RNI No. 4607/57

The Indian Police Journal

Vol. LX No. 4

Oct-Dec, 2013

Published By: **The Bureau of Police Research & Development**, Ministry of Home Affairs, Govt. of India,
Block No 11, 3rd 4th Floor, CGO Complex, Lodhi Road, New Delhi - 110003. India and
Printed at Aravali Printers & Publishers Pvt. Ltd. W-30, Okhla Phase-II, New Delhi - 110020

# THE INDIAN POLICE JOURNAL

Vol. LX No. 4 ISSN 0537-2429 Oct- Dec, 2013

# The Indian Police Journal

Vol. LX No. 4 Oct-Dec, 2013

## BOARD OF REFEREES





Website: www.bprd.gov.in

# NOTES FOR CONTRIBUTORS

**Editorial objectives**

The journal covers articles of general police interest as well as research papers based on empirical data pertaining to police work. Authentic stories of criminal case successfully worked out with the help of scientific aids and techniques are also published. Only original manuscripts are accepted for publication. Articles submitted to the journal should be original contribution and should not be under consideration by any other publication at the same time. A certificate to this effect should invariably accompany the article.

**Areas covered include**

Crime, criminology, forensic science, forensic medicine, police organization, law & order, cyber crime, computer crime, organized crime, organized crime, white collar crime, crime against women, juvenile delinquency, human resource development, police reforms, organizational restructuring, performance appraisal, social defence, correction/ prison administration, police housing, police training, human rights, insurgency, intelligence, corruption, terrorism, etc.

**Review process**

Every article received for publication is subject to the following review procedures:

- It is first reviewed by the editor for general suitability for publication.
- If it is found suitable, it undergoes a review process by a member of our Board of Referees.
- Based on the recommendations of the reviewers, the Editorial Board decides whether to accept the particular article as it is, or seek revision, or reject it.

**Manuscripts requirement**

The manuscripts should be submitted in duplicate in double line spacing with wide margins. Articles should ordinarily be between 2000 and 4000 words in length. Title of the article should be precise.

**Authors should also supply an Abstract of 100-150** words with keywords. A copy of the article saved in floppy/CD in MS-Word may be sent in addition. Contributors are advised to be very brief in introducing the subject and devote most of the paper to the main theme. Authors should take care to ensure accuracy of the data and references. Quotes should be cited accurately from the original source, should not be edited and should refer to the page numbers of the original publication. Capitalization should be kept to the minimum and should be consistent. British spellings should be used rather than American. The typed script may please be carefully scrutinized for typing errors before dispatch. A brief autobiographical note of the authors should also be supplied including full name, designation, postal and e-mail address, if any Figures, charts and diagrams, should be kept to the minimum and good quality originals must be provided. At the end of the article a reference list and a short bibliography would enhance acceptability of the contribution. The contribution can also be e-mailed to the Editor in addition to being sent by post.

**Copyright**

Authors submitting articles for publication must warrant that the work is not infringement of any existing copyright and will indemnify the publisher against any breach of such warranty. Papers and contributions published in the journal become the legal copyright of the publisher unless otherwise agreed.

*Submission should be sent to:*

The Editor,
The Indian Police Journal,
BPR&D, MHA,
Block No. 11, 3rd 4th Floor,
CGO Complex, Lodhi Road,
New Delhi-110003. INDIA
e-mail: dgbprd@yahoo.co.in
editoripj@yahoo.co.in
Tel.: 091-11-24362402, 24365009/5010
Fax: 091-11-24362425, 24369825

The Indian Police Journal

Vol LXI. No. 2 ISSN 0537-2429 Oct-Dec, 2013

The Indian Police Journal
Oct-Dec, 2013 ✦ Vol. LXI ✦ No. 4

IPJ

## EDITORIAL BOARD

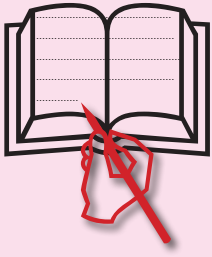


## CONTENTS

Editorial 2

1. Let us First Reform Ourselves Part-II
*R.C. Mohanty* 4
2. Genesis and Growth of Terrorism
*Professor S.K. Jha* 14
3. The Trio : Terrorism, Media and Fear
*Sharon P Thomas, Dr. M. Priyamvadha* 35
4. The Unlawful Activities (Prevention) Amendment act, 2008 and Its Loopholes
*Caesar Roy* 47
5. Right to Information Act-A Tool of Management & Good Governance
*P.S. Bawa, IPS (Retd.)* 59
6. Study of Victims in Crime News in the Newspaper
*Dr. Lata Sharma[1]* 70
7. Criminal Investigation
*Tushar Gupta* 87
8. Woman, Crime and Victims
*Dr. R. Dhakshina murthy* 116
9. Sexual Offences Against Women: With Special reference to Term Consent Under the Law of Rape
*A. Velan Piyush Khanna* 126
10. Rape Victims and Major Offenders in India: An Empirical Study
*Dr. Kuldip S. Chikkara & Anand S. Kodan* 139
11. Crimes Against Women in Chandigarh
*Kuldeep Singh, Kaveri Tandon* 149
12. Jurisprudence of Child Care & Protection
*Dr. K.P. Singh, IPS Chitrangada Singh* 163
13. Observatory Homes for Juvenile Delinquents: Institutions of Behavioural Correction or Exploitation?
*Suchet Kumar* 190
14. Police Trainees & Stress: A Study With Special Reference to Kerala Armed Police Battalion
*Suraj Kushe Shekhar Siby Joseph K* 207
15. Work Stress in Police Personnel The Role of Job Hierarchy and Job Tenure
*Abhay Pratap Singh & Sushma Pandey* 216
16. Objectifying the Subjectivity in Polygraph Examination Procedure in context of Personality Patterns
*Dr. Aruna Mishra, Devinder Singh*
*Dr. Himakshi Bhardwaj* 236
17. Book Review
*Dr. C. Sheela Reddy* 243

# संपादकीय



Internal and external security both share an inclusive and intrinsic relationship in the sense that both influence each other and are shaped by their interaction. It is the contours of Internal Security that lead to the building up a strong and pro-active External Security and vice-versa. In the larger context, it is the cause and effect of the interplay of domestic and foreign policy shaping the nature of internal and external security.

However, the emergence of terrorism has made this interdependent dynamic relationship more complex and problematic. The cross-border and international dimension that the terrorism has acquired over the time has transcended or rather further blurred the division between the internal and external security. It has forced the states across the world to integrate these two security environs into mere cohesive way. Resultantly a State cannot successfully ensure a secured internal and external security environment without integrating both as one and putting premier on both. Terrorism has made it mere imperative now-a-days.

In this issue of Indian Police Journal, we have discussed some of the issues related with terrorism and its fallout. The paper, "Genesis and Growth of Terrorism by Professor S.K. Jha, discusses as to how the media, corruption and weak internal security policy helps terrorism in spreading its inhuman and nefarious tentacles. "In carrying out terrorists operation, the terrorists are inadvertently helped by the media. The desired amount of terror is produced by T.V. coverage, news broadcast and headlines coverage by newspapers and periodicals, media by producing the necessary effects become a partner of terrorism".

Prof.Jha further avers that corruption acts as force multiplier of the terrorism. "One of the most important reasons for the spread of terrorism is corruption which has made India a republic of scandals. It is eating into the vitals of the state, enfeebling internal security and corrupting foreign policy."

Sharon P Thomas and Dr. M. Priyamvadha, in their paper, "the Trio: Terrorism, Media and Fear" maintain that the terrorist organisation provides media with sensational /entertaining news and the media in turn give popularity to their atrocious acts. The modern terrorism aims at influencing an audience beyond the direct victim, and they plan their attack to obtain the maximum publicity through media.

Studies and researches have proved 'a symbiotic relationship' existing between the terrorist and the media. This manifests in its most cynical form wherein the image is

of terrorists using the media as conduit for their messages and the media using the terrorist for dramatic stories. This mutual relationship is reinforced and sustained by the modern terrorism and modern media enjoying a 'give and take' policy for their survival and their interdependency on each other. The two sides appreciate this interdependency as they know this "Policy" is predominant ordinance of the unwritten mutual agreement they enjoy, add the authors.

The terrorism and its counter policy have thrown a policy conundrum before the state having direct bearings on the liberty and freedom of the citizens. The modern terrorist have pitched in this confusion by intensifying their attacks on the civilians: more attack, more stringent anti-terror law and measures leading to more curb and infringement of the rights, liberty and freedom.

Shri Ceaser Roy, in his paper, "The Unlawful Activities (Prevention ) Amendment Act, 2008, and its Loopholes" tackles this problem through case study of various Acts such POTA, TADA and amendments in the Unlawful Activities is (Prevention) Act, 1967 in 2008. The paper comes to conclusion that the new amendment lacks any new ideas about how to tackle terrorism "This amendment Act, 2008 merely borrows provisions from the previous anti-terror laws, rather than offering a new approach in spite of the past failures of stringent anti-rights laws to curb terrorist attacks."

Shri P.S. Bawa, IPS(Retd.), in his paper titled, "Right to Information Act – A tool of Management and Good Governance" vouches for the good governance approach to the secured internal security and better policing. "--RTI Act has the potential to bring about the required change in the system of administration by shedding the cloak of the official Secret Act and getting under the obligation to do certain things that are generally ignored ----------. The Right to Information Act can also be taken to be the " Right to Good Governance .---- This would usher in an era of transparency, integrity, accountability and effectiveness. Right to information is thus converted into a right to good governance and duty to do so."

However, the grim reality of how media inadvertently becoming a partner in the terrorism and internal security fault lines is further authenticated by the study undertaken by Dr.Lata Sharma, in her paper: "Study of Victims in Crime News in the Newspapers". Through content analysis of few national and regional newspapers, the study comes to conclusion that 'Media generally high-lights the big crime events or sensational or dramatic act of criminality, and present victims, whether be it a women, a child or for the matter State or government in biased language' and narratives.

Other papers such as 'Criminal Investigation', 'Police Trainees and Stress: a Study with Reference to Kerala Police', 'Work Stress in Police Personnel: the Role of Job Hierarchy and Job Tenure', 'Objectifying the Subjectivity in Polygraph Examination procedure in context of Personality Patterns' further elaborate directly or indirectly the theme of terrorism, internal security and policing.

**(Gopal K.N. Chowdhary)**
Editor

# Let us First Reform Ourselves Part-II

**R.C. Mohanty***

## Keywords

Reform, Internal Reform, Independence, Autonomy, Rule of Law, Colonial Act, NPA, IPS.

## Abstract

*The argument that police is not independent and has to take orders from the politicians in power does not explain the utter subservience it resorts to. It is true police is not functionally independent and there is need for systemic change to ward off external interference. But it does not mean that it can bend the law under pressure. Law is the real master of the law-enforcing agencies and any interference in the course of its enforcement must be resisted with courage. After all, what can a powerful politician do to the officer on the right side of law? All that he can is a transfer to an unwanted post at an unwanted place. Article 311 of The Constitution ensures that he cannot be removed from the service. Should it not provide enough protection to a righteous officer to act as an agent of law and not as an agent of a politician?*

We have been declaring from the roof top at every conceivable opportunity that we are the largest democracy in the world. Of course, we are, and our growing population has indubitably secured this distinction for us, though it might be in form and not in substance. But nobody took democracy as a panacea for all the problems that the people faced. It is not easy to end poverty and exploitation overnight or, maybe, at all. It may lead to criminalisation

Author Intro :

* IPS (Retd.) Former DGP, Orrisa.

of politics and emergence of gangsters as political leaders and rulers. It may encourage dynastic succession at all levels of the ruling hierarchy. Is it not happening through democratic process? Perhaps such aberrations take place in the course of maturing of a democracy. We have to wait with hope for a millennium, if necessary, for its full flowering. But why should building up democratic institutions and traditions take time? I shall confine my discussion to one institution only---the police to which I have given nearly four decades of my active life.

