

## FACT FINDING REPORT ON POLICE ENCOUNTERS IN WESTERN UTTAR PRADESH

### **Ali Qambar Zaidi, Advocate**

The state of U.P. has witnessed an increase in number of police encounters recently and has been accused of carrying out extra-judicial killings/fake encounters. The U.P. police in 2017 claimed to have conducted 420 encounters in which 15 people were killed in 6 months of the Chief Ministers Yogi Adityanath's government. By 2018 the number reached 1038 encounters in which 32 were killed and 238 injured.

An extrajudicial killing (also known as extrajudicial execution) is the killing of a person by governmental authorities or individuals without the sanction of any judicial proceeding or legal process. Extrajudicial punishments are mostly seen by humanity to be unethical, since they bypass the due process of the legal jurisdiction in which they occur. Extrajudicial killings often target leading political, trade union, dissident, religious, and social figures and are only those carried out by the state government or other state authorities like the armed forces or police, as extra-legal fulfilment of their prescribed role.

The members from the office of the high commissioner for United Nations Human Rights (OHCHR) have written to the Indian government regarding information about 15 cases that could be extra judicial killing. They also state that there are 59 possible fake encounter cases. *"We are extremely concerned about the pattern of events: individuals allegedly being abducted or arrested before their killing, and their bodies bearing injuries indicative of torture,"* said the UN experts. They called for an urgent review of the use of force by Uttar Pradesh police to ensure all law enforcement operations were conducted in compliance with international standards, for prompt, independent, and thorough investigations into all allegations of potentially unlawful killings and for perpetrators to be prosecuted.

The 15 cases raised by the Special Rapporteurs concern: Mr. Gurmeet Singh, Mr. Naushad, Mr. Sarvar, Mr. Ikram, Mr. Mohammad Nadeem, Mr. Jaan Mohammad, Mr. Shamshaad, Mr. Muhammad Mansoor, Mr. Waseem Kala, Mr. Sumit Kumar, Mr. Aslam, Mr. Ramzani, Mr. Shamim, Mr. Akbar, Mr. Noor Muhammad. It is also important to note that a high proportion of those killed belong to the Muslim, Dalits and backward class communities. This however has been time and again denied by the state government.

Therefore to inquire further, on 1<sup>st</sup> & 2<sup>nd</sup> March 2019, a team comprising of Advocate *Ali Qambar Zaidi* (HRLN), Mr. *Akram Akhtar Choudhary* (Afkar India foundation), and Advocate *Sadiq Ahmad* (Aman Biradari Trust) conducted a fact-finding in the Kandhla, Kairana and Shamli towns of western U.P. The cases referred for investigation by the United Nation officials include 7/8 cases that were visited by the team.

### **MODUS OPERANDI.**

The team visited some families and recorded their statements. Thereafter the police version of the incident were also found out (information gathered mainly from the FIR's and statements made by the officials, General Diary and Media reports). Limitations of fact finding would include time constraint, and geographical constraint as those who are allegedly affected by such gross violation of their rights under the garb of maintaining law and order are spread along UP but the team could only interact with some families situated in the above mentioned towns of western U.P.



### **TESTIMONY OF THE FAMILIES.**

Major differences were found in the police version and family versions. All the families have claimed that the entire incident was pre-planned and concocted. The family members maintain that the victim was killed in a cold-blooded murder however the

police claims it to be an on spot cross-fire. The family and the police version is produced hereunder:

## 1. Gurmeet

*Version of Mahendri (Gurmeet's mother):* On 30<sup>th</sup> Nov around 5 P.M., two people namely "Kaala" alias "Kalu" (police informer) and "Rinu" (resident of same village as Gurmeet) arrived on a motorcycle (no. UP 11 AC 5117) and insisted him to go along with them. Upon inquiry of the mother, she was told that they are going for some work and he will return the next day.

On the intervening night of 30<sup>th</sup>-31<sup>st</sup> Nov, it was held that Gurmeet has been abducted from near Kalu's tube-well and local police station was informed. However, on 31<sup>st</sup> Nov he was shot near a place named "*Bhaila Phatak*". He suffered two wounds one on the left leg and another on his back. Upon gunshot, villagers gathered and witnessed that the police was taking him. He was taken to CHC Deoband where his condition was declared serious, thereafter he was taken to SBD hospital and within 1 hour he was forcibly shifted to a private hospital despite being in a serious condition.

