


# Opinion: TN's 'encounters' are unbecoming of a government with social justice principles

*When the State praises 'encounter specialists' like S Velladurai IPS for their extra-constitutional acts, and spares 'torture specialists' like Balvir Singh IPS, police accountability goes for a toss.*



Image for representation

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With three extra-judicial killings in a single week, the Tamil soil of social justice has seemingly turned into a full-fledged police State. The Cuddalore 'encounter' of April 2 was the 18th such incident since the Dravida Munnetra Kazhagam (DMK) government came to power in 2021. The government justified the murders of most of the 21 killed by stating that they were hardened criminals trying to attack the police, but what these deaths expose are the inefficiency of the police and the blatant disregard for the rule of law.

On March 26, the Chennai City Police shot an alleged chain snatcher from north India, after he allegedly opened fire against the cops — the standard encounter narrative of the police.

Five days after this, there was the extrajudicial killing of an A+ category history sheeter in Madurai city, which also faces foul play allegations by the family and activists. A team from the Joint Action Against Custodial Torture (JAACT) visited the spot and categorically termed it a planned act. On April 11, the JAACT, along with 75 other people's organisations in Tamil Nadu released a statement condemning the 'encounters' in the state.

The third in this series of killings was a 19-year-old from Cuddalore, murdered on April 2, yet another case shrouded in the same troubling inconsistencies.

## **The judiciary's role**

In his book *Introduction to the Study of the Law of the Constitution*, British jurist AV Dicey propounded the principle 'rule of law and not rule by men'. He emphasised the supremacy of law and the prohibition of arbitrary power, particularly in the fear that those with the law in their hands might misuse it. This is precisely what's happening today in Tamil Nadu.

The police often act arbitrarily, disregarding the rule of law. Retired Justice K Chandru, renowned for his human rights endeavours, remarked on a similar incident in 2022: "Police cannot take the law into their hands. Police stations cannot become courts, and officers cannot become judges."

It is unfortunate that such a resort to extra-constitutional means by police has become unusually common and normal among the masses, symbolising total disregard for the rule of law.

The judiciary has undeniably played a significant role in holding the police force accountable, but the extent of its impact remains a matter of debate.

The Madras High Court, in a case of encounter killing that took place in 2010, criticised extrajudicial killings, stating that they reflect the police's lack of faith in the rule of law, constitutional rights, and the criminal justice system.

Hearing a petition to initiate an independent investigation into the death of a 2010 extrajudicial killing victim, filed by his mother Guruvammal, the Madurai bench of the Madras High Court noted that Tamil Nadu is seeing an increasing number of accused 'trying to escape,' getting injured in an 'encounter' with the police, and killed.

The court observed, "It reminisces the colonial past of the agency that was constituted by the British under the Indian Police Act, 1861 and is an affront on democracy."

The Madras High Court, in a case of custodial death of 43-year-old Raja in Viluppuram on April 10, 2024, ordered a re-postmortem to clear the inconsistencies with the police's version of the events. This too, however, did not bear any positive results. Raja's wife Anju alleged that the second postmortem involved several procedural lapses that were in violation of the court's directions.

## **Justice served?**

It is pertinent to determine to what extent the judiciary has been able to do justice to the victims of these 'encounter' killings. In Guruvammal's case, it took more than 10 years after her son's death for the compensation to be paid to her.

On the other hand, the prosecution of the police officers has been weak and ineffective. The complaint submitted by Guruvammal alleging murder by the police officers was not registered. Instead, the police investigated a complaint

filed by the officer involved in the incident itself and closed it as a genuine case of 'encounter' killing.

As Justice Chandru bemoaned, "It is a vicious cycle, because the criminal justice system has failed." He added, "Never once has a police officer been arrested for murder." This means that justice is compromised both at the event of an 'encounter' and during the procedure followed after it, despite a number of precedents set by the courts to be followed after an extrajudicial killing occurs.

Henri Tiphagne, a human rights activist, noted in concurrence, "Encounters prevent suspects from exercising the right to defend themselves, and condemn the usual stories cooked up by the police during every encounter." He also deplored that a day might come when innocent lives are taken by 'encounter' killings. This has already taken place several times, a stark example being the killing of an innocent agricultural labourer in 2023 by the Forest Department in the Gudalur range.

## **The state's role**

It is saddening that our criminal justice system is incapable of prosecuting these police officers for their unconstitutional acts. It is a matter of practical difficulty as well. As the Supreme Court pointed out, "Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues and the present case is an apt illustration as to how one after the other, police witnesses feign ignorance about the matter."

Nevertheless, what has the state government, which has complete control over the police under entry 2 of the state list, done to address this issue?

The fifth report of the National Police Commission in 1980 said this about 'fake encounters': "The general public in some areas feel that often encounters are stage-managed by the police." It recommended that "in every case of an encounter, senior police officers should satisfy themselves that the police have acted under the law and not in a cruel or highhanded manner."

In addition, the Administrative Reforms Commission in 2007 observed that the state government is responsible for efficient, effective, responsive, and accountable functioning of police for the entire state.

Chief Minister MK Stalin constituted the fifth police commission a few months after he came to power in 2021. The Commission recommended several reforms including pay hike, initiatives for fostering public-police relationship, and mental health training for police personnel.

Apart from direct reforms within the police infrastructure, the Health Department under the state government must also be made efficient to adhere to the judicial precedents regarding postmortem certificate, video recording of autopsies and issuing them to the families in custodial deaths. These mandates are often violated, and are not addressed by the government.

Notably, the mandate of operational CCTVs in all police stations is also not followed.

Instead of coming up with such measures to stabilise the criminal justice system, the government often involves itself in counter-productive acts. Despite such continuing encounters and custodial violence, Chief Minister MK Stalin has not spoken in public about the need to look into such issues and reform the police.

In fact, the government has done more damage than good on this issue. It has resorted to frequent, unwarranted, and politically motivated transfers of police officers whenever such incidents of extrajudicial or custodial deaths occur. Many of these transfers are against the concept of police accountability and, in particular, against the Supreme Court ruling on police reform, mandating a minimum tenure of two years for senior police officials.

When 'encounter specialists' like S Velladurai IPS are praised for their extra-constitutional acts, and 'torture specialists' like Balvir Singh IPS are spared, police accountability goes for a toss. Recommendations for reform and social justice ideals seem to remain only on paper.

For a state that lauds itself for having the 'professional competency' of that of the Scottish police, this is a very disconcerting state of affairs. When senior police officials glorify police excess amidst a surge in extrajudicial killings and brazenly execute three in a week's time, while the Assembly is in session, the state government's silence does not bode well for the rule of law. It is high time Chief Minister Stalin woke up and reformed the Tamil Nadu Police.

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***Views expressed are the author's own.***