

Jyoti Belur

# Permission to Shoot?

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Police Use of Deadly Force  
in Democracies



Springer

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ISBN 978-1-4419-0974-9 e-ISBN 978-1-4419-0975-6  
DOI 10.1007/978-1-4419-0975-6  
Springer New York Dordrecht Heidelberg London

Library of Congress Control Number: 2010933973

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## Permission to Shoot?

# Preface

Police use of deadly force has fascinated criminologists for decades especially in the Western world. While some instances of police killings have been perceived as being acceptable and unavoidable, often they have elicited controversy and anger. The police are more often than not accused of abuse or excess use of deadly force against fellow citizens. If that were the case, few have delved into the question: what makes ordinary, “decent” human beings do horrible things? (c.f. Huggins et al., 2002; Foster et al., 2005a). Further, the question, “how are such ‘wrongdoings’ on the part of state actors justified in a democratic society?” goes a-begging. The questionable use of deadly force by the police, with a monopoly on state violence, is a universal phenomenon and yet police officers’ perspective on this issue has seldom been explored in depth in democratic countries.

This book is about a peculiar feature of Indian policing called *encounters*. An *encounter* is a spontaneous, unplanned “shoot-out” between the police and alleged criminals, in which the criminal is usually killed, with few or no police injuries. However the police “cover story” (Hunt & Manning, 1991) from official sources and cited in the media is *always* the same raising the suspicion that it is a cover-up for facts that might not be legally defensible or permissible. The term *encounter* is not just police jargon but is part of everyday discourse in India and is used by police officers, media, and public to refer to police use of deadly force in circumstances described by one newspaper report as follows:

*‘Mumbai Police pats itself as encounter deaths double’*

The Mumbai police call it “proactive policing”. In everyday parlance, it is referred to as an “encounter” between policemen and gangsters that always results in the death of these gangsters. That these encounters do not have a surprise element, instead are planned, to a large extent, by the police, no longer raises eyebrows. But even by their own standards, Mumbai police have been far too “proactive” in 2001 compared to the past few years...In 2000, the total number of alleged gangsters killed in encounters was 49, and the year before that it was 60. The quantum leap to 94 has certainly sent shockwaves through the underworld. Extremely pleased at this leap, Police Commissioner M.N. Singh said: “Organised crime is well under check. This is the final blow.

*The Indian Express* (December 29, 2001)

Of all types of force used by the police, deadly force is cause of most concern, not only because its consequences are irreversible and irreparable, but because it

“affects citizens’ attitude toward the police and toward the government in general” (Geller & Scott, 1991), as does all inappropriate use of force. It is important to understand why it is that in a free and democratic society like India, the abuse of deadly force is not only tolerated, but in many ways (both overtly and tacitly) encouraged.

I worked as an officer of the Indian Police Service (IPS) in the state of Uttar Pradesh, which is one of the more backward, illiterate, densely populated, and crime-infested regions of the country. My experience, during training and subsequently in the field, led me to believe that the influence of the occupational subculture<sup>1</sup> is ubiquitous and tangible. There is formal emphasis on the rule of law and due process, but these are viewed by police officers more as obstacles to be overcome in the ultimate quest to tackle crime and law & order problems. The “heroes” or “model cops” to be emulated are those who have proved their “bravery” or “toughness” in the field through dealing with one or more “dreaded criminals” in *encounters*. These messages are rarely articulated explicitly, but are disseminated in more subtle ways, that are nonetheless very powerful. A few young officers even join the police with the aim of joining the ranks of *encounter* “heroes” and tend to use deadly force with less reservation than is mandatory<sup>2</sup>.

This pattern is not replicated across India as some states have a much better record on the use of deadly force than others. Areas facing serious challenges from Naxalites (communist rebel groups), organised gangs, very high levels of serious crime (e.g. dacoit<sup>3</sup>-infested areas), and separatist groups or terrorist operations, have a greater tendency to engage in *encounters* than others. Furthermore, the context and circumstances in which *encounters* happen are very different in all these different situations.