## Stop Abuse of Power of Arrest

Personal liberty is the most cherished value in a democracy. It is only one part of the fundamental right guaranteed by Article 21 of the Constitution, but it is the most visible right we exercise in our everyday life. We are assured of not being interfered with in our work, movement and transactions by anyone including the agents of the State "except according to procedure established by law". You can straight knock at the door of the High Court or the Supreme Court in case of a breach, provided, of course, you can afford a lawyer and the cost of filing a writ and possess the patience to wait for your unpredictable turn. But you should not really need it if the agency provided by the State for your protection is up to the task. You can just make a call from your cell phone wherever you are and expect the agents to arrive in minutes, for they are supposed to be ubiquitous---always with you and for you. You know it is the police of your city or the area you live in. But how sensitive are they to your needs, how responsive to your call? The record is devastatingly poor.

Police is the instrument of the State for enforcement of law and maintenance of order. As such, it has been saddled with the enormous responsibility--- I would not call it "power" as we normally do—of arresting offenders and bringing them to trial. Arrest means depriving a person of his personal liberty, so sacrosanct a right in a democracy. While depriving a person of this right, the officer doing so has not only to exercise due care and caution, but to ensure that he is following the procedure established by law strictly. The Supreme Court succinctly observed in Joginder Kumar case (1994),

"No arrest can be made because it is lawful for the police officer to do so. The existence of power of arrest is one thing. The justification for the exercise of it is quite another. No arrest sheulcl be made without a reasonable satisfaction reached after some investigation about the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest."

The entire nation is aware of the penchant of the police to misuse this power blatantly. Quite often it is done at the behest of the political masters for arresting their opponents on false criminal charges. But the most common cause is to show quick result in sensational cases where there is public clamour for immediate action. I shall cite one such case---a case of broad daylight murder in the capital city of Bhubaneswar in 1988 which had rocked the state in its sheer brutality and audacity.

## Case Study

One day in the afternoon, a couple –a state government officer and his wife—started in their scooter from their official residence in Unit IX for shopping. They took the crowded Secretariat Road by which stand all the important government buildings like the State Assembly, Reserve Bank, State Secretariat and the Office of the Accountant-General. As they were crossing the Indira Gandhi Park, opposite the Secretariat building, they found two youngsters following them in a motorbike. The lady was wearing a heavy gold necklace apart from bangles and ear-rings. The couple sensed that the youngsters were targeting them. Instead of going to the market, the husband drove as fast as he could on the main road toward Rupali crossing in Shahid Nagar where he took a turn to the street where his father-in-law lives. He had covered about seven kilometres, all the time watching in the rear-view mirror the bike which was almost closing on him. He crossed the Capital Police Station on the way, but did not have the presence of mind to drive in. As he reached the ground floor house of his father-in-law, he almost jumped from his scooter and entered the open door. The lady at the pinion could not be so swift and was caught by one of the assailants who had rushed from the bike. The other assailant was waiting on the bike with the engine running.

At that point of time, Rajendra Prasad Mohanty, Deputy Director of Public Instruction, who lived in the neighbouring quarters, was having tea with a friend in the balcony of the first floor. When he saw the lady being attacked by a gangster, he came down almost in reflex action and intervened. The lady managed to extricate herself from the assailant and rush to the house. But the frustrated assailant went on stabbing Rajendra with a knife till he dropped dead. It was not yet sunset and a crowd was watching the scene from a distance. The assailant jumped to the pinion of the bike and both drove away.

The incident stunned the city. The press was understandably wild with accusations of police inaction and want of public safety. The people were outraged at the murder of a professor, so well-known for his gentle and suave manners, while trying to save a lady from the clutches of a robber. There were meetings and processions demanding immediate apprehension of the culprits. As DIG, Crime Branch, I guided the S.P. and the Investigating Officer, a Deputy Superintendent, who, along with half a dozen Inspectors, formed a team, at the initial stage. Soon IG, Crime, took over direct supervision and I was excluded as my objection to third degree, considered essential in the detection of such cases, was well-known. But I continued to watch the progress from outside.

Long before the deadline set, it was declared that the case has been solved and both the culprits have been arrested. Both of them made a clean breast confession which was recorded by the Judicial Magistrate under Section 164 Cr.P.C.. They had temporarily used a stolen Yamaha bike which they had abandoned after the crime. It could not be traced as it might have been picked up by the owner. There was no property stolen; hence there was no question of recovery. A clean investigation and a fine detection indeed!

About two years after the incident, Bhubaneswar police arrested a gang of robbers involved in a series of crimes. During their interrogation, two of them confessed to have committed the murder of Rajendra Prasad Mohanty. I am told the then S.P. Bhubaneswar was a great votary of third degree method and had already established his reputation as a tough interrogator. He got the confessions tape

recorded and sent to the Crime Branch. I have no idea under what circumstances the culprits confessed, but it should not be construed as the effect of third degree. The seizure of the stolen Yamaha motorbike from them and the proof that it was used in that case might have led to their confession.

Both the culprits were sent to Bhubaneswar Special Jail in judicial custody. I happened to be the IG Prisons at that time. When I heard from the Superintendent of the jail about their confession, I talked to them and asked them if they really knew anything about the murder. They looked at me amusedly and said that they actually committed the murder, not the two boys facing trial for it. Then they gave a graphic description of the crime including the fact that one of them had visited crime spot the next day and seen me there. I wondered if it was like the tiger visiting its kill. They narrated the incident at length saying that they were released from Bhadrak jail ( about 120 kms away from Bhubaneswar) a few days before that day and had come to Bhubaneswar in a stolen Yamaha bike. They needed money desperately to pay their lawyer and were waiting for a prey near the Indira Gandhi Park when they sighted the couple on the scooter. The lady's heavy necklace and ear-rings were clearly visible and from experience they knew that they were genuine. Determined to snatch them from her, they chased the couple on the crowded main road and had almost succeeded but for the intervention of the intruder from the neighbouring house. The failure to grab the booties annoyed the one attacking the lady for which he stabbed the intruder to death. When asked what prompted them to make the confession, one of them said they knew that two small time criminals have been booked and were undergoing trial. So they did not apprehend any action against them. The other added that they did not want the two innocent boys to suffer for the crime committed by them! I could not believe my ears. Are they capable of such noble sentiments?

I learnt from the then Additional DG, Crime, that the investigation of the case had been reopened with the permission of the Court, the two alleged culprits had been set free and fresh charge-sheet

had been submitted against the real culprits. I have no knowledge of the result of the trial to share with my readers, but I would scarcely expect a conviction as the investigation was derailed for two years.

## Pliant Leadership

Such cases are numerous and the practice is widely prevalent all over the country. Is it not shameful that senior officers should succumb to pressure just to show result and make a mockery of the Rule of Law? It is not merely the arrest and detention of two young men who, if not innocent, were definitely not involved in that particular crime, but concoction of evidence to prosecute them that is worrisome. Sardar Patel conceived of the IPS as a steel-frame that could stand up to pressure of any kind and from any quarter, however high, however powerful. He would be turning. The failure of the IPS in performing its lawful duty naturally agitated the people and organisations for protection of civil rights sprang up to protest with the help of the judiciary and the human rights commissions. Finally it was the Supreme Court which had to issue elaborate guidelines to check abuse of power of arrest by the police---- a duty rightfully cast upon the Chiefs of the Police of the States by the Constitution and the law of the land.

It would be wrong to say that the IPS was entirely insensitive to the issue. In 1973, when I was, undergoing a six month course of training for senior officers in the NPA at Mt. Abu, I found the Director and the faculty carrying on a crusade against third degree and other unethical practices by the police. The Director spoke to the probationers almost every day and his emphasis was on the immense harm we are causing to the people and to ourselves by resorting to these practices. The training syllabus for the probationers included a substantial dose of modern management techniques and Professors from the IIM, Ahmedabad, and other reputed management schools visited regularly as guest faculty. There was a visible change in the atmosphere of the Academy--- friendly debate and discussion took the place of regimentation. Even the parade ground and the riding ground breathed a new air. There were no longer abuses and invectives hurled at the probationers; the tone of the instructors was respectful and corrective, not punitive. Yoga

and Pranayam, so useful as stress reliever to a stressful job like that of the police, was an integral part of physical training. The Director went still farther by not insisting on the Army style hair-cut for the probationers and it was refreshing to see some of them sporting a fashionable hair style. All this led me to believe that a new era has started and a new breed of IPS officers would soon take over:the leadership of the Service and change its face.

The Academy was not alone in ushering in the new era. Long before it, one IGP of Uttar Pradesh ( the era of DGP was far off) had strictly prohibited use of third degree and concoction of evidence in investigation. He had also prohibited suppression of reported cognisable offences to keep crime statistics low and exploded the myth that it would shoot up crime figures. In Orissa, one young S.P. in the 1950s had succeeded in eliminating third degree in the districts where he was posted. But all this was individual effort to disappear with the departure of the individual from the scene. Once the probationers were out of the Academy, they started wondering how to conduct investigation without third degree. As a result, the hope of a new era ran into a sandy desert.

It was given to Sri D.K. Basu, a lawyer of Calcutta (subsequently a judge of Calcutta High Court) and Chairman of the Legal Aid Services, West Bengal, to move the Supreme Court in August 1986 to curb custodial torture and custodial murder. He was disturbed by the stories of a number of deaths.in police lock- up published in the newspapers and wanted the Apex Court to develop "custodial• jurisprudence" to curb it. The Court realised that the issue was grave and had national ramifications. So it called for statements from the Centre and the States. It would be interesting to go through these statements which almost denied the existence of this practice and claimed that action was taken whenever there was such occurrence, as if taking action against errant officers condones the act. The Court delivered its judgment in 1996 issuing eleven requirements to be fulfilled while making arrest and hoping that it would " help to curb, if not totally eliminate, the use of questionable methods during interrogation and investigation". It further observed,

"Torture is more widespread now than ever before. Custodial

torture is a naked violation of human dignity and degradation which destroys, to a large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward."

The Eleven Commandments have definitely curbed arbitrary arrests by the police to some extent, but whether they have curbed custodial torture and custodial death in any measure is doubtful. And certainly they have not eliminated it. One can always comply with the letter of the law without subscribing to the spirit. It is only the DGP of the State who can obtain compliance both to the letter and the spirit. It is only the DGP who can eliminate the practice altogether when he "wills" to do so. The collective will of the DsGP of the States is the need of the hour. If they do not rise to the occasion, they would only drive the civilisation backward step by step.

## Law is Thy Master

We often hear political elites, facing trial in cases of corruption, declaring their faith in the judiciary. One wonders why such affirmation becomes necessary. Has one ever heard them saying that they have faith in the police? It is some consolation that sometimes people demand investigation of sensational cases by the Crime Branch or the CBI. But that shred of reputation appears to have evaporated of late. It is not the people who are to blame for this. It is the organisation concerned. There is no dearth of examples of the police, including the Crime Branch and the CBI acting at the behest of the ruling politicians. How many times the CBI has exhibited its proneness to change its stand on the culpability of powerful leaders whose assets it investigated on the basis of instructions from the rulers? Today it is ready with a charge sheet and tomorrow it will be insufficient evidence or no evidence at all. How can people repose trust in an organisation that does not have a mind of its own? How does the CBI qualify to investigate persons in high places when it is so pliant to the will of the ruling class? Does it not mean participation in political vendetta?

