



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 5 AND ISSUE 12 OF 2025

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 12 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-12-of-2025/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

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EXTRA JUDICIAL ENCOUNTER UNDER BNSS

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BEST CITATION – MS. LEPAKKSHI M K, MS. T.VAISHALI, MR. S. PRAVEEN, EXTRA JUDICIAL ENCOUNTER UNDER BNSS, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (12) OF 2025, PG. 680-689, APIS – 3920 – 0001 & ISSN – 2583-2344

ABSTRACT

Extrajudicial encounters—commonly known as “encounter killings”—are among the most controversial practices in Indian policing, raising serious questions about the balance between public demand for quick justice and constitutional protections of due process. With the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaces the Code of Criminal Procedure, 1973 (CrPC), debates about police powers and the safeguarding of fundamental rights have been renewed. This paper critically assesses whether the BNSS offers stronger protections against extrajudicial killings or, alternatively, whether its expanded rules on arrest, investigation, and use of force might legitimize police abuses.

The analysis begins with a conceptual understanding of extrajudicial encounters and their causes, followed by a comparative study of relevant provisions under the CrPC and the BNSS. Judicial pronouncements, particularly *People’s Union for Civil Liberties v. State of Maharashtra (2014)*¹¹⁹⁹, have laid down mandatory safeguards against encounter killings, while constitutional protections under Articles 14, 21, and 22 remain the bedrock of the right to life and personal liberty. However, the persistent occurrence of encounter deaths and the glorification of “instant justice” highlight systemic failures of accountability.

This study further situates the BNSS within the broader framework of human rights law, referencing the guidelines of the National Human Rights Commission (NHRC)¹²⁰⁰ and international standards such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990)¹²⁰¹. It argues that while the BNSS introduces procedural reforms—such as mandatory forensic investigation and stricter timelines for trial—the absence of explicit safeguards against unlawful police action raises concerns about potential misuse.

The paper concludes that without strong oversight, independent probes, and clearer limits on police powers, the BNSS may reinforce impunity. Ensuring accountability is crucial to uphold constitutional values and international human rights standards.

Keywords – Extrajudicial encounter, self defence, National Human Rights Commission, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights

¹¹⁹⁹ *People’s Union for Civil Liberties v. State of Maharashtra*, (2014) 10 SCC 635.

¹²⁰⁰ National Human Rights Commission of India, “Guidelines on Encounter Deaths” (1997, revised 2010).

¹²⁰¹ United Nations, “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,” Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990.

1. Introduction

1.1. Background Of Extra Judicial Encounters in India

Extrajudicial encounters, sometimes known as "encounter killings," have long been a controversial aspect of Indian enforcement. The phrase usually refers to situations in which law enforcement officers shoot suspected criminals in apparent self-defense while making an arrest or conducting an investigation. Many of these incidents have been condemned as staged killings intended to evade the due process of law⁴, even though some may be within the bounds of the legal use of force. One The frequency of such occurrences has been repeatedly brought to light by media and civil society reports, especially in areas like Telangana, Andhra Pradesh, and Uttar Pradesh, where police have frequently defended them as an effective deterrence to crime⁵.

1.2. Significance

The significance of this issue has been renewed in the wake of India's criminal procedure reforms. With the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the Code of Criminal Procedure, 1973 (CrPC), lawmakers sought to modernize the justice system by introducing provisions on forensic evidence, timelines for investigation, and use of technology in trials.⁶ However, the persistence of extrajudicial encounters raises the critical question of whether the BNSS adequately addresses the problem of police excesses or whether its expanded provisions on arrest and detention risk exacerbating the issue.

1.3. Research Questions

- Does BNSS provide safeguards against extrajudicial encounters?
- How does it compare with the old CrPC framework?
- Are constitutional and human rights standards adequately protected?

2. Conceptual Framework

2.1. Definition of Extrajudicial Encounter

The expression "extrajudicial encounter" refers to the killing of individuals by law enforcement officials without judicial sanction or trial. While police officials often describe such incidents as acts of self-defense during operations, the term is generally used to denote deaths occurring outside the lawful process of adjudication.⁷ In theory, the law permits the police to use reasonable force, even to the extent of causing death, where it is necessary for arresting dangerous offenders or in self-defense.⁸ However, staged encounters—where alleged criminals are killed in custody or under pretextual circumstances—fall squarely outside the ambit of lawful policing and amount to a violation of the right to life.

