

POLICE ENCOUNTER KILLINGS IN INDIA: AN UNRULY HORSE OR A NECESSARY EVIL

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Abstract

*Encounter killing is a euphemism for extrajudicial executions by Police and Law enforcement agencies in South Asian region including India. This phenomenon presents a profound challenge to the constitutional fabric of India. This paper examines the debate surrounding these killings, which has been positioned between the imperative on the state to maintain law and order and the constitutional obligation of state to uphold the rule of law. The research paper traces the genealogy of encounter killings from their colonial antecedents and use in counter-insurgency to their present-day institutionalization as a tool for routine crime control by employing a qualitative, doctrinal, and comparative methodology. It critically analyses the legal framework including constitutional sanctity of life under Article 21, statutory provisions of private defence and use of force (Sections 34-44 BNS and Section 43 BNSS) which are often invoked as justification. It also evaluates the efficacy of judicial interventions, particularly the landmark 16-point guidelines laid down by the Supreme Court in *People's Union for Civil Liberties v. State of Maharashtra*, and the oversight role of the National Human Rights Commission (NHRC). The paper deconstructs the competing narratives of encounters as a "necessary evil" fueled by a failing criminal justice system, and as an "unruly horse" that tramples upon fundamental rights and fosters a culture of impunity. The analysis reveals that the persistence of encounter killings is linked to systematic weaknesses, the lack of political will for police reform and the failure of accountability mechanisms for the cure of which holistic reforms are necessary. The paper concludes by suggesting reforms which aimed at strengthening the rule of law, ensuring police accountability, and realigning policing with democratic and human rights principles.*

Keywords: Extrajudicial Killings, Police Encounters, Rule of Law, Article 21, PUCL Guidelines, Police Accountability, Human Rights

1. Introduction

1.1 The Dialectic of State Power: Order, Justice, and Extra-legality

It is a fundamental paradox upon which modern democratic state is founded that the state has a monopoly on the legitimate use of violence to maintain public order, yet at the same time it is bound by a constitutional mandate to exercise this power within the strict confines of the rule of law. This inherent collision between the coercive capacity of the state and its legal constraints is nowhere more starkly illustrated than in the phenomenon of "police encounter killings" in India. This particular term, which is now a deeply entrenched euphemism in the Indian lexicon, refers to extrajudicial executions by the police which is typically staged to appear as acts of self-defence in a violent confrontation.⁴ This kind of linguistic sanitization is not merely semantic but also a deliberate rhetorical device that seeks to normalize and legitimize an act that

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⁴ Sudha Ramalingam and R.S. Akila, "The Right To Life Endangered", 6 Socio-Legal Review 142 (2010); see also "Fake Encounters in India: Instant Justice by Police and Posthumous Trial by Media", Stanford University APARC, available at: https://aparc.fsi.stanford.edu/events/fake_encounter_in_india_instant_justice_by_police_and_posthumous_trial_by_media (last visited on July 25, 2025).

fundamentally constitutes a subversion of the legal process. This action transform what is, in essence, state-perpetrated homicide into seemingly justifiable outcome of the law enforcement action. This paper delves into this conflicting terrain, examining whether these killing by the state forces are an unfortunate but necessary tool for controlling crime in society burdened by a sclerotic justice system, “a necessary evil” or whether they represent an “unruly horse” of unchecked state power that, once let loose, threatens to trample the very foundation of constitutional democracy.

1.2 Definitional Ambiguity and Classification of Police Encounters

There is not any statutory definition ascribed to the term “police encounter” under Indian law. This word has primarily been came in vogue in late 20th century in South Asian region as a euphemism to refer to extra-judicial killings by security forces⁵, yet its practical application has assumed grater significance in later period and it became an umbrella term to refer ‘police use of force’ in Indian Sub-continent. Police use of force may be defined as “that amount of effort required by police to compel compliance from an unwilling subject.”⁶ This force is within the parameters of law and hence, it is legal for a police officer to use such force while excessive use of force by the police may be defined as “the application of an amount and/or frequency of force greater than that required to compel compliance from a willing or unwilling subject.” This excessive use of force is problematic and in this situation use of force crosses the boundaries defined by the law, thus making the erring police official liable under the law. In India, we do not have this kind of definitional clarity in the use of term to describe legitimate and illegitimate use of force by police and law enforcement officials. Instead we use the word “encounter” to denote police use of force which may, in turn, be a genuine use of force or an orchestrated use of force which is popularly refer to as ‘fake encounter’. In this backdrop, police encounter killings refer to incidents wherein law enforcement officials fatally shoot alleged criminals during an armed confrontation, typically justifying their action as self-defence. These killings are often rationalised as unavoidable in the course of maintaining law and order. However, a critical distinction must be drawn between genuine encounter killings , where lethal force is a proportionate response to imminent threat, and fake encounter killings, which involve premeditated or staged killings devoid of legal sanction or necessity. In a letter written by the than chairperson of National Human Rights Commission, Justice M.N. Venkatachaliah, former Chief Justice of India, clarified the position of Genuine encounter killings and illegal killings in fake encounters and wrote that under Indian law, police officers do not possess any inherent right to take the life of another person. If a policeman causes a death through his actions, he is liable for culpable homicide, whether it qualifies as murder or not, unless it is legally established that the killing was justified.⁷ According to the Criminal law framework of India, such a killing is not

⁵“Encounter Killing”, Wikipedia, the Free Encyclopedia, available at: https://en.wikipedia.org/wiki/Encounter_killing#:~:text=Encounter%20killings%2C%20often%20simply%20referred,gun%20of%20a%20police%20officer. (last visited on June 15, 2025).

⁵International Association of Chiefs of Police, *Police Use of Force in America* 1 (IACP, 2001), available at: <https://www.theiacp.org/sites/default/files/2018-08/2001useofforce.pdf> (last visited on June 15, 2025).

⁶ International Association of Chiefs of Police, *Police Use of Force in America* 1 (IACP, 2001), available at: <https://www.theiacp.org/sites/default/files/2018-08/2001useofforce.pdf> (last visited on June 15, 2025).

⁷National Human Rights Commission, “Letter to Chief Ministers Regarding the Procedure to Be Followed in Cases of Deaths in Police Encounters” 33-35 (1997), available at: https://nhrc.nic.in/sites/default/files/CasesOfEncounterDeaths_0.pdf (last visited on June 2, 2025).

considered an offence if it was committed in the lawful exercise of the right to private defence.⁸ Section 97⁹ IPC allows a person, including a police officer, to use force in self-defence to protect their own life or the lives of others when there's a reasonable fear of death or serious injury due to the actions of an attacker. In such situations, the law fully supports and protects those who act to keep themselves and others safe. Similarly, Section 100¹⁰ of the IPC provides that a person's right of self-defence includes using force, even causing death or serious harm, when there is a reasonable fear that an attack may result in death or grievous injury if they do not protect themselves or others. This principle aims to enable individuals, including a police officer, to keep themselves and others safe in the face of a serious threat. Additionally, Section 46 of the Criminal Procedure Code¹¹ allows a police officer to use force, including lethal force if necessary, to arrest someone accused of an offence punishable by death or life imprisonment. Therefore, in any case of a death resulting from a police encounter, unless it is proven that the killing was justified either under the right to private defence or as a lawful use of force during an arrest under Section 46 (2)¹² CrPC, the officer responsible would be culpable for homicide. Whether the death meets these legal justifications can only be determined through a thorough and impartial investigation. Thus, the police encounter killings and the deaths caused in such encounters can be classified in two categories: Deaths caused in a genuine encounter killing and deaths caused in a fake encounter killing. In *Extra Judicial Execution Victim Families Association v. Union of India*¹³, the Supreme Court acknowledged that numerous encounters in Manipur under the Armed Forces (Special Powers) Act were prima-facie extrajudicial and fake, illustrating the blurred line between legality and illegality. The absence of a uniform legal framework for determining the authenticity of encounters has led to a dangerous Grey zone of state impunity.