However, the argument that police is not independent and has

to take orders from the politicians in power does not explain the utter subservience it resorts to. It is true police is not functionally independent and there is need for systemic change to ward off external interference. But it does not mean that it can bend the law under pressure. Law is the real master of the law-enforcing agencies and any interference in the course of its enforcement must be resisted with courage. After all, what can a powerful politician do to the officer on the right side of law? All that he can is a transfer to an unwanted post at an unwanted place. Article 311 of The Constitution ensures that he cannot be removed from the service. Should it not provide enough protection to a righteous officer to act as an agent of law and not as an agent of a politician?

The first serious communal riot that independent India had to deal with was that caused by the Partition. It is unsurpassed in the history of the world in its barbarity and ferocity. The entire continent was engulfed in mindless violence. Even at that time, there was no serious complaint of partisanship on the part of the police. The question of political rulers pressuring the police to target a particular community was unthinkable. This phenomenon is of very recent origin. During the anti-Shikh riots in Delhi in 1984, the police reportedly remained a mute spectator while the city was burning. The truth about the role of the police and the politicians in the Gujurat riots of 2002 has been obscured in a maze of allegations and counter allegations and is unlikely to be revealed. There was failure due to the inaction of the State. I have always wondered how a trained police force would discriminate one community from the other at the time of rioting. It is the "dharma" of the police to protect anyone who is being attacked. One does not pause to think what community the attacker and the attacked belong to.

## Summing Up

Once the police recognises the law as its master, the conflict regarding whom to obey will be automatically resolved. Obey the law and the political elite within the ambit of law. It cannot be denied that the political elite is ultimately responsible for the enforcement of law and maintenance of order as per the Constitution. Hence his control over the police and supervision of the police functions. There is a

clear line between lawful orders and those beyond the law. While dutifully accepting the former, the police officer should politely and firmly turn down the latter. This needs strength of character which is not lacking in the IPS. I have personal knowledge of seasoned Chief Ministers taking such refusal gracefully and even appreciatively. We should not make the politicians the scapegoat for our own failings. If there was pressure on Police Chiefs during the Delhi and Gujurat riots to leave the minorities unprotected, did they protest? No police officer has been on record saying that he did.

It is high time the police realised the necessity of internal reforms that could be brought about by them without asking for any resources. The steps suggested in this article do not need any additional man power or material. All that they need is the change in the mind-set. If adopted sincerely, they would bring about a metamorphosis in the police-people relations. Police Stations will no longer be houses of torture. The poor and the down-trodden will no longer fear to enter it to get their complaints registered and redressed. We should bear in mind that it is only the police which can give the people the kind of justice they need---quick and effective. The victims of crime need immediate protection. It is no consolation for them that the culprits will be tried and sent to jail at some unknown date. Even if the crime is not detected, the presence of the police and its efforts at detecting the crime is a matter of assurance for the victim. ■

# Genesis and Growth of Terrorism

**Professor S.K. Jha***

## Keywords

Terrorism, Terrorist , Liberation, Us vs. Them, Freedom Fighter, Media Jargon, Ideology, Media and Fear, Terrorist Movements, Organization.

## Abstract

*Terrorism is an act of war not only against the state, but also against the civilization. Unfortunately, in spite of several enactments of laws to contain terrorism and other actions taken in different countries, all forms of terrorism are on rise.*

## Introduction

Terrorism is rapidly emerging as major threat to the modern civilization. This is not to say that terrorism did not exist in the early societies. History is full of incidents of assassination of kings and his agents by rebellious men. Perhaps the worst kind of terrorism was being perpetuated by tyrannical rulers of totalitarian states on their own men to subjugate them to their rule, what is known to us today as state terrorism. In the contemporary world, the origin of this political concept was the state terror of the so called Reign of Terror in 1793-1794 during the French Revolution.[1] In the particular stage of the French Revolution, Robespierre and the Committee on Public Safety executed thousands of members who

Author Intro :

* University Professor & Head, (Retd.), Department of Political Science, Vinoba Bhave University, Hazaribag (Jharkhand)

had opposed the revolution. The concept has also been applied in the case of the great terror of Joseph Stalin from 1936 to 1938. A government that resorts to terrorism, the way Robespierre and Stalin did has one basic purpose to intimidate those who offer any opposition to their policies. But these violences hardly exercised any influence on international community life. Today nobody feels safe to travel. India is one of those countries worst affected by the curse of terrorism. The intensity of Naxalite terror has reached its peak and the insurgency in North- East Regions still exists though its intensity might have lessened.

## Meaning of Terrorism

There are as many definitions of terrorism as there are authors writing on the subjects Paul Wilkinson defines terrorism as" coercive intimidation. It is systemetised use of destruction, and the threat of murder and destruction in order to terrorise individuals, groups, communities or governments into conceding to the terrorists' political demands. It is one of the oldest techniques of psychological warfare." [2]

In the final document prepared in the international symposium sponsored by the International Institute for Advanced Criminal Sciences, held in siracause in June 1973 terrorism has been defined in the most comprehensive way. "Individual or collective coercive conduct employing the strategies of terror violence and which contain an international element or directed against an internationally protected target and whose aim is to produce a power oriented outcome."[3]

A power oriented outcome is an outcome which is aimed at changing or preserving the political, social or economic structures or policies of a given state or territory by means of coercive strategies. The terrorist organization of Israel 'Sayaret Matkal' wants to maintain the status- quo in Israel, whereas the Palestinian Liberation Organisation (PLO) under Yaseer Arafat was adamant to change the social, political and economic structures (Political Orientation) of Israel like its predecessor terrorist organization 'The Popular Front for the Liberation of Palestine'(PFLP). Such conduct contains an

international element when:-

1) The perpetrator and victim are citizens of different states, or

2) The conduct is performed in whole or in part in more than one state.

Internationally protected targets are:-

(a) Innocent Civilians,

(b) Duly accredited diplomats and personnels of International Organisations acting within the scope of their functions,

(c) International Civil Aviation;

(d) The mail and other means of International Communications,

(e) Members of non- belligerent armed forces.

The United Kingdom Prevention of Terrorism Act 1976 sets out a pragmatic and comprehensive description of terrorism. "Terrorism means the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the community in fear".[4]

In 1984, INTERPOL defined terrorism in the following words:-

"Violent criminal activities, in view of provoking terror or fear, and thus of reaching allegedly political goals"[5].

It should be noted here that terrorist acts are considered to be of international significance if the act is committed either against the nationals of one country outside of that country 's borders or by a foreigner within a country's territory. But one of the greatest difficulty in dealing with the problem of international terrorism is that it is difficult to obtain agreement among the comity of the nations on the boundaries.

One of the controversies is over the question as to 'who is a foreigner'? The Arabs often claim that the Palestinian Arabs who carry out acts of violence in Israel are not foreigners attacking the citizens of another state (and hence perpetrators of acts of

international terrorism), but are the legitimate residents of Palestine who have returned to fight for their homeland.[6]

It won't be out of the context to mention that some people have evolved an idea that one person's terrorist is another's freedom fighter. But this idea cannot be sanctioned. There are fundamental differences between terrorism and national liberation movement. National Liberation Movement or Freedom Struggle is fought for self- determination- a right recognized by the UN charter and International law. Freedom Struggle is against foreign rule or tyrannical rulers. Such foreign rule was the British rule in India or the Dutch rule in Indonesia, the colonial rule in many countries of the world. The word "Freedom Fighter' is used in this context. Terrorism is different from national liberation movement, though, in freedom movement also in order to draw attention to political cause, violence by individuals or groups, acquisition of funds, the liberation of prisoners, the spread of general terror, the demonstration of impotence of government authorities occur. But the terrorist acts usually lack any possibility of achieving such proclaimed purpose. Moreover, freedom fighters do not blow-up buses containing non combatants as terrorists do. Freedom fighters do not set out to capture and slaughter school children as terrorists do. Freedom fighters do not abduct and kill innocent citizens and business men and skyjack and hold hostage innocent men, women and children as terrorists do. The treasured word 'Freedom Fighter' therefore, cannot be associated with terrorist.

Thus any attempt at defining terrorism is bound to raise questions. However, some of the lowest common denominators which are agreed upon world over about terrorism, are:-

- Terrorism always involves a criminal act.
- It involves the use of violence.
- It focuses on choice targets both animate and inanimate .
- It declares reliance on the publicity rather than the events.
- Fights for an ostensible political/ communal cause.

- Does not follow the convention of war.
- Involves planned surprise.
- Demands immediate actions.

## Characteristics of Terrorism

David E. Long in his book , ' The Anatomy of Terrorism' has divided the characteristics of terrorism into four groups-goals, strategies, operations and organization.[7]

- Political Goals:- The ultimate goals of terrorism are political. Whatever, the group psychology or personal motives of organizations and individuals carrying out terrorist acts the presence of underlying political goals is a basic consistent characteristic. Politically motivated terrorism invariably involves a deeply held sense of grievance over some form of injustice. The injustice may be social or economic. The terrorists believe that the injustice cannot be assuaged through any other means but terrorist acts. This is why terrorism is very often termed as the last resort.
- Strategic and Tactical Objectives:-First, terrorism creates terror by unreasonable violence, to induce mass hysteria. Second, it maximizes publicity through all channels of communication.
- Operational Characteristics :- Terrorism adopts pre-mediated use of violence or threat of violence. It indulges in criminal acts including murder, assault, hijacking, abduction, arson, sabotage and the like. It is non-combatant, that is terrorists by and large do not have military goals. It indulges in low cost operation.
- Organisational Characteristics:- The terrorist operational units are usually small groups and they maintain internal discipline. Usually sub national in scope in that they are not organized according to national-state loyalties.

Paul Johnson in his pamphlet called "The Seven Deadly Sins of Terrorism" read out in the Jerusalem conference on International Terrorism 1981, has highlighted the following seven significant characteristics of terrorism.[6]

According to him the first is that terrorism idealises violence. The terrorist is guided by the nihilist philosophy which says , "Violence is a cleansing force, it frees the oppressed from their despair". Violence for him is not to be taken in the last resort, but in itself is a desirable and idealized form of action. Sometimes, such philosophies are advanced by religions preachers to motivate the terrorists.

The second characteristic is that it rejects the positive process, it subscribes to the totalitarian belief, that the most effective way of destroying an idea is to destroy the man who holds it. This is not a political process.

Thirdly, terrorism promotes totalitarianism. Contrary to popular belief it is supporter of the oppressor of the repressive force.

Fourthly, it rejects morality. This helps in launching indiscriminate terror. In his book "The Possessed", Dostovsky argues that the terror group can only be united by fear and moral depravity; "Persuade four members of the circle to murder a fifth, on the excuse that he is an informer, and you will at once tie them all up in one knot by the blow you have shed. They will be your slaves"[7] This is a threat to humanity.

Fifthly, Terrorism poses no threat to the totalitarian states. That kind of states can always sustain itself by judicial murder, torture of prisoners and suspects and complete censorship of terrorist activities

Sixthly, it exploits the apparatus of freedom in liberal societies and thereby endangers it. It is a threat to the Rule of Law, which is necessarily damaged by emergency legislation and special powers.

The seventh, and deadliest sin of terrorism is that it will destroy the will of a civilized society to defend itself.

## Causes for the Growth of Terrorism

Terrorism is an act of war not only against the state, but also against the civilization. Unfortunately, in spite of several enactments of laws to contain terrorism and other actions taken in different countries, all forms of terrorism are on rise.

The following factors can be said to be responsible for such a situation:-

During the Liberation struggles of the former colonies, certain modes of violence have become acceptable methods of correcting the perceived social injustice. The radicals have now adopted those violent methods as an aura of legitimacy.

According to Amy Sands Redlick, modernization , accompanied by urbanization, secularism, and industrialisation may lead to societal violence as groups compete for the same opportunities and resources within a changing social and economic structures [8]

Back in our country the rising expectations and the related poverty can be a cause. Once an individual in an ethnic group realises or perceives a threat to his ethnic group and his relative deprivation, he may become dissatisfied and frustrated with the political system responsible for the inequality and deprivation and may resort to terrorism. Sometimes, one ethnic group is motivated by the success of another ethnic group else by using the method of terrorism.

