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## **Extrajudicial Killing: Legal and Judicial Approach with Special Reference to Thangjam Manorama Case**

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### **Abstract**

The rising cases of extrajudicial cases are the matter of great concern, it is the clear violation of the articles of the constitution as well as international laws and the guidelines of the honourable supreme court. This kind of practices inculcate the pessimistic approach towards true justice and also fade the belief over our judiciary. Some of the provisions of our legislation need to be amended as it is always being used by the law enforcement authorities to cover their brutal demonstration. This article seeks to evaluate those provisions, the role of the judiciary in curbing extrajudicial killings with the case analysis of Thangjam Manorama Devi and its legal and procedural failures.

### **Introduction**

Extrajudicial killing is executing of an individual by the law enforcement officials without the fear of punishment from the concerned authorities. There is no proper definition of extrajudicial killing or no law till now defined it legally but usually, it means an unlawful execution of an individual without the fear of sanction from the administration. This practice simply disregards basic human rights as well as constitutional rights. The recent cases of Hyderabad and Uttar Pradesh shocked this nation completely from the responses it gets after the brutal incident. The huge mass of people was seen celebrating the extrajudicial killing which is the matter of grave concern in any civilized society. Numerous attempts were made earlier to reform the police system but the recent incidents proved that the struggle against the reformation of police system just remained mere attempts.

### **The Role of Judiciary in Curbing Extrajudicial Practices**

Protecting the standard of law and acknowledgement of individual freedoms establish a significant part of getting security. However, this practice is not new to India but this is the first time this kind of incidents were facilitated by the ministers and applauded by the citizens of this country.

There is no proper codified law in India in this regard but through the plethora of cases, the apex court of India tries to convey its concept of extrajudicial killings. In 2012 the apex court set a precedent that "Police have to arrest accused and put them up for a trial, it is not the duty of the police officers to execute accused merely because they are dreaded criminals. By killing and projecting the incidents as an encounter, stringently deprecated and such killings

are illegal and amount to state-sponsored terrorism."<sup>1</sup> Extrajudicial killing is an execution of an individual through an illegal means and it is a well-known fact that under the law no person shall be deprived of his life except the "procedure established by law" the procedure should be just, fair and reasonable, not arbitrary and whimsical.<sup>2</sup> Concerning with the Article 21 of the Indian Constitution the right to have an investigation and fair trial are applicable both on accused and the victim as well.<sup>3</sup> A fair investigation is utmost necessary under Article 14, 21, 39 of the Indian Constitution.<sup>4</sup> The rising extrajudicial killings is also the consequences of law enforcement officials acting arbitrarily which is the absolute violation of Article 14.<sup>5</sup>

Till now the honourable judiciary played a key role in curbing these practices while dealing with the case of **Prakash Kadam & Etc. Etc v. Ramprasad Vishwanath Gupta & Anr**<sup>6</sup> in 2011, the court ruled that the fake encounters fall under the category of "rare of the rarest" cases and can be punishable with the death penalty and probably **Urutti Kolai Case**<sup>7</sup> was the first case where the two policemen were awarded death penalty in 2018.

It laid down various suggestions, precedents, rules and principles to counter this challenge, in the landmark judgment of **Public Union for Civil Liberties v. Union of India**<sup>8</sup> the apex court ruled that no state can disregard the right to life and liberty and commitment to adhere to the procedure established by law under Article 21 of the Indian Constitution. The encounter killings by the police must be explored freely as it "influences the believability of the standard of law and the organization of the criminal equity framework."

It has additionally given 16 rules for the autonomous investigation of encounter killings which must be trailed by every single concerned authority. These rules include obligatory enlistment of FIRs for instances of encounters, an inquiry by the magistrate under section 176 of Cr.P.C, 1973 and report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Cr.P.C, 1973. Eventually, the court held that all the guidelines and principles must be strictly followed in all cases of police encounters by treating them as the law declared under Article 141 of the Constitution of India.