2.1.1. Distinction between Legitimate Police Action and Encounter Killings

Legitimate police action is governed by statutory provisions, including the BNSS (successor to the CrPC), which permits the use of proportionate force during arrest or prevention of an offence.⁹ By contrast, encounter killings often involve excessive, disproportionate, or premeditated force with the intent of bypassing judicial scrutiny. The Supreme Court has clarified in *People's Union for Civil Liberties v. State of Maharashtra* (2014) that every encounter death must be treated as a case of culpable homicide until an independent investigation establishes otherwise.¹⁰ Thus, the crucial distinction lies in adherence to due process, judicial oversight, and proportionality of force.

2.1.2. International Law Perspective: Prohibition of Arbitrary Deprivation of Life

The prohibition of arbitrary deprivation of life is a cornerstone of international human rights law. Article 6 of the International Covenant on Civil and Political Rights (ICCPR), to which India is a party, guarantees that "no one shall be arbitrarily deprived of his life."¹¹ Similarly, the

Universal Declaration of Human Rights (UDHR), Article 3, affirms the right to life, liberty, and security of person.¹² The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) further stipulate that lethal force may only be used when “strictly unavoidable to protect life.”¹³ Extrajudicial encounters, therefore, directly contravene India’s international obligations under these instruments.

2.2. Nature and Causes

Extrajudicial encounters in India are symptomatic of deeper systemic failures. A key factor is police impunity—the lack of accountability mechanisms and political patronage that shield officers from prosecution.¹⁴ In many cases, encounters are celebrated by political leaders and sections of the public as a quick form of “justice,” particularly in high-profile cases involving heinous crimes.¹⁵ Another major cause is the weakness of the criminal justice system, characterized by prolonged investigations, trial delays, and low conviction rates. According to the National Crime Records Bureau (NCRB), conviction rates in serious offences such as rape and murder remain below 50% in several states, leading to public frustration and erosion of faith in the judiciary.¹⁶ This inefficiency fuels public support for encounter killings as a form of instant justice, despite their inconsistency with constitutional and human rights norms.

3. Legal Framework Before BNSS

3.1. Provisions under the Code of Criminal Procedure, 1973 (CrPC)

The CrPC, 1973 provided the principal procedural framework governing police powers of arrest, detention, and use of force.

- Section 46 regulated the mode of arrest. Sub-section (2) explicitly stated that if a person forcibly resists arrest, “the police officer may use all means necessary to effect the arrest,” which in practice extended to the use of lethal force where unavoidable.¹⁷ However, such force was subject to the overarching principle of

necessity and proportionality.

- Sections 96–106 dealt with the right of private defense, which could be invoked by both citizens and police officials. These provisions recognized the right to cause harm—even death—where it was necessary to prevent the commission of certain serious offences, such as rape or murder.¹⁸

- Together, these provisions sought to create a legal balance: enabling police to protect themselves and society, while ensuring that the right to life was not violated without due process.

3.2. Judicial Guidelines

Given the misuse of these provisions, the Supreme Court and the National Human Rights Commission (NHRC) developed additional safeguards:

- *People’s Union for Civil Liberties v. State of Maharashtra* (2014): The Court held that every encounter death must be treated as a potential offence, requiring registration of a First Information Report (FIR), an independent investigation by the CID or police station other than the one involved, and a mandatory magisterial inquiry under Section 176 of the CrPC.¹⁹

- NHRC Guidelines (1997, revised 2010): These mandated that all cases of encounter deaths be reported to the Commission within 48 hours, followed by a detailed report within three months. The NHRC also required post-mortems by a panel of doctors, videography of the examination, and judicial oversight.²⁰

3.3. Constitutional Safeguards

India’s Constitution enshrines robust protections that directly bear on the legality of encounter killings:

- Article 21 (Right to Life): Declares that no person shall be deprived of life or personal liberty except according to “procedure established by law.”²¹ The Supreme Court has consistently expanded Article 21 to include due process requirements, holding that any killing

outside legal procedure amounts to a violation.

