

What makes encounter killings particularly complex is the absence of a clear statutory framework that directly addresses them. As a result, their legality is derived indirectly from constitutional provisions, criminal law principles, and judicial interpretations. This layered framework creates both clarity and ambiguity—clarity in terms of broad principles, and ambiguity in their application. Understanding the legality of encounter killings requires looking beyond individual incidents and situating them within the broader framework of constitutional governance. These incidents do not exist in isolation; they are shaped by the legal limits placed on State power and the expectations that a democratic system imposes on its institutions. Any meaningful discussion, therefore, must begin with an examination of how the law regulates the use of force by the State. One of the key challenges is finding the right balance between effective policing and protection of rights. This is not an easy task, but it is essential.

Judicial engagement with encounter killings in India reflects a sustained and evolving effort to reconcile two concerns that are often placed in tension with each other—on one side, the need to respect and support law enforcement agencies in maintaining public order, and on the other, the constitutional obligation to protect fundamental rights. Courts have been required to navigate this balance in the absence of a specific statutory framework dealing exclusively with encounter killings, which has made their role both interpretative and corrective. In the early phases, judicial responses were shaped by a degree of institutional trust. Police accounts of encounter situations were, more often than not, accepted unless there was clear evidence to the contrary^[1]. This approach was influenced by the understanding that law enforcement agencies operate under difficult and sometimes dangerous conditions, where split-second decisions may be necessary. However, as instances of alleged fake encounters began to surface with greater frequency, this initial presumption of credibility gradually weakened.

Over time, the judiciary has shown an increasing willingness to question official narratives and insist on independent verification. This shift has not occurred abruptly but has developed through a series of cases where courts were confronted with inconsistencies, procedural lapses, and, in some instances, clear indications of abuse^[2]. As a result, encounter killings began to be viewed not merely as operational incidents, but as potential violations of constitutional rights requiring closer scrutiny. What emerges from this evolving approach is a noticeable change in judicial attitude—from cautious acceptance to a more critical and rights-oriented stance. The courts have recognised that unchecked or inadequately regulated use of force does not simply affect the individuals involved; it also has broader implications for the credibility of the legal system. When the State appears to bypass established legal procedures, it risks undermining public confidence in the very institutions designed to uphold justice. Human rights law increasingly emphasises the need to adopt a victim-centric approach. In the context of encounter killings, this involves recognising the rights of the families of those who have died, ensuring access to justice, and providing appropriate remedies. In practice, however, victims' families often face significant challenges. Access to information may be limited, legal proceedings may be prolonged, and institutional support may be inadequate. These difficulties can discourage pursuit of accountability and contribute to a sense of injustice.

In certain cases, courts have used unusually strong language to describe fake encounters. Terms such as “cold-blooded murder” and “state-sponsored violence” are not merely rhetorical; they reflect a deeper judicial concern. Such language serves two purposes. It signals seriousness of the issue and attempts to create a deterrent effect. At the same time, it underscores the idea that unlawful State action is as problematic as private criminal conduct. Another dimension that emerges from judicial analysis is the symbolic role of court decisions.

Beyond their immediate legal effect, these judgments serve as statements of constitutional values. They reaffirm that the State is bound by law even in situations of urgency, and that expediency cannot replace due process. Yet, symbolism alone is insufficient if it is not accompanied by structural change.

In this context, the gap between judicial intent and ground reality becomes particularly significant. The repeated need for judicial intervention indicates that the problem is not one of legal ambiguity but of institutional resistance and systemic weakness. Without independent investigative mechanisms, effective oversight bodies, and a culture of accountability, judicial directions risk remaining aspirational. Ultimately, the judicial approach to encounter killings highlights both the strength and the vulnerability of the legal system. It demonstrates that the Constitution provides a clear and principled framework for regulating State power, but it also exposes the challenges of translating that framework into consistent practice.

The question of criminal liability in encounter killings occupies a central position in any serious discussion on constitutional governance. It is here that the abstract principles of rights and accountability encounter the practical realities of State power. While earlier chapters have examined the legality of encounter killings within constitutional and judicial frameworks, the present inquiry shifts focus to a more direct and, in many ways, uncomfortable issue—whether police officials who participate in unlawful encounters can and should be held criminally responsible in the same manner as ordinary citizens.