She claims that she was only allowed to meet her son in police presence. Thereafter, she tried getting an FIR registered for inquiring into her son's death but was denied. She also approached SSP Saharanpur, National Human Rights commission (NHRC), and Additional Sessions judge/Special Judge- II, Saharanpur but to no avail.



*Mahendri, Gurmeet's mother.*

*Police version (as per the FIR):* following a tip off, at around 6 A.M. the police found Mahendri's son standing near a tea stall along with his two accomplices. Upon seeing police approaching towards him, he opened fire at the police party and in retaliatory fire he sustained bullet injuries. One of the accomplices fled the scene while the other was apprehended along with Gurmeet. He subsequently died on 22<sup>nd</sup> April.

## **2. Sarwar**

*Version of Anwar (Sarwar's brother):* On 28<sup>th</sup> July, 2017 Jasmeen @ Ranno and Munawwar (both police informers) induced Sarwar to go along with them insuring that they will return in some time. Thereafter, Anwar went to their houses but couldn't find his brother following which he went to police station Kairana where he was assured that they will find him by next morning.

On 29<sup>th</sup> around 5 A.M. the family members saw police dragging out Sarwar and Naushad @ Danny from the informer's house and shot them both. Then the police took them in their government vehicles (this was witnessed by the villagers) and declared that one of them died on the way to the hospital and the other when he was under treatment. (there was a discrepancy in the version of the general diary and the note appended to the encounter and discovery reportas to who died earlier but it was covered up by recording the statement of the constable who recorded the FIR and the general diary entry)



*Pic: Sarwar*

Thereafter, he tried getting an FIR registered at PS Deoband for inquiring into his brother's death but was denied. He then approached the Superintendent of police, CJM Muzaffarnagar, District Judge Shamli but to no avail. Also important to note is that the victims were taken to a CHC which was 8-10 km away when he could easily be taken to a government hospital that is around 3-4 km from the place of incident.

*Police version (as per the FIRs):* On 29.07.2017 at about 3:15 a.m., while they were patrolling, an informer stopped them and tipped them about two hardened criminals (Naushad @ Danny and Sarwar) who were sleeping in someone's house and would come out for committing some offence at about 4-5 a.m. Acting upon the information the police surrounded the area and held their positions waiting for the duo to come out.

At around 4:10 a.m., police saw two people coming out from a gully one of them was carrying a gun in his hand. The informer who was also present with the police force identified the two persons and then left the scene. Thereafter, the police intercepted the two and asked them to stop to which they started firing at the police force. In retaliatory fire, both of them got injured and fell down on the ground.

After some time when the police approached they found both of them unable to speak but groaning in pain. The police also recovered certain weapons and ammunitions. Then they were taken to CHC Jhinhana. Sarwar died while on the way being taken to the hospital and Naushad @ Danny died during treatment.



*Anwar: Sarwar's Brother*



It is important to note that the family maintains that it is impossible to be groaning in pain as stated by the police officers since the shot wound was so severe that the brain matter came oozing out.

### **3. Waseem**

*Version of Mustaqeem (Waseem's father):* Waseem was killed in encounter by Meerut Police on 28<sup>th</sup> September 2017. That owing to past intimidations from police that they may kill his son in fake encounter, and circumstances revolving around the encounter, Mustaqeem along with his wife sought enquiry into his son's death through representations made to SP and SSP. his wife also made representation to CJM Meerut which dismissed. She then filed a revision to the ADJ court. She claims that she is being pressurized to withdraw this revision. Her husband has also been abducted by the police officers in plain clothing and a vexacious FIR has been registered against him to further force her to withdraw the revision.

*Police version:* An FIR was registered at PS Sarurpur, District Meerut which states death as having occurred on account of being shot by the police due to cross firing, during an encounter.