1.3 Statement of the Problem

The central problem addressed by this research paper is the systematic institutionalization of extrajudicial killings as a method of state policing policy, employed for both crime control and counter-insurgency. This practice, which has often been accompanied by overt political sanction and bolstered by a degree of public approval, represents a direct and perilous challenge to the cardinal principal of the Indian Constitution. It not only negates the presumption of innocence, but also circumvents the due process of law and usurps the judicial function of determining guilt and imposing punishment. The police which has been intended to be the primary enforcer of the law, become its most flagrant violators, acting as the judge, jury and executioner. The phenomenon of encounter killings is not merely a series of isolated incidents of police excesses but it reflects a deeper malaise within the criminal justice administration in Indian states. This problem points to a crisis of accountability, the

⁸ See Sections 34-44, The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023).

⁹ The Indian Penal Code, 1860, s. 97. (Now, The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.35.)

¹⁰ The Indian Penal Code, 1860, s. 100. (Now, The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s.38.)

¹¹ The Code of Criminal Procedure, 1973, s. 46. (Now, The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 43)

¹² The Code of Criminal Procedure, 1973, s. 46 (2). (Now, The Bharatiya Nagarik Suraksha Sanhita (Act 46 of 2023), 2023, s. 43 (2))

¹³ *Extra Judicial Execution Victim Families Association v. Union of India*, (2016) 14 SCC 536.

failure of decades of police reform efforts, and a growing public disillusionment with the formal criminal justice system.

1.4. Research Objectives

The primary objectives of this research paper are as follows:

1. To trace the historical origins of encounter killings in India, examining their evolution from a colonial-era tool of repression to a contemporary instrument of crime control.
2. To critically analyse the constitutional and statutory provisions governing the use of lethal force by police.
3. To evaluate the efficacy and implementation of judicial interventions and institutional oversight mechanisms.
4. To deconstruct the competing narratives of encounter killings as a “necessary evil” versus an “unruly horse”.
5. To propose holistic, evidence-based reforms for strengthening the rule of law, enhancing police accountability, and fostering a rights-based policing culture in India.

1.5. Research Questions

This paper seeks to answer the following core research questions:

- I. How did the practice of encounter killings evolve from a specialized counter-insurgency tactic into a routinized and often celebrated feature of policing in various parts of India?
- II. To what extent do existing legal frameworks, including the Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Nagarik Suraksha Sanhita, 2023, and the constitutional guarantee of the right to life under Article 21, permit or prohibit the use of lethal force in the manner seen in encounter killings?
- III. How effective have the Supreme Court’s mandatory guidelines in the *PUCL* case and the interventions by the NHRC been in curbing the practice of fake encounters and ensuring accountability for police personnel involved?
- IV. What are the underlying systemic factors, such as judicial delays, political pressure, a colonial-era police structure, and public opinion, that contribute to the persistence and social acceptance of encounter killings?
- V. What lessons can be drawn from a comparative analysis of police oversight models in other democratic jurisdictions to inform meaningful and sustainable police reforms in India?

1.6. Research Methodology

This study adopts a multi-faceted research methodology to provide a comprehensive and nuanced analysis of the subject. It is primarily a qualitative study that integrates doctrinal, historical, and comparative approaches.

- **Doctrinal Analysis:** The research will conduct a rigorous examination of primary legal sources, including the Constitution of India (with a focus on Article 21), Bharatiya Nyaya Sanhita, 2023 and the Bharatiya Nagarik Suraksha Sanhita, 2023. It will involve a detailed analysis of landmark judicial precedents from the Supreme Court and various High Courts to understand the legal and constitutional position on extrajudicial killings.
- **Historical Analysis:** A historical approach will be used to trace the genealogy of the practice, from its roots in colonial policing to its application in post-independence India, charting its transformation over time.

- **Comparative Analysis:** The paper will employ a comparative method to examine police oversight and accountability mechanisms in other common law jurisdictions, namely the United Kingdom, South Africa, and Australia, to identify best practices and potential models for reform in India.
- **Secondary Data Analysis:** The research will rely extensively on credible secondary sources, including scholarly articles from legal journals, books, and in-depth reports published by governmental organization such as the National Human Rights Commission (NHRC). It will also analyse data from official sources like the National Crime Records Bureau (NCRB) and journalistic investigations to provide empirical weight to its arguments.

1.7. Hypotheses

This research proceeds on the basis of the following two hypotheses:

- 1) **H1:** The prevalence of encounter killings in India is not an isolated phenomenon of police deviance but is directly correlated with the systemic weaknesses of the Indian criminal justice system, including prolonged trial delays and low conviction rates, and a persistent political and bureaucratic failure to implement meaningful police reforms.
- 2) **H2:** While lawful police encounters may sometimes be viewed as a necessary evil in addressing crime, Fake police encounter killings function as an unruly horse in the Indian criminal justice system, reflecting a pattern of lawlessness, executive impunity, and systemic deviation from constitutional and human rights norms.

2. The Genealogy of Extrajudicial Force: A Historical Inquiry

2.1. Colonial Antecedents and the Legacy of Repressive Policing

In India, the contemporary practice of police encounter killings cannot be understood as a recent aberration. The roots of this problem are deeply embedded in the very structure and philosophy of policing inherited from the colonial era. The enactment of Indian Police Act, 1861¹⁴ by the colonial government was not conceived to create a service which is accountable to the public. Rather, it was enacted to create a repressive force designed to uphold the authority of the colonial regime and quell dissent. This act continues to form the bedrock of police governance in much of the country. The foundational objectives and purposes of the policing system instilled a culture of control, coercion, and surveillance over a subject population. Even in post-independence India, the legacy inherited by police has proven remarkably resilient.

The early examples for extra-legal state violence can be traced back to this period. For instance, the much celebrated anti-thuggee campaign of the 19th century saw a brutal form of state perpetrated violence. The colonial officers abrogated for themselves a “zone of sovereign power” that operated beyond the reach of conventional judicial processes. This style of operation helped them in justifying extra-legal method to achieve their ends. The statement of a witness to the committee established to investigate the allegation of torture in revenue and police department in the presidency of Madras scathingly remarked¹⁵:

“The police establishment has become the bane and pest of society, the terror of the community, and the origin of half the misery and discontent that exist among the subjects of Government. Corruption and bribery reign paramount throughout the whole establishment; violence, torture, and cruelty are their chief instruments for detecting crime, implicating innocence, or extorting money.”

¹⁴ The Indian Police Act, 1861 (Act 5 of 1861).

¹⁵ Report of the Commissioners for the Investigation of Alleged Cases of Torture in the Madras Presidency (Madras: Fort St. George, 1855).

The first recorded instance which is often cited in the history of encounters in the killing of the freedom fighter Alluri Sitarama Raju during the Rampa Rebellion of 1922.¹⁶ Upon independence, the police forces of former princely states, such as that of Nizam of Hyderabad, passed on traditions of summary execution of the newly formed state police.¹⁷ This, also, further entrenched this belief that certain forms of violence could be legitimately deployed outside the formal legal system. This historical account shows that the practice of extra-judicial application of force was not an invention of post-colonial state. Rather the practice is a continuation and adaptation of a pre-existing model of governance through force.

2.2. Post-Independence Manifestations: From Counter-Insurgency to Crime Control

After the independence, in the following decades, encounter killings became the institutionalized form of state response to political threats, in particular against the armed insurgencies. This practice was extensively used during the Telangana movement. The state government employed it as an official explanation for the deaths of over 3,000 people.¹⁸ This practice became a key tactic in the state's fight against the Naxalite (Maoist) insurgency, a conflict in which the lines between combatant and civilians were often blurred.¹⁹

The most crucial turning point happened during the Punjab insurgency of 1984-1995. It was during this time period that the term "police encounter" became a widely recognised synonym for extra-legal execution. During this period, human rights and activists, most notably Jaswant Singh Kalara, documented a chilling pattern of abuse of power. It was found that police would allegedly take suspected militants into custody without filing arrest reports. Then, they were killed during interrogation which was subsequently stage and armed encounter by planting weapons on the body to fabricate a narrative of self-defense.²⁰

The underlying success of this strategy in quelling Punjab insurgency led to its adaptation for the purposes of urban crime control. This model is came to be known as the "Punjab Solutions". It was imported into cities like Mumbai to tackle the menace of the underworld. The decade of 1990s and early 2000s witnessed the rise of so called "encounter specialists" in the Mumbai Police. The officers of Mumbai Police like Pradeep Sharma, Daya Nayak and Vijay Salaskar were celebrated in the media and by the public for eliminating the notorious gangsters. The Mumbai Police were responsible for the deaths of an estimated 1,200 alleged criminals in such encounters during 1982 and 2003.²¹ This trend in urban policing marked a significant and dangerous evolution. A tactic which was once reserved for exceptional circumstances of national security

¹⁶ Murali Atlury, "Alluri Sitarama Raju and the Manyam Rebellion of 1922-1924" 12 Social Scientist 3 (1984).