Courts have, in several cases, awarded compensation to the families of individuals who have died in unlawful encounters. This development reflects recognition of the violation of fundamental rights and provides a measure of relief to those affected.

However, compensation raises a complex question. While it acknowledges harm, it does

not in itself establish criminal responsibility. There is a risk that monetary relief may be perceived as a substitute for prosecution, particularly in situations where legal proceedings are prolonged or inconclusive. In doing so, it attempts to move beyond a purely doctrinal analysis and engage with the broader question of how accountability can be meaningfully enforced. The question of criminal liability in encounter killings is one of the most sensitive aspects of this debate. It is here that constitutional principles meet the realities of policing. While earlier chapters dealt with legality and judicial response, this article focuses on a more direct issue—whether police officials involved in unlawful encounters can be held criminally liable like any other individual.

Encounter killings, when viewed solely through domestic criminal law, already raise serious concerns. However, when placed within the broader framework of human rights, the implications become even more significant. The issue is no longer limited to questions of legality within a national system; it extends to the State's obligations under universally recognised norms governing the use of force and protection of life. The central question in this context is not simply whether encounter killings are lawful under municipal law, but whether they align with the standards that modern constitutional democracies are expected to uphold. These standards are shaped not only by domestic constitutions but also by international human rights instruments and evolving global practices. The role of evidence, particularly forensic evidence, highlights both the potential and the limitations of current mechanisms. While scientific methods can provide objective insights, their effectiveness depends on proper implementation and independence. Similarly, the distinction between compensation and criminal liability underscores the need to maintain clarity in legal responses. Acknowledging harm is important, but it cannot replace the requirement of accountability.

Ultimately, the question of criminal liability in encounter killings is not only about applying

existing law but about ensuring that the conditions necessary for its application are present. This includes independent investigation, timely prosecution, and a willingness to examine institutional practices. The broader implication is that the legitimacy of the legal system depends on its ability to hold its own agents accountable. When this does not occur, the principle of equality before law risks losing its substantive meaning.

Judicial responses to encounter killings demonstrate a clear commitment to constitutional principles. However, the gap between law and practice remains a significant challenge. The judicial approach to encounter killings reflects a gradual but unmistakable shift towards greater scrutiny and constitutional accountability. Through a series of decisions, courts have clarified that the use of lethal force by the State cannot exist outside the framework of law, and that encounter killings must be examined with the same rigour as any other act resulting in death. What stands out in this jurisprudence is the consistent emphasis on accountability. The judiciary has rejected the notion that police action, by virtue of its purpose, is entitled to unquestioned acceptance. Instead, it has insisted that such actions be justified through evidence, subjected to independent investigation, and assessed within the boundaries of criminal law. This marks an important departure from earlier tendencies to rely on institutional trust.

At the same time, the limitations of judicial intervention are equally evident. While courts have laid down detailed guidelines and expressed strong disapproval of unlawful encounters, their effectiveness ultimately depends on implementation by executive agencies. The persistence of encounter killings, despite clear judicial directions, suggests that the problem cannot be addressed through adjudication alone. Another important aspect that emerges from judicial discourse is the recognition of structural imbalance in encounter cases. The control of evidence by the police, the absence of independent witnesses, and the

inability of victims to present their version create inherent challenges in establishing accountability. Although courts have acknowledged these difficulties, the existing legal framework has not fully adapted to address them. The judicial approach to encounter killings has not remained constant. It has undergone a noticeable transformation over time.

In the earlier phase, courts tended to give the benefit of doubt to police officials. There was an underlying assumption that actions taken during encounters were part of official duty and therefore deserved a certain level of trust. This approach reflected a degree of institutional confidence in law enforcement agencies. However, this position gradually weakened as more cases of alleged fake encounters came to light. Patterns began to emerge—similar narratives of self-defence, lack of independent witnesses, and inconsistencies in official accounts. These factors made it difficult to continue relying solely on police versions. As a result, courts began to adopt a more cautious approach. Instead of accepting explanations at face value, they started demanding independent verification. Greater emphasis was placed on evidence, sequence of events, and the conduct of officials involved. This shift marked an important change. Encounter killings were no longer treated as routine policing outcomes. Instead, they were examined as serious incidents involving potential violation of fundamental rights. Another significant development was the increased focus on procedural safeguards. Courts stressed the need for proper investigation, registration of FIRs, and transparency in handling encounter cases. This was aimed at ensuring that such incidents do not escape legal scrutiny.

