

Brief Communication

Role of Forensic Medicine Expert in Police Encounters

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ABSTRACT

Police encounter is the term used by the Indian Police Service or Indian Military/Paramilitary forces when explaining the death of an individual at their hands who was deemed by them to be a militant or 'subject of interest'. It refers to extra judicial killings or executions not authorised by a court or by the law. Such encounters also go by the name of 'staged encounters', where weapons are planted on or near the dead body to provide a justification for killing the individual. Common reasons given for the discrepancy between records showing that the individual was in custody at the time of his encounter, is that he/she had escaped¹. The police in Indian metro cities have a very high rate when it comes to encounter killings. Since October 1993: 2,560 cases of police encounters have been brought into the notice of National Human Rights Commission (NHRC), of them according to NHRC 1,224 cases have been found fake encounters. It means every second police encounter is fake in the country². Human right activists consider these encounter killings, together with torture by police in lock-ups and custodial deaths, to be gross human right violation. The fact that the dead person had a criminal background that does not give a legal authority to police for such encounters, as the law decide on the basis of evidence of such allegations.

Keywords: Forensic medicine Expert, Police encounter, Postmortem, Human Rights

POLICE ENCOUNTER

Police encounter is a term used by Indian security forces to explain and excuse the death of an individual at their hands. The term was often used during the Punjab insurgency between 1984 and 1995. During this time, Punjab Police officials would often report 'encounters' to local newspapers and to the family members of those killed. The victim was typically a person the police deemed to be a militant, or to be involved in the militant separatist movement, though proof of alleged militant involvement was rarely given. Such encounters have also been referred to as 'staged encounters' or 'fake encounters', as these deaths were often believed to be the result of torture or outright execution. Ultimately, the practice became so common that 'encounter' became synonymous with extrajudicial execution³. The Punjab police specifically targeted the families of suspected militants in encounter killings to punish them⁴. It is alleged that police would typically take a suspected militant into custody without

filing an arrest report. If the suspect died during interrogation, security forces would deny ever taking the person into custody and instead claim that they were killed during an armed encounter⁵. Many Indians believe police would add weapons to the dead body to demonstrate cause for killing the individual, stage managing the encounter, leading to the popular phrase 'fake encounter killing'⁶. They would also concoct a story about militants staging an attack, or the suspect attempting to escape while being escorted to recover militant arms⁷.

A CASE CITED OF ALLAHABAD ZONE

A criminal Bhuwar Nishad was killed in a such alleged encounter by Allahabad UP Police in Ghoorpur area of Allahabad on 20 July 2009. According to eyewitness on the request of relative of Dilip nishad, who was killed by Bhuwar on 25 June 2009, police reached Madaripur village to arrest him. As Bhuwar got the news of police, he ran away in boat towards Ghoorpur village. Relatives of Dilip

followed him on other boat. During this run, one of the person sitting on boat allegedly hit him with blunt hard wooden PATWAR, which caused lacerated wound of scalp. After this struggle, he was caught by police. According to villagers, at the time of arrest of Bhuwar there were no firearm injuries present, only there was massive bleeding from his head (lacerated area). Then he was taken in police jeep with a fake message that he is injured with bullet and they are taking him for the treatment to SRN Hospital. Police left at 12:00 h and reached at 13:45 h. Whereas SRN is only 20 km away. According to villagers police might shot him in the jeep⁸.

In the postmortem report, first injury was due to firearm with an entry wound of 1 cm muscle deep situated on right side of chest 3 cm outwards from right side of the nipple with an exit wound of 2 cm x 2 cm on right side of chest 9 cm below the neck bone. Second injury is also of firearm with an entry wound of 1 cm x 1 cm deep into lung penetrated from back side of right of chest. According to postmortem report, it appears that one bullet from behind and second from back side below shoulder has been shot. Forensic expert opine that two bullets were fired from back. According to postmortem report, third injury is lacerated wound on back side of head 7 cm x 7 cm bone deep with haematoma present. Fourth and fifth injuries are abrasion over right shoulder 2 cm x 9 cm and over left shoulder 10 cm x 2 cm, respectively. Sixth injury is abrasion of 5 cm on right side of front of head. Seventh and eighth injuries are lacerated wound 1 cm x 1 cm bone deep on right side over head and above right ear and 2 cm x 2 cm on left side of head, respectively. According to postmortem report, all above injuries were inflicted before firearm injuries. Forensic expert are of the view that it appears from postmortem report that there was lengthy battle.

It is very much clear from above postmortem report that injury nos. 3 and 6 are sufficient enough to cause the death of person in ordinary course of nature then what was the need of firearm injury? And how police did the encounter?

