country for maybe the last 20 years on any given issue. There is flippancy, also on the part of the readers because there is demand for that. Basically we as a society are lazy to think. We want clear-cut Nescafe solutions! Put in a spoon, stir, and the brew should be ready. Nobody wants to apply his mind. Tell me, in how many media stories do you see serious analysis of either the statistics or chronology of events or of the ups and downs of any social phenomenon? None”. (I 2, Activist)

This quote illustrates the third type of media reporting that eschews serious, balanced analysis but eulogizes officers (ab)using deadly force. One political leader interviewed proudly claimed that he had invited some ‘outstanding officers’ to a special function to ‘felicitate’ them on their numerous successes. The fact that the media displayed a tendency to make them into Page 3 (conventionally, the society page) heroes was acknowledged in a majority of the interviews, and considered to be an unfavourable development by some. The above comments also raise doubts about whether the press in India is truly free and whether it is capable of in-depth analysis and assessment of the crime situation and the police response to it.

### 7.5.3 Public Reaction

Ross (2000: 115) suggests that low level of public arousal, and reaction to events of police use of deadly force might arise out of three processes, “alienation, apathy, acynicism, non-participation, political inefficiency or avoidance; ... or automatic acceptance, obedience or deference to authority; ...or the product of sublimated frustration”. The processes that influenced public reaction in the Canadian context could be said to apply in the Indian situation according to the perceptions of ‘claimsmakers’ who showed awareness of one or more of these three factors operating in Mumbai.

There was near unanimous consensus among those interviewed of the perception that the public at large approved of *encounters* in an unquestioning, unconditional, and mostly apathetic manner. In fact the main public reaction to *encounters* was perceived to be one of apathy. One interviewee, echoing the sentiments of some police officers (see page 171) said,

“People are so desperate to survive, jobs are getting scarce, employment is not amenable. To make two ends meet, they have to struggle for at least 14 to 16 hours. In Bombay, commuting by public transport takes a sizeable portion of our time, then our family needs, the distances we have to travel, hardly leaves any time for contemplation, for reading. So how can people make up their minds [about serious issues]? They also believe that it is useless, the situation is much too powerful, the system is much too powerful and they cannot do anything.” (I 3, Retired Judge)



This feeling that the system was too big, the problem too pervasive, and the judiciary too ineffective to deal with either the problem of organised crime or disciplining police deviance in *encounters* was one that was expressed by most interviewees on behalf of themselves and of the common man. The latter, they believed, burdened by the business of making a living, felt it was a losing battle to demand accountability from either the police or the judiciary or even the politicians, when obviously all three appeared to have a nexus and strong vested interests in maintaining the power balance and status quo. Experience in other countries has shown that even in states where the accountability systems are well developed, rarely have the prosecutions of police officers in abuse of force cases been successful (Blumberg 1989, Uldricks and van Mastrigt 1991, Geller & Scott 1992, Pedicelli 1998).

However, not everyone felt that the public reaction to *encounters* stemmed from apathy. One interviewee felt that active agency was exercised by the people because he felt:

“We have accepted it to be a desirable or an acceptable norm. People want encounters –I’ll tell you within my own family, my aunts and all, they consider me a chakram [weird], it is a Gujarati word, “You all are crazy, how else can you finish these people?” they ask...They are well meaning. Incidentally, my aunts are devout Jains<sup>89</sup>...but they are all for these encounters. It is not that they are dishonest people, not that they are villains, or that they are devious people. They are God fearing, religious minded, ordinary citizens, who are not political in the sense they do not have a public profile, but who instinctively in their heart of hearts feel that this is the way of handling the issue and there is nothing wrong in it. I mean, such decent people who have neither suffered nor have to face organised crime, they feel it is good. This sends two signals - the police feel that it has got social acceptability and secondly, police feel that - ‘bloody, I handle this situation day in and out, I should know. If a person who does not even handle it feels that it is justified then I cannot say that it is less justified’ ”. (I 2, Activist)

The quote illustrates some key structural and cultural factors that shape the public reaction to, and in turn influence police perception of *encounters*. The interviewee went on to make the point that ordinary people considered organised

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<sup>89</sup> The basic tenets of Jainism as a religion are peace and non-violence towards all living creatures.

gangsters as 'evil or wicked' or 'beyond the pale of redemption'. He appeared to suggest that people made the distinction between 'them' and 'us'. Other interviews also revealed a perception reminiscent of Garland's description (2001: 184),

"They [criminals] are dangerous others who threaten our safety and have no calls on our fellow feeling. The appropriate reaction for society is one of social defence we should defend ourselves against these dangerous enemies rather than concern ourselves with their welfare and prospects for rehabilitation".

It could be argued that the 'social defence' Garland refers to had taken the extreme form of elimination of 'dangerous others' via *encounters* in Mumbai, which, according to the interviewee, the police feel they are justified in using, given that they feel it has the approval of ordinary, peace-loving citizens. Similar sentiments appear to operate in two very disparate countries the UK and India, with differences in the scale and nature of the crime problem, the context, historical and cultural backgrounds. However, the question remained whether public tolerance towards hardened criminals was reducing (as research in the UK and US have found that it had for crime in general) or was the rising trend towards becoming a more punitive society "orchestrated by manipulative politicians and the media?" (Matthews 2003: 224). Incidentally the inclination towards greater punitive measures to deal with crime in the West resulted not just in the demand for more prisons and tougher sentences, but also sometimes in calls for 'emotive and ostentatious punishments, which involved new forms of humiliation and degradation as well as public displays of remorse' (Pratt 2001, cited in Matthews 2003: 225). This trend, however, appeared to have gone a step further to public approval of summary executions of who, they are told are 'hardened' criminals, by the police in Mumbai.

The issue is not just whether people in Mumbai actually condoned police use of deadly force or whether they were apathetic towards it, but whether and why they felt it was the right and only solution to the problem. The entire discourse on organised crime in the public sphere in Mumbai revolved around what Cohen (1972) calls the construction of *Folk Devils*, and the subsequent creation of a *Moral Panic* that lends itself to adoption of extraordinary measures on the part of

the authorities to deal with them. While there were no specific incident or series of incidents that sparked off a 'moral panic'- the gradually deteriorating crime situation in Mumbai lent itself to a media generated 'moral panic' about organised crime and its impact on everyday life during the 1990s. This in turn led to moulding and sustaining public opinion against folk devils such as 'hardened criminals' and in favour of *encounters*, especially amongst the middle classes, who are seldom directly affected by organised crime, but have heard or read enough to fuel their fears of crime (Callanan 2005). Fear of organised crime combined with despair and frustration resulting from the perceived failure of the criminal justice system, might have led people to condone police use of deadly force to rid society of such 'folk devils' as 'hardened' organised criminals.

Another reason for why the public did not oppose police *encounters* was articulated by one interviewee,

"In India our great notion of tolerance extends to cover these things – that a few good guys getting killed with a lot of bad guys is fine – the price to be paid. The tolerance for mistakes is very high in India. We don't expect ourselves to have the same sort of efficiency as others" (I. No. 14, Journalist).

Dhillon (2005: 101) comments that because Indians are "blessed with unlimited capacity for patiently suffering indifference, callousness and hypocrisy from their rulers, has made the task of the political and bureaucratic classes so much easier". This 'capacity to endure' allows for mismanagement and inefficiency in the state machinery to proliferate relatively unchecked. It is almost as if the public expect that the police cannot possibly be as efficient or accountable as the British police, whom they held up in reverence and as a role model to aspire towards. Almost everybody interviewed (officers and 'claimsmakers' alike) compared the Mumbai police with Scotland Yard, (mistakenly called Scotland Police, by some) which was universally considered to be the epitome of good policing (a hangover of the colonial days). However policing accounts of British officers (Sillitoe 1955, Mark 1978) show that the police in Britain in the 1940s and 1950s also had a history of using brutal and violent measures to control 'criminals'; a fact that received popular approbation in days when police accountability was not as developed as it is today and the breach of criminal's

rights was not a serious issue. It's not clear that there was public approval of illicit methods, which were kept under cover and only used against the relatively powerless. The change in the nature of policing in Britain did not happen overnight, but greater public awareness and activism, combined with a sense of social responsibility as well as other complex social and cultural changes engendered mechanisms to ensure that police excesses are made accountable if not entirely curbed (Reiner 2000a).

Having explored 'claimsmakers' perceptions on issues around *encounters*, I now analyse their perception of factors that affect the wider social culture within which the phenomenon of *encounters* appears to flourish. This, I hope, would serve to illustrate my commonsense notion that the police function as the democratic society it serves expects, and allows them to do so.

## **7.6 Wider Culture**

The attitudes of the 'claimsmakers' towards the phenomenon of *encounters* were situated in the wider culture of Mumbai. The essence of this 'wider culture' was difficult to capture, and I have almost no evidence of this 'wider culture'. However, I have focused on 'claimsmakers' perception of those aspects which had a direct bearing on the construction of attitudes towards police *encounters*, namely; police image, fear of crime, attitudes towards Rule of Law, protection of Human Rights and notions of justice. In order to understand how such police use of force was tolerated, it was important to understand how the Mumbai police was perceived by the interviewees.

### **7.6.1 Police Image**

When asked what they thought was the image of the Mumbai police, a large majority of the 'claimsmakers' interviewed thought that it was a reasonably efficient force, significantly better than other forces in the country, and though corrupt, fairly effective in keeping Mumbai a safe city.

“Compared to the other police forces within India, they are far better, far more professionally managed, particularly at the higher levels, far more competent and diligent and sticklers for the norms. I mean, there might be rotten apples everywhere. Also it is fairly disciplined and accountable, perhaps on account of its size and the media exposure that Mumbai gets, and also on account of it being the

capital city, all the ministers and bureaucrats, so lot of indirect controlling....So though it is declining very rapidly and though it is going down from bad to worse, by comparison, it is still, in my opinion, a far better police force than including that of Delhi or other places...That is in comparison, but in isolation the public feels that they are the rotten ones. They do feel that they are corrupt and hand-in-glove with the criminals. ...That is precisely why many of the ordinary complaints are not even taken to the police. That is another reason why the local dons have all come up, because I will rather have them as my arbiter. They will take some money and sort out the things, rather than the policeman who will make me do chakkars (rounds) of the police station 'n' number of times and ultimately I may end up coughing out far more money and spending far more time" ( I 2, Activist).

Evidently the interviewee felt that though there were many problems with the Mumbai police, still they were better as compared to police forces in other cities and states. One of the main reasons for discontent with the police was the cumbersome nature of the bureaucratic procedure that takes up time, energy and resources (in the form of money to expedite matters in a corrupt police force) making them an unpopular 'arbiter' in many disputes. I was told that people approached gang leaders for relief, and, at the same time, feared their ruthlessness. Aware of the extent of their influence and political power, it appeared as if people were secretly happy when they were killed by the police, and this, combined with the knowledge that the existing criminal justice system would be incapable of delivering any sort of justice, implied greater support for police *encounters*.

More than one interviewee expressed the opinion that it was the only city in the country where women could safely travel even late at night and compared favourably with other large metros in the world in this respect. This was a source of pride to some of them, and they were willing to overlook the brutal and corrupt image that existed alongside. One interviewee said, "Parents find it a safe city. They say, 'My daughter comes home alone at 11 o'clock and nothing happens to her. It is because the police are effective that is why my daughter comes home safe. Why should I complain against those policemen? They are

killing only goondas” (I 13, Retired Judge)<sup>90</sup>. There was however, no evidence to support that the police were indeed effective in making communities feel safer or whether there were other factors in operation responsible for this situation. This could be one of the justifications for why people, though aware of police wrongdoings in *encounters*, were nevertheless unwilling to protest against them.