### **4. Ikram**

*Family version:* On 10 August, 2017, Ikram had gone to the hospital with his son Sajid, to check on a relative. The same day Shakil and 5-6 other men had come to inquire about him. She told them that he had gone to the hospital following which they went to the hospital and abducted him. Sajid had seen his father outside the hospital with Shakil and other men.

On 11 August, 2017, they got to know of Ikram's encounter through their relatives. Ikram's minor sons went to inquire at the police station about the incident and after Ikram's body was returned to the family after the Post Mortem, but they were threatened by the police. They also claim that there were torture marks on his body including broken ribs and arms, huge injury on the back of his head.

*Police version:* Police received a tip off that 2 men had looted a motorbike following which the police set up barricades to apprehend them. When the assailants tried to flee

they were chased by the police. Subsequently they lost balance and fell and started firing on the police officials. The police then fired in self-defence in which Ikram got injured. He was then taken to a CHC where he succumbed to his injuries. The other accomplice (identified as Shakil by Ikram) managed to escape on foot.

During the incident constable Ankush Godara and constable Raghu Raj Singh received bullet injuries (details of injuries not given in the FIR). As per the FIR, 15 police officials of PS Kairana, PS Kotwali and officials of SWAT Team were involved in the police action.

## **5. Furqaan**

*Family version:* On 22 October, 2017 Furqaan, along with Anees and Rahul, had gone to the bus station to meet his brother-in-law. Furqaan's wife and children were also present with him. The three (Furqaan, Anees and Rahul) were detained by Police officers of Special Task Force Muzaffarnagar and PS Budhana. Thereafter Anees and Rahul were taken to PS Shahpur, they were shot in their legs and shown to be arrested (both currently in prison). Furqaan was then taken to the fields near Badakta Canal Bridge, PS Budhana and killed.

Subsequently villagers informed the family about the incident. Meer Hassan (father of Furqaan) then met Anees and Rahul in prison who informed him about the truth of the incident. He also denies that his son was a wanted criminal as stated by the police officers.

Thereafter repeated efforts were made by him but no documents were made available to him. Police have even repeatedly threatened to kill Meer Hassan's other sons, Anees and Rahul in a similar fashion if they try to pursue legal action. Even the post mortem report has not been provided to the family.

*Police version:* Police saw 5 men on 2 motorbikes and asked them to stop but the assailants started firing. Police then started chasing them and also intimidated the Special Task Force. After the team arrived, they asked them to surrender. But 2 assailants managed to escape on a motorbike, the other 3 ran into the sugarcane farm and started firing. The Police then fired back in self-defence. During the crossfire that lasted 15 minutes, 2 from these 3 assailants managed to escape on foot.

Furqan got injured (constable confirmed his identity since he was a wanted criminal) and was sent to a hospital where he was declared dead. Police state that there was a Rs. 50, 000 reward on gangster Furqan. They also state that senior inspector Adesh Tyagi and constable Harvendar got injured during the event (Details of injury not given in the FIR).

## 6. Mansoor

*Family version:* -Mansoor had spent 3 years in jail where his mental health deteriorated because of electrocution and torture. He was released in 2015 and was totally dependent on family assistance to eat, drink, and walk.

On 26 September, 2017, Prashant Kapil (SHO, PS Sadar Bazar, Meerut and Rashid Ali (SHO, PS Lisari gate) visited and took him with them. Since Mansoor's family had known them for 10-12 years, they didn't raise any objection. On the morning of 27 September, 2017, a local police officer asked Akbar (father of Mansoor) to sign certain warrant papers but did not inform him of the encounter that was done the previous night.

The family got the information from the villagers, who were informed by media reports.



*Relatives of Mansoor*



*Police version:* They received a tip off about 3 men on motorbikes looting a Wagon-R. They spotted the stolen car being driven by the 2 accused and asked them to stop but they sped away. The Police then chased them following which the assailants started firing. The Police then fired back in self-defence during which Mansoor was injured. He was then sent to Medical College where he was declared dead. The other unknown accomplice managed to escape on foot.

## **7. Aslam and Ramzani**

*Family version:* Aslam had met a lawyer to surrender in the cases that were registered against him. On 7 December, 2017, some men took away Aslam and Ramzani on the pretext that they will help them in surrendering before the Court in the cases registered against them.