- Article 14 (Equality Before Law): Requires that every individual, including those accused of crimes, be treated equally under the law. Encounter killings bypass judicial scrutiny, violating the guarantee of equality before the courts.²²

3.4. Article 22 (Protection Against Arbitrary Arrest and Detention): Protects individuals against unlawful detention, requiring prompt production before a magistrate and prohibiting extended custody without judicial approval.²³ Encounter deaths, often preceded by illegal custody or fabricated resistance narratives, directly contravene these protections.

4. BNSS, 2023 and Extra judicial Encounters

4.1. Relevant Provisions in BNSS

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has largely replaced the CrPC framework while retaining many provisions relating to police powers.

➤ Arrest and Use of Force:

- BNSS Section 43 corresponds to CrPC Section 46, permitting the use of “all means necessary” to effect an arrest where a person resists or attempts to evade arrest.²⁴ This continuity means that the scope for police to justify lethal force remains intact.

- BNSS Sections 120–130 correspond to CrPC Sections 96–106, dealing with the right of private defense, including the right to cause death in extreme circumstances²⁵

➤ Custody and Remand:

- BNSS Section 187 parallels CrPC Section 167, allowing police custody up to 15 days and judicial custody up to 60 or 90 days depending on the gravity of the offence.²⁶

➤ New Procedural Reforms:

- BNSS Section 176 introduces mandatory forensic investigation in offences punishable with imprisonment of seven years or

more, intended to strengthen evidentiary standards.²⁷

- Provisions for electronic evidence (Sections 336–340) and strict timelines for investigation (Section 193 requires completion within 180 days) aim to reduce delays in the justice system.²⁸

4.2. Analysis

While the BNSS modernizes procedure, its provisions on arrest and use of force mirror the CrPC, offering no additional safeguards against extrajudicial encounters. The expansion of forensic and electronic evidence requirements may indirectly reduce the incentive for “short-cut justice” by strengthening conviction rates, yet ambiguities in terms such as “all means necessary” leave wide scope for police discretion.

4.3. Potential for Abuse

- Expanded Detention Powers: Although BNSS retains judicial oversight, the possibility of extended police custody allows scope for coercion and custodial violence before judicial scrutiny intervenes.²⁹
- Ambiguities in “Reasonable Force”: Neither CrPC nor BNSS clearly defines proportionality in the use of force. This lack of precision continues to enable the justification of encounter deaths as acts of “self-defense.”

4.4. Comparative Reading: CrPC vs. BNSS

4.4.1. Continuities

- Retention of broad police powers of arrest and use of force.
- Similar custody and remand provisions.
- Absence of explicit safeguards against extrajudicial killings.

4.4.2. Departures

- Introduction of forensic and electronic evidence mandates.
- Stricter timelines for investigation and trial.

- Potentially improved conviction rates may reduce reliance on extrajudicial practices, but no direct mechanisms against fake encounters.

5. Judicial and Human Rights Perspectives

5.1. Case Laws on Encounters

The Indian judiciary has repeatedly emphasized that the rule of law cannot be sacrificed at the altar of expediency. Several landmark decisions have set out procedural safeguards against encounter killings:

- **PUCL v. State of Maharashtra (2014):**

The Supreme Court, responding to rising incidents of encounter killings, issued a set of 16 guidelines to be followed in every case of police encounter resulting in death. These included the mandatory registration of a First Information Report (FIR), an independent investigation by the CID or another police station, compulsory magisterial inquiry under Section 176 of the CrPC, and informing the NHRC of the incident without delay.³⁰ The Court emphasized that every encounter death must be treated as culpable homicide until investigated, reinforcing the principle that no individual, however accused, can be deprived of life without due process.

- **Om Prakash v. State of Jharkhand (2012):**

The Court held that “it is not the duty of the police to kill the accused merely because he is a criminal.”³¹ Fake encounters, the Court ruled, amount to cold-blooded murder and must be dealt with under the ordinary criminal law. This case reinforced the constitutional bar on arbitrary deprivation of life.

- **Nandini Sundar v. State of Chhattisgarh (2011):**

Although not directly about police encounters, this case addressed the state’s arming of private citizens under the Salwa Judum movement in anti-Maoist operations. The Supreme Court held that the state cannot

outsource its coercive functions in a manner that results in lawless violence, emphasizing state responsibility for all actions of armed agents.³² The principle is directly applicable to extrajudicial encounters, where the state bears responsibility for unlawful killings by its security forces.