A few of the interviewees felt that the police were better in the ‘golden past’ but that their reputation for honesty, integrity and efficiency had declined in the past 20 years. The phenomenon of harking back to what Pearson (1983) calls “a still unlocated ‘golden age’” is not unique to Mumbai but has been documented by Pearson as the ‘law-and-order’ myth in the UK. Celebration of the ‘old fashioned bobby’ amidst the policing crisis showed a break from historical reality which did not take into account the fact that the police had traditionally employed ‘strong arm tactics and were accused of brutality and disregard for civil liberties’ over decades. Pearson (1983) suggests this form of historical mythology does not engender reform but merely a reaction that a return to the ‘good old days’ can somehow solve all current problems and dilemmas and is not helpful.

In terms of their respect towards the rule of law and their performance in the protection of human rights also, it was a source of pride for many interviewees that the Mumbai police were deemed to have a better record than other forces in the country. It would not require a great leap of imagination to surmise that this made *encounters* somehow more acceptable because they were conducted by police officers who otherwise respected human rights.

### **7.6.2 Fear of Crime**

In Mumbai, although the discourse emphasized that organised gangs affected everyone and increased a general sense of insecurity in the populace, there was little or no discussion about patterns of victimization. I asked ‘claimsmakers’ how widespread the effect of organised crime was on people and their daily life in Mumbai? Most of them acknowledged that the ‘ordinary common man’ was

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<sup>90</sup> This confidence in the police has however been misplaced as there have been a few cases where policemen have been accused of rape in Mumbai in 2005. (Chada 2005, and ‘Protests over Minor’s rape continue in Mumbai’, *The Hindu*, 26 Apr 2005)

rarely a direct victim of organised crime, but could potentially be indirectly affected by it, as one interviewee said,

“The sense of security is affected. Now see Sumeet Khatau<sup>91</sup> was killed in broad daylight on a chowk [major crossing] of the city. If unfortunately I were passing by and if even one bullet had hit me I would have been killed for no reason.... Secondly, because of the gang activity real estate prices had gone up. Builders had to pay up to these gangs and they would pass on these costs to the buyer. So the prices of flats went up tremendously. Also when I would manage to buy a flat, immediately there would be a telephone call to me saying that ‘you have paid 60 lakhs, now you pay me 5 lakhs’ “ (I 5, Journalist).

A few interviewees felt that only certain sections (builders, film-makers, businessmen i.e. the very rich) felt the impact of organised crime most directly, via threatening phone-calls, extortion demands, kidnapping for ransom, and being shot in broad daylight in case of non-compliance with their demands. On the other hand, as interviews with police officers showed, very few of the officers explicitly recognized this, instead they talked about the broad impact of organised crime and how it affected all sections of society. Interestingly, even those who were most unlikely prey for organised criminals, appeared to approve of *encounters*.

### 7.6.3 Rule of Law

An opinion expressed in many of the interviews was that Indian society did not respect the rule of law and it was generally expected that rules would/should apply differentially to people depending upon their status and wealth. As one interviewee said:

“They [police] have been very, very ineffective in [upholding the rule of law]. Why do we blame the police – the society itself has no respect for the rule of law in general. So why do we expect policemen to - I mean, they have not descended from heaven in helicopters - they are the products of this very society. If journalists can park their cars wherever they want and get away with it because there is a ‘press’ sticker on the car, if bureaucrats and politicians feel that with my ‘red light’ on the car, I can park in the no-parking zone or go in the opposite direction on a one-way street, then you can’t isolate the police alone, because that reflects the mentality and the mindset of the society as such”. (I 2, Activist)

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<sup>91</sup> A businessman who was allegedly the victim of organised gangsters.

There was overall agreement that Indian society was not egalitarian and everyone expected rules to be applied uniformly to others, but not to themselves. One interviewee said, for example,

“See people in this country are trained over centuries to take a great deal of nonsense without protest...We Indians have always felt insecure, we don't want to rub anyone on the wrong side. The instinct for self-preservation prevents us from protesting. We have lacked a public spirit, or even social ethics, because if we were strong in social ethics, this caste system would not have been perpetuated or women pushed into backwardness...It speaks of a total lack of social ethics” (I 4, Director, Cultural Centre)

In essence, the interviewee was claiming that over generations, society had accepted and propagated an unequal social structure, and the desire to live non-confrontationally had over the years leached away the ‘public spirit’ to defend social ethical principles and practices. This was a sweeping generalisation about the nature of Indian society, but not necessarily invalid because of it.

#### **7.6.4 Human Rights: The Right to Life**

As far as the Mumbai police's record in upholding human rights was concerned, while on the one hand some felt that compared to other forces in the country it had a good reputation, on the other the majority opinion could be summarized in the words of one interviewee:

“Very, very poor. In fact not only my perception as a human rights activist, but generally the perception of citizens is the same...There is a large chunk of our citizenry who believe that human rights are of no consequence – ‘maaro saale ko’ [beat the rascal]. They approve of that - not upholding human rights, they condone it, they say it is good thing...They know that human rights are violated left, right and centre, critics like us also know that they are violated left, right and centre but our responses are different. People like us criticize it, others, like our opponents or our critics say, ‘well, so what?’ ” (I 2, Activist)

Three interviewees, who felt the police were effective in protecting human rights, were also those who had defined *encounters* in naïve terms and who refused to admit to any wrong doings on the part of the police. Other interviewees covered the whole spectrum of opinions, beginning with - the police having an overall image of brutality and insensitivity; to a more moderate view in which the police only violated human rights of the poor and /or powerless; and extending to the



other extreme where one interviewee argued that the police were bound to protect only the human rights of the criminals, whereas rights of the victims were neglected by the system. This also became one of the justifications advocated on behalf of one section of society, those who thought that the police, by doing *encounters* were recompensing victims of organised crimes.

This brings us to the next question: what in the perception of the interviewees was society's attitude towards equality and the right to life for all? One of the difficulties of analysing the interview material of the 'claimsmakers' was the fact that often they switched between articulating their personal opinion and what they thought was the general opinion or the opinion of the common man, so it was difficult to draw boundaries between whether they thought that Indian society did not recognize the right to life or whether they believed it was the generally held opinion. This dilemma was exemplified in the answers to the question, "Do you think that as a society we believe that not everyone has an equal Right to Life"? One interviewee replied, " In India we don't have things like right to life at all. We simply just don't recognize the right to life. I mean the apathy is unbelievable" (I 6, Journalist), while another said,

"Have you read Orwell's book 'Animal Farm'? We do not believe in equality. We believe in equality on the basis of caste, creed and money. We feel that some people in this country are second class human beings therefore they can't claim equal human rights - rather they should not claim any human rights - rather they should be used for protecting our human rights at the cost of their human rights" (I 11, Retired Judge)

This Orwellian concept that all human beings are equal but some are more equal than others is not a phenomenon restricted to Indian society, as one interviewee said, "You see it everywhere, all over the world. Iraq is destroyed and thousands of Iraqis are eliminated and it is called collateral damage. And yet the few who died in the 9/11 incident, and American soldiers who die are more important " (I 3, Retired Judge). However, it was recognized by many of the interviewees that Indian society was unequal in essence, with its caste system and the hierarchical way in which society has always been organised, where all human beings were never considered equal. Hence, despite its allegiance to democratic principles and being a signatory to the Universal Declaration of Human Rights there was

little acceptance on ground level that all people deserve an equal right to life. On the contrary, there was a widespread belief that criminals were fair game for the police, as they could otherwise not be processed satisfactorily through the criminal justice system.

In trying to understand the wider socio-cultural background that allowed the largely unquestioned existence of *encounters*, one could justifiably ask whether there were any accountability mechanisms in place to control police abuses and misconduct at all? Almost all the 'claimsmakers' interviewed believed that the lack of rigorous accountability mechanisms and a lax attitude towards police accountability within the criminal justice system (including the police organisation) and more widely, was responsible for excessive use of deadly force. In order to explore 'claimsmakers'' perceptions of the accountability mechanisms I briefly describe the accountability mechanisms in Mumbai.

### **7.7 Accountability Mechanisms**

In most democratic countries a three level policing accountability structure consisting of internal, governmental, and social levels of control, and in some cases a fourth category of 'independent' oversight by complaints agencies, ombudsmen or human rights agencies exists. Such a structure could be said to have global resonance across cultural and linguistic divides. A three or four level accountability structure would ensure that while the police may still be vulnerable to scandals, they would, at least, demonstrate political commitment to accountability that is structural and not imposed from above (Stone 2007).

The current accountability structure with respect to police *encounters* in Mumbai has four levels: there is an official internal mechanism of accountability in the form of departmental and governmental enquiries into *encounters*; legal mechanism of accountability resting in the courts and the criminal justice system; social accountability in the form of a 'free and independent' media; and independent accountability mechanisms in the form of National and State Human rights commissions and NGOs. In this section I do not examine and analyse the actual functioning and effectiveness of these mechanisms, but focus on perceptions of 'claimsmakers' (against the background of police officers'

perceptions on most of these issues in Chapters 4 and 5) regarding the effectiveness and performance of these accountability mechanisms. Perception that there was a lack of rigour in official accountability mechanisms to check police abuse of deadly force might be responsible for the apathy and sense of helplessness that interviewees or citizens felt in challenging police shootings.

When I asked whether they thought that *encounters* were the only solution to the problem of organised crime, twelve of the eighteen 'claimsmakers' disagreed. Apart from two interviewees who felt that *encounters* had no future, the others thought that they would continue to be used by the police to control crime. This prognosis resulted out the recognition of the fact that there were hardly any mechanisms functioning effectively to ensure police accountability. In fact one of the most dangerous developments was, as one interviewee said, "The police feel that we are exempted from the laws, that we have no accountability to anybody, that we can violate the laws which we are otherwise supposed to uphold and enforce. That is precisely what has happened" (I 2, Activist)

### **7.7.1 Internal Accountability**

'Claimsmakers' expressed the opinion that formal organisational structures set up to ensure accountability in the police use of deadly force were restricted to paper rather than being actually functional. While few interviewees had knowledge about internal departmental police procedures and rules, most (magisterial and departmental) inquiries that followed all *encounter* incidents were seen to be a sham, in that, they said that no officer had publicly ever been found guilty of malpractice or misuse of force. Interviews with police officers on the other hand revealed that departmental inquiries initiated against errant officers generated tremendous anxiety and stress for the officers concerned, but officers also acknowledged that these generally resulted in little more than a symbolic 'slap on the wrist'.

### **7.7.2 Legal Mechanisms of Accountability**

There were two kinds of views expressed about the criminal justice system by the 'claimsmakers' interviewed. One strand referred to the inadequacies of the courts and the criminal justice system to convict criminals swiftly and surely to

aid police efforts to combat organised crime; and the other referred to the perceived inadequacies of the courts, as an accountability mechanism, when dealing with cases relating to police malpractices in *encounters*.

As an integral and important part of the criminal justice procedure to control and prevent crime, the courts were seen to have failed dismally by almost all the interviewees. Echoing the sentiments of police officers, 'claimsmakers' also lamented the undue delays, corruption, inefficiency, and uncertainty in the way the courts dispensed justice. That the whole system was geared to be of advantage to the criminal was the general opinion expressed which was also reflected in the wider discourse on rights of the accused<sup>92</sup>.

However one judge's explanation for this state of affairs was: however effective the courts wanted to be in demanding police accountability; they were limited by the evidence that was presented before them. Since investigation of *encounter* cases was led by the police themselves, the courts did not have any say in the quality of evidence that was gathered. This limited their ability to ensure real accountability.

### **7.7.3 Social Accountability Mechanisms**

Considering the news media as a form of social control over police (Stone 2007, Ericson 1989), 'claimsmakers' found them to be sadly lacking in either desire or 'teeth' to demand police accountability. Journalists, as a part of civil society, were scarcely seen by 'claimsmakers' or police officers as mechanisms of social accountability, though there was an emerging breed of 'socially aware' media persons who periodically raised the issue, even though there was little public support in the past. As we have seen, the media's intellectual integrity and honesty were not held in high esteem by interviewees.

