

## “Analysis of the factors causing encounter killings with special reference to India.”

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### Abstract

Harassment by Police officials or police brutality is considered as more serious as crimes are done by the people controlling crimes (Harmon, 1972). Ironically, they tend to adopt these means of abuse of power or are encouraged to conduct encounter killings to maintain law and curb the rate of crime from increasing yearly. In an encounter killing the primary alibi is the right of private defence. The provisions do not distinguish between the kind of force either fatal or non-fatal that can be used. The recent guidelines of the National Human Rights Commission, India and the Supreme Court of India refer to the procedure to be followed immediately before the encounter (as soon as the tip-off is received) and after the encounter has occurred. The research paper attempts to look into the history of encounter killings and analyse the factors which empower the state to conduct an encounter killing. The paper is doctrinal.

**Keywords:** India, Police Brutality, Abuse of power, Encounter killings, Private defence, Reasonable force

### 1. Introduction

Encounters are the indiscriminate killings of people where encounter uses terror as a weapon for governing the state and erode the essence of democracy which is the strong point of the functioning of a state (Mander, 2004). Encounter killings are recently used as a euphemism to describe extrajudicial killings by the police force in a setup encounter where accused persons are killed under the garb of power to arrest and right to private defence (Ramalingam & Akila, 2010).

The Extra Judicial Execution Victim Families Association; a trust whose members are mothers and wives of people who have allegedly been unlawfully executed by the security forces in Manipur and by the Manipur Police filed a writ petition in 2012. Another agency named ‘Human Rights Alert’ which claims to be a registered trust acts as petitioner number 2 in this case. These petitioners have listed out 1528 cases of extra-judicial executions committed in cold blood after being tortured by the Security and Police forces in Manipur. The same list was produced before the United Nations Special Rapporteur on Extra-Judicial, Summary or Arbitrary Execution when he was on a visit to India in 2012. Out of 1528 cases of extrajudicial execution; the petitioners have made elaborate documentation of 62 cases and amongst the 52 cases; 10 cases have eyewitnesses stating the account of the extra-judicial killings. At times, due to the use of excessive force the police tend to cause the death of the accused/victim, this is called an encounter killing or extra-judicial killing (*Extra Judicial Execution Victim Families Association v. Union of India, 2016*).

#### 1.1. History of Encounter Killings in India

Encounter Killings are not new to India as many states have been dealing with encounter killings for decades. They have been an insidious problem. States like Punjab, Gujarat, Maharashtra and Andhra Pradesh have been suffering from the problem of encounter killings since a long time.

The Armed Forces Special Power (Ordinance) was passed on August 15, 1942, by the then Viceroy of India; Lord Linlithgow in order to restrain the Quit India Movement. This movement was launched by Mahatma Gandhi; father of the nation against British Rule. The Ordinance allowed only the officers of the army who were not below the rank of a captain to use necessary force including the causing of death when he does not stop when challenged by the concerned officer. This is the first reflection of extra-judicial execution where the Britishers have permitted the execution of non-violent protesters. Later the ordinance paved way for the Armed Forces (Special Power) Act, 1948 (Commission, 2018).

For almost four decades Telangana has been facing the trauma of encounter killings due to both state authorities and radical political agencies. The part of Telangana; prior to its separation from Andhra Pradesh has been subjected to explosions, encounters, killings of people who are allegedly police informers. The constant existence of violence and killing reduces the trust people place in their own democracy. In Telangana, the then Andhra Pradesh; in the 1960s encounters were used as a means to suppress the tribal movement of the human rights activists and the peasants of the Srikakulam struggle. Numerous leaders involved in this activism struggle were killed in encounters which were allegedly fake. The 'Organization for the Protection of Democratic Rights' and the 'Civil Liberties Committee' have documented the encounter killings of around 300 political activists during the period of emergency i.e. (1975 to 1977). In the past, the security forces and the police have used encounter killings as a means to combat insurgencies in both 1960s and 1980s in Bengal in Punjab respectively (Pillai, 2019).