The growth of communication has helped in dissemination of ideas. The normative justification for political violence is caused by frequent exchange of ideas and travels.

The development of modern weaponry and explosives can make only a handful of people to create terror among a large section and area. It requires only two people to cause explosion in several cities at the same time without being noticed. The transistor bomb explosion at some places in the recent past is an example.

The growing link between terrorist organizations which are sympathetic towards each other is yet another important cause for the spread of terrorism in modern time. The sympathy may sometimes come even from the residents of other countries who may collect funds, weapons and smuggle them to the terrorists.

Active assistance of a hostile country in providing shelter, training, funds and weapons also have encouraged terrorism. The erstwhile Soviet Union was selective in its support of terrorist groups abroad.

For example it supported the Palestine Liberation Organisation because PLO activities had accorded with Soviet International Policies. In 1972, 94 Soviet diplomats were expelled from Bolivia because of their involvement in the activities of the National Liberation Army (ELN), the local guerrilla organization founded by the Cuban terrorist Che. Guevara. On 12th September 1985. Britain expelled 25 Soviet officials, six of them diplomats, for Soviet intelligence activities. Adnam Jabar, Commander of the PLO received six months of intensive training at Sokhodnaya near Moscow. Similarly, Communist China was actively engaged in promoting terrorist groups in Africa, the Middle East and in Latin America. China has supported rival terrorist movements to those supported by the Soviet Union in Rhodesia, South Africa, Angola and other African nations. Several rogue states like Cuba, Iran. Iraq, Libya Sudan ,Syria, and Pakistan have provided material and financial assistance and other resources to terrorists.[9]

The Afghanistan Soviet-US imbroglio was the last episode of the cold war. It was the United States which promoted terrorism to brow beat the Soviet in Afghanistan . The Jihad against communism was funded and armed by the United States .In Nov. 2010, in an honest assessment of the situation in the Afghanistan- Pakistan region, Mrs. Hillary Clinton ,the US Secretary of state , acknowledged that the U S policy of creating the "Mujahideen" to oust the Soviet Union from Afghanistan had boomranged . To quote her "We created the "Mujahideen"force against the Soviet Union in Afghanistan . We trained them, we equipped them, we funded them including some body named Osama bin Laden . And it did not work out so well for us. Part of which we are fighting against (terror) right now, is the creation of the United States." [10]

This led to the emergence of the Taliban in Afghanistan. The Taliban were armed with the ideology of Osama bin Laden. The United States declared the war against terrorism in reply to the Al Qaeda attack on the Twin Towers in New York. The US strategy to defeat the Taliban was confined to the use of military power. There was no attempt to fight the Taliban ideology and strengthen democratic institutions in Afghanistan. [11]

It is heartening to note that the primary responsibility to maintain peace and security of the world according to the charter, is entrusted to the Security Council of the United Nations. But it is an irony that most of its members have indulged themselves in acts of terrorism at different periods of history. It requires the honesty to see the absence of any fundamental difference among the Weatherman, the Mafia, the P.L.O. and members of the security council. All exist via the barrel of a gun, and all seek power for power's sake whether a city street, or over a continent.

Growing nexus between terrorists, smugglers, illicit drugs suppliers and illegal manufacturers of arms has developed a set of unholy alliance. They keep each other in constant touch for mutual benefit.

Geographically, India is sandwiched between two major sources of supply of illicit-drugs –the Golden Crescent (Afghanistan- Iran –Pakistan) and the Golden Triangle (Myanmar- Thailand-and Laos). Thus India is boxed in from three sides with narco- terrorism. Delhi has been used as an approach point and Mumbai as an exit point. The Sikh terrorists had taken full advantage of the emergence of the Golden Crescent. The 'Heroine- Kalashnikov Culture' has been threatening our country. Drugs and arms had linked sikh terrorists to other terrorists in the countries of the Golden Crescent and substantial weapons had been acquired in the under ground arms market.

In India the growth of terrorism to a great extent has been owing to ill-governance. For instance the right to property was deleted by the 44$^{th}$ Amendment in 1978. In the years that followed large chunk of lands belonging to small and marginal farmers and peasants are being acquired by the government for the purpose of SEZ (Special Economic Zone) under the Land Acquisition Act without reference to their reasonableness and without arranging for their rehabilitation in states like Rajasthan, Gujrat and Maharastra.The government preaches that the land so acquired shall be utilized to set up industries in order to provide livelihood and employment to millions. Whereas the people whose lands are acquired view this effort of the government to favour the corporate sectors/ the big

business houses of the country.

Writer activist Arundhati Roy after hearing the complaints of the deprived tribal communities in Ranchi (Jharkhand) alleges that the war on naxals is a conspiracy to acquire the ancestral land of the tribal for industrial use. The 'Operation Green Hunt' according to her, is carried on only at sites earmarked for mining projects, which clearly indicates the role of the government in driving out the tribal. The Unlawful Activities Prevention Act (UAPA) is a weapon to displace tribal and the government is dubbing them as Maoists. Till date the government has arrested 168 people under the UAPA, displaced 18 lacs tribal and 15 lacs acres of land has been taken away without the consent of the tribal. The police have resorted to fake encounters and , have killed people and harassed them. Consequently, the affected people particularly the youths among them, are joining hands with the naxal-terror groups[13].

Use of force should not be the sole response as is believed in the "war of terror". Individual states, while passing counter terrorism legislation, ought to take into consideration human rights implications and the potential for abuse by law enforcement authorities. The fact that young people in different parts of the world are ready to die for a cause (however illegitimate it may be) shows there is something fundamentally wrong .

The rise of fundamentalism of the modern time that has made people converts to some sorts of tactics who are prepared to become martyrs for the cause of the views advanced by their religious leaders, can be said to be another very important cause for the growth of terrorism.

## Main types of Terrorist Movements in Existence

We can distinguish at least four main types of terrorist movements currently active around the globe:-

- Nationalist, autonomist or ethnic minority movements.
- Ideological sects or secret societies seeking some form of "revolutionary justice" or social liberation such as Japanese Red Army.

- Exiled or émigré groups with separatists and revolutionary aspirations concerning their country of origin.
- Transnational gangs deploying terrorist get logistic support from two or more countries with "World Revolutionary " goals.[14]

## Terrorism : how does it work ?

Most of the modern organized terrorist campaigns are modeled on the three phases for development of a revolutionary campaign- the organization phase, the guerrilla phase, and the phase of mobile war. In the organization phase, local guerrilla forces are formed and also simultaneously 'the prop' teams visit all the villages and towns to educate the people as to support them in their cause. At the same time selective terror against government officials, enemies, informers are carried out to gain popularity. During the guerrilla phase selective assassinations, subversive activities are carried out to force the government agencies to retreat to safe places, thereby leaving the rest areas to the control of guerrillas in order to recruit and train a large army. Last , the mobile war to defeat the government totally.

The naxalite terror in some parts of the country has adopted the same pattern. In the Punjab Bhinderwala had attempted to withdraw the government presence from Gurudwara, so that armed forces can be built up for the final war against the state. Recently the Naxalites too had almost succeeded in establishing few pockets of liberalized zones. It becomes necessary for the government to eliminate the sanctuaries and thereby denying the terrorists to come out of the survival phase.

For any terrorist movement the ideological motivation must be there, to be taken up by some leaders at the initial stage. For the naxalites it was the liberation of the peasants from the clutches of the landlords, for the Sikhs it was to secure justice to the Sikhs from the tyranny of the Hindus and search for identity and for the Nagas and Mizos eliminating the exploitation of money lenders from the plain areas. The successful movements for homelands for different religions and ethnic groups inspired for similar objectives. Once the

leaders took up the cause, they found in the youths a good response. To quote N.S.Saksena, "As long as there are causes which arouse intense emotions, idealistic youths will be led to have romantic visions and terrorism for a cause. When a Nation loses efficient leadership , frustration leads the youths to nihilistic tendencies. The main support of practically all terrorist organizations comes from the aggressive youth groups"[15]. In certain societies, ultimate sacrifice for the cause of the group is a religious obligation and the people dying for the cause become heroes of the society. Thus the desire for fame and honour in the group induce people to covert themselves to the cause of terrorists.

The drone strikes expanded on a significant scale by the Obama administration in Pakistan and elsewhere are proving counter productive. The attacks no doubt, are killing some terrorists but are also motivating far larger number of youths to join the terrorist ranks.[14]

In a recent article published by the Inter Press Service , investigative historian Garth Porter points out that CIA officials involved in the agency's drone strikes programme in Pakistan and elsewhere, are privately expressing their opposition to the programme within the agency because it is helping the Al-Qaeda and its allies recruits.[15]

## Acquisition of Arms

The terrorists acquire arms ammunitions and explosives from the following sources:-

(1) Stealing from military stores (2)Manufacturing indigenously (3) Looting from Government arsenals and arms stores (4) Buying it from open market with the help of smugglers and drug traffickers (5) Secretly acquiring it from helping states.

Many of the weapons recovered from the terrorists are from the first three sources.

Purchase of arms from open market requires huge sums of money. Money raised from voluntary contribution may not be enough. Consequently, terrorists commit bank robbery, loot innocent people

and indulge in extortion. In India in the North-East and elsewhere coercion, kidnappings, abductions, protection money and tall taxes have become a permanent source of income to the terrorist organizations and they thrive on these to a great extent. Then the search for foreign assistance in terms of money and materials are carried out.

Some states now find that conventional wars have become very expensive. Moreover, if the enemy is stronger, any direct action would be suicidal . Inspired by the success of resistance movements, these states now prefer 'Low Intensity warfare' as their only option. Pakistan, on many occasions has opted for such indirect war against India in providing necessary sanctuary and other facilities to the terrorists.

The next step of the terrorist organizations is to indulge in terrorist activities. The type of terrorist activity will depend upon the objectives, which may be short term or long term. Short term goals consist of those acts which bring cohesion among group members and prove the mettle of the new comers. Rehearsals for large operations are also undertaken. The long term goals consist of the acts such as to cause break down of the respect for established authority, create climate of contempt for authority, and finally force the authority to concede their demands out of despair.

The terrorists operate in small units. In August 2008, Sri M.K. Narayanan, the then National Security Advisor, said that there were as many as 800 terrorist out–fits in India. The strategy adopted is that the targets are selected first. The selection of targets is such that will attract maximum publicity and jolt the public mind. The target may be highly ranked political leaders and government officials. The target may be mass communication system like railways, transport buses or air crafts so that people are scared to travel and find the life becoming unbearable. The targets may be Strategic industries, public undertakings or public works like dams or canals. This is intended to break the morale of the forces who intend to fight with the terrorists. It is on record that the terrorists did not

spare even the life of the retired Army Chief General Vaidya. In case of international terrorism the targets besides the political leaders, are the government representatives or high officials of the target country.

Sometimes the terrorists are not in sufficient number to reach the targets. In such situations they select their victims. The victims may be anybody. It is immaterial for the terrorists whether the victim is innocent or not. Thus by senseless and indiscriminate violence and unabated criticisms, they try to project themselves as dedicated men acting on behalf of the poor and downtrodden to uplift them and thereby try to build public opinion in their favour.

The following terrorist activities are in vogue today:-

- Abduction of V.I.Ps and diplomats and even civilians, Bank robberies Raids on government arsenals and private arms stores estruction of national monuments and property Explosions at public places Assassination, Hijacking Sabotage of international events, Indiscriminate killings.

It is to be noted here that as the nation states have started successfully tightening the security measures for the VIPs and other vital installations, the terrorists are more and more resorting to indiscriminate killings everywhere.