### **7.7.4 Independent Mechanisms of Accountability**

For a country estimated to have over 1 million NGOs, there has been increasing apprehension about their reputation and effectiveness (Sooryamoorthy & Gangrade 2001). It was generally held by almost all 'claimsmakers' interviewed

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<sup>92</sup> For e.g. see news analysis reports such as in *The Pioneer* (2002).

that NGOs in India had a history and reputation of limited success in general, and particularly in the context of *encounters*. Even activists associated with opposing or questioning police actions in *encounters* admitted that their influence was limited, primarily because NGOs were not seen as having sufficient legitimacy in the eyes of the public. NGOs were either perceived to be ‘fly-by-night’ operators, or furthering the agenda set by their foreign sponsors. Also NGOs themselves had failed to provide the stimulus for awakening social conscience because they were perceived by some as having vested interests in protecting the rights of ‘criminals’ and ‘mafia’ dons; and by others as being not committed enough to appreciate the circumstances and police compulsions that legitimize *encounters*. One activist said that NGOs and commissions had only what he termed as a “ginger effect” (meaning just spicing things up marginally),

“Partly because, you know, the government and the police have become so insensitive to these things. Secondly, [the police say] ‘you [the public] could keep on shouting and screaming, after all I [the police officer] am not accountable to you, nor am I accountable to anybody. So what? You keep on barking, I don’t care’. They [the police] have this sort of nonchalant attitude, ‘it doesn’t affect me’. Thirdly, the social respectability and now the social glamour attached to such deeds neutralises all this shouting and screaming that we all do. They say for every activist and one NGO that is condemning encounters, there are 10 Rotary clubs willing to invite the encounter specialist to give talks on how to fight crime and there are three Mid Day’s and Bombay Times to take his exclusive interviews. So obviously he says, ‘what do I care for you?’. The NGOs are not having any public support”. (I 2, Activist)

Reference made by the interviewee to the ‘glorification’ and ‘glamourisation’ of *encounter* ‘specialists’ led him to believe that it resulted in the demonization of NGOs and activists who demanded accountability for the actions of these ‘heroes’.

Others felt that, “If these NGOs thought that they could get mileage out of any case they would take it up. It has to be politically motivated”. (I 5, Journalist). Still others were suspicious of what they called the “foreign funding” that backed some NGOs, believing the latter to be a “money laundering kind of set up” and not “really committed or passionate about what they are doing” (I 10, Representative Industrial Association). In fact it appears that the term NGO itself

has acquired a pejorative connotation in India, and working in the voluntary sector is considered the route to comfortable living, money and a secure job, so much so that leaders of these organisations live in palatial houses and enjoy a jet-setting lifestyle (Sooryamoorthy & Gangarde 2001- citing Roy 1994, Aiyar 1998). The secrecy, lacks of transparency, misuse, and other corruption scandals surrounding funding have been well-documented (Das 1998, Prasannan 1996, Shourie 1995) lending support to the views expressed in the interviews.

A few of the interviewees agreed with the sentiments expressed by this person,

“These Human Rights Commissions and all - yes, we have to fight for our rights, we are all human - but the police are also human, and victims are also human. But only the rights of the accused are protected, why? ... What happens to a woman and her children after her husband is killed [by criminals]? If they open their mouth they will be harassed. What have we done to maintain these people who are bereaved? Nobody is taking up that issue. NGOs are not doing it. But one small error and they attack the police.” (I 9, Lawyer)

This sounded remarkably like a justification for *encounters* - one that involved condemning the condemner. By belittling the efforts of the commissions and NGOs working to protect the rights of *encounter* ‘victims’, this interviewee sought to justify police actions by saying that they were not only retributive justice, but also aimed at protecting the family of the victims of organised crime from being harassed or intimidated by the gangs preventing them from aiding the prosecution of gang members. Another interviewee went to the extent of saying:

“After two or three incidents [of *encounters*] have gone up to the courts, the position of the police gets upset. When some commission, either Minority Commission or Human Rights Commission they question the police in front of the public, that is the main source of all trouble to the police. Then the fear of the police is finished for the criminal.” (I 8, Politician)

It was clear that this politician considered commissions and courts to be more a nuisance hindering effective police actions than actual functional accountability mechanisms. He felt that the democratic process of calling police actions to account in a public forum would in some way emasculate and humiliate the police, so that the ‘fear’ of the police would be lost.

## 7.8 Bystander Denial at Work

Situating these *internal* bystander accounts - 'claimsmakers' being internal to the society where the alleged atrocities are taking place - within the framework of denial shows how similar processes were at work here providing the support network for the police to use deadly force with impunity and without accountability. The term 'bystander' according to Cohen (2001: 140) has pejorative connotations of passivity and indifference as opposed to similar terms such as onlookers, audience, spectators, or observers. However, the question that merits more detailed research in the future is whether bystanders in Mumbai were merely passive and/or indifferent, or whether they were, (as some of the interview and anecdotal evidence showed), actively engaged in approving and encouraging police *encounters*. And if they were, what made ordinary, decent individuals (not just the elite 'claimsmakers') approve of extralegal executions by the police?

Police *encounters* in Mumbai were not secret or unspoken operations like the 'disappearances' in Argentina (Hinton 2006) and there was little mobilisation of public opinion against them for many years. Sporadic incidents have and continue to give rise to demands for inquiries or greater police accountability<sup>93</sup>, in the media and other pressure groups. However, these disappear from the public domain rather rapidly. Whether the public did not know enough about *encounters*, or just lost interest in pursuing these cases, or whether there was a conspiracy to keep such items out of the public eye is debatable. However, the fact remained that there were no significant public protests, as compared to for example, the intense media, public, and official scrutiny that followed the Jean Charles de Menezes shooting by officers of the London Metropolitan Police. Of course the context of policing in London is very different from that in Mumbai, as is the issue of routinely armed policing and the number of police shootings every year. Also, in a country beset by grinding poverty and other social problems, and in a city where the struggle to make a daily living occupied most people's energies, *encounters* might be of low priority. But one interpretation of the lack of protests in Mumbai could be that it was a form of moral passivity,

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<sup>93</sup> See 'Encounter victim's family seeks probe' in *The Times of India*, 26 Feb 2006;

which often takes the form of denial to sustain it. Whether this was a form of moral passivity of bystanders in Mumbai, that resulted either out of active support for actions of the perpetrators, or from fear and/ or a sense of being helpless to fight it, is open to debate. Cohen's (2001) analysis of both the situational and cultural causes of what he calls internal bystander passivity is of relevance to understanding the public reaction to *encounters* in Mumbai.

Situational causes enumerated by Cohen (2001: 143) for why people in Mumbai might have remained mute spectators to the phenomenon of police *encounters* were found in the interview accounts of 'claimsmakers'. They put forward explanations for their own and the 'general public's' inaction in allowing *encounters* to happen, which ranged from: *misperception* – not understanding or misunderstanding what is happening; *diffusion of responsibility* – someone else can help; *fear* – of reprisals; *denial* – blocking out the significance of the event; *lack of empathy, boundaries* – victims (alleged gangsters who are in this case 'victims' of the police) do not share the same moral universe; *psychic numbing* – lack of reaction due to overexposure to fact; *routinization and desensitization* – each further occurrence is predictable with no impetus to help; *no channel of help* – not knowing how to make a difference; and finally *ideological support* – sharing the world view of perpetrators.

Since the interviewees in my sample were people with some power and influence, they did not express their inability to stand up to the system, or challenge police actions as clearly as ordinary, common people might have done. People in Mumbai were certainly not living in a totalitarian regime, subject to direct state coercion or total information control. However, there might have been a certain resistance to getting involved in matters dealing with the police and the long-winded procedures of the courts. Another reason why people (and many of my interviewees) did not publicly denounce police *encounters* might have been because some sections of the public were not actually aware that *encounters* were a problem, or it might have been easier to pretend not to know than to acknowledge the existence of 'wrongdoings' and feel the moral compulsion to do something about it. There were voices within my small sample that were critical of police *encounters* but they realised that without evidence to



prove police malpractices, these could scarcely be controlled. Analysis of these interviews revealed how not only situational factors, but also the political culture, even in a democratic state, can prove to be fertile ground for such denials to flourish. It could be argued that while there was support for *encounters* from some sections of society, there was perhaps indifference on the part of the majority that allowed for a discourse of denial to exist.

## 7.9 Summary

It was the perception of 'claimsmakers' interviewed that *encounters* were deemed acceptable by the public not only for the most part as passive bystanders, but were also actively encouraged by some sections of society. The interviewees displayed considerable knowledge about what they thought actually happened in *encounters*, but at the same time accepted that there was no discernible public protest against what they considered was the blatant misuse of deadly force. They enumerated factors such as - media, political and police spin which magnified the fear of organised crime; secrecy surrounding operational details; public apathy in Mumbai; despair at cumbersome and long delayed criminal justice processes; frustration with an elaborate bureaucratic machinery which impedes more than it facilitates; a tolerant attitude born out of fatalism; the non-egalitarian nature of Indian society which does not recognize an equal Right to Life for all; and finally, inadequate accountability mechanisms, as being responsible for the phenomenon of *encounters* being sustained and encouraged.

In the next chapter, I place the conclusions from the preceding 4 chapters of individual perceptions of ('their' reasons) why such police use of force was not only tolerated but encouraged in Mumbai, within a broader perspective incorporating structural, cultural and situational factors ('the' reasons) to show that the situation in Mumbai was both unique and yet, in some ways, not dissimilar to how some Western democratic societies reacted to cases of police brutality up to the early 1950s and 60s. By drawing upon research done in other countries on police shootings, I construct the theoretical framework that explains how and why police violence can continue unchallenged in a democratic country.

## **8 CHAPTER 8: EXPLAINING *ENCOUNTERS*: CONCLUDING REMARKS**

### **8.1 Introduction**

This study has explored and analysed police officers' and 'claimsmakers'' perspectives on *encounters*. While police officers perceived a social consensus supporting police use of deadly force to eliminate 'criminals', this conviction was not reflected unequivocally in interviews with 'claimsmakers'. This research suggests that there wasn't unanimity or consensus between the two sets of interviewees about the desirability, legality, morality or efficacy of *encounters*. Police officers believed that most of the public and politicians supported *encounters*, despite the fact that doubts and counterclaims by the media, activists and political opposition have questioned their legality in some cases (see Chapter 3 and Appendix 4). 'Claimsmakers' too believed that general societal approval existed, despite some of the people interviewed having serious personal qualms about *encounters* as a policing policy to combat crime. The faceless, amorphous mass that comprises the 'public' have never been asked their opinion about this or indeed any other policing issue in any systematic, large-scale survey.

The main aim of my research was to answer the question, how do police officers explain the use of deadly force to eliminate 'criminals', to themselves and to their various audiences. In Chapters 4, 5 and 6, I analysed the perception of police officers on this and related issues and suggest that officers used denial, in its broadest sense as suggested by Cohen (2001), incorporating classic techniques of neutralization, to assuage their own conscience. They gave what they thought were plausible explanations for their audience (consisting of the media, politicians, the courts and the public) to account for *encounters*. Use of classic denial techniques by police officers in Mumbai was not unique, as Huggins et al (2002) and Foster et al (2005) also found evidence of the use of similar justifications put forward by police and state forces (violence workers) to account for state crimes in their studies. Cohen (2001: 58) explains that denial theory aims to understand the accounts of 'deviants' - '*their*' reasons for why

*encounters* occurred or were 'done'. These were discussed in Chapter 6. In this final chapter I discuss 'the' reasons (underlying structural causes) as they were understood and explained by my interviewees for why circumstances in Mumbai appeared to be so conducive for *encounters*. In this way I use findings from my data to link them with the wider theoretical explanations for police violence discussed in Chapter 1 in order to develop hypotheses for future research on what the structural causes for *encounters* might be.

A thorough account of 'the' reasons for why *encounters* happened in Mumbai would require an extensive analysis of Mumbai's political economy, social structure, culture and its recent history in particular (to explain the fall in *encounters* since the period under study 1993-2003), and would be a new project in itself. As a starting point to the agenda for future research, in this final chapter I discuss :

- the factors alluded to by respondents (officers and 'claimsmakers') in the interviews to explain *encounters* within the theoretical framework on police use of force set out in Chapter 1.
- The implications of past research in other locations and countries pointing to the same factors affecting police decisions to invoke force.
- The aim of this would be to indicate that underlying causes put forward by my respondents were neither whimsical nor particularly unique to Mumbai.