5.2. NHRC Guidelines and International Norms

➤ **NHRC Guidelines on Encounter Deaths:**

The National Human Rights Commission (NHRC) issued binding directions in 1997 (revised in 2010), requiring that:

- All encounter deaths be reported to the Commission within 48 hours.
- A detailed report, including post-mortem, ballistic, and forensic evidence, be submitted within three months.
- Post-mortem examinations be conducted by a panel of at least two doctors, preferably videographed.
- Disciplinary and criminal proceedings be initiated if the evidence indicates unlawful police action.³³

Despite these safeguards, compliance by state police forces has often been partial or selective, limiting their effectiveness.

➤ **International Standards**

India is a party to the International Covenant on Civil and Political Rights (ICCPR), which under Article 6 guarantees the right to life and prohibits arbitrary deprivation of life.³⁴ Additionally, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) stipulate that law enforcement officials must apply non-violent means first, resorting to firearms only when strictly unavoidable to protect life, and always in proportion to the threat.³⁵ These international norms set a higher threshold than the existing ambiguities in Indian statutory law, highlighting the gap between India’s international commitments and its domestic enforcement.

6. Critical Analysis

6.1. Does BNSS Adequately Prevent Extrajudicial Killings?

The BNSS introduces certain procedural reforms—such as mandatory forensic investigation in serious offences (Section 176),³⁶ use of electronic records (Sections 336–340), and stricter timelines for investigation (Section 193). These measures could strengthen the evidentiary process and potentially improve conviction rates, thereby reducing reliance on extrajudicial practices as a means of “short-cut justice.”

However, the continuity of provisions such as Section 43 (equivalent to CrPC Section 46) allowing the use of “all means necessary” to effect arrest, and Sections 120–130 (private defense, including causing death) means that the scope for police justification of lethal force remains intact.³⁷ Importantly, the BNSS does not provide additional statutory safeguards against unlawful encounters, such as independent oversight mechanisms or automatic judicial review of encounter deaths. This omission reflects a significant loophole in accountability mechanisms.

6.2. Conflict between Public Demand for Swift Justice and rule of Law

India’s encounter culture is fueled by widespread public support for “instant justice.” High-profile cases, such as the 2019 Hyderabad veterinary doctor’s rape-murder case, saw mass celebrations when the accused were killed in a police encounter.³⁸ Public endorsement of such actions exerts pressure on the police to deliver quick results, even at the cost of due process.

The Supreme Court, however, has repeatedly emphasized that the rule of law must prevail over mob sentiment. In *PUCL v. State of Maharashtra* (2014), the Court cautioned that encounter killings cannot replace judicial trial, warning that legitimizing such actions would erode constitutional guarantees under Articles 14 and 21.³⁹ Thus, while BNSS reforms aim to

address trial delays, they do not directly confront the popular narrative that valorizes police encounters. The risk remains that public demand will normalize impunity, undermining constitutional safeguards.

6.3. Challenges in Implementation

- Political Patronage of Police Actions:

Extrajudicial encounters are often encouraged or defended by political leaders as symbols of strong governance. This political sanction emboldens police officers to act outside the law, knowing they are unlikely to face consequences.⁴⁰

- Weak Oversight Mechanisms:

Institutions tasked with oversight—the judiciary, the National Human Rights Commission (NHRC), and state police complaints authorities—have limited enforcement powers and are often underfunded or ignored. For example, NHRC guidelines on encounter deaths are frequently disregarded by state police forces, reducing their deterrent value.⁴¹ Similarly, judicial inquiries under Section 176 CrPC/BNSS remain procedural formalities in many states, rather than meaningful accountability tools.

- Entrenched Police Culture:

The persistence of encounter killings reflects a culture of impunity within law enforcement, where officers view such actions as both efficient and publicly rewarded. Without structural police reforms—such as independent complaint authorities, protection for whistleblowers, and professional training in human rights-based policing—BNSS reforms are unlikely to change this culture.