Aslam's Cousin Sattar received a call from the police on 9 December, 2017 asking about Aslam's details (name of village etc.) but did not inform him of the killing. They were informed of the incident by village pradhan. On the same day, Salma's (wife) brother received a call from the police- informing them of Ramzani's death in an encounter in Aligarh.

Aslam's body was given to the family on 10 December, 2017 at 4 AM he was escorted by heavy police vehicles which stayed till burial. The FIR and Post Mortem Report were also not given to the family.

*Police version of Aslam:* They received a tip off about 2 criminals roaming in Dadri to commit a crime following which the police set up barricades to apprehend them. They spotted two men on a motorbike who sped up to flee. When the Police started chasing the assailants, they started firing, the Police fired back in self-defence. This crossfire lasted for 15 minutes.

During the crossfire Aslam got injured, he was sent to a hospital where he succumbed to the injuries. The other unknown accomplice however managed to escape. Inspector Saurav received a bullet injury on his thighs and Constable Vikas received a bullet on his leg. The police also state that Aslam was a known criminal with reward of Rs. 65000 on him.

*Police version of Ramzani:* The police receive a tip off about three men looting a car following which police set up barricades to apprehend them. The assailants then fired at the police, Police fired back in self defense.

During the crossfire, Ramzani got injured. He was sent to a hospital where succumbed to injuries. The other two unknown accomplices however managed to escape.

## **8. Shamim**

*Family version:* Shamim had loaned Rs. 1 lakh to Akram (relative) and when he asked him to repay, Akram tried to get Shamim arrested. Akram was in constant touch with the police officers, he called them and insisted that Shamim be arrested. Sahiba (Shamim's sister) and other family members have overheard one such conversation. The Family alleges that Akram in connivance with officials of PS Jansath killed Shamim. The family found out about the encounter on 31 December, 2017 through local newspapers. Police did not inform them about the same. Family states that the police has been pressuring them since the encounter and have even asked them to sign some papers.

*Police version:* The police received a tip off from SWAT team and Special Cell Delhi Police that Shamim along with his accomplices is planning to come to Jansath and commit road robbery in a Swift car. Following which a team of 17 police officers reached the spot, waiting for them. A Swift car was then spotted. When the driver was stopped he fired at the police, got out of the car and ran away in the opposite direction. Shamim, who was sitting in the front seat also fired at the police. Police fired back in self-defence.

When Shamim was shot from the front, he got injured. Subsequently he was taken to the CHC where succumbed to his injuries. The other unknown assailant however escaped on foot. During the crossfire, Constable Ashok Khari received bullet injuries (details of injury not mentioned in the FIR).

It is important to take into account that Shamim had two bullet injuries one from the front and the other from the back however the police claims to have shot him from the front, thus the police version again stands contradicted.

## **ANALYSIS:**

The facts and circumstances that emerged out of this fact-finding confirm the darkest suspicion about these killings. They are stated below:

### **A. Similar pattern of encounters.**

Most of these extra judicial killings follow a similar pattern. The police receive a tip off from informers, following which the police tries to apprehend them but in order to escape they start firing back and the police retaliates in self- defence injuring the assailant(s). He is then taken to a hospital where he succumbs to his injury. The other assailant(s) however manage to escape.

It is important to note here that all those who manage to escape are the informers. Further it is worth wondering how these accomplices manage to escape despite heavy police presence which also include special task forces in some cases. Also important to note is that during the cross firing the police always suffers minimal injury or are saved due to their bullet proof jackets and the details of the injury are most of the times not recorded. Also the weapons used by the police are not sent for investigation.

### **B. Nature of injuries**

In most of the cases, the bodies were found to have torture marks which cannot be a result of on spot firing and thus contradicts the police version. Further the fatal injuries are mostly direct bullet hits resulting in tattoo like marks around the injury. These tattoo like marks are a result of close range firing which is highly unlikely in cases of cross firing. In some cases the nature of injuries is such that the brain material comes oozing out further pointing towards the fact that these were Fake encounters and the victims were shot point blank.