I use studies on police violence in other countries either to draw parallels, or differences between conditions in which the police used deadly force in those countries and the particular circumstances existing in Mumbai. I explore the different theoretical explanations put forward by scholars studying police violence in other countries and their applicability to the situation in Mumbai. I conclude by drawing mainly upon Janet Chan's theory based on Bourdieu's concepts of *field* and *habitus*, which I suggest provides acceptable categories for the explanation for *encounters*. I also briefly examine what can be done to control the police abuse of deadly force, and issues around police leadership. Drawing upon the experiences of other countries that have tried to control police use of deadly force, I make some policy recommendations for controlling police

abuse of deadly force in Mumbai. Finally, I highlight areas that need further research.

## 8.2 Explanations for Police Use of Deadly Force

As I have already described, denials of *encounters* cannot be dismissed as being fiction or simply rhetorical devices intended to exonerate deviant conduct. In this section, I identify what my interviewees thought were the factors that caused police to resort to the use of deadly force as a crime control measure. I have discussed explanations for *encounters* grouped as structural, cultural, organisational, and individual or psychological factors in Chapter 1. Theoretical explanations for police violence differ depending upon the emphasis of the particular approach and individually provide partial explanations for *encounters*. A synthesis of the various theoretical approaches, I suggest, best provided by Chan's framework, would account for police *encounters* and also indicate how police reforms and policy changes can control police abuse of deadly force in a democratic society.

It is important to acknowledge that police *encounters* have not been perceived as a major 'problem' in India, barring a few cases (see Chapter 3 and Appendix 4) because they have not been labelled officially as deviant acts. Unless there is widespread recognition of *encounters* as police deviance, they will continue to recur as unproblematic, indeed, valued behaviour. The phenomenon is a demonstration of the classic labelling theory that proposes, 'Deviance is *not* a quality of the act the person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'...deviant behaviour is behaviour people so label" (Becker 1963: 9). In Mumbai, since *encounters* were not considered deviant behaviour, officers engaging in them have not been labelled deviant (see Chapter 1).

However, I argue that *encounters* should be seen as problematic and a manifestation of police deviance not only by universal standards but according to the legal, ethical and human rights standards that are notionally regarded as applicable for police actions in Mumbai. India aspires to achieve these international standards and in order to protect the police from litigation in the

future, to maintain police legitimacy, authority and trust, and to protect citizens from arbitrary executions; *encounters* ought to be recognized as problematic. Police *encounters* need to be explained along two dimensions: what motivates officers to indulge in police killings (emphasizing active agency factors); and what allows such killings to continue unchallenged in a democratic society (emphasizing passive permissive factors). However, the boundaries between factors actively contributing towards the occurrence of *encounters* (motivations) and those that passively allow them to continue (condonation) are blurred. For example, bystander (public) silence or lack of condemnation may be taken as silent support or active encouragement, via ‘non-talk as (approval) talk’; or as apathy, as in ‘not bothered to protest’, thus allowing abuse to continue. Similarly the boundaries between ‘*the*’ reasons for the existence of police *encounters*: structural, socio-cultural, organisational and individual: are also blurred, sometimes with no clear cut dividing lines between them. Thus, what may be perceived as a structural explanation (lack of accountability mechanisms) may also be a cultural or organisational explanation (lack of culture of accountability in the organisation) for *encounters* to occur.

### **8.2.1 Structural Reasons**

Interviewees mentioned corruption, increasing class inequalities in Mumbai, and deepening divisions between communities in Mumbai as factors that increased social insecurity and fear of organised crime. Patel’s (2003: 345) analysis of the political economy of Mumbai suggests that the decline of Mumbai’s labour-intensive industries, the shifts to capital intensive industry and the uneven growth of economic activity as a result of the processes of globalization have furthered extreme social and spatial inequalities and have had “altogether negative implications for the poor and deprived in the city”. The Bombay textile mill strike (1982-4) where 75,000 workers lost their jobs, and the subsequent decline of organized industrial employment increased furthered economic inequalities (van Wersch 1992, 1995). Swaminathan’s (2003) study of poverty and living standards in Mumbai concluded that the city displayed wide disparities in terms of income, housing, employment, education, sanitation, water supply and nutrition. Others have also charted the complexities of globalisation, urbanisation, large scale migration, changing economic opportunities, and the

growing divide between Hindus and Muslims that have contributed to the skewed nature of social, political and economic development in Mumbai (see for e.g. Nijman 2006, Varma 2004, Grant & Nijman 2003, Patel 2003, Desai 2003, Blom Hansen 2001). Corruption is endemic to all sectors in India, which is said to rank 73<sup>rd</sup> in the list of 102 countries according to the Corruptions Perception Index and the police are considered the ‘most corrupt’ sector in terms of public perception (Vittal 2003: 35, citing a survey done for Transparency International India 2002).

Similar conditions of structural inequalities were found to account for police violence in countries like Argentina, Brazil and Jamaica by Chevigny (1995). Chevigny (1995) found that although policing in the Latin American countries of Brazil and Argentina was different from that in Jamaica, and in the United States, there were several patterns of urban policing problems that were common. Problems arising out of immigration, colonialism, social dislocation and mobility, corruption, and a widespread fear of crime combined with disillusionment with the criminal justice system created an “explosive brew of state power and vigilantism” that allowed police to use extralegal methods to deal with crime (Chevigny 1995: 142-3). For similar reasons Harriott (2000) found that nearly 44% of the police force in Jamaica were in favour of retributive vigilantism in the form of summary execution of gun criminals. However, Chevigny attributes the difference between the levels of abuse of deadly force in the USA and its profligate use in Brazil, Jamaica, and to a lesser extent, Argentina, to social factors. All these countries experienced in common: strong class conflicts between the rich and the poor; impatience with the courts; a willingness to adopt extralegal methods to punish and deter combined with the government’s disinclination to stop this kind of vigilantism; and a weak sense of citizen participation. However, the “sense of frightening economic crisis, the constant threat of poverty with no apparent exit that haunts the third world,...the near-panic fear of crime, abetted by the mass media and political leaders” was more prevalent in the latter countries as compared to the USA in the nineties (Chevigny 1995: 129). Hinton (2006): 33) like Chevigny (1995) suggests that police abuse of force is much greater in developing countries because “social instability, violent crime and inequality are problems of a much larger magnitude

than in advanced countries". All these arguments apply equally to the situation in Mumbai (Shaban 2004).

### **8.2.2 Socio-Cultural Reasons**

There were a variety of social and cultural explanations for police violence in Mumbai. Interviewees identified factors such as inadequate respect for the rule of law (preference for short-cut methods); the Hindu doctrine of karma and dharma and belief in cycle of death and rebirth (see for e.g. Malamoud 2003, Biardieau 2003, Bouillier 2003); a culture of indifference and apathy; widespread corruption (Vittal 2003); and a culture of hero worship. These emerged as cultural factors contributing to the abuse of deadly force by the police, which in turn had an impact on social factors such as class and caste inequalities; inherited heritage of colonial policing; the impact of media-made moral panics; and rising public insecurity due to reported increase in organised crime activities that also encouraged police violence.

Hinton (2006) seeks explanations for the widespread existence of police violence in Latin American countries such as Brazil and Argentina in the socio-political relations that emerged in the post colonial, military dictatorial regimes. Factors such as "uncivic attitudes towards public office, low levels of public accountability and destructive forms of political competition" were endemic in both states and this implied that the lack of horizontal and vertical accountability as well as corruption resulted in police reforms being thwarted (2006: 11).

Impact of colonial rule and consequences of the resulting policing style could be understood as structural factors affecting decisions to invoke force (see Chapter 1), however, I think that the post-colonial police in India has inherited a certain mentality which has affected policing culture and attitudes (also see Verma 2005, Dhillon 2005), which is why I discuss it as a cultural factor affecting use of force decisions. Mars (2002) suggests that police violence in Guyana prior to 1966 was aimed at population control under a colonial state authority. However, even after independence, the local state authority chose not to redefine the role and function of the Guyana police. It continued to function as an instrument of public intimidation and was deployed to repress political opponents. Mars (2002)

suggests that the enduring influence of colonial rule in Guyana has contributed to strengthening and legitimising police violence as part of active state repression and prevented the development of policing as a public service by allowing police forces to emerge as instruments to further political tyranny.

Arnold (1992) discusses a similar development in post Independence policing in India and suggests that once the Congress Party came into power at the Federal Centre “it sought to take over and strengthen the existing machinery of government, the better to consolidate its own position, reward its supporters and discomfort its adversaries” (1992: 52). He suggests that after Independence, the fledgling Congress government faced with a series of crises that threatened the unity and viability of the new nation state, such as - communal violence during and after Partition; communist insurrection in some regions; and unrest among industrial workers and peasants in many parts of the country. Governments at the Centre and the states indefinitely postponed any possibility of a radical overhaul of the police organisation they had inherited from the British. Governments preferred to take over the colonial police organisation (and its colonial mentality) largely intact and promoted Indian officers, habituated to colonial policing roles and attitudes, to vacant senior posts formerly held by the British. He concludes that there were no significant changes in police values and methods post Independence and that “the greatest value of the police to the new regime - as to its predecessor - was as an agency of coercion and intelligence” (1992: 58). Thus, police violence in Mumbai could be said to have its roots in its colonial past (Blom Hansen 2001: 151-2) characterized by: repression and coercion, belief in the value of periodic exhibitions of force, the interplay of police and military responsibilities, the equation of force with authority, the absence of public accountability, and the reliance upon supervisory and organisational systems of manipulation and control (Arnold 1986: 235).

Added to socio-cultural factors, religious influences in the form of Hindu belief in the cycle of death and rebirth might have led to a more permissive policy on police use of deadly force being acceptable to a large section of the population. However, this proposition is difficult to prove or evidence. Since Independence, India has expressed its commitment to protecting and upholding Human Rights



as enshrined in the United Nations' Universal Declaration of Human Rights (1948). It could be argued that the ingrained inequality in the form of the caste system bred into Indian society for centuries combined with the doctrine of 'karma' (one has to make reparations for one's deeds of this life and of previous existences on this earth) subconsciously clashes with equal access to the right to life for all. Again, this might be a difficult proposition to test. I tentatively suggest that this is perhaps a clash resulting from a struggle between the universal conception of rights (predominantly a Western conception) versus cultural relativity of rights based on differences in socio-religious and cultural values. However, making any definitive statement would require further investigation into the link between religion and the use of deadly force.

Crime coverage occupies an important position in the media, and since a majority of people have no direct experience of crime (especially organised crime), the media provide important source of information and influence public opinion. Besides, Callanan (2005) suggests the crime situation is often distorted when portrayed by the media, which tends to promulgate simplistic ideological divides like good (the police) and evil (the alleged gangster), which gathers support for simplistic solutions like executing or incapacitating the criminal. During times of moral crisis there is increased legitimacy for both institutions of social control and the media. The latter, by "working in the best interests of the public by 'discovering' a potential threat, by alerting citizens to the issue, and by demanding government action" gains legitimacy, whereas "institutions of social control are legitimised as a necessary force to combat such menacing threats to public safety" (Callanan 2005: 68).

Extrapolating the results of studies on the effect of the media in other countries directly to the Mumbai is fraught with methodological and practical pitfalls. However given that I was unable to find references to studies on the media and crime coverage in Mumbai, it would be for further research to see whether factors identified by Callanan existed, and how they operated in a culture of corruption and where a rigorous commitment to the rule of law appeared not to exist (according to my interviewees).

### 8.2.3 Organisational Reasons

Organisational reasons are of two types: external factors affecting the organisation's operational functioning and internal factors affecting the bureaucracy of the police.