¹⁷ S. Purushotham, "Internal Violence: The 'Police Action' in Hyderabad" 57 Comparative Studies in Society and History 435 (2015).

¹⁸ M.A. Kafeel and A. Johnson, "Encounter Politics: A Serious Violation of Human Rights" 1 International Journal of Advanced Legal Research (2022)

¹⁹ Human Rights Watch, "Being Neutral Is Our Biggest Crime: Government, Vigilante and Naxalite Abuses in India's Chhattisgarh State" (July 14, 2008), *available at*: <https://www.hrw.org/report/2008/07/14/being-neutral-our-biggest-crime/government-vigilante-and-naxalite-abuses-indias> (last visited on Nov. 3, 2025).

²⁰ Human Rights Watch, "Protecting the Killers: A Policy of Impunity in Punjab, India" (Oct. 17, 2007), *available at*: <https://www.hrw.org/reports/2007/india1007/india1007.htm> (last visited on Nov. 3, 2025).

²¹ "Mumbai's Skewed Encounter Record" The Indian Express, *available at*: <https://indianexpress.com/article/india/india-others/mumbais-skewed-encounter-record-2/> (last visited on Nov. 3, 2025).

and armed rebellion was now being normalised as a routine method for maintaining law and order. The employment of this tactic effectively bypassed the criminal justice system in the heart of urban India. The state of exception which was once geographically and politically confined began to seep into the everyday functioning of the state. This process transformed a tool designed for existential threats into an instrument of routine governance. It fundamentally altered the relationship between the citizens and the state and embedded extra-legality within the core of the policing function itself.

3. The Constitutional and Legal Matrix: Rights, Defences, and Prohibitions

3.1. The Sanctity of Life: Article 21 and the 'Procedure Established by Law'

The cornerstone of the legal and constitutional argument against encounter killings is Article 21 of the Constitution of India, which unequivocally states: “No person shall be deprived of his life or personal liberty except according to procedure established by law”²². This fundamental right, available to citizens and non-citizens alike, is the very heart of the constitutional scheme, safeguarding the most precious of all human rights. The Indian judiciary has, over decades, breathed life into this provision through expansive interpretation. The landmark judgment in *Maneka Gandhi v. Union of India*²³ marked a paradigm shift from the narrow, positivistic reading in *A.K. Gopalan v. State of Madras*²⁴. The Supreme Court held that the “procedure established by law” under Article 21 cannot be any procedure, but must be one that is “right and just and fair and not arbitrary, fanciful or oppressive”. This introduced the principles of natural justice and reasonableness into the heart of Article 21, effectively creating a due process requirement. The right to life was interpreted to mean more than mere animal existence; it encompasses the right to live with human dignity²⁵.

Encounter killings represent a direct and brutal negation of this constitutional mandate. By their very nature, they circumvent and obliterate the entire procedural edifice of the criminal justice system. They deny the accused the right to a fair trial, the right to be defended by a lawyer, and the right to be heard, a violation of the fundamental principle of *Audi Alteram Partem* (hear the other side). The police, in effect, carry out a summary execution based on their own suspicion or determination of guilt, an act that is the very definition of arbitrary state action. Therefore, any killing of a suspect by the police, unless it falls strictly within legally recognized exceptions, is an egregious violation of the procedure established by law and a direct assault on the sanctity of life guaranteed by Article 21.

3.2. The Police Prerogative: Analysing Section 43 BNSS and the Right of Private Defence (Sections 34-44 BNS)

Police authorities invariably seek to justify encounter killings by taking refuge under specific statutory provisions that permit the use of force. A critical examination of these provisions, however, reveals that they provide a very narrow and circumscribed authority, which is systematically stretched and distorted to cover acts of extrajudicial execution.

Section 43 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)²⁶: This section outlines the procedure for making an arrest. Sub-section (2) permits a police officer to use “all means necessary to effect the arrest” if the person to be arrested forcibly resists

²²The Constitution of India, 1950, art. 21.

²³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

²⁴ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

²⁵ *Supra* note 20.

²⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 43.

or attempts to evade arrest. While the phrase “all means necessary” appears broad, it is severely curtailed by sub-section (4), which explicitly states: “Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life”. This provision, therefore, creates a clear legal bar against using lethal force during arrest for the vast majority of offences. The police narrative in encounter cases often alleges that the deceased was a hardened criminal involved in heinous crimes, a claim designed to bring their actions within the ambit of this exception.

Sections 34-44 of the Bharatiya Nyaya Sanhita, 2023 (BNS)²⁷: These provisions, dealing with the Right of Private Defence, are the most common legal shield invoked by the police. Section 34 states that nothing is an offence which is done in the exercise of this right. Section 38 enumerates the specific circumstances under which the right of private defence of the body extends to voluntarily causing death, such as when there is a reasonable apprehension of death or grievous hurt. However, this right is not absolute. Section 37 BNS imposes crucial limitations²⁸, stipulating that the right in no case extends to the inflicting of more harm than is necessary to inflict for the purpose of defence.

The typical police script in an encounter case, that the accused was asked to surrender, but instead opened fire, compelling the police to retaliate in self-defence, is a meticulously constructed narrative designed to fit squarely within these legal exceptions. However, this narrative often crumbles under scrutiny. Forensic evidence and fact-finding reports frequently reveal a different story. Human Rights Watch, for instance, has noted that in the “vast majority” of encounter cases, no police officer is injured or killed, which casts serious doubt on the claim of a genuine armed exchange where there was an imminent threat to life.²⁹ The Justice Sirpurkar Commission, which investigated the 2019 Hyderabad encounter of four rape-accused, found the police version to be “concocted”³⁰ and concluded that the officers involved were guilty of murder. This reveals that the self-defence claim is often not a reflection of reality but a post-facto legal fiction, a standardized, premeditated script designed to retroactively legitimize an extrajudicial act and ensure impunity by aligning it with statutory exceptions. This is not merely an abuse of the law, but the use of the law itself as a cloak for abuse.

3.3. International Law Imperatives: UN Principles on Use of Force and the Convention Against Torture

Indian law and policing practices, when benchmarked against international human rights standards, reveal a significant deficit in compliance. The **United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF)**³¹, adopted in 1990, provide a global standard for police conduct. These principles are built on the core tenets of **necessity, proportionality, and precaution**.

- **Necessity:** Law enforcement officials must, as far as possible, apply non-violent means before resorting to force. Force may be used only if other means remain ineffective.

²⁷ The Bharatiya Nyaya Sanhita, 2023, ss. 34-44.

²⁸ The Bharatiya Nyaya Sanhita, 2023, s. 37.

²⁹ Human Rights Watch, “India: Rights and Wrongs — Improving Human Rights in India” (1991), available at: <https://www.hrw.org/reports/pdfs/i/india/india929.pdf> (last visited on Nov. 3, 2025).

³⁰ Report of the Commission of Inquiry into the Encounter Killings of the Four Accused in the Hyderabad Rape and Murder Case (Justice V.S. Sirpurkar Commission) (2022).

³¹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 1990.

- **Proportionality:** When the use of force is unavoidable, officers must exercise restraint and act in proportion to the seriousness of the offence and the legitimate objective to be achieved.
- **Precaution:** The use of firearms is an extreme measure. Principle 9 of the BPUFF is particularly salient³², stating that intentional lethal use of firearms may only be made when “strictly unavoidable in order to protect life”.

The routinized nature of encounter killings in India, often celebrated as a measure of policing success, stands in stark violation of these principles. The high threshold of lethal force being “strictly unavoidable” is seldom met in cases that are later revealed to be staged executions.

Furthermore, India’s position on the **United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)**³³ is indicative of a systemic reluctance to institutionalize accountability. Despite signing the Convention in 1997, India has yet to ratify it, and a domestic law against torture, such as the Prevention of Torture Bill, has languished for years. This failure is deeply significant, as torture and custodial violence are often the precursors to staged encounters. Suspects are frequently tortured in illegal custody, and if they die, an “encounter” is fabricated to cover up the custodial death. The refusal to enact a robust anti-torture law signals a lack of political will to dismantle the infrastructure of impunity that enables such abuses.