### **The provisions of Substantive and Procedural law which needs to be Analyze.**

Some of the provisions of substantive and procedural law indirectly help law enforcement authorities to indulge or to even cover up their brutal acts. Under Section 100 of the Indian Penal Code, 1860 permits an individual to use the right to the private defence which may

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<sup>1</sup> Om Prakash v. State of Jharkhand (2012) 12 SCC 72.

<sup>2</sup> Maneka Gandhi v. Union of India AIR 1978 SC 597.

<sup>3</sup> Nirmal Singh Kahlon v. State of Punjab & Ors (2008) 3 SCC 180.

<sup>4</sup> Ponrani v. Samuel Raj CRL O.P (MD) No. 5474 of 2010.

<sup>5</sup> E. P. Royappa v. State of Tamil Nadu & Anr AIR 1974 SC 555.

<sup>6</sup> (2011) 6 SCC 189.

<sup>7</sup> P.S. Gopikrishnan Unnithan, Two Policemen Given Death In Infamous Kerala Custodial Death Case, India Today, (July 25, 2108) <https://www.indiatoday.in/india/story/policemen-death-infamous-kerala-custodial-death-udayakumar-1295467-2018-07-25> (last visited on August 7, 2020)

<sup>8</sup> (1997) 1 SCC 301.

extend to causing the death of another individual if there is reasonable thought in the mind that the threat to life exists. The differentiation must be drawn between the right of self-defence or private defence and excessive use of force or retaliation and that the right can be practised distinctly to shield oneself yet not to retaliate.<sup>9</sup>

Section 46 of Cr.P.C, 1973 authorizes the law enforcement officials to use all means necessary to apprehend the accused if there is resistance on his part. However, this section was often misused by the authorities to cover up extrajudicial killings. Further, Section 197 of Cr.P.C, 1973 which deals with the prosecution of judges and public servants states that the sanction will be needed from the government to initiate criminal proceedings against public servants but in the case of **Parkash Singh Badal And Anr v. State Of Punjab And Ors**<sup>10</sup> the court observed that there is no need to take prior sanction for initiating criminal proceedings against public servant where the act has been carried out for personal gain. The immunity which is being provided under section 197 of the code is only applicable to acts done in pursuance of official duty and the same was validated in the case of **Station House Officer v. B.A. Srinivasan**<sup>11</sup> in 2019.

The apex court in **Prakash Singh & Ors v. Union of India and Ors**<sup>12</sup> directed Indian states to establish a Police Complaint Authority [PCA] to evaluate the misconduct in the cases of extrajudicial killings, this establishment would be of independent. Only 12 states till now have set up police complaint authority and even these states have not done it as per the determination methodology ordered by the apex court mandate. Further, Article 3 of Universal Declaration of Human Rights [UDHR] categorically states that "Everyone has the right to life, liberty and security of person". There is a modus operandi endorsed by the legislation for the criminal investigation which is enshrined in the Constitution of India under Art 21 as "Right to Life and Personal Liberty". The human right can't be waived and which should be accessible to every individual. Indeed, even the State can not violate that particular right. Consequently, it is the duty of the law enforcement officials to follow the Constitutional standards and maintain the Right to Life of each individual whether an honest one or a lawbreaker.

Most of the extrajudicial killings reported in the state of Manipur as some of the provisions of AFSPA provides immunity to the armed forces. Under section 4 of AFSPA, a wide range of powers are being given where even noncommissioned officers are allowed to shoot to kill not only on self-defence but under a mere suspicion, this particular law is always being used as a shield to protect the officials involved in this practices as under section 6 of AFSPA the victim should take authorization with the central government to initiate a proceeding against the accused.

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<sup>9</sup> (2013) 2 SCC 493.

<sup>10</sup> AIR 2007 SC 1276.

<sup>11</sup> (2020) 2 SCC 153.