#### *External factors affecting the organisation*

Factors such as an overburdened criminal justice system; imbalance between the massive volume of crime and available police resources; lack of accountability structures; police subordination to the political executive; and the role and structure of the police, emerged from the interviews as reasons that led to police use of deadly force in *encounters*. The inability of the criminal justice system to cope with the demands of the crime situation is amply evidenced in the large number of cases pending final disposal in the courts throughout the country (see Chapter 3). Interviewees (police officers and 'claimsmakers') expressed widespread frustration resulting from the slow moving processes of the courts. Similar problems in other countries have sometimes led to police adopting other extral-legal methods to deal with crime (Chevigny 1995) but the inadequacies of the criminal justice system combined with other factors discussed might have created a situation in Mumbai which expressed itself in the unique form of *encounters*. Also possibly, the desire on the part of officers to adopt short-cut solutions and deliver instant justice might have gained the approval of a large section of society. There is however, little evidence to support this claim.

A majority of the officers interviewed had the perception that the volume of crime was very high as compared to the manpower and infrastructure provided to cope with it, and the extraordinary circumstances of a city gripped by organised crime demanded extraordinary measures to tackle it. It is questionable whether citizens actually shared this perception, due to the lack of public opinion surveys to establish the existence and depth of the 'fear of crime'. However, interviewees felt that the media conveyed the impression from the mid-to late 1990s that organised crime was out of control and that drastic measures were needed to control it.

Accountability structures in Mumbai (Chapter 7) though rudimentary, nonetheless existed. Whether they were functioning as they ought to was doubtful, given the lack of faith expressed in them by 'claimsmakers' and the dismissive attitude towards them expressed in the interviews with officers. Besides, there exists no external or civilian oversight to the police complaints process. Though, the National Crime Records Bureau maintains records of all complaints against police personnel, as the following table shows, complaints have seldom resulted in conviction for officers.

**Table 8.1: Complaints against Mumbai Police Personnel and their Disposal**

<i>Year</i>	<i>Number of Complaints received during the year</i>	<i>Departmental Action</i>	<i>Judicial Action</i>	<i>Found False</i>	<i>Number of personnel sent up for trial</i>	<i>Number of personnel in whose cases trial was completed</i>	<i>Number of personnel convicted</i>	<i>Number of personnel acquitted</i>
1995	146	59	87	0	87	1	0	1
1996	100	47	53	0	53	8	0	8
1997	73	27	46	0	46	17	2	15
1998	52	20	32	0	32	7	0	7
1999	59	22	37	0	37	7	0	7
2000	44	18	26	0	26	8	0	8
2001 <sup>94</sup>								

Source: *Crime in India 1995-2001*

Judicial inquiries and the courts are a formidable forum demanding accountability for police actions, but these are few and far between and as part of the accountability mechanism are often capricious and politically expedient. Also since investigations into police misconduct are invariably conducted by the police agencies themselves and because courts and commissions can only adjudicate on a case based on the facts and evidence placed before it, there is scope for a great deal of manipulation (see Appendix 4). The lack of an

<sup>94</sup> From 2001, complaints against specific city police forces stopped being published. However, *Crime in India 2001* shows that for the state of Maharashtra only one case of fake *encounter* was registered. No officers were reported to either been chargesheeted or convicted, as perhaps the case was still under investigation.

independent investigative agency makes it easier for officers to get away with abuse of force.

The police in Mumbai are not just formally accountable to the political executive (see Chapter 3), but even operational decisions defer to political compulsions. This implies that they carry out the wishes of the ruling executive but are not open to public scrutiny. It also means that politicians have a great deal of power in protecting officers by disallowing scrutiny by other Central Police agencies, by not commissioning a judicial inquiry into alleged misconduct, or by not sanctioning permission to prosecute officers under section 197 of the Code of Criminal Procedure (though this last power is rarely invoked). As a result, police officers remain confident that if they 'act in good faith' and follow the tacit policies of the political party in power, they will be protected. The close nexus between the police and politicians and how it affects accountability was recently demonstrated when the Home Department in Maharashtra, acting on a recommendation of the Maharashtra State Human Rights Commission, had declared that inquiries into *encounters* would mandatorily be conducted by the State Criminal Investigation Department (CID). However, senior police officers appealed to the Minister in charge to reconsider this decision because of the "humiliation and embarrassment" that officers had to face in a number of cases, where the CID hastily arrested senior officers on registration of an offence but had to discharge them later (Marpakwar 2007). The government is said to have accepted the suggestion of senior police officers and reportedly plans to issue fresh guidelines that in certain disputed cases special inquiries into *encounters* will be conducted by senior police officers rather than the CID<sup>95</sup>. However, political patronage for police use of force is fickle and could give way to public pressure should the occasion arise.

The way in which officers interpreted and constructed their police role and their perception of society's expectations from them clearly indicated that crime control was considered to be primarily the responsibility of the police as people's expectations from the criminal justice system as a whole were very low. This

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<sup>95</sup> *The Times of India* : (2007), 'Encounter deaths: Now cops to probe', July 17<sup>th</sup> 2007

created a sort of structural imbalance and placed undue pressure on the police as sole agents to control crime, who were then forced to resort to extra legal or 'innovative' methods. I suggest that Merton's anomie theory (1938) when applied to the circumstances in Mumbai, could contribute to explaining *encounters* thus: crime control is a culturally approved goal for the police, but the means for achieving this goal are limited (in terms of inadequate infrastructure, manpower, criminal intelligence and a tardy criminal justice system). As a result, the police seek innovative measures (*encounters*) to achieve a culturally approved goal (crime control). At a very superficial level, this theory perfectly explains why police officers are motivated to use illegal means to do what they clearly see as 'doing their job'. Various 'justifications' put forward by the officers would be their explanation for their desire to adopt deviant means to achieve their approved goal. Merton isn't offering an account of the experience of deviance, but of its structural/cultural sources. He is concerned also with the issue of how cultures, subcultures, individuals assess the importance of achieving goals only via legitimate means. The relevance in this case seems to me that the Mumbai police interviews suggest not only a particular salience of crime control as a goal but less concern with the legitimacy of means, in their eyes and also in those of the 'claimsmakers' and perhaps wider society. But the theory cannot explain why only a few officers feel the need to adopt deviant means, or that a few officers might specialize in *encounters* for reasons other than fulfilling the goal of crime control.

#### *Internal bureaucratic reasons*

The reasons why the police organisation might implicitly condone *encounters* included: public expectations that the police solve the crime problem; inadequate resources to professionally tackle the serious nature of organised crime; a lack of emphasis on proper internal accountability structures; a policing style driven by ego / personality based cult; a preference for easy, short-cut methods to deal with complex problems. The Mumbai police organisation may not be unique in these respects. However, given the reasons why Mumbai police officers might be working within an organisational culture which upheld the use of deadly force as desirable for dealing with gangsters, the classic 'obedience to authority' thesis (Milgram 1974, Kelman & Hamilton 1989, Zimbardo et al

1973) could be advanced to explain *encounters*. This approach emphasizes the link between authority and violence, strengthened further by the processes of routinization and dehumanization that 'weaken the usual moral inhibitions against violence' (Kelman & Hamilton 1989: 15). I certainly found evidence (See Chapter 6) that similar processes worked in Mumbai to make the use of deadly force acceptable. By tacitly authorizing violence, senior police officers made it possible for subordinate officers to routinely (ab)use deadly force against 'criminals' and 'villains' who were deemed worthy of execution.

My own experience of policing and the interviews with officers led me to conclude that a 'personalistic' style of policing prevailed in Mumbai, which meant personal preferences and styles of individual police leaders influenced organisational attitudes towards *encounters*. Officers mentioned that some police Commissioners encouraged *encounters*, leading to higher numbers of police killings, while others did not approve of them. This may be an important factor why since 2003 Mumbai has witnessed fewer numbers of *encounters* every year<sup>96</sup>. The impact of police leadership on controlling police killings is discussed later in this chapter.

However, these theories provide only a partial explanation for police violence, primarily because they consider individuals indulging in 'evil' acts doing so as puppets of their 'circumstances' and do not stress the 'agency' or volition of individuals (Foster et al 2005). A contrasting approach is adopted by Goldhagen (1995) who suggests with respect to the Holocaust that perpetrators may be willing, self-initiated and active agents rather than victims of circumstances<sup>97</sup>. There does appear to be some credence to the concept of volition as one explanation for why some officers are more prone to use deadly force as against others who would prefer not to do so. The contrast of situational determinism versus free choice is unnecessarily stark and surely there is an interdependence of structure and action (choice). Thus, not all police decisions to use force can simplistically be explained by the 'obedience to authority' argument, but under

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<sup>96</sup> See *The Times of India* (2004), 'Encounter killings down to a trickle', December 9th 2004.

<sup>97</sup> Goldhagen (1995) also looks at aspects of German history that might have contributed to participation in the Holocaust.

similar circumstances, some officers choose to, while others refrain from, the use of deadly force. The reasons why this might be so are discussed in the next section.

#### **8.2.4 Individual – Psychological Reasons**

In this section I look at various theoretical approaches to explain why some officers were ‘encounter specialists’ and why they chose to employ violence. The discourse around *encounters* was such that only a few officers were portrayed as being responsible for a majority of *encounter* deaths. ‘Encounter specialists’ in Mumbai did not appear to be publicity shy and were quite open about their excessive involvement in *encounters* and the media gave them celebrity status. This provided the motivation for a few officers to repeatedly use force. It also provided the opportunity for some senior officers and politicians to blame a few individuals in case things went wrong and there were inquiries into police actions. Thus, ‘heroes’ would become ‘rotten apples’ in the official and/or media discourse as responsible for abuse of force when convenient or necessary.

However, the ‘banality of evil’ thesis refutes the need for an individualistic theory of some special pathology to explain violence, instead it emphasizes the ordinariness of those involved in ‘evil’ practices (Huggins et al 2002, Conroy 2000) and argues, “ordinary people are transformed by particular practices in their routine work environments into killers and murderers – they are not dispositionally predisposed towards violence” (Foster et al 2005: 56). In Mumbai, police officers and even ‘encounter specialists’ were ordinarily recruited from among the general population and were not characterized by any particular preference for power or displayed any special inclination for violence before induction. However, there exists a possibility that people with a certain authoritarian personality type were attracted to police work. Alternatively, it could be the case that the organisational and social context within which police officers in Mumbai operated allowed ordinary individuals, who were so inclined to do so, to indulge in or support illegal killings. However, I cannot claim to say this definitively since an analysis of officers’ background, life experiences or personality has not been studied in the Indian context, nor was it the focus of my research. It is however, a definite direction for future research on the police.

Foster et al (2005) prefer to adopt what they call a 'relational' model to explain police and military violence in apartheid South Africa. In their approach, the emphasis on structural factors is counterbalanced by the concepts of 'entitlement' and 'interplay of multiple subjective identities'. Thus the 'relational' approach suggests that a sense of entitlement [which "permits actors to do otherwise indefensible acts with a sense of righteousness" (2005: 328)] combined with the complex interplay of various identities that officers have [nationalism, racism, anti-communism, Afrikaner identity, masculinity and militarism (2005: 290-91)] act in ways that justifies the use of deadly force to the perpetrators in the South African context. Further research could explore how officers' perception of their own role; social expectations from the police; and their professional, personal and religious subjective identities provide the 'entitlement' to use deadly force in Mumbai.

Huggins et al (2002) seek explanations for use of torture and abuse in types of 'masculinity' in their study of Brazilian 'violence workers'(state officials involved in killings and torture). During the fieldwork, I did not intend to focus on or study the personalities of the officers interviewed, but though "issues of masculinity do not readily leap off the pages of these accounts" as Foster et al (2005: 286) remark about their work with officers in South Africa, there is a subtle sub-text and I could not help remarking the presence of all three masculinity types (Huggins et al 2002, see chapter 1) in my sample. Active participants with 'personalistic' masculinity talked in terms of caring for and providing relief for the 'victims of organised gangsters', of 'doing good' by cleaning 'scum off the streets' and did not like to think of themselves as murderers but as the friend/ protector (elder brother) of people. Officers (active participants and facilitators) who stressed achieving organisational targets and who compartmentalized work and self into separate categories, 'institutional functionaries' who thought of *encounters* purely as a means to control crime (thus rationalizing the achievement of good ends even at the cost of approving bad means) displayed a 'bureaucratic' personality. Also officer accounts about their colleagues who were neither committed to society nor to the organisation but acted completely in ways that promoted their self-interest (hints of corruption



in police killings and officers suspected of being 'hired' hands to eliminate rival gang members) fell into the category of those who possessed a 'blended' personality. Huggins et al (2002: 232-69) put forward their conception of violence workers as ordinary men doing evil deeds and where the 'interplay and interdependence' of historical and political factors, sociological and organisational influences and social-psychological processes create the right circumstances for the resulting violence.