Police abuse of authority is so prevalent in Uttar Pradesh that the Allahabad High Court responded in outrage in a 2001 opinion 'A large number of petitions are coming up

before this court with allegations against the Police that they are behaving like bandits, thieves, rapist and petty criminals... The police are supposed to protect the people and not to rape, black mail or loot them... it is high time that the police also start behaving in a civilised manner'.

INTERNATIONAL CONVENT ON CIVIL AND POLITICAL RIGHTS (1979)

Indian government has signed on International covenant on civil and political rights in the year 1979¹⁰. Articles 6 and 9 of it states that:

Article 9:-1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 6:-1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death

penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

FAKE ENCOUNTER IN TERMS OF LAW

Supreme Court has given verdict that in rare of rarest of case death punishment can be given but UP police is giving death sentence in the name of self-defence and duty responsibility as a said encounter. Human right commission has also supported the high court's concern in their 2001 report and the statistical data given about the encounters in UP were astonishing.

Section 21 of Indian constitution has given right to live to all citizens .It was observed by human rights activists that central and state government were not serious to implement the right to live in ground reality.

Section 46 of the Criminal Procedure Code proscribes touching an arrestee 'unless there be it submission to the custody by word or action'. It is only on forcible resistance or evasion by the arrestee that an officer can 'use all means necessary to affect the arrest'. However, a cop still does not have 'a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life'. Sections 99 and 100 of the Indian Penal Code read together amplify the limits to private defence to public officials in discharge of their duties-under Section 99 'no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt'; 'no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt'; 'the right to private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence'¹¹.

Section 100 supplements Section 99, 'The right of private defence of the body extends to the voluntary causing of death or of any other harm to the assailant if: (i) such an assault as may reasonably cause the apprehension that

death will otherwise be the consequence of such assault; (ii) such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault; (iii) an assault with the intention of committing rape; (iv) an assault with the intention of gratifying unnatural lust; (v) an assault with the intention of kidnapping or abducting; (vi) an assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release ⁽¹¹⁾.

Committee of Concerned Citizens (an independent collective of individuals sharing a deep and common concern on this climate of violence, brutalisation and insensitivity) has been repeatedly highlighting these issue of encounters, precisely because it relates to extinguishing of human life and right to life by the Government itself—Government which is expected to protect life and liberty under the Constitution—and for which no recompense is possible. Such killings have become part of the administrative practice of the State, consciously pursued and encouraged. Such fake encounters can no longer be considered as isolated aberrations or administrative miscalculations or termed as excesses or unintended transgressions of law by individual police personnel. They can only be perceived as the calculated and deliberate system response of the State, which is adopting a policy of annihilation of individuals, unable to comprehend a complex problem, which is the result of inequity and denial of justice¹².

REMARKS

To avoid such inhuman activities, it is not only the responsibility of police but also of team of doctors performing the postmortem to pursue their duty properly, sincerely and as per law.

The problem of police brutality has a wide range of causes. The police force has an inordinate amount of power and discretion delegated to them by the legal system, the political climate and society in general. The internal reward system, which provides monetary incentives or promotions for carrying out extrajudicial executions, also acts as a catalyst. In addition, victims

hail primarily from the disenfranchised, poverty-stricken, lower caste and illiterate sections of society, which generally lack access to the few legal remedies that actually exist. A lack of cohesion between local organisations has rendered the existing support system incapable of combating the problem. Furthermore, systemic and endemic corruption in the police and within the political and judicial agencies exacerbates the problem and ensures that such crimes go unpunished.

The doctor performing autopsies of such cases are under immense pressure from high authorities (police/administration) to justify the encounters.

Doctors can commit mistake in noting down the findings (knowingly or unknowingly), which is against medical and legal ethics. The authors proposes that in all these cases of custodial deaths, post-mortem examination should be conducted by a board of more than one doctor, out of which at least one doctor should either be a forensic medicine expert or should have got proper training in dealing such cases. An inexperienced team of doctors has limited value to conduct such important medico-legal postmortems and to find out the exact cause of death.

The autopsy of such cases is a challenging job and requires an expertise opinion who got the in depth knowledge of forensic medicine. The model autopsy procedure should be followed with utmost care. The autopsy should be conducted by a team of doctors and should also include a forensic expert along with senior experienced doctors. It should start with panchnama and if possible the statement of eyewitness should also be scrutinised along with First Information Report. Videography and coloured photography should be taken before starting and while conducting the postmortem examination. Each and every step of dissection focusing on the ante-mortem and post-mortem injuries over the body should be differentiated and recorded as a piece of evidence. The other recommendations issued by NHRC in this regards should

also be adhered to in these cases like autopsy protocol and format of post-mortem report.

The opinion about cause of death should be ascertained on the basis of external, internal findings, injuries present over the body, visceral examination (if needed) and histopathological examination (if needed) to exclude any pathology. The detailed autopsy should be done so that cause of death of the individual should be known to authorities, NHRC and general public also.

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