India, as a constitutional democracy and a participant in the international legal order, is expected to ensure that its actions conform to certain minimum guarantees. Among these, the protection of life occupies a foundational position. Any State action that results in the loss of life must therefore be examined with a degree

of scrutiny that goes beyond ordinary administrative review. Encounter killings present a particularly difficult challenge in this regard. They are often justified in terms of necessity, public safety, or operational urgency. At the same time, they raise concerns about arbitrariness, lack of due process, and absence of accountability. This dual character makes it necessary to examine them through a framework that integrates legal doctrine with human rights principles. The issue of encounter killings cannot be understood only as a legal problem. It reflects a deeper tension between the need for effective law enforcement and the requirement of constitutional accountability. While earlier chapters have examined the legal framework, judicial approach, and criminal liability, this article brings together the key findings of the study and evaluates them in a broader context. The purpose here is not merely to summarise the discussion, but to critically assess whether the current system is capable of addressing the problem. It also attempts to suggest practical reforms that can strengthen accountability without weakening the ability of the State to maintain law and order.

One area that requires attention is the development of a clearer statutory framework governing encounter killings. At present, the legal position is derived from a combination of constitutional interpretation and judicial guidelines. While this provides flexibility, it may also lead to inconsistency in application. Codifying procedures relating to investigation, evidence preservation, and accountability could enhance clarity and uniformity. Such a framework would not create new rights but would strengthen the enforcement of existing ones. The study shows that addressing encounter killings requires more than legal clarification. It requires systemic reform at multiple levels. At the institutional level, there is a need for stronger accountability mechanisms. Independent investigation, transparent procedures, and effective oversight are essential. At the legal level, existing provisions must be applied more consistently. Procedural

safeguards should not be treated as formalities, but as essential protections. At the administrative level, better training and clear guidelines can help ensure that police officers understand the limits of their authority. At the societal level, there is a need to change attitudes towards justice. The idea that quick punishment is better than fair procedure must be questioned.

These reforms are interconnected. Addressing one aspect without the others is unlikely to produce lasting change. Another aspect of legal reform involves reconsidering procedural barriers such as the requirement of prior sanction for prosecution. While such provisions are intended to protect officials acting in good faith, they may also delay or prevent legitimate cases from proceeding. Ensuring that these safeguards are applied carefully is essential to maintaining balance.

One of the most commonly invoked justifications for encounter killings is that they provide swift justice in a system often criticised for delay. This argument draws strength from public frustration with lengthy trials and low conviction rates. However, a closer examination reveals that the idea of “instant justice” is conceptually flawed. Justice, in its legal sense, is not merely about the outcome but about the process through which that outcome is reached. It requires examination of evidence, opportunity for defence, and impartial adjudication. Encounter killings bypass all of these elements. What is presented as justice is, in reality, a form of retribution that lacks procedural legitimacy. One of the most striking aspects of encounter killings is the gap between what the law provides and what happens in reality. On paper, the legal framework in India is quite strong. Constitutional provisions, criminal law principles, and judicial guidelines all place clear limits on the use of force.

The rule of law is a foundational principle of any democratic system. It requires that all actions of the State be governed by law and subject to accountability. Encounter killings pose a direct challenge to this principle. From a human rights perspective, this trend is particularly troubling.

The protection of life is not meant to be conditional or situational. Allowing exceptions to become the norm undermines the very foundation of rights-based governance. In doing so, it attempts to move beyond a purely doctrinal analysis and engage with the broader question of how accountability can be meaningfully enforced. The question of criminal liability in encounter killings is one of the most sensitive aspects of this debate. It is here that constitutional principles meet the realities of policing. While earlier chapters dealt with legality and judicial response, this article focuses on a more direct issue—whether police officials involved in unlawful encounters can be held criminally liable like any other individual.

Beyond legal analysis, encounter killings raise important ethical questions. They challenge the idea that individuals, regardless of their alleged conduct, are entitled to dignity and fair treatment. The use of lethal force without due process reduces individuals to objects of State action. This conflicts with principles of justice that emphasise fairness, equality, and respect for human life. From a philosophical perspective, the legitimacy of punishment is tied to its justification through a fair process. Encounter killings disrupt this connection. The judiciary has played an important role in addressing encounter killings. It has laid down guidelines, emphasised accountability, and expanded the interpretation of fundamental rights.