Certain states in India that were and some that continue to be affected by counterinsurgency, like Punjab, Kashmir, Assam, and other North Eastern states have different experiences as compared to those affected by militant Maoist rebels. Gossman (2002) describes types of “death squads” that operate in various parts of India, differentiating between out-of-uniform police officers who formed death squads in insurgency ridden Punjab; security forces (army, paramilitary forces, and the police) operating in Kashmir and in Assam, threatening and assassinating militant leaders and other opposition figures; and special police squads operating in Naxal-infested areas. The Naxalite movement began in India in 1969 formed by radical Maoists, who believe that the enemy of class struggle, the power-wielders in the existing social order, have to be eliminated even if that enemy (state agents)

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<sup>1</sup>Several studies have shown that the police organisation has a particular occupational culture, which is shared by almost all police forces across the world. It is characterised by mission, action, cynicism, suspicion, pragmatism, machismo, solidarity, isolation, etc. (Reiner, 2000a).

<sup>2</sup>Studies by Van Maanen (1973), Hunt (1985) and Harris (1978) found that a similar process of “indoctrination” of new police recruits into the “masculine ethic” and the regaling of war stories featuring violence by instructors was a feature of police training in the USA.

<sup>3</sup>Dacoity is defined under section 391 of the Indian Penal Code as robbery committed conjointly by five or more persons.

may not have directly harmed them. States affected by the Naxal movement include Bihar, West Bengal, Chattisgarh, Andhra Pradesh, Jharkhand, parts of Orissa, Maharashtra, Madhya Pradesh and is spreading to other parts. In these states, especially Andhra Pradesh, special police squads are alleged to have executed suspected militants and prominent activists in custody and “claim that they have been killed in armed “encounters”; for most of these routine killings, no elaborate cover-up was considered necessary” (Gossman, 2002:262).

Another pattern of *encounter* killings was well established in Punjab and Kashmir (during the days of insurgency in the 1980s and 1990s) where the “victim” was detained and tortured for several days before being killed (Mahmood, 2000, Pettigrew, 2000). Gossman (2002:268) suggests, “Government practice of providing cash rewards for police who eliminated wanted militants encouraged the police to engage in extrajudicial killings”.

*Encounters* may be considered by the police to be a natural fallout of routine policing in these “difficult” areas. However, in other parts of the country, especially in some large cities like New Delhi and Mumbai, *encounters* appear to be used more as a deliberate, short-cut method to bypass the delays and uncertainties of processing “criminals” through the criminal justice system rather than being spontaneous shootouts between organised criminals and the police.

Police *encounters* are not only “prized” internally by the police organisation and are sometimes rewarded by the government (either with one-rank-promotions, or bravery medals, and/or other privileges), but also enjoy some societal approval in Mumbai. There have been several examples when the police have been publicly congratulated for “acts of bravery” that have ridden society of a “menace”. Most police officers<sup>4</sup> consider their work to be not just a job, but to be a “way of life with a worthwhile mission” (Reiner, 2000a; Skolnick & Fyfe, 1993) – to serve the public and protect society against the forces of evil. Public adulation is a heady stimulant and combined with positive press ratings and organisational approval in the form of allowing such actions to continue unquestioned, can serve to demolish any moral compunctions that the police have towards depriving another person of life.

Police officers are recruited from among ordinary citizens, (albeit at different levels and ranks) and are not inherently evil or natural “killers”. The question then arises: how and why do ordinary people kill fellow citizens? The explanations might lie in their difficult working conditions, the demands of the socio-political milieu within which they operate, combined with a spiralling crime problem that have led to a situation where “criminals” are seen to deserve executions. It could even be the case that since most police *encounters* are not subject to detailed scrutiny, the decision to invoke deadly force maybe undertaken lightly, or without considering the full impact of the moral and legal aspects involved.

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<sup>4</sup>In India a distinction is drawn between the subordinate ranks (men) and senior ranks (officers). However, henceforth the term “police officers” will cover all ranks of police personnel in this book.



There is growing human rights awareness in India and a number of Non Governmental Organisations (NGOs) and pressure groups have over the past few years questioned some of these more dubious police tactics and actions. Over the past decade there has been some public outcry against *encounters* and criminal action has been initiated against some well-intentioned but misguided policemen involved in *encounters*.

Police use of deadly force not only has a very significant impact on the right to life of the victim, but it also affects the life of the police officer involved, in many far-reaching ways – from being involved in criminal or departmental proceedings and inquiries to maintaining their moral well-being. Solving the moral dilemma of using “dirty means to achieve good ends” (Klockars, 1991) is something every police officer has to confront during his/her career in some form or the other. The book examines the truly complex nature of the issues surrounding the police decision to invoke deadly force and explores an area that has profound ramifications for policing, police malpractice, and the social and cultural context in which it takes place.