### **C. Treatment of family members**

Many families already had an idea that their child might be killed in a fake encounter. When they inquire into the killing they are shunned down by the police officers and are constantly pressurized not to pursue any legal action. Further other family members are also put in jail on fake charges as alleged by the family.

They are also not allowed to register an FIR inquiring into the killing and are in most of the cases not even provided with the post-mortem report. Further the family members are not informed by the police officials as mandated by the Supreme Court directions. The family only gets the information from fellow villagers, media reports or relatives. Even at the time the victim is in the hospital, the family is only allowed to see him under police presence.

#### **D. Lack of witnesses**

In none of the cases there is a presence of witness that can testify for the police version, however in most of the cases there are direct witnesses of the encounters.

#### **E. Declaration of awards**

The police claim that those killed were wanted criminals with several cases against them and have a bounty of several thousand on them. This is however disputed by the family claiming that either the deceased had left criminal activities long ago or that he had served his sentence.

It is important to take into account that these awards are declared right before an in some cases even after the victim is killed by the police in a fake encounter and the name of these allegedly wanted criminals do not even appear in the “most wanted list” of the State.

#### **F. FIRs**

The FIRs which are registered by the police against the victim detailing the encounter follow an identical sequence indicating the use of a template in such cases. It is also important to note that the family members are not allowed to register a FIR against the police officials demanding an inquiry into the killing.

### **THE LEGAL POSITION**

The police justify their action on the basis of self-defence. In reality however self-defence has nothing to do with most of the encounters and many of such incidents are calculated ones. Self-defence and retaliation are clearly distinguishable. The right of self-defence available to any person ends, mainly, when there is possibility to

overpower the culprit without killing him. If the force does the act of killing the victim even after they get chance to overpower them it is beyond the right of self-defence. Police being a mighty force cannot always resort to the theory of self-defence especially when the opposite party is a minor group with fewer weapons. If the police fire the victim when there is chance to overpower them without killing it is retaliation. The Apex Court in *Extra Judicial Execution Victim Families Association (EEVFAM) and Ors. Vs. Union of India (UOI) and Ors (AIR 2016 SC 3400)* has succinctly stated that the right of self-defence or private defence falls in one basket and use of excessive force or retaliatory force falls in another basket. Therefore, while a victim of aggression has a right of private defence or self-defence (recognized by Sections 96 to 106 of the Indian Penal Code) if that victim exceeds the right of private defence or self-defence by using excessive force or retaliatory measures, he then becomes an aggressor and commits a punishable offence. Unfortunately occasionally, use of excessive force or retaliation leads to the death of the original aggressor. When the State uses such excessive or retaliatory force leading to death, it is referred to as an extra-judicial killing or an extra-judicial execution. In *Darshan Singh Vs. State of Punjab and Anr. (AIR 2010 SC 1212)*, the Supreme Court has held that “when there is real apprehension that the aggressor might cause death or grievous hurt, in that event the right of private defence of the defender could even extend to causing of death. A mere reasonable apprehension is enough to put the right of self-defence into operation, but it is also settled position of law that a right of self-defence is only right to defend oneself and not to retaliate.”

Further, the Supreme Court, on the basis of the NHRC guidelines, has issued 16 detailed guidelines in *People's Union for Civil Liberties Vs. State of Maharashtra (2015 CriLJ 610)* in the matter of killing in police actions. It is highly necessary to probe in to the fact whether the guidelines were followed by the police. These guidelines include:

- a. Tip-offs about criminal activities must be recorded either in writing or electronic form.
- b. If pursuant to a tip-off the police uses firearms and this results in death of a person, then an FIR initiating proper criminal investigation must be registered.
- c. Investigation into such death will be done by an independent CID team which has to fulfil eight minimum investigation requirements.



- d. Mandatory magisterial inquiry into all cases of encounter deaths.
- e. The NHRC or State commission must be immediately informed of the encounter death.
- f. Medical aid to injured victim/criminal and a magistrate should record his statement.
- g. Ensure forwarding FIR and police diary entries to court without delay.
- h. Expeditious and proper trial.
- i. Informing next of kin of the dead alleged criminal.
- j. Bi-annual statements of all encounter killings to be sent to the NHRC and state commissions by a set date in a set format.
- k. Disciplinary action against and suspension of a police officer found guilty of wrongful encounter.
- l. Compensation scheme under the CrPC to be followed for awarding it to kin of dead victim.
- m. Police officers must surrender their weapons for investigation, subject to rights under Article 20 of the Constitution.
- n. Also intimate family of accused police officer and offer services of lawyer/counsellor.
- o. No out of turn gallantry awards for the officers involved in encounter killings.
- p. The family of the victim can complain to the Sessions judge if it feels that these guidelines have not been followed. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein.

