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Fake Encounters & States' Lawlessness; Human Rights Perspective

by
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"You must not lose faith in humanity. Humanity is an ocean; if a few drops of the ocean are dirty, the ocean does not become dirty."

Mahatma Gandhi

I. INTRODUCTION

Police is indispensable for a civil society. The role of police in maintaining law and order is pivotal; but the institution of police due to its historical reasons behaves in a autocratic manner in a democratic country. Police inflicts barbaric injuries to common men for no reasons. In all our democratic values fundamental right of life is of essential and immense value as the same has been achieved after decades of struggle by human civilization but police often snatches it away from the common man. Recently eighteen policemen were convicted and sentenced with life imprisonment for fake encounter of a MBA professional on the name of threat to President of India. Police is an epitome of British imperialism in India and it could not change its creed and colour substantially in post independence era. The real tussle between 'vulnerable' and 'might' is often epitomized by police. Police in Indian society is an expression of might and all power flows from it. Police is controlled nowadays only by politicians. This paper aims to make a legal investigation of fake encounters and barbaric treatment to arrestees in interrogation process.

II. LEGAL SAFEGUARDS TO ARRESTEES

The list is unending and ever-increasing as the society itself calls policemen with pride and prestige the '*encounter specialists*' which promotes them for repeating it. A fake encounter or a staged encounter happens when



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the police or armed forces kill the suspects in custody or when the suspects are unarmed, and then claim that the victims were killed in an encounter when the police had to shoot in self-defense. In such cases, the weapons may be planted on or near the dead body to provide a justification for killing the individual.

In the 1990s and the mid-2000s, the Mumbai Police in India used the encounter killing to cripple the underworld in the city and bust the rampant extortion racket. The police officers, who came to be known as 'Encounter Specialists', believed that these killings delivered speedy justice, but were criticized by the human rights activists. According to the National Human Rights Commission of India, there were 440 cases of alleged fake encounters in the country during 2002-2007. According to the report of the Asian Centre for Human Rights (ACHR), "Torture in India 2011", the National Human Rights Commission (NHRC) recorded a total of 14,231 deaths in custody in India between 2001 and 2010, which includes about 1,504 deaths in police custody and about 12,727 deaths in judicial custody. The ACHR report observes that these are only the cases reported to the NHRC, and do not include all cases of custodial deaths.

What did the authorities do to protect him? What is the government doing to protect people in custody? What are the preventive measures taken? Are there medical

facilities and staff in every jail in the country to provide services in emergency situations? "India signed the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 1997 but is yet to ratify it. A toothless Prevention of Torture Bill is pending before the Parliament, and there is very little hope that it will be passed within the tenure of this government. While there are jail manuals in many states, (besides the model jail manual) which state how prisoners are to be treated and what they are entitled to in prisons, there are absolutely no rules regarding the treatment of inmates in police custody and they remain totally at the mercy of the police." Of course, torture or killing of a person in police custody is to put it mildly is illegal. But the real question is: *when gold rusts, what can iron do? Who can police the police?* Several Years ago Justice Brandies who looked upon the government as 'the potent and omnipresent teacher that teaches the whole people by its example' said, *"If the government becomes a law breaker, it breeds contempt for law; it invites every man to become a law unto himself."* He also maintained that, *"Nothing can destroy a government more quickly than its failure to observe its own laws, or worse the disregard of the character of its own existence."*

The society also does hero-worshipping of fake encounters and encounter specialists. Cinema glorifies such events by showing these encounter specialist as 'Dabang' (fearless) police officers whose competence and caliber




is tested by number of his encounters. The aura of encounter specialist created by society lures the entrants policemen to be a encounter specialist and in the process the whole idea of maintaining the law and order by lawful means is missed and the remedy becomes worst than the malady. The whole philosophy of police is that the society must not become savage while being saviour but the fake encounters are live examples of society being savage.