The aim is not merely to uncover or describe police use of deadly force, but in order to understand the use of force,

“One must evaluate them [police accounts] from the point of view of the cops who succumb to these moral hazards of their occupation. Doing so requires that the cops themselves be permitted to speak at length and in intimate detail about these issues. As they do, they often advance extremely complex and sometimes highly seductive moral and psychological arguments for their behaviour.” (Klockars & Mastrofski, 1991:396)

Therefore, an important part of the research is to explore the different ways in which police officers and people whom I call “claimsmakers” perceived and talked about issues around *encounters*. Various justificatory arguments used by officers clearly indicate that they used a discourse of denial to account for *encounters*, arguments that not only neutralised their actions but also served useful functions for the audience they were intended for. Thus the discourse of denial served two purposes: first, ameliorating guilt or culpability about the action itself; and second, enabled the public to respond to *encounters* not as cold-blooded police killings but as part of a justified war on crime.

*Encounters* have yet to be publicly perceived as a “social problem” – “a social condition that has been found to be harmful to individual and /or societal well being” (Bassis et al., 1982:2) in India. It is therefore imperative to understand how the phenomenon of *encounters* is socially constructed by “claimsmakers” asking the sorts of questions that Best (1995) explores: what sorts of claims get made; when do claims get made, and by whom; how are these claims received by the intended audiences and under what conditions? By adopting a form of contextual constructionism in the research, this book explores the claims made by officers and “claimsmakers”.

The book is set out as follows:

Chapter 1 reviews the literature on police violence, concentrating on studies of police violence in some western democracies, especially the USA, the UK, Canada, and Australia, as well as in other less-developed democratic countries, in Latin America and Africa. The Mumbai police is situated within this wider literature and



various models (individual, situational, organisational, and structural) to explain the causes of police violence, that are relevant to the situation in Mumbai are discussed. The “moral dilemma” that arises in situations that call for solutions to a “means-and-ends” problem is explored. The content and nature of policing is intrinsically linked to the use of force, and in many countries has been associated with some form of racial discrimination. The situation in India, and Mumbai, in particular, is more nuanced, in that, the use of deadly force by the police is allegedly directed against “hardened criminals”, but the police are often accused of mainly targeting criminals belonging to a minority ethnic community.

Chapter 2 discusses actual examples of police shootings in three big cities, New York, London, and Mumbai in order to draw out similarities and differences in the way the shootings were presented and perceived in these cities. High profile cases of shootings that generated controversy, a lot of media interest, and elicited a strong reaction from the public and the police organisation alike, are discussed in some detail. The subtle nuances of the way the story is presented by the police, interpreted and disseminated by the media and perceived by the public, and the courts in the three cities highlights the universal nature of the problem of police shootings: that is the police are perceived as getting away with abuse of deadly force, not just in former colonies and dictatorial or military regimes but in democracies.

Chapter 3 introduces Mumbai city and its socio-economic and cultural place in Indian life. The city, its size, population, ethnic composition, importance as a commercial trade centre, its manufacturing and service industries, and its special position as the capital of the film industry in India (Bollywood) all demonstrate that Mumbai has a unique social, cultural and economic position in India. The city’s contemporary police force has grown out of a colonial legacy of policing based on the model of the Royal Ulster Constabulary. The structure of the police service, as well as the administrative framework that provided the context within which *encounters* emerged and different power structures operated and influenced the politics of day-to-day policing are discussed. The chapter traces the growth of organised crime in Mumbai since the 1970s that led to the use of deadly force by the police, in scenarios constructed as *encounters*. It focuses on the growth and development of some of the leading gangs, and how their activities impacted on citizens of Mumbai. The twin processes of the politicization of organised crime and the criminalization of politics in Mumbai are also discussed.

Chapters 4–6 focus on interviewees’ perspectives of *encounters*, their understanding of the term, and attitude towards the legality, morality, desirability, and acceptability of *encounters*, individually and organisationally. Police officers’ perception of their role and responsibilities are vital in shaping their attitude towards *encounters* and whether they are willing to adopt or condone these actions. Their perception of how the public respond to the use of deadly force is also important in understanding their justifications for *encounters*. Public opinion is reflected to some extent in the interviews with “claimsmakers”, so called, because these particular individuals – lawyers, journalists, judges, politicians, Human Rights activists, and representatives from the industrial associations – actually had made public claims about *encounters* over the period of study (1993–2003). These interviews were used to contextualize the conviction of police officers that society not only

approved of and encouraged their actions in *encounters*, but that there actually was a vocal social demand for such proactive action. While there was no consensus on the moral or legal rectitude of police *encounters*, there was a common belief that *encounters* were very effective as a short-term measure to control spiralling organised crime. There was also a belief that even though police actions were suspected, there was very little anyone could do to prevent or punish “wrongdoing”. A striking feature of these interviews was the lack of consternation or protest that the police were involved in executing alleged criminals and this appeared to provide the moral impetus to police justifications of *encounters*.