However these guidelines are being flouted by the state police. Further *in Om Prakash and Ors. Vs. State of Jharkhand through the Secretary, Department of Home, Ranchi-1 and Anr. [(2012) 12 SCC 72]* the court remarked that 'it is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial. This Court has repeatedly admonished trigger happy police personnel, who liquidate criminals and project the incident as an encounter. Such killings must be deprecated. They are not recognized as legal by our criminal justice administration system. They amount to state sponsored terrorism.'

## **STATE'S PERSPECTIVE**

In complete disregard to the above mentioned directions and guidelines of the apex court, the state officials seem to justify and even support such killings. In an interview to India TV in June 2017, UP chief minister said, *"Agar apradh karenge toh thok diye jayenge (If they commit crimes, they will be killed)."* Even if it is taken as a rhetorical statement, his formulation was a mockery of the very law that he had sworn to uphold. The Supreme Court had clearly stated that encounter killing in any case is unjustified and should not be adopted as a policy of the state since it amounts to "state sponsored terrorism". Further in a conference the minister remarked *"Today, the people are secure and safe. The police used to be scared that if we act against criminals, we will be acted against. We have changed that. The police is leading from the front."*

Thus, we see that the encounter killings are seen as a major achievement by the state officials which further encourages such arbitrary and unconstitutional killings. This is also evident from the out of turn promotions granted to those officers who were involved in such killing. These officers are also bestowed with gallantry awards against the guidelines of the apex court. It is also important to note that under-trials are not criminals until they are convicted and the charges on them are proved. Perhaps the state has forgotten the difference since most of the victims were those who were under-trial. The state also claims that law and order is in check, however this is being seen as a cover to other unjustified activities of the state.

## **CONCLUSION**

What is seen by the state as boosting morale of the police officers actually leads to violation of the due process of law. This also violates the basic tenets of the constitutionality by violating the right to natural justice enriched in part 3 of our constitution. Not only this, but such acts are in clear violation of the directions given by the Supreme Court. Such acts amount to serious violation of Human Rights since they deny the right to equality, right to life and right to fair trial to the victim.

Time and again the court has clarified that the state does not have the power and authority to carry out encounters. The court has clearly remarked that "encounter philosophy amounts to criminal philosophy." The state's primary function is to

enforce the laws and not violate them, but state policies such as granting promotions and awarding gallantry to the police officers that carry out such encounters encourages such violation of the law and are there unconstitutional. Indeed there have been cases where the officer has admitted that he carried out the encounter to get promotion.

Police are state (government) bodies whose primary function is to see that law and order in their territory is maintained. However this does not entail them to violate the due process of law and uproot the very basic tenets of constitutionality and human rights guaranteed to each individual irrespective of his/her social, political, economic or religious background.

This also does not leave any scope of reform of the victim and simultaneously destroys the faith in legal as well as the state machinery.

## **RECOMMENDATIONS**

1. Implementation of the investigation guidelines stated in PUCL case (supra). Strict action in case of failure.
2. Investigation in encounter cases should be by a court monitored SIT.
3. Recording of family statements during investigation and immediate registration of FIR on behalf of family.
4. Ensure the safety of other family members of the deceased to further ensure that they are not being pressurized.
5. Strict compliance of provisions of the CrPC with respect to unnatural deaths.
6. Provisions of compensation for the victim families in cases of fake encounters.

Human Rights Law Network (HRLN) has already filed petitions in three of the above mentioned cases and is following up on the issue. With regard to the other case appropriate legal action will be taken as and when required. The team is further ready to provide any necessary legal assistance in cases of such gross violation of rights and to curb the practice of illegal encounters carried out by the state.

---