III. PROTECTION AGAINST TORTURE

Torture always works as an antithesis to rule of law. But torture is a tradition in many penal systems. That is why as a matter of policy, Articles 8 & 9 of United Nations Declarations on Human Rights protects all persons from torture and other inhuman or degrading treatment of punishment. Indian Constitution, Code of Criminal Procedure, Indian Evidence Act, and Protection of Human Rights Act provide adequate safeguards against police torture and custodial violence. In spite of all these national and international safeguards encounters are taking place perennially. The most crucial aspect of fake encounters is that mostly the youth loose their lives as they are killed while travelling and being rebellious to police as they do not show submissiveness to their authority having scientific tempers that police is for them. The investigation of fake encounters is the most difficult. At the outset police negates the whole issue of fake encounters and when media and civil society mount pressure then they try to make a very strong case of national threat or potential terrorist etc. Unlike civil matters criminal cases are not won on 'preponderance of probability' but here the prosecution has to prove his case cent per cent. Criminal prosecution depends on eye witnesses which are hard nut to crack in fake encounter cases as the general public is not on the scene of crime as the same is committed in desert places. Fellow policemen often do not come out to be witness against their own colleagues which makes the whole process of investigation and prosecution very intricate task for victims' family and investigators.

IV. JUDICIAL RESPONSE TO CUSTODIAL DEATHS & VIOLENCE


Supreme Court in *Raghubir Singh v. State of Haryana*¹ held that, "We are deeply disturbed by the diabolical recurrence of police torture resulting in terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of law gore human rights to death." But in *State of U.P. v. Ram Sagar Yadav*² Supreme Court found it helpless to book to justice the policemen who murdered Brijlal for failing

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to pay bribe of Rs. 100 in a trivial matter of cattle trespass and complained about bribe to senior police officers. The Supreme Court held that an amendment regarding burden of proof should be done. It held that, "Police officers alone and none else can give evidence as regards the circumstances in which a person in their custody comes to injuries while in their custody. Bound by ties of a kind of brotherhood they often prefer to remain silent in such situations and when they choose to speak they put their own glass upon the facts and pervert the truth. The result is that persons on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station are left without any evidence to prove who the offenders are."

In *Sheela Barse v. State of Maharashtra*³ the court has given directions to ensure protection against torture and maltreatment of women in police lock up. In *D.K. Basu v. State of W.B.*⁴ after perusing several reports on custodial violence Supreme Court held that, "Custodial violence including torture and death in lock ups strikes a blow at the rule of law which demands that the powers of executive should not only be derived from law but also that the same should be limited by law." The court further said that, "However in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of the citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during course of investigation...custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law," Supreme Court issued various guidelines. The most of the guidelines have been incorporated in the code.

On fake encounters Supreme Court has raised its brows which are evident by *Prakash Kadam v. Ramprasad Vishwanath Gupta*⁵ where Supreme Court held than in our opinion this is a very serious case wherein prima facie some police officers and staff were engaged by some private persons to kill their opponent i.e. Ramnarayan Gupta and the police officers and the staff acted as contract killers for them. If such police officers and staff can be engaged as contract killers to finish some person, there may be very strong apprehension in the mind of the witnesses about their own safety. If the police officers and staff could kill a person at the behest of a third person, it cannot be ruled out that they may kill the important witnesses or their relatives or give threats to them at the time of trial of the case to save themselves. This aspect has been completely ignored by the learned Sessions Judge while granting bail to the accused persons. In our opinion, the High Court was perfectly justified in cancelling the bail to

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the accused-appellants. The accused/appellants are police personnel and it was their duty to uphold the law, but far from performing their duty, they appear to have operated as criminals. Thus. the protectors have become the predators. As the Bible

says "If the salt has lost its flavour, wherewith shall it be salted?", or as the ancient Romans used to say, "Who will guard the Praetorian guards?" We are of the view that in cases where a fake encounter is proved against policemen in a trial, they must be given death sentence, treating it as the rarest of rare cases. *"Fake 'encounters' are nothing but cold blooded, brutal murder by persons who are supposed to uphold the law. In our opinion if crimes are committed by ordinary people, ordinary punishment should be given, but if the offence is committed by policemen much harsher punishment should be given to them because they do an act totally contrary to their duties. We warn policemen that they will not be excused for committing murder in the name of 'encounter' on the pretext that they were carrying out the orders of their superior officers or politicians, however high. In the Nuremburg trials the Nazi war criminals took the plea that 'orders are orders', nevertheless they were hanged. If a policeman is given an illegal order by any superior to do a fake 'encounter', it is his duty to refuse to carry out such illegal order, otherwise he will be charged for murder, and if found guilty sentenced to death. The 'encounter' philosophy is a criminal philosophy, and all policemen must know this. Trigger happy policemen who think they can kill people in the name of 'encounter' and get away with it should know that the gallows await them."*