In Chap. 7 perceptions of police officers’ perspectives on *encounters* are put together with Stan Cohen’s Theory of Denial to demonstrate how officers use denial and justificatory accounts to explain the necessity and importance of *encounters* in Mumbai. Police officers have to live with the fact that they used or condoned the use of deadly force as perpetrators or bystanders and that they act as judge, jury, and executioners against alleged criminals. I suggest that classic denial mechanisms are used to justify their actions to themselves and to their audiences.

The final chapter uses “*their*” (interviewees’) reasons to extrapolate “*the*” (structural) reasons for why *encounters* happen (Cohen, 2001:58), why they are tolerated, and identifies agendas for future research. Taking a step back from these stories “*the*” reasons why police actions were not challenged, and the wider structural and systemic factors that create conditions where killing “hardened” criminals seems to be the last resort for the police are explored. Chapter 8 examines the social and political situation in a commercial, crime-ridden city, preoccupied with protecting its businesses, manufacturing units and service industry as well as safeguarding the life and property of its citizens and speculates on the wider cultural and specifically police sub-cultural factors that made *encounters* both feasible and acceptable. Factors accounting for police abuse of force in Mumbai are compared and contrasted with prevailing conditions in other societies where police executions feature prominently. The experience of different police forces and policy makers in other countries have sought to control police use of deadly force by introducing legal, procedural, cultural, and/or structural changes and their efficacy are discussed. Finally, suggestions for possible solutions to curb Mumbai police’s excessive use of deadly force and protect the right to life are offered.

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# Acknowledgements

I would like to thank the Mumbai Police and all the wonderful officers who unhesitatingly agreed to participate in my research project. The interviews were conducted over 2002–2003 and the then Commissioner of Police, Mr. M.N. Singh was magnificent in his support and cooperation. I am indebted to all the officers who were willing to commit time and thought to explore some very sensitive issues around police use of deadly force. Numerous staff in the Commissioner's office were very helpful in collating statistics and other information I needed. I was amazed at the level of openness with which the Mumbai police extended support for the research. I am also grateful to all my "claimsmakers" who were also very generous with their time and opinions on the police and policing issues. I would like to thank the Director, National Police Academy, Hyderabad and the NPA library staff for the generous use of their facilities while conducting background research.

I am grateful to ABC Clio, Oxford Journals and Sage Publications for permission to reprint materials from:

1. (2010) Police 'encounters' in Mumbai. In J. Kuhn and J. Knutsson (Eds.), *Police Use of Force: A Global Perspective*. Westport, CT: Praeger Greenwood. 52–63.
2. (2010) Why do the Police Use Deadly Force: Explaining Police 'Encounters' in Mumbai, *British Journal of Criminology*, 50(2), 320–341.
3. (2009) Police use of deadly force: police perception of a culture of approval. *Journal of Contemporary Criminal Justice*; 25(2), 237–252.

This research would not have been possible without the guidance and support of Prof. Robert Reiner, Prof. Stan Cohen, and Dr. Janet Foster. As my guides and mentors they skillfully steered me through my attempts to negotiate uncharted territories of research methodology, theory, and academic writing. I am also grateful to Prof. Ken Pease, Prof. Paul Rock, Prof. Graeme Newman, Prof. M. Natarajan, and Dr. Arvind Verma for supporting the endeavour to write this book. I am especially indebted to Prof. P.A.J. Waddington for his incisive and critical comments and suggestions, which have only made the book better. I would also like to thank Prof. Gloria Laycock and my colleagues Aidan Sidebottom and Dr. Lisa Wainer for their help and encouragement during the writing of this book. I am grateful to Welmoed Spahr and Katie Chabalko for their editorial support.

My deepest gratitude I reserve for my parents Sudhindranath Belur and Urmila Belur and my wider family for unconditionally supporting me and believing in me throughout. Finally, I would like to thank Vidhi and Manasvini for their love, patience, and support in making this whole project come to fruition.