The 1980's and 1990's also did not bring an end to encounter killings. Two members of a political party were arrested during the span of two days but not produced before the magistrate. Soon after the arrest, they were found to be killed. Between 1998 and 2005 there were approximately 17 political, most of them belonging to a certain political party. In 2008 encounter killing was used to dish out 'instant justice' on accused/s of acid attack (Minute, 2019). Between 2000 and 2001, 350 lives were lost in police encounters and almost 310 due to Naxalite activities (Mander, 2004).

During the same period between 1984 to 1995 post, the assassination of Prime Minister Mrs. Indira Gandhi, many ruthless operations took place in Punjab with the main aim of countering insurgency. The operation included measures like enforced disappearances, torture, arbitrary detentions and extrajudicial killings which resulted in 6000 secret cremations in a single district of Punjab (Raj A, 2019).

In Maharashtra, the gang rivalries have been well known. Therefore, the Police of Maharashtra has been known to use encounter killings in order to control the organized crimes committed by these gangs. Hence, Maharashtra is the first Indian state to introduce 'encounter killings' as a technique for policing and has mastered this technique over a period of time. The first-ever 'recognized encounter killing' in the country is of Manya Surve which took place on 11<sup>th</sup> January 1982 (Panigrahi, 2012).

## **2. Factors causing Encounter Killings**

In India numerous factors have furthered the increasing frequency of encounters killings. These factors are majorly indicative of the unsolicited police policy used by the officials under the concealment of police practices. The factors also help in understanding how a phenomenon like encounter killings remain unquestioned in a democratic country like India. The factors are mentioned below:

### **2.1.Social Good**

As per police officers, social good occurs when while attempting to arrest a criminal (who is allegedly wanted for murders but is either acquitted or released earlier than his years of imprisonment); then rather than going through the effort of arresting the accused the police prefer to kill him. The police claim that they commit the encounter keeping the interest and safety of the society in mind (Belur, 2007). The police officers also believe that the encounters are conducted to establish the supremacy and superiority of the police officials.

### **2.2.Immediate impact on gang activities resulting in crime control**

It was opined by some police officers that encounter had an instantaneous impact on the criminal activities of gangs operating in the city (Shah & Ganguly, 2009). The police officers are staunch believers that encounter had a deterrent impact on employment, and the movement of gang members within the city (Shekhar, 2018). This reassures the citizens of the state that the law and order is prevalent in the society and sends a warning to the criminals that police are also taking an aggressive step towards controlling crime. However, there are no proofs to prove the same.

### **2.3.Overburdened Criminal Justice System**

The right to a speedy trial is considered as a part of right to personal liberty and right to life under article 21 of the constitution of India (Gupta & Gupta, 2020). The judiciary in India is heavily overburdened with a massive stockpile of pending cases. Currently, 66,072 cases are pending in the Supreme Court of India as on 01.02.2021 (Supreme Court of India, 2021). 3,74,90,60 cases are pending in the District and Taluka Courts of India as on 14/02/2021 (National Judicial Data Grid, 2021). Even the fast-track courts in India have not been able to deliver the very purpose that they were established for. A total of 26,965 cases of the Indian Penal Code (IPC) and Special and Local Laws (SLL) have been disposed of by various courts in 2019 (National Crime Records Bureau & Ministry of Home Affairs, 2020). The time duration taken by the fast-track courts to undertake the trial of these cases were between less than a month to more than ten years. Though the number of cases disposed of by the fast-track courts is impressive but the duration taken to conduct trials for ten years does not suffice the purpose of the court being a fast-track court.

The primary reason for the fast-track court to be overburdened or to have stopped functioning all together is the lack of funds. The 11<sup>th</sup> Finance Commission allocated Rs. 502.90 crores for the duration 2000-01 to 2004-05 for the establishment of fast-track courts across India (Commission, 2000). The 12<sup>th</sup> Finance Commission was established for the duration 2005-10; before which an affidavit was filed questioning the continuity of the scheme establishing fast track courts (Commission, 2004). It was found that approximately 82 crore rupees were lying unspent with the Central Government.