## Terrorism and Media

In carrying out terrorist operations, the terrorists are inadvertently helped by the media. The desired amount of terror is produced by T.V. coverage, news broadcast and headlines coverage by newspapers and periodicals. Media by producing the necessary effects become a partner of terrorism. To quote Walter Lequeur "The media are the terrorists' best friend. The terrorist acts by itself is nothing, publicity is all".[16]

Media coverage of terrorism has been a subject of dispute among policy makers. Some people believe that media coverage particularly T.V. programmes because of the dramatic presentation of actions and message, give the terrorists magnificent chance to sell their

ideas. By making terrorists 'heroes' and 'famous' media encourages further terrorism. There is a great demand to deny the terrorists the 'oxygen of publicity, provided by the media. If this is done it will help in reducing their activities.

On the other hand the protagonists of media claim that the people have got the Right to Information and it is the duty of the media to discharge its functions impartially. In England, the B.B.C. has taken such stand for which it has been subjected to bitter criticism. Media coverage, they say help to educate the people, and make them security conscious. Media in a free society is to function the way it is now doing. It should however be noted that the terrorists find it useful to draw the public attention to their cause which is crucial to their success. The terrorists use the media to project an image of legitimacy as 'Rebels with a good cause' and not as enemy of the society. Media coverage not only focuses the world attention on the demands of the terrorists, but also induces state repression. This is what the terrorist desire.

According to Carlo Marighella, "The aim of the terrorists is to induce repression by making it impossible for the government to govern without repression and through violence on the street , to compel the government to harass the population with searches, curfews, arrest and detention and to make liberal forms of law unworkable, by intimidating witnesses and journalists, so that witnesses dare not give evidence and juries dare not convict. As a result less liberal forms of law have to be introduced – for example, the suspension of trial by the Jury (Judges) and the acceptance of written evidence without the witness having to appear in person.[17]" This inevitably results into more injustice, more sympathy with the accused, and hence more support for the revolutionary movement.

The terrorists always try to project the deaths during police encounter, as cold blooded murder by the police. Such propaganda draws more people towards the side of terrorists. At the same time terrorists violence invite chain reaction among the target population who also indulge in senseless reprisals. The combined effects of

both the state repression and reprisals are that the moderates on both sides are eliminated and polarization becomes complete. The success of terrorism will depend upon the extent to which they are able to attain the above objectives.

## Strategy to Deal with Terrorism

India like any other democratic state has to face with certain constraints in combating terrorism. Things are different in totalitarian states, where extra-legal measures can be carried out, without the world knowing much about. But in a democratic country, with the professed principle of respect for human rights and dignity, and complex legal system, the stringent draconian laws are resented as invasion on the liberty.

However, all the liberal states have enacted certain special laws dealing with terrorists. In India the most important change brought about recently is in respect of streamlining the investigation and prosecution of terrorist offences at the central level. The establishment of National Investigation Agency under the NIA Act of 2008, is the first step towards effective handling of terrorism related offences. Parliament passed the law with near unanimity which indicates the willingness of different political parties ruling the states to enable the centre to act on the issue. Combating terrorism is now a joint responsibility of central, state and local governments.[18]

The second piece of legislation, the Unlawful Activities (Prevention) Amendment Act 2008, makes a number of substantive and procedural changes to empower the NIA, to act effectively and decisively on terrorism related activities. The powers of the police to arrest and search have been tightened. Section 43A to 43F have been substituted with provisions that enlarge the power to search any premises or arrest any person about whom an officer knows or believes, has a design to commit an offence covered under the Act. The provision of anticipatory bail (Section 438) does not apply to offences under the Act. If the accused is a foreigner, who entered the country illegally, bail is not to be granted at all.

Finally, the Act empowers the central government to freeze, seize, or attach the financial assets of those engaged in the terrorism.

These are strong measures, if responsibly executed in combating terrorism, would undoubtedly protect the security and liberty of the citizens both of which are the foundation of the Rule of Law in a constitutional system.

## Minimal Military Option

However, some other steps will have to be taken to arrest the situation arising out from terrorism. Use of military force in combating terrorism should not be resorted too frequently in a pluralistic state like India in the interest of the security of the country. It is to be noted here that the fight against 'terror' is larger and more complex than the challenge of dealing with terrorists. The former requires more of statesmanship and good governance. The later demands legislative and administrative reforms to plug the loop holes in criminal law and the criminal justice administration.

The terrorists threats that we are facing now are on an unprecedented scale but since the fundamental rationale of anti terrorism measures has to be to protect the human rights and democracy, counter terrorism measures should not undermine democratic values, violate human rights and subvert the Rule of Law. While fighting the war against terrorism, the state cannot be permitted to be either selective in its approach or to go overboard and declare a war on the civil liberties of the people. In the long run only good governance can control terrorism.

## Police Sub-System of Criminal Justice System

Police is the only instrument to do this job. But experiences show that the civilian police is neither trained nor equipped with modern weapons to fight terrorism. Hence, para-military forces trained physically, psychologically and technically are deployed to fight the terrorists. The police should be given the primary role in collecting the local intelligence, reaching the people living in fear and raising their morale and bring the offenders behind the bar by a quick and systematic investigation. Civilian police, many a time, remove the misunderstanding of the people and ease their tension because of their proximity to the local people.

We have already heard a lot about the self-seeking politicians and corrupt officials including the police who have made a mess of

the entire country. For politicians nothing matters, other than the votes. In their scramble for power they have encouraged narrow parochialism and regionalism. Majority of the government officials, corrupt to the core, create more problems and alienate the people from the authority. There is a talk about corrupt police officials and fake encounters that have driven many youths to the fold of the terrorists. We also hear about political leaders providing patronage to the criminals and protecting them from prosecutions and arrests. Now this is the time that it should be stopped.

Sam Souryal writes "what distinguishes police practices in free societies from those exercised in communist or fascist societies is basically the relationship between the system of criminal justice and the sub- system of police. In the latter societies, police agencies operate on the assumption that they are in fact, criminal justice… in free societies police agencies are and must always remain, a sub-system—a component of the criminal justice system."[19]

But unfortunately today it is functioning independently of criminal justice system in India. Every unit under its own organizational culture and sub-culture is working in its own way. At a very few places, little co-ordination is seen amongst the authorities manning the Investigation, prosecution and prison; all have become 'process' in themselves. Process of fixation of responsibility is one of the casualties in the current criminal justice system in India. Moreover, there is practically not any mechanism of correcting distortion and surmounting operational hurdles in accordance with the changing circumstances. As a result, a number of fallouts can be seen and observed. Litigation is now a terror and horror in itself. It is never final and is ever perennial. As a result of this, the unauthorized groups like private Army, militant organizations, underworld gangs have taken over the task of grievance redressal in many states in India. Increasing lawlessness and decreasing fear of law are the proof of the failure of the criminal justice system in India[20].Thus it becomes the prime duty of the government to streamline the criminal justice system.

If the police is careful not to offend the innocent and law abiding civilians while implementing the special laws in searches, seizures,

arrests projecting a picture of impartiality and honesty in the conduct of their duties, it will be the most useful instrument in combating terrorism.

## Corruption: Force Multiplier of Terrorism

One of the most important reasons for the spread of terrorism is corruption which has made India a republic of scandals. It is eating into the vitals of the state, enfeebling internal security and crimping the external security and foreign policy. India confronts several pressing national security threats. But only one of them –political corruption – poses an existential threat to the state, which in reality has degenerated into a republic of mega scandals. India's situation is best explained by an ancient proverb; "A fish rots from the head down". When the head is putrid, the body politic cannot be healthy. And when those at the helm remain wedded to grand corruption, clerks and traffic police cannot be single out for taking small bribes. In fact it is self-perpetuating cycle of corruption at all governmental levels—federal, state and local. As the then Chief Justice of India, Mr. Balakrishanan, pointed out the plastic explosives employed in the deadly 1993 Mumbai bombings had been smuggled into the country due to the local corrupt practices. [21]

Corruption stalls development, undermines social progress, undercuts the confidence of citizens in the fairness of public administration, impedes good governance , erodes the rule of law, discourages domestic and foreign investment, fosters a black market economy and raises new security threats. In sum, corruption obstructs a country from realizing its goals and undercuts national security. It is an irony that corruption has spread within the two institutions that are central to the country's future –the judiciary and the armed forces. Corruption distances people from the administration and compel them to join the terrorist fold. It is extremely urgent that government of all levels-federal, state and local should take stringent measures to arrest the situation and weed out the corrupt and root out corruption.

Finally, there should be no leniency in dealing with terrorists. History is full of examples when determined legal actions have considerably

curbed the menace. Terrorists should not be under any impression that they will get away with minimum or no punishment. The Indian government and its people are reminded of one of the proverbs of Napolean Bonaparte; " A generous king loses the reign". ■

## References


1. Davis Jack Political Violence in Latin America, London : International Institute for Strategic Studies, 1972 P.-32.
2. Paul Wilkinson, Terrorism Theory and Practice, London:Allen & Unwin 1985, P. 114 Yonah Alexender (Edt.)
3. Morris Michel ,International Terrorism And Political Crime, Little Brown & co. 1966, M.C.Bassioni (Edt.) p. 146
4. The United Kingdom Prevention Of Terrorist Act 1976.
5. The Hindu , Kolkata, 12th oct. 2010.
6. Brian Jenkins, International Terrorism: a new code of conflict, Los Angeles, Crescent Publication,1975, p. 14.
7. David F. Long The Anatomy of Terrorism, Paegar Publisher, New York, 1983, p.71.
8. A.S.Redlik, New Aspects of International Terrorism , Review of International Affairs, Vol. 26, No.598, 1975, pp. 25-28
9. Naunihal Singh, The World of Terrorism , South Asia Publisher, New Delhi ,1989.p.-3
10. The Hindu, Kolkata, Nov. 14th, 2010.
11. Kalim Bahadur, United States And the Anti – Terrorist Strategies , World Focus Jan. 2010 p. -3.
12. J. Mahapatra, Coping With Terrorism, A Paper presented at the SVP National Police Academy , Hyderabad,2001.
13. The Hindu, Kolkata, 19th Aug. 2010.
14. N.S.Saksena, Terrorism :History and Facets Abhinav Prakashan, New Delhi, 1985 p. 121.
15. The Hindu, Kolkata Nov. 13th 2010.
16. Walter Lequer, Terror And Resistance, New York, Oxford, 1972,p.-79.

17. Carlo Marighelle, International terrorism And World Security, London, Croom Helm, 1975, 237.

18. S. K. Jha. Police as an Agent of Social Change, The Indian Police Journal, Jan.-March, 2010.The Bureau of Police Research & Development, Ministry of Home Affairs, New Delhi, p.-11.

19. Sam Souryal, Terrorism And Criminal Justice, Lexington Books, 1978.p. 33.

20. S.K.Jha. Op. Cit. P.-12.

21. The Hindu, Kolkata, 7th Dec. 2010.

# The Trio: Terrorism, Media and Fear

**Sharon P Thomas***
**Dr. M. Priyamvadha****

## Keywords

Terrorism, Media, Terror tourism, Audience, Commercialization, Interdependency, Victims, Fear, perpetrator, traumatic incident.

## Abstract

*The terrorist organization provides media with sensational /entertaining news and the media in turn give popularity to their atrocious act. The modern terrorism aims at influencing an audience beyond the direct victim; and they plan their attack to obtain the maximum publicity through media. This paper makes an attempt to find out whether media promotes terrorism by influencing the thoughts of people by stressing fear. Critical analysis was done to find out the relationship between terrorism, mass media and fear among general public due to the increasing competition of the media to broadcast events live from any part of the world.*

## Introduction

Scarcely a day passes that we are not struck with penetrating stories of criminalization and terrorism. The distinguished feature of terrorism when compared to any other forms of crime is that it aims at evocating fear among the public.The foremost aim of a

Author Intro :

* UGC Junior Research Fellow, Department of Criminology, University of Madras, Chennai

** Assistant Professor, Department of Criminology, University of Madras, Chennai

terrorist attack is to create panic in general public, and the media is forced to be the evident for their deadly acts.