7. Comparative Jurisprudence

7.1. Encounter Killings in Other Jurisdictions

Extrajudicial killings are not unique to India; several other jurisdictions have faced similar challenges, providing useful lessons in terms of legal safeguards and human rights compliance:

- **Philippines – “War on Drugs” (2016–present):**

The Philippine government launched an aggressive anti-drug campaign under President Rodrigo Duterte, resulting in thousands of deaths in police operations outside judicial process. Investigations by the UN Human Rights Council and local NGOs found systemic patterns of unlawful killings, often with political sanction and public support.⁴² Despite strong evidence of human rights violations, enforcement of accountability measures remained minimal, highlighting how political endorsement and weak oversight can institutionalize extrajudicial practices.

• **Latin America – Mexico and Brazil:**

In Mexico, police and military operations against organized crime have frequently

resulted in “shootouts” later contested as extrajudicial killings. Similarly, in Brazil, the Rio de Janeiro Police have faced scrutiny for frequent lethal encounters in favelas. Investigations by the Inter-American Commission on Human Rights (IACHR) have criticized inadequate accountability mechanisms, insufficient forensic investigations, and the cultural normalization of lethal policing in high-crime areas.⁴³

• **South Africa – “Death Squad” Policing (Apartheid Era Legacy):**

Although historical, post-apartheid commissions of inquiry in South Africa revealed the importance of independent investigation and judicial oversight to restore trust in policing after periods of state-sanctioned extrajudicial killings.⁴⁴

7.2. Insights for India

• **Independent Oversight Is Essential:**

Without autonomous monitoring bodies, encounters are often sanctioned politically and socially, undermining the rule of law. Strengthening institutions like NHRC, judicial review, and independent police complaint authorities is critical.

• **Clear Legal Standards and Proportionality:**

Ambiguities in statutory language regarding “use of force” facilitate abuse. Countries that codify precise thresholds for lethal force reduce the potential for arbitrary killings.

• **Forensic and Procedural Safeguards:**

Rigorous forensic investigation, timely reporting, and transparent documentation (e.g., videography of post-mortems) are crucial to accountability. Latin American and Philippine experiences demonstrate that where these measures are weak or unenforced, extrajudicial killings proliferate.

• **Public Awareness and Civil Society Engagement:**

Extrajudicial killings often receive popular support in high-crime contexts. Engaging civil society and public education campaigns on the importance of due process can reduce the normalization of encounters.

8. Recommendations

➤ **Strengthening Independent Oversight**

Independent oversight mechanisms are critical to prevent abuse of police powers. Recommendations include:

• Empowering judicial inquiries to automatically review all encounter deaths, with binding recommendations on prosecutions and departmental action.⁴⁵

• Establishing autonomous police complaints authorities at the state and district levels, with powers to investigate complaints against law enforcement officers and initiate disciplinary or criminal proceedings.⁴⁶

• Enhancing the NHRC’s enforcement powers and ensuring timely reporting of encounter deaths, with penalties for non-compliance.

➤ **Clearer Statutory Limits on Use of Force under BNSS To reduce ambiguity and discretionary abuse:**

• BNSS should codify strict criteria for proportionality and necessity in the use of force,

defining circumstances under which lethal force may or may not be justified.

- Introduce a mandatory requirement for reporting and justification in every case where lethal force is used, with detailed documentation of threats faced, alternatives considered, and preventive measures undertaken.⁴⁷

➤ Training Police in Human Rights–Compliant Law Enforcement Professionalizing policing is essential to prevent encounter culture:

- Integrate human rights training and international standards (ICCPR, UN Basic Principles) into police academies and in-service programs.

- Conduct periodic evaluations of officers' compliance with protocols on arrest, detention, and use of force.

- Promote community policing initiatives to build trust and reduce public support for extrajudicial measures.⁴⁸

• Conclusion

This study finds that while the BNSS, 2023 introduces progressive reforms—such as forensic investigation and stricter timelines—it does not explicitly address the persistent problem of extrajudicial encounters. The provisions on arrest and use of force continue the ambiguities of the CrPC, leaving space for misuse. Judicial guidelines and constitutional protections under Articles 14, 21, and 22 remain vital, yet weak enforcement and public acceptance of “instant justice” undermine accountability.

A balance must be struck between ensuring police efficiency in combating crime and upholding constitutional safeguards. Without clearer statutory limits, stronger oversight, and strict accountability, the BNSS risks legitimizing extrajudicial practices. Reforms are therefore essential to align India's criminal procedure with democratic values and human rights obligations.

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