This raised a very pertinent question whether the state can wash their hands of their responsibility of setting up/continuing the functioning of fast-track courts instead of fulfilling its constitutional requirements on the basis of monetary restrains or any other reason. An efficient and independent system of judiciary is a tenet of the constitution and if the state is unable to provide that due to lack of judges, then the efficacy of the justice delivery system is questioned; hampers the dispensation of justice and also subverts the basic structure. The court laid down that the states must incur the cost of the expense on the administration on their own and if needed can seek the assistance of the Union of India or the Finance Commission (*All India Judges' Association and Ors. v. Union of India and Ors.*, 2002).

The Supreme Court, while concurring with the judgement endorsed the position of the Central Government clarifying that the continuation of the fast-track courts is under the authority of the state and the state only can decide whether to continue with the fast-track courts or not, with their funds (*Brij Mohan Lal v. Union of India*, 2005). The 14<sup>th</sup> Finance Commission has proposed establishing 1800 courts and also monetary aid to enable the process.

In general, the humongous amount of pendency of cases in all courts are a) the filing of new but frivolous cases b) seeking of adjournments by the advocates; c) understaffed d) infrastructure issues among others. The Covid-19 pandemic compelled the world to work from home including the court hearing to be done online. Here also when a matter was to be heard online especially the cross-examinations the consent of advocates representing both parties was to be taken and some of the advocates still chose to not give their consent. This entails that even during a time when the logistic issues are almost nil; then also pendency continues.

Therefore, it is clear that the police officers are reluctant to add more cases to the exhausting functioning of the criminal justice system and increase the burden. It also puts a severe toll on the prevailing limited resources and workforce. Moreover, currently, there are only 193 police officers per lakh citizens (Mangla & Kapoor, 2020). According to United Nations, there must be 222 police officers for every one lakh citizens (Network, 2010). This is another reason why police officers do not tend to increase the caseload.

### **2.4.Personal Glory**

Indian television and the movies made on the concept of encounter killings like ‘Encounter Shankar’, ‘Ab Tak Chappan’ among others have glorified many trigger-happy cops. Even the print media has left no stone unturned to ensure that these cops get their share of glory. There are several names of Police Officers which have been tagged as ‘Encounter Specialist’ as the number of encounters conducted by them is very high. These officers undoubtedly leave a bad precedent as they are ones meant to prevent the law from being violated but think of themselves to be above the same law and indirectly question the civility of the nation (Noorani & S.A.H.R.D.C, 2012).

#### **2.4.1.Daya Nayak, No. of Hits: 83, State: Maharashtra**

During his term Mr. Nayak had the attitude of a Commissioner, boasting of six mobile phones, at a time when affording one was out of question for common people. He had a list of numbers of people leading the underworld and operated with the help of confidential informants. These informants gave the updates on the

whereabouts of the underworld boss and helped in planning and executing encounters. These encounters were so perfectly planned that they left no space for questioning the validity of the same (Kopikkar et al., 2007).

#### **2.4.2. Brij Lal, No. of Hits 100, State: Uttar Pradesh**

Additional DGP Brij Lal still figures among Uttar Pradesh's top encounter. His most talked-about stint was as Senior Superintendent of Police of Meerut between 1991 and 1993 when he set a record of 53 encounters. His most exciting encounter was one where he chose to act as a decoy and become part of a 'fake' marriage party to put down Haryana gangster Tej Pal Gujjar in Bulandshahar (Kopikkar et al., 2007).

#### **2.4.3. Rajbir Singh, No. of Hits: 100, State: Delhi**

Rajbir Singh has worn the title of 'encounter specialist' for ten years. He has at least 100 encounters to his name, including some of the most talked-about encounters conducted by Delhi police including the encounter of certain members of the Gujjar Gang. Having acquired a reputation as an anti-terror expert, he was trained abroad twice for the same. Despite this entire body of questionable work, he was awarded the President's Medal for Gallantry and the Indian Police Medal for Meritorious Service (Kopikkar et al., 2007).

#### **2.5. Internal Investigation and Judicial System**

There is a plethora of factors that encourage encounter killings. The impunity that the security forces and police officers enjoy, the shortcomings of the judicial system and the lack of internal investigation are some of the prominent factors.