Supreme Court in *Shamima Kausar v. Union of India*⁶ is keeping a vigil eye on fake encounter of *Sohrabuddin Sheikh case*. In *Mehboob Batcha v. State*⁷ respondents policemen wrongfully confined one Nandagopal in police custody in Police Station Annamalai Nagar on suspicion of theft from 30.5.1992 till 2.6.1992 and beat him to death there with lathis, and also gang raped his wife Padmini in a barbaric manner. The accused also confined several other persons (who were witnesses) and beat them in the police station with lathis. Supreme Court once again reiterated that custodial violence in police custody is in violation of this Court's directive in *D.K. Basu v. State of W.B.*⁸ and we give a warning to all policemen in the country that this will not be tolerated. The graphic description of the barbaric conduct of the accused in this case shocks our conscience. Policemen must learn how to behave as public servants in a democratic country, and not as oppressors of the people.

In *Haricharan v. State of M.P.*⁹ Supreme Court reiterated the principle that the expression "Life or Personal Liberty in Article 21 includes right to



live with human dignity. Therefore, it also includes within itself guarantee against the torture and assault by the States or his functionaries." The Supreme Court, as the custodian and protector of the fundamental and the basic human rights of the citizens, would view with deep concern any allegation made against the police officials about custodial crimes. The states functionaries cannot and must not be used for inflicting tortures on unprovoked people. The apex court has always been vigil to protect the people from tragedies and tyrannies of Indian police by enforcement of fundamental rights very vigourously. The judiciary has commanded respect by providing unprecedented remedies to people.

V. CONCLUSION & SUGGESTIONS

Fake encounters are serious issue in a democratic country as it takes away life of an innocent and helpless human being and above all it tarnishes the image of a country which has a firm belief in life and liberty. Police inflicts power on vulnerable for variety of reasons like to reduce psychological pressure created by media after a gruesome crime in society, to satiate their self super egos, to maintain terror and authority in

society, to be famous, for money, for libido and so on. Any egalitarian society will not endorse these fake encounters as it makes the whole society a barbaric and savage society which is against the objectives of modern world. It questions very existence of democracy. Fake encounters must be eliminated from the society and Police must understand that they can prevent crime by securing more abidingness from the citizens of laws though respect to laws not by fake encounter like measures. On the basis of some of gruesome encounters in India following suggestions may be submitted:

1. Police officers indulging in fake counters must be immediately arrested, prosecuted and severally punished.
2. Police officers so convicted must not be given superannuation benefits like pensions, gratuity etc.
3. In fake encounters the state must award compensation to the victim's family.
4. Police officers must be trained to do scientific interrogation.
5. Forensic science such as brain mapping, lie detectors, DNA finger printing etc must be deployed in interrogation process.
6. All people taken in arrest must be shown in police records.
7. The civil societies and media must further the cause of victims of fake encounters.



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8. Police should not impede in the process of investigation relating to fake encounters by slowing it or impeding the process of procurement of evidences.
9. Police must understand the value of life of individual and must regard the democratic values of the country.
10. The Government must also take care of the needs of policemen employed at lower level as the mishaps mostly take place at SHO or constable level. They must be given good working environment, scientific tools, good vehicles, proper salary and perquisites, proper leave, leisure and rest so that they unnecessary do not end up killing hapless people in case pressure is mounted on them for any of the reasons cited.

In the last few verses may be submitted to the feelings of the persons falling prey in the hand of police:

***"Bane hain ahal-e-hawas muddai bhi munsif bhi Kise vakeel karein kisse
munsifi chaahen"***

—Faiz Ahmed Faiz

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¹ (1980) 3 SCC 70.

² (1985) 1 SCC 552.

³ (1983) 2 SCC 96.

⁴ (1997) 1 SCC 416.

⁵ (2011) 6 SCC 189.

⁶ (2010) 6 SCC 662.

⁷ (2011) 7 SCC 45.

⁸ (1997) 1 SCC 416.

⁹ (2011) 4 SCC 159.

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