4. Judicial Scrutiny and the Quest for Accountability

4.1. The Landmark Pronouncement: *PUCL v. State of Maharashtra* and the 16-Point Mandate

In a seminal moment for police accountability in India, the Supreme Court in *People’s Union for Civil Liberties & Anr. v. State of Maharashtra & Ors.*³⁴ confronted the burgeoning crisis of encounter killings head-on. The case arose from a writ petition filed by the PUCL questioning the authenticity of 99 encounter killings in Mumbai between 1995 and 1997, which resulted in the deaths of 135 individuals.

Recognizing the grave threat that fake encounters pose to the rule of law and public trust in law enforcement, the Court delivered a judgment rooted in the fundamental right to life under Article 21. It acknowledged that while the police must be empowered to deal with hardened criminals, they cannot be allowed to resort to extrajudicial methods. The Court observed that such killings undermine the entire constitutional order and foster a climate of impunity. To address the procedural vacuum and ensure transparent and independent investigations, the Court, exercising its powers to protect fundamental rights, laid down a comprehensive set of 16 mandatory guidelines. Crucially, it declared these guidelines to be the law of the land under Article 141 of the Constitution³⁵, making them binding on every police force in the country until a specific legislative framework is enacted.

The guidelines represent the most significant judicial attempt to regulate police conduct in encounter situations and establish a robust mechanism for accountability.

³² *Ibid.*, Principle 9.

³³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, UN Doc. A/39/51 (1984) (Entered into force 1987).

³⁴ *People’s Union for Civil Liberties v. State of Maharashtra*, (2014) 10 SCC 635.

³⁵ The Constitution of India, 1950, art. 141.

Table 1: The 16-Point Guidelines in *PUCL v. State of Maharashtra*

| Guideline No. | Summary of the Mandate |
|---------------|---|
| 1 | Record Intelligence: Any tip-off or intelligence regarding criminal movements must be recorded in writing or electronic form. |
| 2 | Mandatory FIR: If an encounter results in death, a First Information Report (FIR) must be registered, and the report forwarded to the court immediately. |
| 3 | Independent Investigation: The investigation must be conducted by an independent agency, such as the CID or a police team from another station, under the supervision of a senior officer. |
| 4 | Magisterial Inquiry: A magisterial inquiry under Section 176 of the CrPC is mandatory in all cases of death in police firing. |
| 5 | Inform Human Rights Commission: The NHRC or the State Human Rights Commission must be informed of the incident without delay. |
| 6 | Medical Aid to Victim: The injured criminal/victim must be provided with prompt medical aid, and their statement recorded by a Magistrate or Medical Officer. |
| 7 | No Delay in Forwarding Reports: FIR, diary entries, panchanamas, sketch, etc., must be sent to the concerned court without delay. |
| 8 | Submission of Final Report: A final report of the investigation must be sent to the competent court for a speedy trial. |
| 9 | Inform Next of Kin: The next of kin of the deceased suspect must be informed at the earliest. |
| 10 | Bi-annual Statements to NHRC: The Director General of Police (DGP) must send bi-annual statements of all police firing deaths to the NHRC. |
| 11 | Disciplinary Action: If the police officers are found guilty after the investigation, disciplinary action must be initiated, and they should be suspended. |
| 12 | Compensation to Dependants: Compensation must be granted to the dependants of the victim under Section 357-A of the CrPC. |
| 13 | Surrender of Weapons: The concerned police officers must surrender their weapons for forensic and ballistic analysis. |
| 14 | Legal Aid for Officers: The family of the police officer involved must be informed, and the officer should be offered legal and counselling services. |
| 15 | No Instant Promotions or Rewards: No out-of-turn promotion or gallantry awards shall be bestowed on the officers soon after the occurrence. |
| 16 | Grievance Redressal: The victim's family can approach the Sessions Judge if the prescribed procedure is not followed, who must then address the grievance. |

(Source: *People's Union for Civil Liberties & Anr. v. State of Maharashtra & Ors.*³⁶)

³⁶ *People's Union for Civil Liberties v. State of Maharashtra*, (2014) 10 SCC 635.

4.2. The Shield of Sanction: Interpreting Section 197 CrPC in *Om Prakash v. State of Jharkhand*

While the *PUCL* judgment sought to create a pathway for accountability, a significant legal impediment remains in the form of Section 197 of the CrPC (now Section 218, BNSS, 2023)³⁷. This provision mandates that no court shall take cognizance of an offence alleged to have been committed by a public servant “while acting or purporting to act in the discharge of his official duty,” except with the previous sanction of the competent government. This requirement acts as a powerful shield, often preventing the prosecution of police officers involved in fake encounters.

The Supreme Court's judgment in *Om Prakash & Ors. v. State of Jharkhand & Anr.*³⁸ illustrates the protective nature of this provision. In this case, which involved an alleged fake encounter, the Court quashed the criminal proceedings against the accused police personnel, holding that their actions were committed in the course of their official duties and thus required prior sanction for prosecution. However, the application of this principle to cases of fake encounters creates a legal paradox. An act of murder or a staged encounter cannot logically be considered part of a police officer's "official duty." Yet, courts have often taken the view that if the act is reasonably connected with the official duty, even if it was performed in excess of it, the protection of Section 218, BNSS is attracted. This interpretation creates an almost insurmountable barrier for victims' families, as the very government that employs the accused police officers is unlikely to grant sanction to prosecute them, especially in a climate of political endorsement for such killings. The sanction requirement, therefore, becomes a key instrument in perpetuating the culture of impunity.

4.3. Judicial Ambivalence and the Challenge of Implementation

Despite the clear and comprehensive mandate in *PUCL*, the judiciary's overall impact on curbing encounter killings has been limited, largely due to inconsistent application by lower courts and a systemic failure of the executive and police to comply with the guidelines. While higher courts have repeatedly admonished the practice, describing it as a “criminal philosophy” that erodes the credibility of the rule of law, encounters have continued unabated across the country. A critical procedural loophole that subverts the entire accountability framework is the practice of police registering the FIR against the deceased victim. In such cases, the police department itself assumes the status of the complainant, alleging that the deceased person attacked them first. The case is then typically closed on account of the accused's death, and no protest is filed against the closure. This tactic effectively prevents a criminal investigation into the actions of the police officers involved, directly contravening the spirit and letter of the *PUCL* guidelines which mandate an FIR against the police.

The Supreme Court has recently sought to close this loophole. In *Arif Md Yeasin Jwadder v. State of Assam & Ors.*³⁹, the Court reiterated that the procedural safeguards laid down in *PUCL* are binding and must be enforced regardless of whether the victim or their family initiates a complaint. It emphasized that the guidelines are not contingent on direct victim participation and are designed to ensure fairness and transparency in every case of death caused by police action. This reaffirmation is a positive development, but its effectiveness will depend entirely on its rigorous enforcement by

³⁷ The Code of Criminal Procedure, 1973, s. 197; The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218.

³⁸ *Om Prakash v. State of Jharkhand*, (2012) 12 SCC 72.

³⁹ *Arif Md Yeasin Jwadder v. State of Assam*, 2024 SCC OnLine SC 156.

trial courts and the willingness of police forces to abandon their long-standing practices of evasion. The gap between judicial pronouncement and on-ground reality remains the central challenge in the quest for accountability.

5. The Dichotomy of Perception: Necessary Evil vs. Unruly Horse

The debate surrounding encounter killings in India is sharply polarized, reflecting a deep societal schism on the nature of justice, security, and state power. The two dominant narratives, that of the “necessary evil” and the “unruly horse”, frame the issue in starkly contrasting terms, each drawing upon different sets of values, fears, and frustrations.

5.1. Overview of Encounter Killings in India: Statistical Trends

As discussed above, police encounter killings have emerged as a recurrent feature of law enforcement in India, raising concerns of their constitutionality, legality and transparency. According to the data compiled from National Human Rights Commission (NHRC), between 1st April 2011 to 31st March 2024, a total number of 2011 deaths in police encounters have been intimated by the states and union territories in India.