"The media find themselves in a dysfunctional position relative to terrorism. On the one hand, they must report terrorist attacks as they happen. On the other, they are part of the reason these incidents occur in the first place" (Bongar et al., 2007). The responsibility of the media to say the truth is ceased as it is difficult to find out the real picture of a terror incident. Fortunately or unfortunately media helps the terrorist organization to achieve their goals by spreading false understandings and fear among the public on the occurrence.

## Media: The Saint or the Sinner?

"Why Mumbai is Still Unsafe-three blast burns a gaping hole in the heart of the country's most spirited city, exposing how vulnerable its hardworking citizens are to terrorists, ineffective politicians and corrupt police"(India Today, 2011 July).

Here, the media gives an impact that the officials are ineffective and incapable of putting an end to this deadly act. The words also give an implied intention that the resilience of the global humanity is bliss to the government and the politicians ruling this democratic country. The media places itself in the pavilion, enjoys the game played by the antisocial elements and give passive comments to the situation. They pity the messy city and show the helplessness of the laymen. This flesh penetrating language by the media should be interpreted as their marketing strategies rather than the urge to give a true picture to fellow citizens.

The languages media use to portray terrorism are at most important as mere mistake or carelessness may mislead the general public. According to Graaf (as cited in Lockyer, 2003), "when journalists interview sources there is a 'good chance' that they will also inadvertently adopt some of the source's language. That means in practice, that when a journalist uses an insurgent terrorist as a source, the terrorist's romantic language often seduces the journalist into unconsciously adopting it." Modern media hymn the song of terrorist. It could be that the media is exited with the cut-

out language of the modern terrorism. Media fancy the language this modern terrorism feed them with. The terrorist's and counter-terrorist's language has made its way into common usage in the media. One should be aware that the dialects these "in league" groups use itself is fear generating in public. But the media has already accepted the nomenclature of terrorist group and thus the terrorist has won half of their psychological victory.

As the media got carried away with the exiting language of the "in league" group the public may also get fantasized with the same phenomenon. The dialect media use in reportage has more power than mere some words which give information. These words can influence the thoughts of the people and they may derive with new views and ideas. Thus evolved inspired ideas could be found evil to the society. "They had enough of terror tourism and they can do without any more salutes to their battered spirits" (India Today, 2011 July). The public feel helplessness and has learned to perceive these tragic incidents as the scar in the face of humanity. But by the very word 'terror tourism' media is trying to give them a different dimension to the century's old deadly disease. This could be considered as the modern media's urge to commercialize every product they come across than an attempt to pacify the helpless people by giving them hope. It can also be seen as an innovative idea to save the media from not being at the loose end, as the iterative use of words cause boredom in readers. The 'terror tourism' is definitely an eye catching statement and the author has succeeded in depicting the 'old picture' in a fresh package to catch the attention of public. The general public is compelled to view the same subject from a different angle which they have never dared to do. This trick of selling the old wine in new bottle force the laymen to rethink the very existence of terrorism as good or beneficiary to them.

## Mass Media –The Omnipresent

The media give importance to "newsworthy" incidents which will capture the interest of the viewers and maximize their profit. Terrorism is the pervasive flavor of the era and any profit grabbing sector will try selling the product to maximum consumers

regardless of the apprehensive effect of the act. More than a piece of information about the world around, people gets emotionally attached to the traumatic "news". Media exploits this nature of the people and fills the channel with more tragic scenes which in turn generates more viewership and profit.

Commercialization of media has changed the very nature of news reporting. It is mainly because the invasion of visual media has overthrown the print media in many ways. Visual media has occupied a place in human life beyond imagination. Rather than presenting the existing facts in front of the world, the media reportage aims atthose'sensitizing stories' that has not been reported. The live telecast by the mass media has enhanced unwanted competition among the news channels itself and they aim at maximizing their viewership by giving more sensational news to their viewers. This is mainly because most of the multimedia outlets are owned by conglomerates and their commercial orientation aims at the profit of their firm. "Many top media executives today come from the corporate world and no longer from the ranks of journalists" (Ramonet, 2002).The media fails to show justice to their responsibilities, they focus on sensitizing an issue which in turn raise the 'trp' (target rating point) of their product. It can be said that the modern media cast away the traditional journalism and neglect the morality of 'real journalism'.

## Terrorism and Media- two sides of the same coin?

"Studies agree that a symbiotic relationship exists between the terrorist and the media. In its most cynical form, the image is of terrorists using the media as a conduit for their message and the media using the terrorist for dramatic stories" (Lockyer, 2003). The terrorist needs more publicity and public panic and the commercial journalism's competition for readers and viewers have catalyst this 'symbiotic' terrorist-media relationship. As per Hocking "The terrorism depends for its success on media coverage" (as cited in Palatalized, 1992). The modern terrorism and modern media enjoys a 'give and take' policy for their survival and they are interdependent. The two sides appreciate this interdependency as they know this "policy" is the predominant ordinance of the unwritten mutual agreement they

enjoy. According to Barnhurst (as cited in Alali & Eke, 1991),"As media cover terrorism, they incite more terrorism, which produces more media coverage". The terrorist organization provides media with exiting and entertaining news and the mass media in turn give popularity to their atrociousacts. This interdependency makes them two sides of the same coin

It is not that the modern media cannot survive without terrorism. But they constantly respond to the terrorist act and propaganda because the terrorism provides them with sensational dramatic news which makes the media run. "Once a terror-event is launched before the camera, the drama by definition is a success" (Bell, 1978).The people prefer 'soap opera' than bare facts about the toxic incidents happening around the world. "Terrorists recognize that their best route to public recognition is through appealing to traditional news values: drama, conflict and tragedy—as fuelled by competition among the media" (Jaehning, 1978). Rather than a source of information and a medium for entertainment, the laymen use mass media as a way to gratify their emotional needs. The public expect melodrama from media and as the terrorist are aware of this trend of modern world they cater them with enough and more.

No other incidents can create the 'hype' a terrorist attack brings to the citizens and the government. At times media itself get trapped and fall for this illusionary world created by the terrorist. Every media professional fantasize an exclusive interview with the so called terrorist. As they know the trend of modern world, such an opportunity will shoot their carrier to unforeseen heights. So they are of all ears when it comes to a terrorist attack or terrorist organization which in turn will benefit them personally. It is clear that with a single meeting with such a 'spill blood' activist the newscaster can get his name marked in the history of journalism. Mark Blaisse,a reporter who happened to interview Abu Nidal has mentioned him as..." the most elusive of all the super terrorists" (Blaisse, 1992).This aspiration of journalist to be in limelight makes terrorist a "priceless commodity" in the market of modern media. And the media itself lay platform for them to share their propaganda with the public and government. With this flagrant publicity the media makes these assailants 'heroes'. The terrorist master minds sense this urge of the

media professionals and direct the media for their benefit. Thus media become puppet in the hands of perpetrators.

## Media and Fear

The public's reaction and opinion differs about the occurrence and persistence of terrorist attacks compared to that of other tragic or disastrous events showed in television. "In stark contrast to natural disaster, terrorism intentionally targets basic social infrastructure in a manner that inspires lingering fear throughout society" (Fullerton, Ursano, Norwood, & Holloway, 2003).Ordinary people perceive these incidences as a brutality redirected towards them from a strange enemy who cannot be found or caught. The panic is more when they realize that they are supposed to counter something which cannot be seen. The people are forced to live in this panic situation awaiting another dreadful strike from the unknown source. In such a situation when the media assure the public to enlighten them with the root cause of the traumatic incident and the perpetrators behind the dreadful act, the layperson will trust the media. "Research indicates that the majority of public knowledge about crime and justice is derived from the media" (Surette, 1998). The general public is unaware of the real picture outside; they get information and ideas from the media alone. Mostly public is not interested to become well-informed on many issues. When all the major media depicts the same picture, the general public perceives it as the reality and derive conclusion from the available sources.

The very news of a terrorist attack itself is panic-creating in people. The viewers get horrified when they come across such horrendous incidents. It sweeps them without warning and the scene creates panic in them. The re-telecast of the events makes the audience feel the pain and helplessness of the pathetic victims. As the audience does not have personal experience they tend to believe what the media provides them with. "Research indicates that media sources will be more meaningful when direct experience is lacking" (Liska & Baccaglini, 1990).The viewers should not always feel the sense of responsibility as the event is not affecting them personally. They get emotionally involved in the drama and pity the unfortunate victims.

It is a known fact that media plays a major role in altering the existing ideas and believes of their audience. "The media may not be successful much of the time in telling people what to think, but it is stunningly successful in telling them what to think about" (Cohen, 1963).Media influences the thoughts of the people and narrates them how the societies judge a particular incident and teach appropriate response to that event. And the blindfolded civilians tend to show socially accepted reactions and emotions to these tragic events portrayed by the media. The media plays ultimate role in molding and giving breathe to the public's understanding of terrorist and their heinous activities around the world. But the innocent people are not aware of the fact that media is one reason for their misfortune.

## The Trio- Terrorism, Media and Fear

The terrorist act itself is designed to destruct innocent human and implant the endless feeling of fear among the public. "If there is no aim to instill terror then the violence is not of a terroristic nature" (Wilkinson, 1997). And the media play its role of 'instilling fear' well to achieve these perpetrators their dream. "The media's reporting of terrorist spectaculars helps to facilitate two of the universal goals of terrorism. Terrorists gain attention when the volume and placement of news coverage affects the public agenda. There is also evidence that thematically framed stories that refer to specific grievances influence public attitudes about the roots of politically motivated violence" (Nacos, 1994) Any terrorist attack which aims at publicity and panic of the public has two parts; the first part is done by the terrorist himself by triggering a dreadful attack and the second is done by the media by inducing fear among the general public. "If terrorism can be defined as violence that is designed to deliver a message, the media are the messenger" (Bongar et al., 2007).The success of the attack depends on the sensitization of media about the incident and any terror attack is a feast to the modern media."If one of the elements of terrorism is the wish to obtain publicity for a cause and create propaganda, the media has obviously overreacted in responding to this desire" (Kratcoski, 2001). Thus the goal of modern terrorism can be fulfilled by the act of media only, and our modern media act as the theatre for the terrorist heinous act.

A media report of terrorist attack without causality is considered to be a failure in the part of the attackers. Because the prominent feature of any terrorist activity aims at the destruction of innocent human life and the psychological causality ofthe end number of audience. "The primary goal of terrorism is to disrupt society by provoking intense fear and shattering all sense of personal and community safety. The target is an entire nation, not only those who are killed, injured or even directly affected" (Hall, Norwood, Levinson, 2002).The terrorist target the innocent civilians and it is a humiliation to accept the fact that countless time the terrorist master minds have tasted the essence of victory.