<sup>12</sup> (2006) 8 SCC 1.

### **Human Rights Organizations and their Concerns.**

On 12th May 2010, the NHRC issued guidelines which are to be followed in the cases of death in police action, which includes compulsory FIR, inquiry in all cases if the complaint is made, the incident must be reported within 24 hours to the SSP or SP.<sup>13</sup> Manual on Human Rights for Police Offences and in its Annual Report 1996-97 made it clear that any alleged extrajudicial killings committed by law enforcement authorities should be treated as a culpable homicide and try with the due procedure established by law unless it is proved otherwise.<sup>14</sup>

On 11th January 2019, Office of the High Commissioner for Human Rights [OHCHR] observed that law enforcement officials act as reluctant in conveying the information about the victim and withholding the post mortem reports stands in complete contravention against the guidelines of the Supreme Court.<sup>15</sup>

Other than the way that India doesn't have any codified law concerning the extrajudicial killings yet at the equivalent, it can't be denied that judiciary assumed a critical job in checking this sort of practices through the plenty of cases. Be that as it may, the ongoing episodes of extrajudicial killings demonstrated that there is an absence of political will and non-execution of legitimate obligation by authorities with genuineness prompted this sort of terrible, tragic occurrence. Individuals were made to accept the political manner of speaking that the instant equity ought to be given to the accused because there is no expectation from the troubled judiciary.

### **Some Shocking Data in this Regard.**

- Extrajudicial killings, custodial violence, fake encounters, forced disappearance, unlawful deprivations of life are not new in our country and here are some shocking data in this regard:
- The Asian Center for Human Rights published the statistics accumulated by the National Human Rights Commission on deaths in custody in terms of which 1,504 cases of deaths in police custody and 12,727 cases of deaths in judicial custody were reported from 2001 to 2010.<sup>16</sup>

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<sup>13</sup> NHRC, Revised Guidelines/ Procedures to be followed in cases of deaths caused in police action, (May 12, 2010) <https://nhrc.nic.in/sites/default/files/Death%20During%20the%20course%20of%20Police%20Action.pdf> (last visited on August 7, 2020).

<sup>14</sup> NHRC, Manual On Human Rights For Police Officers, (December 10, 2011) [https://nhrc.nic.in/sites/default/files/Manual\\_On\\_Human\\_Rights\\_for\\_Police\\_Officers.pdf](https://nhrc.nic.in/sites/default/files/Manual_On_Human_Rights_for_Police_Officers.pdf) (last visited on August 7, 2020).

<sup>15</sup> OHCHR, INDIA: UN experts alarmed by alleged police killings in Uttar Pradesh, (January 11, 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24066&LangID=E> (last visited on August 7, 2020).

<sup>16</sup> Asian Center for Human Rights, Torture In India, (November 21, 2001) <http://www.indianet.nl/pdf/torture2011.pdf> (last visited on August 21, 2020).

- National Human Rights Commission revealed that it had recorded 1,782 cases of fake encounters in India from 2000 to 2017.<sup>17</sup>
- Four UN human rights experts have expressed alarm about allegations of at least 59 extra-judicial killings by police in Uttar Pradesh since March 2017.<sup>18</sup>
- The Special Rapporteur to the United Nation found 2,700 unmarked graves containing over 2,943 dead bodies have been discovered of extrajudicial killing between the period of 1990 to 2009 in Jammu and Kashmir and some of these graves containing more than one body, the administration informed that almost 4000 people were missing, however, the other parties claimed this data is about 5000-10000.<sup>19</sup>
- In 2017 the apex court of India responding a Public Interest Litigation ordered a probe against 1,528 extrajudicial killings by the Indian armed forces which have been taken place between 2000 to 2012 in the state of Manipur.<sup>20</sup>
- The reports proved that this practice is not new to our society and presently this kinds of brutal incidents are getting facilitated by the political ministers which encourage law enforcement officials to indulge in this practices without the fear of law.