Between 2003 and 2007 approximately 2 lakh 82 thousand complaints were filed against police violations but only 28% were given an inquiry of any kind, either a departmental, judicial or magisterial (Belur, 2007).

Even when a judicial decision is awarded the time taken to execute the order makes the judgement futile. For example, in 2006 it was instructed by the Supreme Court that a 'Special Complaints Authorities' a.k.a. PCAs was to be created by every state to deal with complaints against police officers. Barely a handful of states had established the same and even those who did so failed to conform to the procedural requirements laid down by the court.

#### **2.6. Rewards**

When a police officer is rewarded for conducting encounter killings it encourages him to conduct more encounters as per human rights activists (Ramakrishnan, 2009). Every law enforcement officer and a police officer is rewarded in the form of money or given an out-of-turn promotion or both. Usually, monetary rewards are given in cases where information about a dacoit is given to the police but practically these rewards are given when the dacoit is killed by the police party. For example, a dacoit named Pratap Gadaria was killed in Chambal and the police party was awarded over 14 lakh Rs. for eradicating an entire team of dacoits (Network, 2008). Furthermore, human rights activists believe that the police officers do not let a dacoit surrender himself and wait to conduct an encounter until the prize money grows many folds.

Recently, the Azamgarh police killed a listed criminal on whom there was a reward of Rs. 1 lakh as announced by the government. Criminal Suryansh Dubey was killed in the encounter in Sherwa village of Azamgarh which was confirmed by Deputy Inspector General of Police; Subhash Dubey. Suryansh Dubey had alleged committed murders of a gram Pradhan and another person last year among other crimes. Some other police officers were injured in the concerned encounter, but after the encounter took place another 2 lakh Rs. were added to the main reward cost which will be given to the police team which was engaged in the encounter.

No police officer will be given instant gallantry awards or out-of-turn promotions after the occurrence of the encounter (*P.U.C.L. v. State of Maharashtra, 2014*). It is imperative that; the gallantry award or the promotion must be given only after the gallantry of the team/the officer concerned is absolutely established. Even after the judgement there seems to be no change in the system.

#### **2.7. Intimidation and Harassment of the family members**

Intimidating or harassing a family member of the secondary victim or the eye witness of the encounter (if any) after the encounter killing; which adds to the prevalence of encounter killings. The international non-governmental organization 'Human Rights Watch' has pointed out that there are chances of the victim's family being intimidated by the police officers as the FIR may have to be registered at the very police station where the abuse had occurred or the same police officer is stationed at the very police station.

Raj Narain was a physically challenged farmer who was killed in a fake police encounter wherein after the encounter the family of the primary victim was incessantly harassed by the police even though they pursued the

case for 15 years. The villagers in which the victim lived with his family have also complained about harassment. They mentioned that the police would not let them go in and out of the village to avoid them taking any documents related to the encounter outside the village. The police inspectors involved in this encounter were given life sentences on September 12, 2017(Singh, 2007).

In another instance, two of the breadwinning members of the family killed in an encounter and a few others picked up by the police with no plausible explanation in Aligarh; the remaining family has been put under house arrest. The family also claimed sexual harassment at the hands of the police officers deployed outside their house after the incident. The incident occurred on 20<sup>th</sup> September 2018 where two youth were shot dead in a controversial encounter wherein journalists were invited to cover the occurrence live (Anwar, 2018).

In Pilibhit, Punjab, six people were killed in encounters conducted in a single night. The families allege that not only they had to bear the brunt of their family member passing away in fake encounters they were also harassed by Punjab Police over charges of keeping illegal weapons. The family members also claimed physical and mental harassment at the hand of the police for which they even asked for help from the Punjab government but they didn't receive any. Balwinder Kaur a secondary victim from one of the families mentions that the fake encounters caused them to be tagged as terrorists and harassed by the police officers while being questioned for the weapons. The families took 25 years to prove their own and their deceased family member's innocence (Brar, 2020).