Unfortunately as the terrorist wish, every inhumane attack has a bunch of tremendously affected victims with the endorsement of media. "In the age of mass communications, the role of the news media cannot be separated from acts of terrorism." (Jenkins, 1981).The modern media's inclination of reporting news live has enhanced the reach of public and caught the interest of terrorist. "Television reporting of acts of terror appears to have stronger emotional impact than print news" (Cho et al., 2003). People have a presumption that their eyes never lie and tend to believe what they see rather than what they hear. By visualizing these traumatic incidents the audience tends to associate themselves with the pain and agony of the victims. "Television imposes its own perversions on the other information media, beginning with its fascination with pictures. And the basic idea that only what is visible deserves to be news. If the emotion you feel by looking at the pictures on TV news programmes is true, then the news is true" (Ramonet, 2002). With this media circus of screening the traumatic event every now and then compel the victims to tamper with their memories and generate distress and agony within them. These horrifying pictures also create panic and sense of insecurity in general public too. The audience relate themselves with the victims and the area where the attack took place. In spite of the distance and the odds of such an act happening in their neighborhood, people develop fright and panic watching the harrowing scenes. With the shore up of the media, public observe these terrorist attacks alarming and position themselves in the vicinity of the perpetrators. The laymen assume

them as the subsequent target and find their life at stake. It is the media that decides the extent of intensity in a particular attack and how public should view and perceive the incident. Usually media give importance to events which gives them commercial benefit. In addition, no other coverage gives them as much viewership as a 'melodramatic' terrorist event.

The mass media promotes terrorism by invoking fear and an uncertain future. There is no life to modern terrorism without the blessings of media reportage. The media's specific ability of instilling fear among the fellow beings brings terrorism, media and fear to a complete triangle. This unbreakable triad relationship has given the world many dreadful events. The 9/11 attack is a remarkable example of this triangle. "The September 11, 2001 was planned on exactly that premise-that the media would cover the story with the immediacy it deserved. That's probably why the attack was in two parts. The first plane hitting the first building got everyone's attention. When the second plane struck, the cameras were on, and billions of people watched it live in their homes.....The sight could not have been more horrible. That, of course was exactly what the terrorist wanted. Whatever else anyone can say of the attacks, they were brilliantly conceived with the media in mind"(Bongar et al., 2007).

## Conclusion

Media should realize that the fear of terrorism among general public is more expansive and pervasive than a terrorist act itself. Any act that enhance panic among people and destruct the social and moral structure of the society should be cut off. It is of crucial importance to the media that the usage of language that describes the terrorism and terrorist activities should be monitored because any error may lead to a subject of dispute among the public.

Even though the media do not represent terrorist values; when it comes to the competitive market and exclusive news for the audience, the morality and values that the media holds on to fades to a large extent. Thus the terrorist organizations exploit and manipulate media for their own ends. It can be said that in the rat race

of maximizing profit, the commercial journalism lead way to more terrorist events. "The free press is the primary conduit connecting terrorists, the public, and governments" (Nacos, 1994). It's high time the media stops acting as a messenger of these destructive elements and take the role of a media in its true spirit and objective. Rather than bearing the burden of this deadly viper, media can take the role of a negotiator and put an end to this dreadful act that is eating into the vitals of mankind. ■

## Bibliography


1. Alali, A.Odasuo, and Kelvin Eke (eds.). (1991). MediaCoverage of Terrorism: Methods of Diffusion. Newbury Park: Sage publications.
2. Bongar, Bruce., Brown, L. M., Beutler, L.E., Breckenridge, J. N., Zimbardo, P. G. (Eds.). (2007). Psychology of terrorist. Oxford University Press, I nc. 198 Madison Avenue, New York.
3. Barnhurst, Kevin G. (1991). "The Literature of Terrorism." In Alali and Eke 1991a: 112-137.
4. Biernatzki, William E. (2002). Terrorism and Mass Media. Centre for the Study of Communication and Culture. Volume (21) 1. Retrieved May 15, 2012, from http://cscc.scu.edu/trends/v21/v21_1.pdf
5. Blaisse, Mark. (1992). Reporters' Perspectives. In Paletz and Schmid 1992: 137-169, translated from AbuNidal, by Mark Blaisse. Amsterdam:Arbeiderspers, 1989.
6. Bowyer, Bell J. (1978). Terrorist Scripts and Live-Action Spectaculars. Columbia Journalism Review. No.17.pp. 47-50
7. Cho, J., Boyle, M. P., Keum, H., Shevy, M. D., McLeod, D, M., Shah, D. V., et al. (2003). Media, Terrorism and Emotionality: Emotional differences in media content and public reaction to September 11 terrorist attacks. Journal of Broadcasting and Electronic Media, 47(3), 309-327. DOI: 10.1207/s15506878jobem4703_1
8. Cohen, Bernard. (1963).The Press and Foreign Policy. Princeton: Princeton University Press.
9. De Graaf, op. cit., p.65.
10. Fullerton, C. S., Ursano, R. J., Norwood, A. E., & Holloway, H. H. (2003). Terrorism and disaster: Individual and community mental

health interventions (pp. 1-22). New York: Cambridge University Press.

11. Hall, M. J., Norwood, A. E., Ursano, R. J., Fullerton, C. S., & Levinson, C. J. (2002). Psychological and behavioral impact of bioterrorism. PTSD Research Quarterly, National Centre for Post Traumatic Stress Disorder, 13(4), 1-7

12. Hocking, Jennifer Jane. (1992). Governments' Perspectives.

    In Paletz and Schmid (eds), Terrorism and media, Newsbury Park; London; New Delhi: Sage. Pp.86-104

13. India Today, July 25th, 2011, Vol XXXVI (pp.21-22)

14. Jaehning, Walter B. (1978). Journalists and Terrorism:

    Captives of the Libertarian Tradition.Indiana Law Journal.

    Vol. 53, No. 4, pp. 717-744.

    Retrived May, 14, 2012, from: http://www.repository.law.indiana.edu/ilj/vol53/iss4/5

15. Jenkins, Brian. (1981). The psychological implication of media-covered terrorism. The rand cooperation, Santa Monica California. PDF Url :ADA483724. Retrieved April 23, 2012, from http://www.rand.org/pubs/papers/2005/P6627.pdf

16. Kenneth, Dowler. Media consumption and public attitudes toward crime and justice: The relationship between fear of crime, punitive attitudes and perceived police effectiveness.Journal of Criminal Justice and Popular Culture, 10(2). Retrieved May 15, 2012, from: http://www.albany.edu/scj/jcjpc/vol10is2/dowler.html

17. Kratcoski, Peter C. (2001). Research Note: Terrorist Victimization: Prevention, Control, and Recovery.

    Studies in Conflict and Terrorism. Vol. 24, pp. 467-473.

18. Lockyer, Adam. (2003).The Relationship between the Media and Terrorism. The Australian National University. Retrieved April 20, 2012, from http://rspas.anu.edu.au/papers/sdsc/viewpoint/paper_030818.pdf

19. Liska, A., &Baccaglini, W. (1990). Feeling safe by Comparison: Crime in the Newspapers.Social Problems. 37: 360-74.Volume (37) 3. University of California Press. Retrieved April 23, 2012, from http://

www.jstor.org/discover/10.2307/800748?uid=3738256&uid=2&uid=4&sid=56075587643

20. Nacos, Brigitte L. (1994). Terrorism and the Media: From the Iran Hostage Crisis to the World Trade Center Bombing. New York: Columbia University Press.pp.73.74. Retrieved April 23, 2012, from http://books.google.co.in/books?id=F8I8B0tjJdgC&printsec=frontcover#v=onepage&q&f=false

21. Paletz ,D. L &Schmid, A. P. (Eds.). (1992).Governments' Perspectives. Newbury Park, CA: Sage Publications.

22. Ramonet, Ignacio. (2002). The Power of Television Pictures. WebWorld: Communication and Information in the Knowledge Society: An International Gateway. UNESCO webworld /e publication. Retrieved April 23, 2012, from http://www.unesco.org/webworld/points of views/200202 ramonet.shtml

23. Surette, R. (1998). Media, Crime, and Criminal Justice: Images and Realities. 2nd Edition, New York: Wadsworth Publishing.

24. Wilkinson, Paul. (1997).The Media and Terrorism: A Reassessment. Terrorism and Political Violence, Frank Cass, London. Vol.9 (2). pp.51-64.

# The Unlawful Activities (Prevention) Amendment Act, 2008 and Its Loopholes

**Caesar Roy***

## Keywords

Terrorism, Anti-terrorism laws, Extraordinary laws, Arrest, Human Rights.

## Abstract

*Anti-terrorism legislation designs all types of laws passed in the purported aim of fighting terrorism. Anti-terrorism laws in India have always been a subject of much controversy. One of the major grounds of this controversy is that these laws stand in the way of fundamental rights of citizens guaranteed under Part III of the Constitution. After the Mumbai terrorists' attacks, Parliament amended the Unlawful Activities (Prevention) Act, 1967 in 2008. This Amendment Act was preceded by the Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA), and the Prevention of Terrorism Act 2002 (POTA). In 2004 also, certain amendments were introduced to the Unlawful Activities (Prevention) Act, 1967. This new amendment lacks any new ideas about how to tackle terrorism. This Amendment Act, 2008 merely borrows provisions from the previous anti-terror laws, rather than offering a new approach, in spite of the past failures of stringent anti-rights laws to curb terrorist attacks. The aim of this Article is to analyze the loopholes of the Unlawful Activities (Prevention) Amendment Act, 2008.*

Author Intro :

Assistant Professor in law, Midnapore Law College, Midnapore, West Bengal. PIN – 721102. Email – caesarroy123@gmail.com

## Introduction

In the aftermath of the spurt in the terrorist activities recent years including the Parliamentary attack and the Mumbai attacks, it was decided to strengthen the legal framework in the battle against terrorism and a federal anti-terrorist intelligence and investigation agency, like the FBI in United States of America, was set up soon to co-ordinate actions against terrorism. As a resultthe Government introduced the Unlawful Activities (Prevention) Amendment Bill in LokSabha on 16th December, 2008, aiming to strengthen the arrangements for speedy investigation, prosecution and trial of cases related to terrorism. The Bill was passed by LokSabha and became the law of the land on 17th December, 2008. After the lapse of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), the government decided not to extend the legislation due to the severe criticisms and protests on its draconian approach. The Prevention of Terrorism Act, 2002 (POTA), was repealed in 2004 for the same reasons. In 2004 itself, certain amendments were introduced to the Unlawful Activities (Prevention) Act, 1967, thereby making it the nation's anti-terror legislation.

Anti-terrorism laws in India have always been a subject of much controversy. One of the major grounds of this controversy is that these laws stand in the way of fundamental rights of citizens guaranteed under Part III of the Constitution. The anti-terrorist laws have been enacted by the legislature and upheld by the judiciary though not without reluctance.

In the landmark case of D.K. Basu v. State of West Bengal,[1] the Supreme Court extended the Constitution's procedural guarantees further by requiring the police to follow detailed guidelines for arrest and interrogation. The National Human Rights Commission has similarly issued extensive guidelines on the rights to be granted at the time of arrest.[2]

1. D.K. Basu v. State of West Bengal, AIR 1997 SC 610.

2. National Human Rights Commission of India, Guidelines on Arrest, 22 November, 1989, available at http://nhrc.nic.in/Documents/sec-3.pdf , last visited on 07.03.2012

This part delves into some specific provisions of the recent Amendment to the Unlawful Activities (Prevention) Amendment Act, 2008, which blatantly violate the Constitution. Most of these provisions have been directly lifted from the predecessors of this Act, namely TADA and POTA. The thing to be noted is that these provisions are more or less the replica of the provisions of the erstwhile Terrorist And Disruptive Activities (Prevention) Act,1985 (TADA) and Prevention Of Terrorism Act, 2002 (POTA), thereby leading to the conclusion that these statutes were also violative of the same rights.

Some of the loopholes of the Unlawful Activities (Prevention) Amendment Act, 2008 are given below –

## Arrest Procedure

According to section 43A of UAPA, 2008, a person may be arrested by any officer of the Designated Authority on the basis of personal knowledge or information furnished by another person etc.

Therefore personal knowledge without any evidence and information given by another person because of enmity can take away the fundamental right of person as it gives wide and discretionary power in hand of officer with full room of arbitrariness.

