

Extra-Judicial Killings in India: A Crisis of Justice, Faith and Public Morality?

This post discusses extrajudicial killings in India, the consequent legal challenges they create, and the increasing normalisation of such encounters through pop culture and public acclamation. Gauri Kumar and Naina Bhargava highlight these arguments using specific examples, and present the existing response of the Supreme Court of India regarding extrajudicial killings.

Extrajudicial killings are not new to the winds of India. They have transformed India from a democracy to something resembling the autocratic, and often lawless, [khap panchayat](#), forming a blot on the country's criminal justice system. The promise of Law was to work as an instrument of safety and due process, which were accordingly embedded into the judicature. However, the rule of law and constitutionalism continue to be undermined, pointedly through the rise of extrajudicial killings. Accompanying the deteriorating salience of the rule of law is the unregulated power that the public vests in the hands of the police to act as judge, jury and executioner. [Winston Churchill once said that the mood and temper of the public regarding the treatment of crime and criminals is the most unflinching test of any country's civilisation](#). India represents a failure of this test, where the dangers of unrestrained police power, and the consequences of a dwindling rule of law are disproportionately higher for cultural or religious minorities.

[The killing of George Floyd](#) in the United States by Derek Chauvin, a police officer, on 25 May 2020 was unprecedented in the response that it provoked, both within and outside the country, against the use of excessive police force. India is also not untouched by police brutality. Throughout, and since, India's colonial experience, civil existence has been characterised by strong undertones of communalism, casteism, classism, and political tension. The instability they cause coexists with a strong police presence, which manifests in extrajudicial 'encounter' killings and, in some cases, permission to deploy unlimited force in politically volatile areas under the [Armed Forces Special Provisions Act](#). This practice of unaccountable police and military force is not India's alone and can be seen in many developing countries like [Kenya, Nigeria and the Philippines](#). Police are often encouraged in their lawlessness, which is especially pronounced during times of political unrest when they are used to suppress dissent. Added to this is an unaware citizenry which inclines towards unaccountable forms of retributive justice and distrust in legal institutions.

[The brutal rape of a doctor in Hyderabad](#) unleashed a rage, revealing a bloodthirsty public. People demanded the rapists be shot at sight because they were simply undeserving of a fair trial and, it would seem, the [police obliged](#). The Hyderabad rape case shows a brutal form of justice where the extermination of an untried criminal is equated with due process. While the National Human Rights Commission (NHRC) [has taken suo moto cognisance](#) of the matter, the leniency shown by the NHRC and courts represents a pivot towards instantaneous, and equally questionable forms of justice. This, in turn, creates an atmosphere of impunity for police forces which leads to the murder of innocent civilians, as in the case of [Jayaraj and Fenix](#) who were sodomised and fatally beaten in police custody for violating the norms of lockdown rules.

Extrajudicial acts are immoral, but also unprofessional. The scope for professional and ethical regulation is limited when policing is reduced to professional crime-fighting, as it was in [mid-20th century America](#). Furthermore, an Indian study on [Professionalism in the Constabulary](#) shows that India's police officers experience feelings of powerlessness, isolation, incomprehension and role-confusion due to lack of requisite professional learning and skills. In light of the findings of this Report, the lack of accountability within the police and its susceptibility to public pressure is not surprising.

Interestingly, the lack of scrutiny of police professionalism allows policing to become a supererogatory act, where an individual is praised for doing something but not blamed for failing to do it. [Heroism is also a supererogatory act](#) which requires one to go above and beyond the call of duty, and undermines knowledge, rule-following and pragmatism. Heroism, in the case of police, would applaud the officer for exterminating the rapist but not punish them for [failing to protect a Kashmiri civilian in an encounter](#). Heroism does not allow for consistency, whereas professionalism demands it. Yet, heroism is the preferred lens through which the public views the police. This practice is sustained through various means, including the Indian film industry. In India, the police *vardi* (uniform) is regarded as the carrier of justice, an embodiment of sound judgement and honour. In an average theatre, a scene depicting police brutality witnesses cheers, and characters who seek to derail the protagonist's pursuit for justice by sticking to the rules are brandished as weak and unmanly.

The Supreme Court of India has consistently admonished the use of heroism to conceal extrajudicial killings. In [Om Prakash & Ors vs State of Jharkhand & Anr](#) (2012), the Court ruled that 'it is not the duty of the police to kill the accused merely because he is a criminal', underlining the point that the Indian criminal justice system recognises and condemns encounter killings as injudicious. In separate rulings, the Supreme Court has emphasised the importance of a fair investigation and the right to trial in delivering justice. To protect the right to life and personal liberty, it is imperative that the police work within the ambit of the law. In the occurrence of a 'encounter' killing, the Supreme Court has gone so far as to recommend the [death penalty](#).

To improve the credibility of the rule of law and the administration of criminal justice, the court has proposed [16 Guidelines](#) to independently investigate 'encounter' killings. Furthermore, the Court has also laid down the framework for NHRC in its [Annual Report \(1996-97\)](#). Currently, India stands at the edge of a slippery slope: it is imperative that we begin holding the police accountable for their lawlessness and amend the criminal justice system to rebuild the lost trust in the judicial mechanisms of the country.

This article gives the views of the author, and not the position of the South Asia @ LSE blog, nor the London School of Economics and Political Science.