### **The Extrajudicial Killing of Thangjam Manorama Devi and the Violation of Human Rights.**

Her bullet-ridden body was found on 11 July 2004 by villagers around 4 K.M away from her home. She was arrested on 10 July 2004 by Assam Rifles without the presence of lady constable which is again the violation of the law. The Writ Petition (C) No. 5817 of 2004 filed by Col. Jagmohan Singh challenging the state of Manipur appointing an inquiry<sup>21</sup> for this incident, the claimed;

"The apprehended cadre requested to allow her to ease herself. Thereupon, the vehicle was stopped and the party with whom she had been travelling, took a position at about 30-35 meters away from her to allow her privacy to ease herself. It was approximately 5:30 AM. That all of sudden the arrested lady cadre started to flee through a gap in the nearby hedge. That the guard commander happened to see her attempting to flee and shouted for her to stop and fired a short burst in the air to warn her. Those instinctively other members of the guard

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<sup>17</sup> Phalguni Rao, NHRC registered 1,782 fake encounter cases between 2000-2017; Uttar Pradesh alone accounts for 44.55%, Firstpost, (February 02, 2018) <https://www.firstpost.com/india/nhrc-registered-1782-fake-encounter-cases-between-2000-2017-uttar-pradesh-alone-accounts-for-44-55-4332125.html> (last visited on August 21, 2020).

<sup>18</sup> ONCHR, India: UN experts alarmed by alleged police killings in Uttar Pradesh, (January 11, 2019) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24066&LangID=E> (last visited on August 21, 2020).

<sup>19</sup> Christof Heyns, ONCHR, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, (April 26, 2013) [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1\\_EN.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1_EN.pdf) (last visited on August 21, 2020).

<sup>20</sup> Prabhas K Dutta, AFSPA and 1528 encounter killings in Manipur: Time to revoke 'license to kill', India Today, (July 14, 2017) <https://www.indiatoday.in/india/story/afspa-1528-encounter-killings-manipur-1024375-2017-07-14> (last visited on August 21, 2020).

<sup>21</sup> Col. Jagmohan Singh And Ors. vs The State Of Manipur And Ors. on 23 June, 2005. <https://indiankanoon.org/doc/38473/> (last visited on July 11, 2020).

party fired towards her legs. That as a result, she suffered bullet injuries resulting in her death".<sup>22</sup>

Even if the above-mentioned claim was true and accurate, the Assam Rifles violated the law of the land and Justice D. Biswas of Gauhati High Court who heard the petition pronounced and noted this on his final verdict.

"It is evident that the raid was conducted without the presence of a lady constable; though the house was cordoned off, no attempt was made to contact the Superintendent of Police to provide the services of a lady constable: the arrested person was not handed over to nearest police station: she was interrogated after arrest and moved from place to place in search of another lady cadre and there was no FIR pending against Km. Thangjam Manorama Devi at the time of her arrest."<sup>23</sup>

"Aside from these procedural disappointments, there are various motivations to question the form of occasions depicted by the Assam Rifles. On July 12, 2004, the state administration of Manipur requested a commission of investigation into Manorama's executing even though the commission's last report has not been made open, legal counsellors speaking to Manorama's family at the hearings approached testimonies made by individuals from the Assam Rifles, exploring authorities, specialists, witnesses, and family members to the commission. Individuals from the patrolling party who later ousted before the request commission said that Manorama's options were limited while she was in authority.

Her family members likewise said that she was wearing the customary Manipuri sarong when she was arrested. It would have been inconceivable for Manorama to run far with her options limited to up and in a firmly bound sarong. No individual from the Assam Rifles guaranteed that any individual from the watch party pursued Manorama to attempt to stop her. They said that in the wake of yelling a notice, troops started shooting, causing her demise. Manorama was unarmed while in authority which makes it difficult to comprehend why the Indian forces decided to keep a protected separation and open fire.