### 8.3 The Synthesis

A more rounded explanation for police violence would necessarily be complex and multidimensional. It ought to involve explanations at the individual, organisational, situational, political and social levels and the various theoretical approaches described above combine some or all of these factors to account for police violence. One of the many useful approaches to 'understanding what the problem is' and to answering 'what can be done about it', is Janet Chan's exposition of the *field* and *habitus* approach based on Bourdieu's original concept. Developing the thoughts of previous policing scholars (for e.g. Skolnick's 1961 work on police deviance) Chan (1996, 1997) suggests that the *field* of police work consists of the historical relations between certain social groups and the police, anchored in the legal powers and discretion police are authorized to exercise and the distribution of power and material resources within the community. *Habitus*, on the other hand, is closer to what has earlier been described as cultural knowledge. It is a system of 'dispositions', which integrate past experience and enable individuals to cope with a diversity of unforeseen situations; dispositions can be either coherent and systematic, or 'ad hoc' when triggered by particular 'encounters' in the field (Wacquant 1992: 18-19, cited in Chan 1996: 115). *Habitus* allows for creation and innovation within the *field* of police work (1996: 115), while at the same time being limited by the *field*. Thus, Bourdieu's (1996: 115) theory recognizes the interpretive and active role played by police officers in relating policing skills to the social and political context of policing. It also allows for the existence of multiple cultures since officers in different organisational positions operate under different sets of *field* and *habitus*. Applying Chan's framework to explain police use of deadly force in Mumbai suggests the following interpretation: use of violent, short-cut methods

are 'dispositions' (*habitus*) affecting police behaviour that emerged in response to the particular socio-cultural and historical conditions created by burgeoning organised crime in Mumbai (*field*). The perspective stresses the impact social, cultural and historical factors have on the police organisation and individual officers which lead to the abuse of deadly force becoming an acceptable crime control measure.

Following Chan's theory we can see police violence as the result of the interaction between society's demand that the police control crime (social, structural and cultural factors), the interests of the police organisation to be seen as being effective (organisational, cultural factors), and inclinations of certain officers to employ deadly force more readily than others (individual, psychological factors), that result in *encounters*. Chan uses old arguments explaining police deviance with new terminology to combine structural, cultural, organisational and individual factors to account for police violence.

Change strategies according to Chan (1996) involve organisational restructuring, changes to recruitment and training, development of community-based programmes as well as broader socio-legal changes. The debate is not whether rule-tightening or changing culture is more important (both clearly are) and while tightening the law might be easier to achieve than changing police culture, the results of both could be unpredictable (Chan 1996: 131).

The concept of *field* extends beyond the formal rules and laws governing policing and includes socio-cultural conditions in which policing is conducted. Policing a society that upholds a punitive culture, encouraging retributive use of deadly force against 'criminals', and does not emphasise police accountability for such actions, is conducive to cultivating a disposition to readily employ deadly force as a solution to the crime problem. Thus the question of reforms, of what can be done about police violence, begs a multi-pronged approach. In Mumbai, in order to change the *habitus* (*encounters* can be envisaged as a form of behaviour that is informed by a particular *habitus*) dispositions to use violence and illegal short-cut methods) conditions in the *field* (socio-cultural and legal factors) also ought to be changed. This would involve large-scale social

transformation, which includes police reforms, legal reforms, as well as an attitudinal change in the way society perceives and reacts to *encounters*. Chan gives an agenda for change but there is need for further research to see what it all means in the Mumbai context.

#### **8.4 Police Reforms**

Solutions to tackle the problem of police violence and the extent to which they will be successfully adopted will depend upon the kind of policing system involved. Reiss's (1995) analysis of comparative policing systems distinguishes between policing centralized under a single state authority (for e.g. France) and a largely decentralized policing system (for e.g. the USA). Since centralized systems are highly bureaucratic and highly resistant to changes in structure and authority, innovation and change can be initiated and proceed only from the top downward and discretionary decisions of lower officers is not permitted. However, some amount of discretion is inevitable as resources never permit full enforcement; controls are always patchy in practice and because of the nature of the low visibility of street level policing. But when centralized systems are corrupted, though rarely, the entire system is corrupted by central government corruption. On the other hand though decentralized systems are largely autonomous, they are vulnerable to electoral politics and thus prone to allegations of favouritism and corruption of authority. Such systems also have the advantage of being more innovative and are free to adopt and adapt changes and respond to outside influences, but this is strictly voluntary. Though corruption is endemic in decentralized forces, it is more localized and contained, and the top is rarely corrupted (Reiss 1995). The literature on controlling police use of deadly force has to be understood within this framework. The Indian police combine features of both centralized and decentralized systems (see Chapter 3), which means that they enjoy and suffer the advantages and disadvantages of both.

Most of the studies on police use of deadly force have been conducted with the intention of finding solutions to curb this phenomenon, making the studies largely prescriptive in nature. Solutions to the problem of police violence are offered at the individual, organisational and situational level depending upon the

theoretical approach of a particular study. Thus studies advocating the 'rotten apple' or 'fascist pig' explanation for police violence advocate reforms at the level of the individual officer prescribing attitude and psychological tests to be included as part of the recruitment process to ensure only the most 'suitable' candidates are chosen for the job. Better training and sensitising programmes are also part of the solution to ensure that individual officers are given an opportunity to renew their commitment to the rule of law and human rights (Grant & Grant 1996). However Worden (1996) found "little consistency between officers' attitudes and behaviours and little consistency in each officer's behaviour from one incident to another" which ties in with Waddington's (1999b) view that police canteen culture need not and does not in actual fact, affect behaviour. Thus solutions that sift out 'unsuitable' candidates at the recruitment stage (via psychological tests) and emphasise training and sensitising officers though useful, are not the whole solution to curbing excessive use of force.

Research that locates the source of violent behaviour of officers in the police subculture and organisational ethos, either put forward solutions that emphasise training and placing administrative controls to ensure no abuse of force is tolerated, or suggest that real change can come about only when police culture can be changed to ensure that tolerating or encouraging deviant behaviour is prohibited (Fyfe 1986, Chan 1997, Reiner 2000a). Some studies concluded that introduction of administrative controls via new guidelines and procedures succeeded to a large extent by bringing down use of deadly force in New York, Kansas City and Atlanta (Fyfe 1979, Sherman 1983). Sherman's (1983) research showed that the reduction in shooting was only in dubious cases, but shots fired in more serious, life-threatening circumstances (what might be termed as 'non-elective' shootings in Fyfe's terminology) obviously remained the same. There is, nevertheless, general agreement among policing scholars that cultural change possibilities are very limited without structural change. There is also recognition in the literature that traditional organisational reforms may not bring about such a change as the culture originates in the nature of police work itself and not particular forces or organisations (van Maanen 1974, Toch 1976).

Klockars (1996: 16) mentions three obstacles that stand in the way of restricting excessive use of force by the organisation: the first is the 'code' (Muir 1977); the second is the 'CYA' (cover your ass) syndrome endemic in police organisations, which means officers will behave in ways that will not expose them to criticism; and the third is the widely held belief that a 'good' supervisor is one who will 'back up' an officer in a tight situation or when he/she makes a mistake. But Klockars feels that these obstacles are difficult to remove because of the fundamentally punitive orientation of the quasi-military administrative structure of police departments, where violation of rules leads to punishment every time. Also the occupational culture is such that a supervisor will earn the loyalty and support of his colleagues and subordinates if he covers for them and protects them when they flout the rules. Klockars' (1996) solution is simple, not every instance of use of excessive use of force need be punished, but the way forward in controlling its use is in identifying instances of use of force on every occasion.

Studies that focus on analysing the situational aspect of the violent police-citizen interaction advocate solutions whereby officers have better control on the nature of the encounter, are able to process information better and take adequate precautions to ensure that the outcome of a chance encounter is not violent (Scharf & Binder 1983, Fridell & Binder 1992). Fyfe (1986) suggests that in order to reduce unnecessary violence, the police role must be defined as one of a diagnostician and they must learn that role thoroughly as well as use the principles of tactical knowledge and concealment to reduce the likelihood of having to resort to deadly force, before they actually confront someone who may be armed and dangerous. Klinger (2005) applies Perrow's Natural Accident Theory to explain violent outcomes to police-citizen interactions. Recognizing police-citizen interactions as social systems Perrow's (1984) argument, that systems are more likely to have problems that lead to negative outcomes as their elements become more tightly coupled and interactively complex, can explain how officers can avoid using violence by concentrating on tactics of police work. By keeping things simple, involving as few people as possible, and not getting too close, cops can avoid unnecessary shootings (Klinger 2005). These micro-situational analyses seem directed at factors that make some officers unnecessarily prone to shoot (*habitus*) compared to others in fundamentally the

same position (*field*) because of these informational and tactical deficiencies and are thus, complementary to the broader explanations for police violence.

A final category of studies that look at use of force decisions by police officers in moral terms - as a moral dilemma between bad means and good ends - advocate more ethical policing to ensure that officers choose the most appropriate solutions to the 'dirty Harry' problem. Klockars' (1996) makes the point that there that the 'dirty Harry' dilemma is a genuine ethical problem, that cannot be ultimately resolved. As a result, officers violating legal rules must accept that they will be held to account, as with conscientious objectors, civil disobedience, or say mercy killings by doctors. But if the authorities and public concur with the moral and situational assessment of the police, the verdict will not be punitive.

Dellatre (2002: 197) feels that

“Once we go beyond the law for a noble purpose rather than a selfish one, we may feel that we have committed ourselves to illegal means, as further extremes become natural...This can be the beginning of substantial erosion. There is a fine line in these things, but once you step over it, you tend to justify subsequent acts by the former one”.

Thus refusing to step over this line would not be morally tainting, in Delattre's opinion. But it can lead to tragic outcomes in specific cases, which is why it is a genuine dilemma. On the other hand, he feels that even officers who have employed illegal methods as a last ditch attempt - at great personal sacrifice, without regard to self-interest cannot be regarded as tainted, because the nature of police work sometimes demands such actions (Delattre 2002). It is only flattering and arrogant self-appraisals that justify actions as being entirely noble that are the cause of noble cause corruption. Kleinig (1996) feels that while going down the 'slippery slope of corruption' may be dangerous, it need not imply an inevitable descent to the bottom, as officers are capable of judging when to draw the line.

Tackling the problem of police abuse of deadly force has been attempted by developed countries like the USA, the UK, and Canada as well as developing democracies like Brazil, Argentina and South Africa. The difference in the approach has been at the various levels at which the problem is perceived and

addressed. For example in the USA, the UK, Canada and Australia, which have more established democratic traditions, accountability mechanisms exist but the emphasis is on fine-tuning them or making them more refined to suit the purpose. In developing countries in the Latin America or South Africa, the problems are more fundamental, of propagating a culture of democratic accountability to the rule of law and the people, of setting up proper accountability mechanisms in the first place, and also reforming management and supervision practices to ensure greater independence from political interference and ensure more professionalism in policing. Such reforms would require changes in the *field* i.e. the social context and problems facing the police.

The studies discussed are useful in their applicability to the Indian police if the 'problem' of *encounters* has to be tackled not just symptomatically but by addressing the root causes of illegal use of deadly force. We have seen that the causes of abuse of deadly force are embedded in the individual and organisational level, flowing from the socio-political and cultural environment in which policing is conducted. Recognizing that the discourse of denial at individual, organisational and societal levels masks a deep-rooted problem in the role and public expectations from the police in a democratic society is the first step in controlling *encounters*. While some of the justifications in police discourses may be anchored in fact, (for example, frustration arising out of an ineffective criminal justice system) this study seeks to show that the dominant discourse on *encounters* is fundamentally a form of denial that allows extra-legal use of police force to exist and be acceptable.