Table 2: Total Number of Police Encounter Deaths intimated to NHRC by States and Union Territories

| Year | Number of Police Encounter Deaths | Cases which have been concluded after receipt of report | Cases awaiting preliminary consideration | Number of Cases pending where reports are received from the state or Report is Pending |
|-----------|-----------------------------------|---|--|--|
| 2011-2012 | 179 | 229 | 1 | 671 |
| 2012-2013 | 181 | 191 | 1 | 652 |
| 2013-2014 | 148 | 112 | 7 | 685 |
| 2014-2015 | 192 | 112 | 0 | 765 |
| 2015-2016 | 206 | 104 | 2 | 862 |
| 2016-2017 | 180 | 267 | 19 | 756 |
| 2017-2018 | 164 | 176 | 7 | 755 |
| 2018-2019 | 158 | 98 | 2 | 817 |
| 2019-2020 | 127 | 255 | 4 | 690 |
| 2020-2021 | 87 | 302 | 6 | 430 |
| 2021-2022 | 159 | 188 | 27 | 359 |
| 2022-2023 | 125 | 170 | 2 | 342 |
| 2023-2024 | 105 | 214 | 7 | 219 |

(Source: NHRC Annual Report 2011-2024⁴⁰)

Under the NHRC guidelines, states and union territories have an obligation to report and intimate the deaths caused in a police encounter within 48 hours of the happening of the incident. The problem lies with this piece of information contained in the annual report of NHRC is the under reporting of the police encounter deaths by the states and union territories which creates a hindrance in getting the actual picture of police encounters and killings in such encounters. State of Uttar Pradesh intimated 155 cases

⁴⁰ See National Human Rights Commission, *Annual Reports (2011-2024)* (NHRC, India).

of encounter deaths to the NHRC between 1st April 2016 to 31st March 2024 but according to the Annual Report, 2024 of Uttar Pradesh Police which has been prepared under the direction of Director General of Police, Uttar Pradesh, a number of 217 criminals have been killed by the police during 2017 to mid-2025.⁴¹ This dichotomy of the data shows under-reporting of encounter killings by the states.

Also, this data does not reveal the number of complaints received regarding the allegations of fake encounter deaths. An RTI query by the researchers to the NHRC revealed that between 2010 and 2024, NHRC have recorded 875 complaints of fake encounter deaths including 5 complaints in which NHRC has taken suo-moto cognizance of the encounter killing and recorded a complaint under “fake encounter deaths” category.⁴² This means where states and union territories have intimated 2011 number of encounter deaths between 2011 to 2024, NHRC received 875 complaints of alleged fake encounter deaths in the same period, making almost every second or third police encounter death as an alleged fake encounter death which paints a grim picture of trust – deficit in police and erosion of police accountability in India.

Further, the problem is exacerbated by the slow speed of disposal of complaints regarding police encounter killings. As shown in the table, a high number of cases and complaints remained under process at the end of relevant time period.

The data regarding cases registered against state police personnel for human rights violation in case of encounter killing as provided in the yearly report published by National Crime Records Bureau (NCRB) paints a contrasting picture in relation to data regarding intimation of encounter deaths by the states to the NHRC and number of complaints received by the NHRC alleging fake encounter deaths. A study of NCRB data from 2016 to 2022 regarding cases registered on the complaint of fake encounter killing reveals that very few cases have been registered in this regard and seldom the chargesheet has been filed and the arrest of erring police personnel have been made. More importantly, not a single police personnel was convicted of any offence regarding the allegation of fake encounter killing during 2016-2022 as reported by NCRB.

Table 3: Cases Registered against State Police Personnel for Human Rights Violation in cases of Encounter Killings from 2016 to 2022

| S L | Year | Cases Registered | Final Report Submitted | Chargesheet Filed | Police Personnel Arrested | Police Personnel Chargesheeted | Police Personnel Convicted | Police Personnel Acquitted |
|-----|------|------------------|------------------------|-------------------|---------------------------|--------------------------------|----------------------------|----------------------------|
| 1 | 2016 | 13 | - | - | - | 4 | 0 | 0 |
| 2 | 2017 | 6 | 2 | 2 | 8 | 4 | 0 | 0 |

⁴¹ “Criminals Killed in Encounters Since 2017: UP Govt” The Indian Express, *available at*: <https://indianexpress.com/article/cities/lucknow/criminals-killed-encounters-2017-up-govt-10133399/> (last visited on Nov. 3, 2025).

⁴² The researcher had filed an application under the Right to Information Act, 2005 with Registration Number: NHRCM/R/E/25/00018 filed on January 09, 2025 and asked certain questions from NHRC. NHRC in its reply of Application No.: NHRCM/R/E/25/00018 on January 20, 2025 provided the answers to the questions asked. In its reply, it revealed that between 2010 and 2024, it received 875 complaints of “alleged fake encounter deaths” and during the given time period it took suo-moto cognizance of 5 cases of fake encounter killings.

| | | | | | | | | |
|---|-----|----|---|---|----|----|---|---|
| 3 | 201 | 4 | 3 | 0 | 0 | 0 | 0 | 0 |
| . | 8 | | | | | | | |
| 4 | 201 | 10 | 0 | 0 | 2 | 0 | 0 | 0 |
| . | 9 | | | | | | | |
| 5 | 202 | 3 | 2 | 0 | 2 | 0 | 0 | 0 |
| . | 0 | | | | | | | |
| 6 | 202 | 6 | 3 | 0 | 0 | 0 | 0 | 0 |
| . | 1 | | | | | | | |
| 7 | 202 | 6 | 2 | 2 | 15 | 11 | 0 | 0 |
| . | 2 | | | | | | | |

(Source: Crime in India: Statistics 2016-2022, National Crime Records Bureau⁴³)

The data from the National Human Rights Commission (NHRC) on police encounter deaths, alongside the total number of IPC crimes and the corresponding crime rate in India, reveals a complex and somewhat paradoxical picture. While the number of police encounter deaths shows significant fluctuations from year to year, the total number of IPC crimes and their rate per 100,000 population follow their own trajectory influenced by a range of social, economic, and policy-related factors.

IPC Crime and Crime Rate in India (2011–2022)

| Year | Total Number of IPC Crime | Crime Rate (per 100,000 population) |
|------|---------------------------|-------------------------------------|
| 2011 | 23,25,575 | 192.2 |
| 2012 | 23,87,188 | 196.7 |
| 2013 | 26,47,722 | 215.5 |
| 2014 | 28,51,563 | 229.2 |
| 2015 | 29,49,400 | 234.2 |
| 2016 | 29,75,711 | 233.6 |
| 2017 | 30,62,579 | 237.7 |
| 2018 | 31,32,954 | 236.7 |
| 2019 | 32,25,701 | 241.2 |
| 2020 | 42,54,356 | 314.3 |
| 2021 | 36,63,360 | 268.0 |
| 2022 | 35,61,379 | 240.7 |

(Source: Crime in India: Statistics 2011-2022, National Crime Records Bureau⁴⁴)

For instance, from 2011–2012 to 2023–2024, the number of police encounter deaths varies, from a low of 87 in 2020–2021 to a high of 206 in 2015–2016, yet there's no clear or direct correlation between these deaths and the total number of crimes or their rate during the same period. The total number of IPC crimes in India shows a general upward trend, reflecting growing pressures stemming from population growth, changing patterns of crime, and greater awareness and registration of cases. The crime rate per 100,000 people also varies, starting at 192.2 in 2011, peaking at 314.3 in 2020,

⁴³ See National Crime Records Bureau, *Crime in India Statistics (2016-2022)* (Ministry of Home Affairs, Govt. of India).

⁴⁴ See National Crime Records Bureau, *Crime in India Statistics (2011-2022)* (Ministry of Home Affairs, Govt. of India)

and then dropping back to 240.7 by 2022, further illustrating that there's no simple link between police encounters and the overall trajectory of crime in the country.

This view highlights that a rise or fall in encounter deaths cannot be directly explained by a corresponding change in crime or its rate. Often, an increase in encounter deaths may be influenced by policy decisions, operational practices, or political pressures to appear tough on crime, while the number of crimes and their rate may be driven by a range of structural and sociocultural factors. Therefore, understanding the relationship between these sets of data involves looking at both the human rights implications of state action and the broader context of crime trends and justice delivery mechanisms in the country.