### **2.8.Fabrication of Evidence**

The ease with which a police officer can manipulate or fabricate the evidence collected in encounter killings makes it easier to prove a fake encounter as a genuine encounter; making them more prevalent. The encounter in 1997 conducted at Connaught Place provides an example of police impunity. The entire team of 9 police officers were found guilty of fabricating false evidence under Section 193 of the Indian Penal Code, 1860 (*Indian Penal Code*, 1860). The police officers allegedly accused of conducting the encounter were found guilty of planting evidence in the car. They were also found guilty of bringing fake evidence like bullets and pistol to the location where the encounter was conducted.

The Connaught Place encounter also brings forth another flaw in the system. It indicates how easily the police forensic experts can manipulate evidence. A former Principal Scientific Officer working at the Central Forensic Science Laboratory was found guilty of testifying falsely and fabricating evidence to match his testimony to prevent police officers involved in that encounter (Garg, 2007).

### **2.9.Private Defence**

Article 30 of the Universal Declaration of Human Rights entails that none of the provisions of this declaration should be interpreted as if they are implying any authority, state, people or group of people to destruct any rights or freedoms to carry out any activity (Commission, 2016). Private defence is a standard alibi for police officers when an encounter killing takes place. The judicial precedents have described that no citizen or police officers can use excessive force to kill another person. No person has an unsanctioned right to deprive another person of his right to life. In an encounter killing, police officers use self-defence as an excuse and commit the killing resultantly violating article 30 of UDHR, which is considered to be the Magna Carta of Human Rights.

If a police officer causes the death of a person, then it may amount to culpable homicide not amounting to murder; if a reasonable justification is provided for causing the death of the person or it may even amount to murder. If a police officer is involved in an encounter killing then the burden of proof lies on him to prove that while he was attempting to arrest the alleged accused; the death was caused under the legitimate use of the right to private defence or was used in proportion to the resistance faced by the officer. But the chain of events that occurred during the encounter and whether appropriate force was used or not can only be ascertained by a proper investigation (Commission, 2011).

There are provisions that empower the state to punish rogue officials. These provisions seem to be futile as such a meagre punishment / such a petty amount of fine for taking the life of a person would not have the desired amount of deterrent effect on the police officers, this can be seen in the glory that the police officials like 'Daya Nayak', 'V.C. Sajjanar', and 'Rajbir Singh' among others enjoy.

### **3. Relationship between Use of force by Police and Reduction of Crime**

The law enforcement agencies like police, the army other special forces play a significant role in maintaining public order and peace in the society. A society with a weak system to ensure law enforcement can ultimately cease to exist (Kargin, 2016). But keeping the balance between the use and abuse of power by the law enforcement agency is a herculean task. Any action conducted by the police officer which falls under the

excessive use of power tends to disturb the tranquillity of the society and impacts the image of the department also.

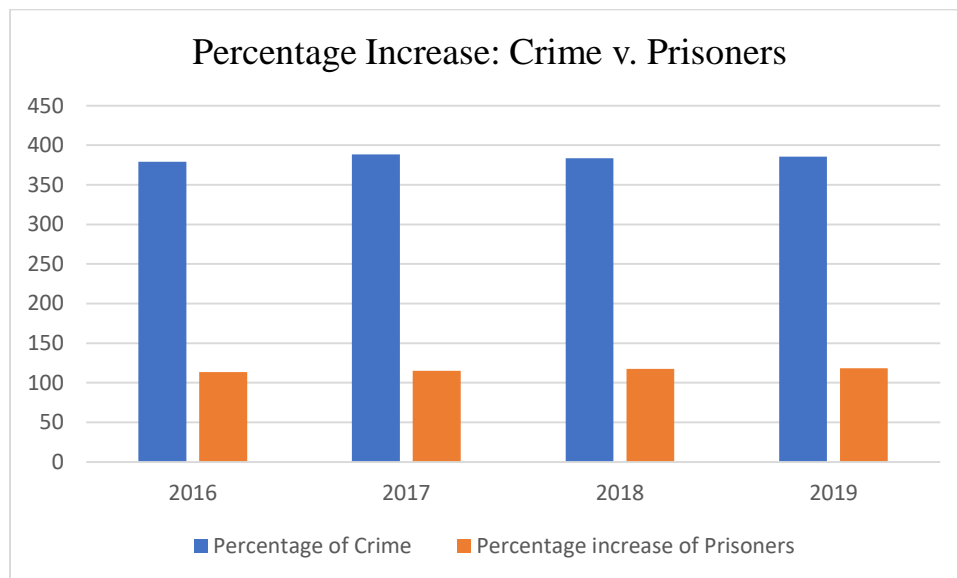
Police are the government agency that is supposed to perform multiple minor and major functions. The minor functions include controlling traffic, assisting the police and maintaining peace. The major is maintaining the law and order in the society and provide security to the citizens of the state (Ministry of Home Affairs, 2021). In order to perform these functions properly, the police are given powers. However, there is no data which establishes a nexus between the increase in the prisoners and decreases in the crime rate in the same year.