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# Chapter 1

## Police and the Use of Deadly Force

### Introduction

The use of force has always been an integral aspect of policing. Distinguishing between the use of justified, legitimate force and illegitimate force raises many complex and delicate moral, legal, and sociological conundrums. Explaining variations in the use of force requires insight into policing and the exercise of discretion that have been at the heart of empirical and theoretical research on policing in the Western world over the last half century.

Police work, almost universally, is characterised by features such as danger, authority, and the mandate to use coercive force that is non-negotiable (Bittner, 1975; Skolnick & Fyfe, 1993). As the governmental law enforcement agency, the police see themselves as the “thin blue line” that separates anarchy from order (Skolnick, 1975). It is often when police act idealistically, with a “sense of mission” (Reiner, 2000a) to control a dangerous and unruly underclass, that the most shocking abuses of police power take place (Skolnick & Fyfe, 1993). The police are armed and potentially dangerous in most countries and while protection by the police is generally assumed theoretically, protection *from* their misdeeds and mistakes is more problematic and less well-defined (Manning, 2003). Proper execution of police use of force is essential not only to maintain state order and legitimacy, but also as it affects public perception, attitude, and behaviour towards the police and the government (Friedrich, 1980).

This book analyses the police use of deadly force drawing upon primary research in the city of Mumbai, India. Issues of police violence in Latin America, the Caribbean, and South Africa are similar to those in India given a common background of colonial imperialism, a culture of violence, developing economies, class inequalities, and widespread poverty that they share. Admittedly, there are also some crucial differences between these countries. However, police violence is not necessarily restricted to third world or developing economies. The USA, UK, Canada, and Australia have also witnessed this phenomenon and struggle to deal with it.

The research reported here resonates with early studies on policing in both the USA and the UK. This could be because of certain similarities between the conditions under which the police described in these studies were operating, and the

Mumbai police (c.f. Bittner, 1975; Holdaway, 1983; Skolnick, 1966; Westley, 1970, on policing in the 1960s and 1970s). The level of awareness of the police in these early studies on issues such as human rights, due process, and rule of law was, if not identical, at least, comparable. Another reason could be that these studies are pioneering works commenting on the working of the police. Thus, the methods used by these scholars to arrive at their analysis – primarily ethnographic, and incorporating qualitative methods such as participant observation and interviews – are similar to the ones used in this study. This study is one of the first qualitative studies on policing and use of deadly force in India.

## Police Use of Force

Manning (1977: 40) suggests that British policing is synonymous with “legal monopoly on violence and is protected to the point of legal sanctioning for the use of fatal force”. This is debatable, especially since the British police do not have a legal monopoly of violence – they have greater legal powers than ordinary citizens, but anyone is entitled to use violence in certain circumstances, for example self-defence. Also, the police are not necessarily protected for use of fatal force but their immunity is dependent on the circumstances surrounding the particular incident. Police use of force is quite complex and involves subtle judgements in determining its necessity and legitimacy.

The concept of “the capacity to use force as the core of police role” (Bittner, 1991: 42) is central to understanding police work. Police use of coercive force could be conceived as a continuum, “consisting of a range of control tactics commencing from body language and oral communication, through weaponless physical control, to non-lethal weapons, and finally to lethal measures” (McKenzie, 2000: 182). One way of defining force is, “acts that threaten or inflict physical harm on citizens”, which could be measured according to the “severity of harm it imposes on a citizen” from least to most harmful (Terrill, 2001: 2). The terms “police use of force”, “police violence”, and “police brutality” are often used interchangeably, though they could imply use of force that is either justified or unjustified, legally and/or morally. Public understanding of the term police brutality means anything from the use of abusive language, commands to move on or go home, stop and search, threats to use force, prodding with a stick, approaching with a pistol, or actual use of physical force (Reiss, 1968).

Bayley (1996) suggests an eight-point classification of “police brutality”: arrest-related assaults, torture (or third degree), deaths in custody under suspicious circumstances, police shootings, police raids, riot and crowd control, intimidation and revenge, and non-physical brutality. However, police brutality is not necessarily synonymous with use of excessive force – it has more to do with perception of the observer of what is considered unacceptable behaviour. Thus, some of what may be considered police brutality (e.g. use of abusive language) is not necessarily excessive force and in certain circumstances use of what the law defines as excessive force