5.2. The 'Necessary Evil' Narrative: Public Sanction and the Failing Criminal Justice System

The argument that encounter killings are a “necessary evil” is not typically an explicit legal defence but a powerful socio-political justification that finds considerable traction among the public and political class. This narrative is built upon a profound and widespread disillusionment with the formal criminal justice system (CJS) in India. The system is widely perceived as being corrupt, inefficient, and agonizingly slow. For instance, a report on the Allahabad High Court revealed that the average waiting period for the disposal of a criminal appeal is an astounding 35 years, with thousands of convicts having already served more than a decade in jail while their appeals remain pending.⁴⁵

This systemic failure creates a vacuum of justice, which in turn fuels a public appetite for swift, decisive, and retributive action against perceived criminals. When the formal system fails to deliver justice within a reasonable time, the public often comes to view extrajudicial methods as an effective and efficient alternative. This sentiment is actively cultivated and exploited by political leaders, who often endorse and glorify encounter killings as a hallmark of a tough-on-crime governance model. Statements by high-ranking officials, such as the Uttar Pradesh Chief Minister, that criminals will be “jailed or killed in encounters,”⁴⁶ serve to legitimize the practice and present it as a valid instrument of state policy. The UP government has even publicized encounter statistics as proof of successful crime control, turning these killings into a public spectacle designed to assuage social anxiety about rising crime.⁴⁷

From the perspective of law enforcement, this narrative is reinforced by immense institutional and political pressure to show results. Police officers often feel they are dealing with hardened criminals who can manipulate the legal system to evade justice. A survey conducted by Common Cause and the Centre for the Study of Developing Societies found that a significant portion of police personnel (22%) believe that killing “dangerous criminals” is a better option than subjecting them to a legal trial.⁴⁸ In this

⁴⁵ Arvind Choudhary, “U.P. Convicts Who Appeal to High Court Face Average 35-Year Wait” *The Times of India*, Aug. 24, 2021, available at: <https://timesofindia.indiatimes.com/city/lucknow/up-convicts-who-appeal-to-high-court-face-average-35-year-wait/articleshow/85581156.cms> (last visited on Nov. 3, 2025).

⁴⁶ “Criminals Will Be Jailed or Killed in Encounters: CM Yogi Adityanath” *The Times of India*, Nov. 19, 2017, available at: <https://timesofindia.indiatimes.com/city/ghaziabad/criminals-will-be-jailed-or-killed-in-encounters-cm-yogi-adityanath/articleshow/61707953.cms> (last visited on Nov. 3, 2025).

⁴⁷ “63 Killed in 10,000 Encounters Under Yogi Adityanath Rule in UP” *NDTV*, Feb. 26, 2023, available at: <https://www.ndtv.com/india-news/63-killed-in-10-000-encounters-under-yogi-adityanath-rule-in-up-3868234> (last visited on Nov. 3, 2025).

⁴⁸ Common Cause and Centre for the Study of Developing Societies, “Status of Policing in India Report 2019: Police Adequacy and Working Conditions” 144 (2019), available at:

view, encounters become a pragmatic, if legally questionable, “shortcut” to maintain order and respond to public and political demands for action.

5.3. The 'Unruly Horse' Reality: Impunity, Political Patronage, and the Erosion of Rule of Law

The counter-narrative frames encounter killings not as a necessary tool, but as an “unruly horse” of arbitrary state power that, once unleashed, tramples upon the very foundations of a constitutional democracy. This perspective argues that the practice represents a fundamental betrayal of the rule of law. By bypassing the courts, encounters negate the constitutional guarantees of Articles 14 (equality before law) and 21 (right to life and due process),⁴⁹ and obliterate the presumption of innocence, a cornerstone of criminal jurisprudence. This practice thrives in a culture of near-total impunity. The systemic failure to prosecute and convict police officers involved in fake encounters sends a clear message that they are above the law. Instead of facing punishment, officers known as “encounter specialists” are often hailed as heroes, revered by the state, and rewarded with out-of-turn promotions and gallantry awards, a practice the Supreme Court explicitly forbade in the *PUCL* case. This positive reinforcement institutionalizes criminality within the police force itself.

Crucially, this unbridled power is not exercised randomly. The victims of encounter killings are overwhelmingly from the most vulnerable and marginalized sections of society, the poor, Dalits, and religious minorities, particularly Muslims.⁵⁰ These communities lack the political connections and financial resources to challenge the police narrative and pursue justice, making them easy targets. The practice thus becomes a tool for enforcing social hierarchies and disciplining populations deemed undesirable. A more recent and insidious manifestation of this phenomenon is the rise of “half-encounters,” particularly in states like Uttar Pradesh. This involves police inflicting grievous but non-fatal injuries, typically by shooting suspects in the leg or knee, a practice sometimes referred to as “kneecapping”. Between 2017 and 14 October 2025, while 256 people were killed in 15,726 encounters conducted in UP, 10,324 were injured in this manner and 31,960 people were arrested by the Police.⁵¹ This tactic serves as a form of extrajudicial punishment that maims individuals for life but cleverly circumvents the stringent reporting and investigation requirements mandated by the Supreme Court and NHRC for fatal encounters, allowing the practice to continue with even less scrutiny.

The symbiotic relationship between the failure of the CJS and the rise of extrajudicial violence creates a dangerous feedback loop. The inefficiency of the formal system creates a public demand for informal, violent solutions. The police deliver these solutions through encounters, which are then justified as a necessary response to the

https://www.commoncause.in/uploadimage/page/Status_of_Policing_in_India_Report_2019_by_Common_Cause_and_CSIDS.pdf (last visited on Nov. 3, 2025).

⁴⁹ The Constitution of India, 1950, arts. 14 & 21.

⁵⁰ Nearly 37% of Those Killed in Encounters by UP Police in Past 3 Years Are Muslims” The Economic Times, Aug. 6, 2020, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/nearly-37-of-those-killed-in-encounters-by-up-police-in-past-3-years-are-muslims/articleshow/77511147.cms> (last visited on Nov. 3, 2025).

⁵¹ “Over 15,000 Police Encounters Since 2017: 256 ‘Hardened Criminals’ Eliminated, 31,960 Criminals Arrested in Uttar Pradesh” The Hindu, Feb. 25, 2024, available at: <https://www.thehindu.com/news/national/uttar-pradesh/over-15000-police-encounters-since-2017-256-hardened-criminals-eliminated-31960-criminals-arrested-in-uttar-pradesh/article70162995.ece> (last visited on Nov. 3, 2025).

broken system. However, this reliance on extra-legal methods further erodes the legitimacy and functionality of the CJS, making it appear redundant and diverting focus from essential reforms like improving investigation and prosecution. In this vicious cycle, the failure of the formal system legitimizes the informal, and the practice of the informal ensures the continued decay of the formal. They are not two opposing forces, but two sides of the same coin of state failure.

5.4. Voices from the Ground: Testimonies of Victims' Families and Police Perspectives

To fully comprehend the impact of encounter killings, it is essential to move beyond legal and statistical analysis and listen to the voices of those directly affected. The testimonies of victims' families paint a harrowing picture of grief, trauma, and a desperate, often futile, search for justice. Families consistently allege that their loved ones were not killed in spontaneous confrontations but were abducted from their homes or workplaces and executed in cold blood. Nandlal Rajbhar, whose son Mukesh was killed in an encounter in Uttar Pradesh, claimed that local police picked his son up from another city, brought him to the encounter site, and killed him.⁵²

These families often face immense pressure and intimidation from the police. There are reports of police insisting on the cremation of bodies, even when it goes against the family's religious customs, in an apparent attempt to destroy forensic evidence. In some instances, police have refused to hand over the bodies to the families for last rites, an act of profound cruelty that denies them closure and violates their fundamental rights. Survivors of "half-encounters" and their families live in constant fear of further reprisal. As one victim stated, "At least I am alive now. If I seek action against the police, they will definitely kill me".⁵³ This pervasive fear silences dissent and obstructs the path to justice, leaving families with a lingering sense of pain and helplessness, encapsulated by one victim's brother: "We were devastated. We were sure the lower court wouldn't have been able to get us justice. The police would have killed him in an encounter later. At least he breathes now."⁵⁴

On the other side of the divide, the perspectives of police officers, gleaned from memoirs and interviews, reveal a complex mix of motivations. Memoirs like *Police Encounters* by Medha Telang, based on the experiences of a CID Inspector, often portray officers as dedicated individuals working with a mission to bring criminals to book through resilience and guts.⁵⁵ Interviews with retired police chiefs, such as former Mumbai Police Commissioner D. Sivanandan, shed light on the immense pressure they faced to clean up the city's mafia. When asked if the clean-up was achieved through encounters, he acknowledged the context of a rampant underworld and the need for decisive action.⁵⁶ These accounts often highlight the difficult conditions, political interference, and the perception that they are fighting a war against organized crime

⁵² Nandlal Rajbhar (father of Mukesh Rajbhar), quoted in Saurav Das, "Extrajudicial Killings May Be Frequent in India's Most Populous State" *New Lines Magazine* (Aug 5 2024), available at: <https://newlinesmag.com/reportage/extrajudicial-killings-may-be-frequent-in-indias-most-populous-state/> (last visited Nov 3 2025).