No unfilled cartridges were found in the region, bringing into question the patrol party's case that edgy shots were discharged to attempt to stop her. No blood was found close to the body even though Manorama had endured at any rate six-shot injuries, raising doubts that she was murdered somewhere else and her body later dumped. The police specialist and criminology expert who was a commission observer said that the idea of the slug wounds recommended that the shots were discharged at short proximity and that Manorama was resting when she was shot. He likewise dismissed that the body bore numerous different wounds that demonstrated that Manorama had been tormented before she was slaughtered.

A report from the Central Forensic Science Laboratory discovered semen stains on Manorama's skirt recommending that she may have been raped and assaulted before her

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<sup>22</sup> The Killing of Thangjam Manorama Devi, Human Rights Watch, [https://www.hrw.org/reports/2008/india0908/3.htm#\\_ftn70](https://www.hrw.org/reports/2008/india0908/3.htm#_ftn70) (last visited on July 12, 2020).

<sup>23</sup> Supra, 21.

demise. After the post-mortem, the police offered to hand over Manorama's body to the family for incineration, yet her family members said that they would not guarantee the body until the culprits had been rebuffed and the AFSPA has pulled back from the state. On July 24, 2004, the Manipur government requested the police to incinerate the body."<sup>24</sup>

On 12th July 2004, almost twenty-six organizations called of 24hr general strike include "MAFYF, UCM, AMSU, HERICON, ASIF, Human Rights Alert [HRA], COHR, AMKIL, NIPCO, CLK, MAPI Council, MACHA LEIMA, IMMA, THANIL, Manipur Keithel Nupi Marup, UPF, IPSA, All Manipur Tammi Chingmi Apunba Lup, Nongpok Leingak Nupi Lup Wangkhei, United Women Development Organisation, All Manipur Women Social Reformation Development Samaj, Khongjom Circle Meira paibi Forum, Thoubal Dist, Women Association for Civic Action of Kangleipak and MEEKHOL." On the local level, the people of Bamon Kampu formed a committee called Peoples Action Committee Against the Brutal Custodial killing of Thangjam Manorama Devi" to inquire the particular brutal incident.<sup>25</sup>

This incident shakes the conscience of the nation and on 15th July 2004, made a piece of national news. The group of women stripped off their clothes in front of 17th Assam Rifles Headquarter (western gate of kangla) to lodge their protest against the brutal killing of Thangjam Manorama Devi. The women chanted their slogans loud and clear to produced the involved army personals before them and at the same time they challenged the army personals to come out and outrage their modesty if they wished.<sup>26</sup>

### **Conclusion.**

There is an utmost necessary to formulate a codified law in this regard. In any case, it is likewise evident that "law does not make the society but society make the law" and unfortunately the general public are spellbound and controlled by the degenerate government officials for their benefits. The current situation with society is visually impaired as we as of now witness and seen individuals praising the extrajudicial killings and officials who indulge in this practice getting promoted and awarded with medals. Law enforcement authorities should always be held accountable for their actions. This kind of practices cannot be overlooked or even ignored merely referring to the crime. The principle of "***let hundred guilty be acquitted but one innocent should not be convicted***" should always be taken into consideration. This kind of practices may give pleasure to the general public referring to the crime the one committed but it will create havoc and the culture of impunity.

**"Justice delayed is justice denied but sadly it is also true that justice hurried is justice buried."**

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<sup>24</sup> Supra, 22.

<sup>25</sup> Protest Erupt Over Custodial Death of Woman, Many Nail AR, The Sangai Express (July 12, 2004), <http://www.e-pao.net/epRelatedNews.asp?heading=1&src=130704> (last visited on July 15, 2020).

<sup>26</sup> Women Give Vent to Naked Fury in Front of 17 AR in Kangla, The Sangai Express (July 15, 2005), <http://www.e-pao.net/epRelatedNews.asp?heading=1&src=160704> (last visited on July 15, 2020).