However, there are clear limits to what courts can achieve. Judicial decisions depend on proper implementation by executive agencies. Without this, their impact remains limited. Another limitation is that courts usually act after the incident has occurred. They can examine legality, but they cannot prevent misuse of power at the moment it happens. This highlights the need for stronger institutional mechanisms, rather than relying solely on judicial intervention.

*Raja chen-
na bhavellokey prithivyaamdandadharakah*

*Shaley matsyanivapakshyan durbalaanbalvatt
araah"*

This shloka means that when the King carrying the rod of punishment does not protect the Earth then the strong persons destroy the weaker ones, just like in water the big fish eat the small fish. In the *Shantiparva* of *Mahabharata* Bhisma Pitamah tells Yudhishtir that there is nothing worse in the world than lawlessness, for in a state of *matsyanyaya*, nobody, not even the evil doers are safe, because even the evil doers will sooner or later be swallowed up by other evil doers.

From a constitutional perspective, encounter killings raise concerns that go beyond individual rights violations. They challenge the foundational principles of governance, particularly the rule of law and separation of powers. The analysis carried out across different chapters leads to several important conclusions. First, the legal framework in India is sufficiently strong. Constitutional provisions, especially those relating to life and equality, clearly restrict the use of force and require accountability. Criminal law also provides mechanisms to deal with unlawful killings. Second, despite this strong framework, encounter killings continue to occur. This indicates that the problem lies in implementation rather than in the absence of law. Third, judicial intervention has played a significant role in highlighting the issue and setting guidelines. However, its effectiveness is limited by weak enforcement. Fourth, structural issues within the criminal justice system, such as delays and low conviction rates, contribute indirectly to the persistence of such practices. Finally, public perception plays a crucial role. When encounter killings are widely supported, it reduces the pressure for accountability and creates an environment where such actions may continue.

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Encounter killings represent a complex challenge at the intersection of law, governance, and society. While they are often justified in terms of necessity or efficiency, such justifications do not withstand careful legal scrutiny. The deprivation of life without due process is fundamentally incompatible with constitutional principles. The analysis presented in this study demonstrates that the issue is not one of legal deficiency but of implementation. The law provides adequate safeguards, but their effectiveness depends on consistent enforcement and institutional commitment.

A sustainable response requires a combination of legal reform, institutional strengthening, and cultural change within law enforcement agencies. It also requires a broader recognition that the legitimacy of State power is derived not from its ability to act swiftly, but from its adherence to law. Ultimately, the strength of a constitutional democracy is measured by how it treats those accused of wrongdoing. Encounter killings test this measure by challenging the balance between security and liberty. The path

forward lies in reaffirming the rule of law and ensuring that justice is not only done, but done through lawful means. Given the structural imbalance that characterises encounter cases, there is a compelling argument for rethinking the conventional approach to burden of proof in such matters. The suggestion of adopting a presumption against the State does not rest on the idea of assigning automatic guilt to public authorities. Rather, it acknowledges the unique position of power and control that the State occupies in these situations and seeks to correct the imbalance that flows from it.

In most encounter cases, the State, through its agencies, controls nearly every aspect of the incident. It determines how the event is recorded, how the evidence is collected, and how the narrative is presented. This concentration of control creates an inherent advantage that is not easily countered by those seeking to challenge the official version. The absence of the victim's testimony, combined with limited access to independent evidence, further complicates the task of establishing what actually occurred. Traditional principles of criminal law place the burden of proof on the prosecution, requiring it to establish guilt beyond reasonable doubt. While this standard is essential for protecting individual liberty, its application in encounter cases raises practical difficulties. Where the evidence is largely in the hands of the State, and where alternative accounts are difficult to substantiate, the ordinary framework may not adequately address the imbalance. One of the key challenges is finding the right balance between effective policing and protection of rights. This is not an easy task, but it is essential.



INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 8 OF 2026

APIS – 3920 – 0001 (and) ISSN – 2583-2344

Published by
Institute of Legal Education

<https://iledu.in>





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