⁵³ "Extrajudicial Killings May Be Frequent in India's Most Populous State" *New Lines Magazine* (Aug 5 2024), available at: <https://newlinesmag.com/reportage/extrajudicial-killings-may-be-frequent-in-indias-most-populous-state/> (last visited Nov 3 2025).

⁵⁴ *Ibid.*

⁵⁵ Medha Telang, *Police Encounters: Unforgettable Crimes* (Notion Press, Chennai, 2021).

⁵⁶ "Police Bosses Shoot Down 'Encounter Heroes'" *The Times of India*, June 27, 2005, available at: <https://timesofindia.indiatimes.com/home/sunday-times/deep-focus/police-bosses-shoot-down-encounter-heroes/articleshow/1110574.cms> (last visited on Nov. 3, 2025)

where the conventional rules of the justice system are inadequate. While these perspectives do not legally justify extrajudicial actions, they provide crucial insight into the institutional culture and the rationalizations that allow the practice of encounter killings to persist.

6. Institutional Oversight and the Crisis of Accountability

The persistence of encounter killings in India is inextricably linked to a profound crisis of accountability, where the institutions designed to act as checks on police power have proven to be largely ineffective. Despite a framework of legal and constitutional safeguards, the mechanisms for oversight and redress have been systematically weakened by a lack of political will, institutional inertia, and a pervasive culture of impunity.

6.1. The Role and Efficacy of the National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC), established in 1993, stands as the country's premier institution for the protection of human rights. From its early days, the NHRC recognized the grave threat posed by encounter killings. In 1997, under the chairmanship of Justice M.N. Venkatachaliah, it issued a set of guidelines⁵⁷ mandating that all deaths in police action be reported to the Commission, and that magisterial inquiries be conducted in every case. These guidelines were a precursor to the more detailed mandate later issued by the Supreme Court. The NHRC serves as a crucial repository of data on encounter killings. According to information provided by the Union Home Ministry, a total of 813 cases of death in police encounters were registered across the country in the six years between April 2016 and March 2022.⁵⁸ This data reveals that the problem is not uniform but is concentrated in certain states, which have become notorious hotspots for such killings.

Despite its important role in monitoring and data collection, the NHRC's effectiveness in ensuring accountability is severely constrained. Its powers are largely recommendatory; it can investigate and suggest action, but it cannot enforce its own orders or prosecute delinquent officials.⁵⁹ This "toothless" nature is reflected in its own statistics. In a startling disclosure, the NHRC reported that between its inception in 1993 and 2010, it had investigated 1,846 cases of encounter deaths but found only 27 to be "fake" or unjustified.⁶⁰ This incredibly low figure, representing just 1.5% of cases, raises serious questions about the Commission's investigative rigour and its willingness to challenge the official police narrative, thereby undermining its credibility as an effective watchdog.

6.2. A Comparative Lens: Police Oversight Mechanisms in the UK, South Africa, and Australia

A comparative analysis of police oversight mechanisms in other democratic, common law jurisdictions highlights the structural deficiencies in the Indian system. These countries have moved towards creating genuinely independent bodies to investigate complaints against the police, a feature that is critically absent in India.

⁵⁷ National Human Rights Commission, Guidelines on Encounter Deaths (1997), revised (2010).

⁵⁸ Ministry of Home Affairs, Government of India, "Data on Police Encounters in the Country" (Mar. 23, 2022), available at: <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2022-pdfs/RS23032022/2287.pdf> (last visited on Nov. 3, 2025).

⁵⁹ Aditi Ganesh Patnuskar, Asma Athar Lokhande, et.al., "Role of the National Human Rights Commission in Addressing Human Rights Violations" 3 International Journal of Emerging Technologies and Innovative Research (IJETIR) (Dec. 2023).

⁶⁰ Sudha Ramalingam and R.S. Akila, "The Right To Life Endangered", 6 Socio-Legal Review 150 (2010).

- **United Kingdom:** The police accountability framework in the UK is built on a tripartite system of governance involving the Home Office, local Police and Crime Commissioners (PCCs), and Chief Constables.⁶¹ Crucially, serious complaints and incidents, including deaths following police contact, are investigated by the **Independent Office for Police Conduct (IOPC)**. The IOPC is a non-departmental public body, structurally independent from the police, which aims to build public confidence through transparent and impartial investigations.⁶²
- **South Africa:** As part of its transition from apartheid to democracy, South Africa established the **Independent Police Investigative Directorate (IPID)** in 1997. The IPID is an independent body mandated to conduct impartial investigations into serious criminal offences allegedly committed by members of the South African Police Service (SAPS) and Municipal Police Services, including deaths in police custody or as a result of police action.⁶³ Its creation underscores the principle that a democratic state requires a police force that is accountable to an external, independent authority, not just to itself.
- **Australia:** Australia employs a multi-layered oversight system, with bodies like state Ombudsmen and specific Crime and Corruption Commissions. The legal framework, such as the *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)*⁶⁴, statutorily requires that any force used by police must be “reasonable, necessary, and proportionate” to the situation⁶⁵. Also, *Law Enforcement Conduct Commission Act 2016 (NSW)*⁶⁶ creates an oversight mechanism to check and balance the powers conferred to the law enforcement officers by the *Law Enforcement (Powers and Responsibilities) Act 2002*. While there is no single national oversight body, the emphasis is on external scrutiny and adherence to clear legal standards.

The key takeaway from this comparative analysis is the international consensus on the necessity of structural independence for police oversight. In India, the *PUC*L guidelines mandate investigation by the CID or police from another station. While this is an improvement over an internal inquiry, it still involves police investigating police. Magisterial inquiries are conducted by the executive magistracy, which is part of the government administration, not an independent judicial body. This lack of a truly independent investigative agency is a fundamental flaw in the Indian accountability framework, allowing for bias and collusion to persist.

6.3. The Path Not Taken: Analysing Decades of Police Reform Recommendations

The current crisis of accountability is not due to a lack of knowledge about what needs to be done, but a persistent and systemic failure to act. For over four decades, a series of high-level committees and commissions have submitted comprehensive reports with

⁶¹ Ercan Balcıoğlu and Erkan Pala, “Police Accountability System in England and Wales” 18 *Journal of Sociological Research* 35 (2015)

⁶² “Independent Office for Police Conduct (IOPC)” Wikipedia, available at: https://en.wikipedia.org/wiki/Independent_Office_for_Police_Conduct (last visited on Nov. 3, 2025).

⁶³ “Independent Police Investigative Directorate” Wikipedia, available at: https://en.wikipedia.org/wiki/Independent_Police_Investigative_Directorate (last visited on Nov. 3, 2025).

⁶⁴ Law Enforcement (Powers and Responsibilities) Act 2002 (Act No. 103 of 2002, NSW Government)

⁶⁵ Law Enforcement (Powers and Responsibilities) Act 2002 (Act No. 103 of 2002, NSW Government), Australia, ss. 230 & 231

⁶⁶ Law Enforcement Conduct Commission Act 2016 (Act No. 61 of 2016, NSW Government), Australia.

detailed recommendations for police reform, yet these reports have largely gathered dust on government shelves.

- **The National Police Commission (NPC), 1979-81⁶⁷:** This was the first and most comprehensive post-independence review of the police system. Its eight reports made wide-ranging recommendations, the most critical of which was to insulate the police from extraneous political pressure. It proposed the establishment of State Security Commissions to lay down broad policy guidelines and evaluate police performance, and recommended fixed tenures for Police Chiefs to prevent their arbitrary removal by political masters.
- **Subsequent Committees:** The recommendations of the NPC were endorsed and built upon by subsequent bodies, including the Ribeiro Committee (1998)⁶⁸ and the Padmanabhaiah Committee (2000)⁶⁹. The Soli Sorabjee Committee went a step further and drafted a **Model Police Act in 2006⁷⁰** to replace the archaic 1861 Act, providing a modern legislative framework for a democratic and accountable police service.