**Table-I**

Year	Percentage of Crime	Percentage increase of Prisoners
2016	379.3	113.7
2017	388.6	115.1
2018	383.5	117.6
2019	385.5	118.5

(All data is collected from NCRB Publications Prison

Statistics India and Crimes in India between 2016 to 2019.)



One of the factors of encounter killing is the notion of crime control. Certain Police Officers believe that the rate of crime can be reduced by conducting encounter killing. The table above

describes the percentage increase in crime rate and percentage increases in prisoners yearly from 2016 to 2019. From 2016 to 2017; the crime rate and the percentage of prisoners has increased. This disproves that putting more criminals in prisons would eventually reduce crime. From 2017 to 2018, there is an increase in the number of prisoners and there is a decrease in the crime rate. Even from 2018 to 2019 there is a slight increase in both the crime rate and percentage increase of prisoners. Therefore, the data refute the theory that putting more people in prison will reduce crime or using the same analogy killing more people via encounters will reduce crimes in the country.

#### 4.Parameter of Use of Force

Law enforcement agencies are required to use force but it is both a boon and a bane. It is an integral part of the policing system but it also becomes the cause of problems. The officer must have the knowledge of the amount of (fatal/non-fatal) force and in what circumstances should it be used. The power to arrest is laid down under Section 46 of the Code of Criminal Procedure which empowers the police officer to ensure the arrest by using all the means deemed necessary by the officer apart from death. Under Section 100 of the Indian Penal Code; the police officer can commit the death of a person if there is an imminent threat. The use of excessive

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force or abuse of power by a police force can be deemed to be a failure of the constitution similarly the inability of the police department or the law enforcement agency to train their officers to utilize the correct amount of force can be deemed to be the failure of the department itself (Schatmeier, 2013).

Protecting one’s right to property, liberty and life is the basic right to private defence. Hence, every state is undeniably dutybound to protect the right to life and the right to liberty of every citizen. To fulfil this duty of protecting the basic rights of the citizen’s every state has to rely on its resources and manpower, however, limited they may be which is a herculean task in itself. There is also a duty to maintain the balance between the treatment of undertrial prisoners and the treatment of convicted prisoners. The United Nations has laid down ‘Minimum rules of Treatment of Prisoners’ which mention that the prisoners in jail who are undertrial must be treated in a better manner. But the reality paints a different picture altogether. There are many cases of violence in prison. There is a primary risk of putting the first time/undertrial offenders with the hardened criminals as the first-timers may turn into a hardened criminal themselves.

There is also a risk of prisoners suffering violence. The case of the police officers puncturing the eyes of 80 suspects and then pouring acid in them to make the suspects blind is one of the most scarring incidents on the criminal justice system in India (Khatri v. State of Bihar, (1981).

### 5. Use of Force: Statistical Data

At times, police often use force that is more than required and excessive force is also directed towards a certain type of people. The table below lists the number of encounter killings committed in India as per the Annual reports of the National Human Rights Commission.