Changes have to be introduced within the police organisation and at the leadership level, as a first step towards addressing the problem of excessive use of deadly force. In order to do so, one must look a little deeper at the malaise that grips policing in general in the Indian context. The main problems with the Indian police have been identified by Verma (2005: 163) as: "the elitist nature of the police leadership, the politicization of the department, unaccountability to the people and outdated management practices have all combined to make corruption endemic and even acceptable within the organisation". Verma goes on to suggest that change can be brought about by "major transformation of organisational

structure, management practices, supervision procedures, decentralization of power, creation of local accountability system, even a change in role and functions of the police in society” (2005: 163-4). Issues that have been identified and sought to be addressed in the eight National Police Commission Reports submitted between 1978-81 and other committees such as the Padmanabhaiah Committee Report (2000) and the Soli Sorabjee Report on Police Reforms (2006). These reports have recommended specific reforms in diverse areas such as recruitment, training, promotions, tenure, transfers and postings of officers, increasing functional autonomy of officers, encouraging professionalism, enhancing credibility, addressing politicisation and criminalization of the police, introducing a new system for evaluation performance and new accountability structures. However, these recommendations have remained a paper exercise, with state governments being unwilling to implement wide-ranging changes that would shift the balance of power away from politicians and in favour of police officers (Verma 2005). A Public Interest Litigation (PIL) requesting implementations of police reforms filed by a few high-profile retired senior police officers in the Supreme Court has after 10 years resulted in a historic decision by the Court in September 2006 directing the Union of India to implement the recommendations of the National Police Commission in order to ensure that the police are accountable primarily to the law of the land and the people (Raghavan 2006). Despite judicial activism police reforms in India remain unaddressed even in 2007. However, hope remains, as compliance with the Court’s directives has to be ensured by the Union Government, sooner rather than later.

Many of the recommendations given by these committees address some of the basic problems that lead to poor policing practices in India. Unless some of the fundamental issues in reforming the police organisation and expectations from the police are addressed - for example, introducing an independent accountability structure - more refined recommendations that lead to fine-tuning accountability structures or introducing specific controls on individual use of force incidents would be premature. A review of various police accountability structures in places as wide ranging as Philadelphia, Abuja and Sao Paolo, all conclude that a strong system of police accountability with well-functioning structures at



internal, governmental and societal levels is essential to control use of force and should be part of regular governance of police powers and not merely a result of a demand of the aggrieved (Stone 2007). Lessons that India can draw upon in its reform process.

It would appear that specifically controlling deadly use of force would be easier to achieve if some of the requisite police reforms already recommended are put in place. However, as the experience of introducing police reforms in Brazil and Argentina show, the failure to professionalize the police is closely linked to enduring political patterns of patronage, unholy alliances and impunity, where political self interest is paramount and successive governments are quick to introduce new policies without addressing deficiencies in the old ones (Hinton 2005). Without political support and the will to introduce reforms and make them successful, change is unlikely to occur even in the Indian context as has been demonstrated by the past record of state governments since Independence.

The experience in South Africa shows, despite organisational and environmental imperatives to improve management and supervision of the South African Police Service, the requisite change from traditional styles to more participatory forms of management has not occurred due to its militaristic legacies, traditions of contestation and non-corporate cultural conventions (Marks & Fleming 2004). The colonial legacy of police violence, strict adherence to a traditional hierarchical command and control structure combined with subordination to political wishes has additionally weakened organisational and environmental imperatives to adopt changes that remain weak in the Indian context.

### **8.5 The Role of Police Leadership**

It is clear that there is a definite relationship between the top police leadership and the emphasis placed on *encounters* as a method of dealing with organised crimes. There have been some Police Commissioners who openly declared their support for officers who were involved in 'genuine' *encounters* and it seemed to be the case that there was a special dispensation to certain officers to carry out these activities unimpeded. In their interviews, some officers admitted as much to me. It might have been the case that the nature and extent of organised crime

group activities were such during the late 1990s that they demanded drastic measures to be taken by the police to reassure the public. On the other hand, it may just have been the nature of leadership, which encouraged the use of *encounters* in preference to processing these 'criminals' through the criminal justice system. However, since a change in the leadership in 2003 and subsequent corruption scandals that rocked the Mumbai police, there has been a curb on *encounters* whose numbers have reduced drastically (though they have not been completely eliminated). One explanation could be the fact that the new leadership has posted the so-called *encounter* 'specialists' out of the Crime Branch to regular police stations<sup>98</sup>. Another explanation given by the police for the fall in *encounters* has been that they had already eliminated a whole cadre of criminals, so much so that very few active members remained. Also the fear of *encounters*, officers were convinced, meant that there was a slowing down in new recruitment to the organised gangs. There is, however, no evidence to prove this. The fear and insecurity of crime that appeared rampant in the late 1990s also seems to have abated judging from the newspaper and media reports on the subject, being now replaced by the fear of terrorism and terrorist attacks that have besieged Mumbai in the past few years<sup>99</sup>, culminating in the powerful serial blasts affecting 6 commuter trains and one railway platform on 11 July 2006 killing over 200 persons and injuring more than 714 persons<sup>100</sup>. Thus, the nature of crime and security concerns has changed in Mumbai over the past decade.

Whatever the explanation for the fluctuations in the numbers of *encounters* over the period under study (1993-2003), a direct link between the priorities of the leadership of the police organisation and the use of *encounters* as a crime control measure cannot be ruled out. Though some commentators suggest that changes in legislation and rules are more effective in reducing officer discretion and increasing accountability (Foster 2003, citing her own forthcoming work, Marks 1999, Brogden et al 1988, Grimshaw and Jefferson 1987), a change in leadership

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<sup>98</sup> See for example *The Times of India*: (2006), 'Encounter cops among 120 shuffled', June 29 2006.

<sup>99</sup> See for example *The Times of India* : (2003), 'Chronology of Mumbai blasts since December 2002', July 29<sup>th</sup> 2003

<sup>100</sup> See for example: 'Mumbai blasts death toll reaches 200', posted online by the Press Trust of India, July 12<sup>th</sup> 2006.

style can be instrumental in bringing about a change in police culture and practices more effectively, and without which additional legal restrictions or more stringent accountability mechanisms may not work as well. However, police organisations the world over have struggled to break with leadership styles based on ‘authoritarian, centralised control of mindless subordinates’ (Cowper 2004: 113), and it is difficult for police leaders with little effective leadership or management training to find alternatives to “top-down decision making and total submission to ensure their authority and status” (Cowper 2004: 119) when confronted with crisis situations. Marks (2005) suggests in the context of transforming the South African police that ‘directive leadership’ based on ‘participatory management’ which involves “close and careful supervision coupled with clear and understandable directives during operations” and “agreed upon performance indicators, formulated with rank-and-file participation” (2005: 251) would prove beneficial in transforming organisations via leadership changes. Similarly Long (2003) suggests a change of leadership style from ‘transactional’ (emphasis on satisfying more bureaucratic and legal requirements) to ‘transformational’, (emphasising inspirational motivation and participatory change on a reciprocal basis between subordinates and leaders). Exploring this link further is one area of future research.

## **8.6 Future Directions**

This study used a qualitative approach to understand police officers’ perspectives on issues around use of deadly force. The real question: ‘what actually happens in an *encounter*’ however, remains unanswered. It does not seem likely that if the police are involved in ‘wrongdoings’, especially of the illegal kind, the phenomenon would be open to participant observation research in Mumbai. But it would be useful to understand a little more about the dynamics of the *encounter* situation that results in the use of deadly force, analyse trends and patterns in police shootings in order to be able to recommend specific reforms in this area as well as to study the impact of these reforms on police practice. Quantitative studies that used the available, more detailed police and official statistics on citizen-police encounters that police forces in the USA, the UK and other countries maintained, and which included information about race, gender, age and class of the people (officers and ‘victims’) involved, allowed

criminologists to theorize about the impact of these factors on the nature of the interaction. It also helped predict future trends, as well as providing solutions for improving performance in identified problem areas of police violence. Future research on police use of deadly force in India could proceed along similar lines. It would lead to better understanding of the problem and solutions specifically targeted to the peculiar nature of police violence in the Indian context could be devised.

Further research on public attitudes towards crime and police use of deadly force would be useful in raising the profile of an issue that has significant impact on the right to life. It would also let police officers, leaders, policy makers and politicians put public opinion in proper perspective before they permit 'deadly' crime control measures on the strength of the argument that they are in the interest of and are supported by the greater majority of the population.

### **8.7 Summary: A Final Word**

The police use of deadly force in circumstances described as *encounters* in Mumbai have for many years now been widely and largely without question accepted as the correct and effective response to controlling increased organised crime. However, *encounters* which were once prized and acknowledged as individual and organisational achievements (during the period under study 1993-2003) are in the past few years gradually emerging as contested territory with questions being raised about whether officers abuse deadly force as a last resort to control crime or whether murkier motives (corruption and self-interest/aggrandisement) are at work here. Since these developments have occurred in the recent past it is difficult to ascertain the precise reasons for the change, especially since there is no particular incident<sup>101</sup> that marked a change in attitudes. However, factors such as increasing public awareness of Human Rights issues as a result of greater activism on the part of Human Rights Commissions and the Courts; changing political equations; conclusion of trials in older cases of *encounters* that ended in conviction of a few police officers; more awareness on

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<sup>101</sup> Incidents like the attack on the Twin Towers in September 2001 in the USA or the July 2005 bombings in London that heralded a sea change, in the direction opposite to that in Mumbai, towards police use of force issues in these countries.

the part of the media; and change in police leadership, might have been responsible for the change. The research suggests that in Mumbai police *encounters* were unquestioned and police officers continued to operate in an atmosphere that lacked rigorous accountability to either the rule of law or the public for a number of years. Interviews with police officers and ‘claimsmakers’ revealed a discourse of denial that existed: accounts that enabled officers to explain to their audiences why *encounters* were justified and inevitable in the effort to fight crime.

This research in one city of democratic India draws on Sykes and Matza’s original work on techniques of neutralization and fits officer accounts within Cohen’s framework of denial, making it one more example contributing to the literature that seeks to demonstrate that deniability is endemic to societies as diverse as Nazi Germany, apartheid South Africa, dictatorial regimes in Brazil and Argentina; societies that have something to deny, to justify, to cover up. Atrocities when committed by state actors and condoned by the political machinery, have to be explained and made acceptable to the public, and this was done in Mumbai, like in other contexts, by denying that *encounters* were unjustified either on legal, and/or moral grounds.

However, justifications put forward by police officers for the use of deadly force to control organised crime at a time when it was rampant might be grounded in fact and necessity of the circumstances in the city. The research showed that *encounters* might have enjoyed social approval or perhaps were unchallenged either because of apathy or lack of knowledge on the part of the wider public. Wider structural, organisational, socio-cultural and individual factors that promoted the use of deadly force present real challenges for the Mumbai police and need to be addressed if there is to be effective control on *encounters*.

When I started the research in 2001 *encounters* figured prominently in the news and print media, and the research was considered to be very topical in Mumbai. Even though the number of *encounters* have declined in Mumbai since then, the latest incident in Gujarat (see Appendix 4) and the criminal conviction of 10 police officers in Delhi for criminal conspiracy and murder (see pages 205-6) has

again made them the ‘flavour of the month’ and the need to address the problem of unaccountable police use of deadly force is once again at the forefront of public discourse in India. *Encounters* that appear to have been normalized and grounded in necessity in Mumbai, ought no longer to be so. The conditions that give rise to the necessity of *encounters* need to be addressed and unless the process of ‘normalization’ and ‘cover-ups’ is exposed, which means, unless *encounters* are seen as problematic and addressed as such, they will continue to occur (maybe not continually but in periodic cycles) and pose a danger to the right to life, one of the most basic of human rights that a democratic country has the obligation to secure, protect and promote.