The consistent failure of successive governments to implement these crucial reforms led to the landmark Supreme Court judgment in *Prakash Singh v. Union of India*⁷¹ (2006). In this case, the Court, losing patience with executive inaction, issued seven binding directions to the central and state governments, which included setting up State Security Commissions, Police Establishment Boards, and Police Complaints Authorities, thereby giving judicial force to the core recommendations of the reform committees.

Even this direct judicial mandate has been met with apathy and resistance. Many states have either not complied or have enacted laws that dilute the spirit of the Supreme Court's directions, creating accountability bodies that lack genuine independence and power. This decades-long saga of aborted reform demonstrates a deep-seated political and bureaucratic resistance to creating a police force that is professional, autonomous, and accountable to the rule of law rather than to its political patrons. The culture of encounter killings is a direct and deadly consequence of this deliberate choice to preserve the status quo.

7. Conclusion and Recommendations

7.1. Synthesising the Findings: Re-evaluating the Hypotheses

This research has traversed the complex and contentious landscape of police encounter killings in India, examining the phenomenon through historical, legal, sociological, and comparative lenses. The analysis confirms the hypotheses set forth at the outset. The prevalence of encounter killings is not merely a consequence of rogue officers but is deeply correlated with the systemic failures of the Indian criminal justice system and a profound lack of political will to implement foundational police reforms (**H1**). The slow pace of justice, low conviction rates, and a police architecture designed for colonial repression have created a fertile ground for extra-legal methods to take root and flourish. Furthermore, the evidence strongly supports the conclusion that existing legal and institutional accountability mechanisms, though robust on paper, are systematically subverted and rendered ineffective in practice. The powerful judicial mandate in *PUC*

⁶⁷ National Police Commission, *First Report* (Govt. of India, 1979)

⁶⁸ *Report of the Ribeiro Committee on Police Reforms* (1998)

⁶⁹ *Report of the Padmanabhaiah Committee on Police Reforms* (2000).

⁷⁰ Soli Sorabjee Committee, *Model Police Act* (2006).

⁷¹ *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

v. *State of Maharashtra*⁷² is frequently sidestepped through procedural manipulation. The NHRC, despite its crucial monitoring role, lacks the enforcement power to ensure compliance. The formidable shield of prior sanction for prosecution under Section 218 BNSS⁷³, combined with a pervasive culture of police impunity and political patronage, ensures that officers who engage in such acts rarely face legal consequences.

The narrative of encounter killings as a “necessary evil” is thus exposed as a misleading justification for state lawlessness. Lawful police encounters are necessary in order to protect the life and limb of the police officials and public at large, law and order in the society and to secure the implementation of the law but can't be a narrative that preys on public frustration to legitimize the actions of an “unruly horse”, an unaccountable police force that tramples upon the fundamental rights to life, dignity, and due process (H2). This creates a vicious cycle where the failure of the formal system is used to justify informal violence, and the practice of this violence ensures the continued decay and irrelevance of the formal system. Encounter killings are, therefore, not a solution to the problem of crime; they are a symptom of a deeper constitutional and governance crisis.

7.2. Towards a Rights-Based Policing Model: Recommendations for Legislative, Judicial, and Institutional Reform

Addressing the deep-seated problem of encounter killings requires a holistic and multi-pronged approach that goes beyond mere condemnation and focuses on structural transformation. The following recommendations are proposed to build a policing model that is accountable, professional, and aligned with the principles of a democratic, rights-based society.

A. Legislative and Policy Reform

1. **Enact a New Police Act:** The Central and State governments must demonstrate the political will to repeal the archaic Police Act of 1861 and enact new legislation based on the Model Police Act, 2006⁷⁴. This new law should statutorily establish mechanisms for police autonomy in investigations and internal administration while ensuring accountability to the law.
2. **Ratify UNCAT and Enact Anti-Torture Law:** India must immediately ratify the UN Convention Against Torture (UNCAT)⁷⁵ and enact a strong, standalone domestic law against torture that criminalizes custodial violence and provides for stringent punishment. This would break the link between custodial torture and staged encounters.
3. **Amend Procedural Laws:**
 - **Section 218 BNSS:** Though under this section a maximum time-period of 120 days have been provided to grant sanction or refuse to grant it, failing which it shall be deemed that the sanction has been granted which is an improvement over earlier provision provided under Section 197 of CrPC, this section should be amended to clarify that prior sanction is not required for prosecuting public servants in cases of custodial death, torture, rape, or extrajudicial killings, as such acts can never be considered part of their official duty.

⁷² *People's Union for Civil Liberties v. State of Maharashtra*, (2014) 10 SCC 635.

⁷³ The Bharatiya Nagarik Suraksha Sanhita, 2023, s. 218.

⁷⁴ Soli Sorabjee Committee, *Model Police Act* (2006)

⁷⁵ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. Res. 39/46, UN Doc. A/39/51 (1984) (Entered into force 1987).

- **Section 173 BNSS:** An amendment should be made to mandate the registration of an FIR against police officers in every instance of a death or grievous injury resulting from police action, as a default procedure.
- **Bharatiya Sakshya Adhiniyam, 2023:** The law should be reviewed to strengthen safeguards against coerced confessions and ensure that evidence collection adheres to strict scientific and legal standards, reducing reliance on force.

B. Institutional Reform

1. **Establish Independent Police Complaints Authorities (IPCA):** In line with the *Prakash Singh*⁷⁶ directives and drawing from international models like South Africa's IPID, genuinely independent Police Complaints Authorities must be established at the state and district levels. These bodies must have:
 - **Structural Independence:** Members should not be serving or recently retired police officers or bureaucrats. The selection process should be transparent and involve the judiciary, opposition, and civil society.
 - **Investigative Powers:** IPCAs must have their own team of investigators and forensic experts, independent of the police force.
 - **Power to Prosecute:** They should have the power to directly file chargesheets in court against delinquent officers, bypassing the need for government sanction.
2. **Implement Police Reform Directives:** The seven directives of the Supreme Court in *Prakash Singh v. Union of India*⁷⁷ must be implemented in letter and spirit by all states. This includes the establishment of State Security Commissions to insulate police from political interference and Police Establishment Boards to manage postings and transfers based on merit and tenure.
3. **Strengthen the NHRC:** The Protection of Human Rights Act, 1993, should be amended to grant the NHRC binding powers and the authority to initiate prosecutions. Its investigative wing should be significantly strengthened and made more independent.

C. Judicial Action

1. **Strict Monitoring of PUCL Guidelines:** The Supreme Court and High Courts must create a mechanism for the proactive and continuous monitoring of the implementation of the 16-point *PUCL* guidelines⁷⁸. Strict contempt of court proceedings should be initiated against state governments and police chiefs who fail to comply.
2. **Specialized Courts:** The judiciary should consider designating special fast-track courts to exclusively try cases of alleged fake encounters and custodial deaths to ensure swift justice and combat trial delays.
3. **Zero Tolerance for Procedural Lapses:** Trial courts must be vigilant in enforcing the *PUCL* guidelines, including ensuring that an FIR is registered against the police in every case of an encounter death and rejecting police closure reports that are based on flawed or one-sided investigations.

D. Police Training and Cultural Reform

1. **Overhaul Training Curricula:** Police training modules must be fundamentally reformed to shift the focus from a culture of force and coercion to one of service and rights protection. Training must emphasize human rights, constitutional law, de-escalation techniques, and community policing.

⁷⁶ *Prakash Singh v. Union of India*, (2006) 8 SCC 1.

⁷⁷ *Ibid.*

⁷⁸ *People's Union for Civil Liberties v. State of Maharashtra*, (2014) 10 SCC 635.

2. **Promote Scientific Investigation:** There must be a massive investment in forensic infrastructure and training for police in modern, scientific methods of investigation. This will reduce the reliance on confessions, often extracted through torture, as the primary form of evidence.
3. **End the Glorification of Violence:** The practice of giving out-of-turn promotions and gallantry awards for encounter killings must be stopped immediately and permanently. Performance metrics for police should be based on their ability to uphold the rule of law, prevent crime through community engagement, and secure convictions through professional investigation, not on the number of criminals they eliminate.

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