**Table-II**

Annual Report No.	Year	No. of Encounter Killings
Twenty-First	April 2013-March 2014	148
Twenty-Second	April 2014-March 2015	162
Twenty-Third	April 2015-March 2016	156
Twenty-Fourth	April 2016-March 2017	178
Twenty-Fifth	April 2017-March 2018	277

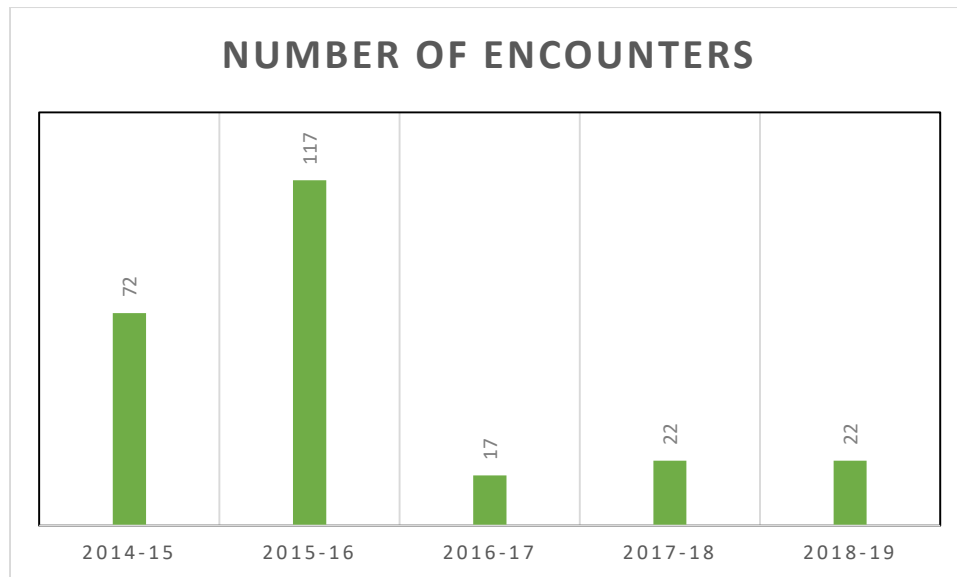
(The data has been collated from various Annual Reports of National Human Rights Commission.)

The data in Table II shows that in the last few years just once the number of cases has reduced i.e., from 162 to 156 cases the entire data shows a constant increase in the number of encounter killings. However, the NCRB Data put up a different picture altogether. Between 2014 to 2019; a total of 250 encounters have been committed across the country. This shows a lot of discrepancy between the data collected by the National Human Rights Commission and the National Crime Records Bureau.

**Table-III**

Year	Number of Encounters
2014-15	72
2015-16	117
2016-17	17
2017-18	22
2018-19	22
(Uptil 20.01.2019) Total	250

(The data collected from Open Government Data Platform India.)



## 6. Conclusion and Suggestions

It can be seen that despite so many laws in functioning regarding, right to private defence, arrest, and appropriate use of force in arrest, the encounters of Vikas Dubey in 2020 and the four accused in Hyderabad in 2019 show the need to amend the laws in order to break the vicious cycle of arrest, firing in private defence and encounter. The following suggestions can be recommended:

- 6.1. Under section 100 and section 101; no police officer should be permitted to cause the death of a person.
- 6.2. The punishment for violating his authority under the police act must be increased so as to have an exemplary deterrence effect on the other police officers.
- 6.3. A guideline laid down by the apex court in (*People's Union for Civil Liberties v. State of Maharashtra*, 2014) mentions that after the police officer receives a tip-off then he must record it, electronically or in the case diary but there is no need to note down the names of the suspect or to where the party is headed. Noting down both these shall help in the inquiry later to confirm:
  - a) the identity of the victim
  - b) his criminal record (if it exists)
  - c) the location where the encounter occurred).

Therefore, the guideline should make it mandatory to note these details.

A separate and independent agency much be created where the secondary victims can go for their protection and seek justice. The Supreme Court has reiterated this recommendation in various judgements. It was upheld that if there is a loss of life in an encounter irrespective of the encounter being genuine or fake; an exhaustive investigation must be conducted preferably by an independent agency like the Central Bureau of Investigation which would provide assurance to the family of the victim/s (*R.S. Sodhi, Advocate v. State of U.P.*, 1994). Even the case of *People's Union for Civil Liberties v. State of Maharashtra*, 2014) lays down a similar guideline.

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