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Acts:

**Code of Criminal Procedure**

**Indian Evidence Act**

**Indian Penal Code**

## **APPENDIX 1: QUESTIONNAIRE FOR INTERVIEWS WITH POLICE OFFICERS**

### **Section 1: Work History**

1. Could you tell me a bit about your career, so far? In which year did you join to police service?
2. Why did you join the police
3. Was a career in the police your first choice? What attracted you to this job?
4. Could you tell me a bit more about your educational background?
5. Which of your previous postings has been the most challenging? Why?
6. How do you view your current posting?
7. What are your responsibilities at present?

### **Section 2: Perception of Police Work**

1. What are the main responsibilities of the police in society?
2. What aspects of your own work do you think are the most important?
3. Could you tell me a little bit more about your present responsibilities?
4. What has been the crime situation in Mumbai over the past 10 years?
5. How do you think the crime problem can be tackled effectively in Mumbai?
6. Do you have any suggestions for the government to make tackling crime easier?
7. Do you feel that there should be any changes within the police force itself?

### **Section 3: Role and Use of Firearms**

1. Have you had to use firearms in your experience of policing Mumbai?
2. Do you think arming the police with more weapons, especially more sophisticated weapons is necessary?
3. What kind of firearms training have you received in your career so far?
4. Do you think it was adequate and appropriate?
5. In which situations do the police have to resort to the use of firearms?

#### **Section 4: Police Encounters**

1. What do you understand by the term 'police encounters'?
2. How does the media normally react to incidents of police shootings?
3. What do you think is the public's perception of *encounters*?
4. (I mention particular political attitudes towards *encounters* in other states in India based on media reports and own experience) What has been the government's attitude towards *encounters* in Mumbai?
5. Why do you think *encounters* happen?
6. Are *encounters* effective in controlling crime? How?
7. Do you personally approve or disapprove of *encounters*?
8. Do you think the police organisation and other related agencies support *encounters*?

#### **Section 5: Changes and Reforms**

1. What do you think about the laws governing the police use of firearms? - Are they adequate or in need of reforms?
2. Do you think there are adequate legal and departmental safeguards to ensure no misuse of police use of firearms takes place?
3. Do you think there is a need for police reforms in this area?
4. Are you satisfied with your job?

## **APPENDIX 2: QUESTIONNAIRE FOR INTERVIEWS WITH 'CLAIMSMAKERS'**

### **Section 1: Views on Crime**

1. What is the prevailing crime situation in Mumbai?
2. What is the meaning of organised crime?
3. Has organised crime affected you personally- either directly or indirectly?
4. Do you think organised crime has affected life in the city in any way over the past 10 years?

### **Section 2: Views about the Police**

1. What is the main role of police in society?
2. Do you think the police alone are responsible for controlling crime?
3. How would you describe the Mumbai police?
4. What sort of reputation does the Mumbai police enjoy among the larger public?
5. Do you think the police have been effective in controlling ordinary crime?
6. Do you think the police have been effective in controlling organised crime?
7. What suggestions would you make for the police to be more effective?

### **Section 3: Views on the Police Use of Firearms**

1. In which situations do the police have to resort to the use of firearms?
2. Do you think they have adequate training in the use of firearms?
3. How would you describe the past record of the Mumbai police, as far as the use of firearms is concerned?
4. Do you think arming the police with more weapons, more sophisticated weapons would make them more effective in controlling crime?

### **Section 4: Views on Police Encounters**

1. What are police *encounters*?
2. Are they effective in controlling crime?



3. Why do you think the numbers of *encounters* have been growing in Mumbai over the past few years?
4. What is the public's attitude towards *encounters*?
5. What is the media's attitude towards *encounters*?
6. What is the political attitude towards *encounters*?
7. Do you think the Human Rights Commissions or NGOs have been effective in putting a check on fake *encounters*?
8. What are your views on the protection of Human Rights of an alleged criminal?
9. What is your personal opinion on police *encounters*?

**Section 5: Personal Information about the Interviewee**

1. Age; Educational Qualifications; and Professional Background.

**APPENDIX 3: MANDATORY GUIDELINES ISSUED BY THE MUMBAI HIGH COURT IN 1997 TO BE SCRUPULOUSLY FOLLOWED BY POLICE IN INCIDENTS OF ENCOUNTERS WITH CRIMINALS**

“While disposing the petitions (No. 1032, 1064 and 1146) filed against the Mumbai Police, the Mumbai High Court have issued the following mandatory guidelines to police while dealing with incidents of encounters with criminals, which result in injury or death of the criminal. All police officers should take note and follow these guidelines scrupulously.

1. Whenever police receive intelligence or tip off about the criminal movements and activities pertaining to commission of grave crimes, it shall be entered into a case diary. If the receiving authority is the police officer of a particular police station, the relevant entry has to be made in the General diary (station diary) and if the receiving authority is a higher police officer, the relevant entry to the said effect has to be made in a separate diary kept and provided thereof and then pursue further in accordance with the procedural law.
2. Regarding any encounter operation, once it is over and persons are killed or injured and the same is reported, either orally or in writing, to the police in furtherance of section 154 Criminal Procedure Code, it shall be registered in the Crime Register of that particular police station and that further the said First Information Report (F.I.R.) along with copies to the higher officials and the Court in original shall be sent immediately through proper channel so as to reach the Court without any delay at all. A report as enjoined under section 157 (1) of the Code of Criminal Procedure by the concerned police station shall also follow necessarily.
3. After setting the law in motion by registering the F.I.R. in the Crime Register by the concerned police officer of the particular police station, the investigating staff of the police shall take such steps by deputing the man or men to get the scene of crime guarded so as to avoid or obliterate or disfigure the existing physical features of the scene of occurrence shall continue till the inspection of place of occurrence takes place by the investigating staff of the police and preparation on spot panchanama and the recovery panchanama.

4. Police officer who takes part in the operation encounter or the investigating officer of the concerned police station, shall take all necessary efforts and arrangements to preserve fingerprints of the criminals or dreaded gangsters who handled the weapons immediately after the said criminal was brought down to the ground and incapacitated and that the said fingerprints, if properly taken and preserved, must be sent to the Chemical Analyser for comparison of the fingerprints of the deadbody to be taken.
5. The materials which are found on the scene of occurrence or the operation encounter and such of the materials including the blood stained earth, and blood stained materials and the sample earth and other moveable physical features, shall also be recovered by the investigating staff under the cover of recovery panchanama attested by the independent witnesses.
6. To fix the exact date and actual place of occurrence in which operation encounter has taken place, a rough sketch regarding the topography of the existing physical features of the said place shall be drawn by the police or the investigating staff of the police either by themselves or with the help of the staff of the Survey Department even while the spot panchanama is being prepared.
7. The inquest examination shall be conducted by the investigating staff of the police on the spot itself without any delay and the statements of the inquest witnesses are to be recorded under section 161 Code of Criminal Procedure and the inquest panchanama shall also be sent along with the above case record prepared along with the First Information Report without any delay whatsoever to the Court.
8. If the injured criminals during the operation encounter are found alive, not only that they should be provided medical aid immediately but also arrangements and attempts shall be made by the police to record their statements under section 164 of the Code of Criminal Procedure either by a Magistrate, if possible and if not, by the Medical Officer concerned, duly attested by the hospital staff mentioning the time and factum that while recording such statements the injured were in a state or position

that they will be able to give statements and the concerned certificates by the doctors appended thereto.

9. After the examination of further witnesses and completing the investigation inclusive of securing the accused or accused persons, the concerned police is directed to send final report to the Court of competent jurisdiction as required under section 173 of the Code of Criminal Procedure for further processing.
10. Either in sending the First Information Report or sending with the general diary entry referred in the guidelines numbers 1 and 2, the concerned police shall avoid any iota of delay under any circumstances whatsoever so also rough sketch showing the topography of the scene and the recovery of the materials and the blood stained materials with the sample earth with the other documents, viz. the spot panchanama, recovery panchanama - all very vital documents - the respondents police are also directed to send them to the Court of concerned jurisdiction without any delay.”

*(Source: Crime Branch, Mumbai Police)*

#### **APPENDIX 4: RECENT CASE OF 'FAKE' ENCOUNTER INVOLVING 3 IPS OFFICERS**

Police *encounters* were back in the public discourse recently (March 2007) and caused furore in the Lok Sabha (Lower House of Parliament) when 3 high-ranking officers of the Indian Police Service (IPS) were arrested for their involvement in the fake *encounter* of Sohrabuddin Sheikh in the state of Gujarat<sup>102</sup>. News reports of the case presented the facts as follows: Police officers stopped a tourist bus in the state of Karnataka, searched it and dragged three people, Sohrabuddin, his wife Kausar Bi and Tulsiram Prajapati off the bus. Three days later on the 26 of November 2005, Sohrabuddin was killed in an *encounter* and his wife was 'missing' (presumed killed, and the body disposed) since then. One year after this incident Prajapati was also killed in an *encounter*, when he was allegedly extorting money from a marble merchant. Deputy Inspector General Vanjara, who headed the Anti-Terrorist Squad that conducted these *encounters*, was claimed to have told the press, "It was the work of 'deshbhakts' (patriots)", and that the police by killing Sohrabuddin, had eliminated yet another 'terrorist' with 'links to the Lashkar-e-Toiba (a terrorist outfit) and the ISI (Inter Services Intelligence Agency of Pakistan)', who was plotting to kill Chief Minister Narendra Modi (Bunsha 2007).

However, Sohrabuddin's family petitioned the Supreme Court asking for the missing body of his wife, Kausar Bi. The investigation into the allegations was entrusted to the Criminal Investigation Department. The state home ministry was reported to have tried hard to scuttle the investigation and when it became difficult to conceal the government's involvement in the case, the officer in charge of the investigation was changed. The next officer in-charge of the investigation, however, unearthed enough "damning evidence of reckless killings, phony investigations and zero accountability" (Bunsha 2007) to issue arrest warrants against three senior police officers on 27 April 2007. Media

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<sup>102</sup> See for example: 'Gujarat fake encounter issue rocks Lok Sabha', Press Trust of India Report, in *India Today on the Net*, 27 April 2007: [www.indiatoday.com/itoday/20070305/newsallFullStory.php?id=6209](http://www.indiatoday.com/itoday/20070305/newsallFullStory.php?id=6209).

reports claimed that other subordinate officers involved in the *encounter* of Sohrabuddin admitted to the deliberate murder of Kausar Bi. Media reports also claimed that the investigation had revealed that Sohrabuddin had a criminal record, but no terrorist links were uncovered. It was alleged that Vanjara eliminated Sohrabuddin at the behest of some political leaders, who in turn had been approached by industrialists who were victims of Sohrabuddin's extortion schemes. News reports claimed that in his career, Vanjara had supervised nine *encounters* in which fifteen people were killed (Bunsha 2007). There is also a public interest litigation in the Supreme Court asking for an inquiry into 21 *encounter* deaths between 2003 and 2006 in Gujarat. While political leaders were disclaiming any political involvement in these *encounters*, NGOs and activists are reported to have taken up the cause. There appear clear indications that these *encounters* were at the political behest of the politicians in power and the Gujarat government's credibility is being questioned (Raghavan 2007). However, the investigating team has been unable to find evidence of government involvement in these *encounters* and though charges against the officers involved have been submitted to the court, the evidence is reportedly insufficient<sup>103</sup>. It raises doubts whether a systemic cover-up is underway and while the court may take a few years to reach the final outcome of the case, the prognosis for a full-fledged criminal conviction for senior officers involved is not very good, in the light of media reports about the poor quality of evidence collected.

However, this incident has served to raise the issue of police encounters once again in the public domain and activists and journalists are asking uncomfortable questions of the government and the courts.

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<sup>103</sup> See for example: 'Sohrabuddin case falling apart?', *The Times of India*, 16 June 2007; 'Encounter probe now an eyewash?', *the Times of India*, 29 May 2007; and 'Fake encounter: Gujarat CID rules out political link', MSN India, <http://content.msn.co.in/msncms/LinkPage.aspx?ID>