## Pre-Trial Imprisonment

Section 43D of UAPA, 2008 brings back the disputed Section 49(2) (a)-(b) of POTA. The section permitted the pre-trial imprisonment of the accused till 180 days. What's more, Section 48 of POTO was similar to the above two provisions of law. However, the thing to be noted with regard to the duration of 180 days is that the time prescribed is far more than the duration which is permitted under Section 167(2) (a) of the Code of Criminal Procedure, wherein the detention of a person can be ordered by the Magistrate only if the individual is brought before him in person and that too for a maximum period of 90 days.

According to this provision after the police initially produce an accused before a magistrate; the magistrate may then remand the accused to police custody for up to 30 days, rather than fifteen

days. For extending the detention Public Prosecutor merely needs to show that investigation has been progressed rather than proving that there are adequate evidences against the accused.

India's 180-day period is much longer than the permitted maximum detention in other democratic states. SitaramYechury, pointed out in RajyaSabha about the shorter period of detention in other countries. According to him, 'in the United States no citizen could be detained for more than two days without charges being framed. In Canada, it is one day. In Russia, the period is five days. In France it is six days. In the United Kingdom, the House of Lords returned the proposal to increase the period under detention from 26 to 48 days.'[3]The UK Terrorism Act permits 28-day judicially-authorised pre-charge detention.[4] Under Australia's Crimes Code the maximum pre-charge detention is 24 hours, which does not include "dead time" when the suspect is not questioned.

Hence, it is not convincingly to explain the glaring distinction between India and other countries with regard to the period of custodial interrogation. The 90-day period was perhaps the longest in the world; doubling this period just to make the law appear stringent makes no sense. This detention can amount to 'sentence' on a person who may never be charged with any crime. Moreover, the possibility of long periods of detention without charge or trial provided by this section might lead to its misuse by the police for the purpose of preventive detention. According to reports, in fact, the police arrested persons knowing that there was an insufficient basis to justify the arrest under the Act, and detained them up to the maximum period allowed just to intimidate the detenues. In these cases the investigations were simply not completed and the detenues were released without charge. Lastly, the judge who is considering the extension of pre-charge detention must consider judiciously and reason for doing so must be mentioned.

3. V. Venkatesan&VenkiteshRamakrishnan,(2009), "Limits of law", Frontline (Delhi), Volume 26, Issue 1, January 03-16.

4. Terrorism Act 2006 (UK) http://www.opsi.gov.uk/acts/acts2006/ukpga_20060011_en_1, section 23, last visited on 07.03.2012.

## Procedural Requirements for Bail

Similar to TADA and POTA, the substantive bail standard under UAPA, presents a nearly insurmountable burden. No accused can be released on bail or on his own bond. Also, the Public Prosecutor has to be given an opportunity of being heard on the application for such release. According to section 43D (5) of UAPA, any person against whom the prima facie case is lodged he cannot be released on bail. According to section 43D (7) of the said Act, bail shall not be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

According to Article 9 of Universal Declaration of Human Rights and Article 9(1) to (5) of the International Covenant on Civil and Political Rights, no one shall be subjected to arbitrary arrest, detention or exile. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a Court in order that Court may decide without delay on the lawfulness of his detention and order release of the detention is not lawful. Besides, the bail provision is also the clear violation of human rights.

Taken together with the provisions providing the government with up to six months to file a charge sheet, UAPA's bail provisions fail to ensure that individuals are given prompt notice of the charges against them or that they be tried within a reasonable period of time or released from custody. This also goes against the rule of bail of the criminal law being the rule and continued detention, the exception.[5]

Such stringent procedural requirements for bail blatantly violate the Constitutional provisions. Article 22(2) and 22(5) of the Constitution of India mandate that 'when a person is detained in custody, it shall be communicated to him, as soon as may be possible, the grounds of arrest and shall afford him or her an earliest opportunity

5. Chandrashekharanpillai K N (Revised), R V Kelkar's Criminal Procedure, (2001), Eastern Book Co., Lucknow, Pp. 279-280.

of making a representation before a magistrate.' Under all the anti terror legislations enacted in India till date, the length of detention permitted before such a presentation is made, effectively ignores all such constitutional safeguards.

The longer period of detention could also be criticized in the light of one of the landmark

judgments of the Supreme Court HussainaraKhatoon and Others v. Home Secretary, State of Bihar,[6] According to the Apex Court, "No Procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair or just". There can be no doubt that a speedy trial "is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21".

But under the Act (UAPA) as no material is available to the accused, he will have to wait for 180 days so as to know the reason of his arrest which in turn means that the trial period would be longer for him; the procedure hence, is not reasonable, fair or just under Article 21 of the Constitution. Therefore, if Article 21 has to be a reality, the procedure prescribed by law should be known to the accused. The information crucial for his or her defence should be made available to him/her as a right.

I suggest that every detainee must be produced before a judicial magistrate within 24 hours of his arrest. No exceptions may be admitted to this constitutionally mandated rule. Further, there should be a strict time frame for trials. Also an automatic release on bail should follow if proceedings have not begun within 90 days of charges being filed.

The UAPA also includes a blanket denial of bail to the foreigners accused under the Act. Thus, Non-Indian citizens who have entered the country without authorization are subjected to even more severe consequences since UAPA flatly prohibits them from being granted bail "except in very exceptional circumstances and for reasons to be recorded in writing." The provision is a clear violation of Article 14 of the Constitution of India as Article 14

6. 1980 (1) SCC 81

provides equality for all "within the territory of India" irrespective of national origin. This implies that the release of an accused while the trial is pending would now be conditional on citizenship and based on an assumption that a person who entered the country illegally would continue to act illegally. It is suggested that granting of bail, should be made conditional only on a guarantee to appear for trial and taking into account no other factor, like, the nationality of the accused.

Adverse Inference Provisions

Under Section 5 of TADA, the possession of an unauthorized weapon in a notified area qualified to be an offence; the provision had been reinserted in POTA as Section 4 and it also forms a part of the Unlawful Activities Prevention Amendment Act, 2004 as section 23(1). The point to be noted here is that the possession of a weapon cannot imply the involvement of its owner in an offence unless the same is proved by the prosecution.

The definitions are so broad that the offences clearly overlap with ordinary criminal procedure. The Arms Act of 1959 that also has similar provisions; this makes this section an instance of a clear violation of Article14 of the Constitution of India.

The Act confers power of arbitrary selection of those who are to be tried under the UAPA, 2008 and those under the Arms Act. There is no nexus between the selection process and the two Acts in question. It confers sweeping power upon state governments to arbitrarily charge alleged violators of the Arms Act as "terrorists" instead, without any criteria to guide the state government regarding the same.

## Support given to Terrorist Organisations

Section 39(1) of UAPA, and Section 21 of POTA are similarly worded and qualify any kind of assistance given to the terrorist organizations as an offence. Section 39(2) punishes this offence with an imprisonment for a term not exceeding ten years, or with fine, or with both. Neither the Indian Penal Code nor the Criminal Procedure Code provides any definition of 'support'. Since no

definition is given, 'support' could be interpreted as loosely as possible.

''Inviting support'' may not involve any encouragement to commit violent and criminal acts. On the contrary it might include the peaceful, private discussion of political ideas. The wordings of this section could lead to violations of the right to freedom of expression guaranteed under Article 19(1) (a) of the Constitution of India.

## Definition of Terrorist Act

The UAPA, 2008 echoes POTA by specifying that a terrorist act is one carried out with the "intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or……to strike terror in the people……."

The definition of 'terrorist act' includes not just the use of radioactive and nuclear material, but anything that may threaten Indian security or anyone who may overawe or kidnap constitutional and other functionaries listed by the government.

The definition of a "terrorist act" has been further expanded in the Bill so as to include terror funding organization of terrorist camps as well as recruitment of people for committing terrorist acts. This list is potentially endless. While the definition of "terrorist act" provides some interpretive guidance, the statute defines no additional substantive criteria to guide the government's determinations, and does not provide for judicial review of those decisions of the government.

If we follow the Anti-terror laws of the other countries, these laws clearly separate terrorist acts from ordinary criminal acts. But the 2008 Amendment Act definition fails to do this, and thus remains ambiguous and reflects a lack of conceptual understanding of terrorism. According to the UN's special rapporteur on the promotion and protection of human rights while countering terrorism, "at the national level, the specificity of terrorist crimes is defined by the presence of three cumulative conditions - (i) the means used… (ii) the intent… and (iii) the aim, which is to further an underlying political or ideological goal." Without all the above three elements

the prohibited act could not be considered a terrorist act because it fails to distinguish itself from an ordinary criminal act.[7]

Subjectivity of the definition in more of the nature which enhances the scope for misusing the power by police and will defeat the very purpose of amending section 41 of Criminal Procedure Code, 1973.

## Denotification of Terrorist Organisation

Section 36 of UAPA, leaves the entire procedure for the denotification of a ''terrorist organization'' from the schedule dependant on the discretion of the central government. The first application for denotification must in fact be submitted directly to the central government, while the second would go to the Review Committee. However the members of the Review Committee, while not being themselves government officers, are nevertheless appointed by the central or the state government, and might be subject to pressures from these institutions.

The powers to proscribe organizations also criminalizes- in section 39 of the UAPA- anyone ''arranging, managing or assisting in arranging or managing'' a meeting where a member of a ''terrorist organization'' is speaking. The ''meeting'' could consist of three people ''whether or not the public are admitted'', thereby including private meetings and discussions.

It is contended that these powers may infringe on the rights to freedom of association, guaranteed in Article 19(1) (c) of the Constitution of India. As it would mean that any journalist, researcher, human rights activist or other professional meeting with any member, even if inactive, of a ''terrorist organization'' would be guilty under the Act.

## Presumption of Innocence and Burden of Proof

Under the UAPA, 2008 the presumption of guilt is on the accused. If arms, explosives, fingerprints or any other "definitive evidence" is

7. Special Rapporteur on the promotion and protection of human rights while countering terrorism, 'Protection of human rights and fundamental freedoms while countering terrorism' (16 August 2006) UNGA Doc A/61/267, atpara. 44. See also UNSC Res 1566 (8 October 2004) UN Doc S /RES/1566.

found at the crime scene and is linked to the accused, the "Court shall presume, unless the contrary is shown, that the accused has committed such offence". During the parliamentary debates, the Home Minister Mr. P. Chidambaram justified this reversal of the burden of proof on the grounds that in the past, terrorists have evaded conviction because they were permitted to remain silent. Mr. Chidambaram stated that if evidence points to the accused "then the accused has a duty to enter the box or let an evidence to say that I am giving contrary evidence."[8] In addition to shifting the burden of proof, this would also deny the accused the right to remain silent.

The right to a fair trial (presumption of innocence and the right to silence) is protected under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which India is a party to. Article 14 protects a number of rights considered necessary for a trial to be fair, including the presumption of innocence and the right to silence.[9]

The Human Rights Committee (HRC), in its 2007 General Comment No 32, states that while Article 14 is not listed as a non-derogable right, breaching "fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times", including public emergencies.[10] The HRC has also established jurisprudence that antiterrorism measures adopted pursuant to Security Council Resolution 1373 must conform with the ICCPR. Under Article 51 of the Indian Constitution the government is obligated to "endeavour to… foster respect for international law and treaty obligations". Therefore, any anti-terror legislation must not violate the right to a fair trial by denying an accused the presumption of innocence or

8. Parliamentary Debate, 17 December 2008. http://164.100.47.134/newls/textofdebatedetail.aspx?sdate=12/17/2008, last visited on 07.03.2012.

9. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 14(2) and art 14(3)(g).

10. HRC, 'General Comment No. 32 - Article 14: Right to equality before courts and tribunals and to a fair trial' (23 August 2007) UN Doc CCPR/C/GC/32 (2007), para. 6.

reversing the burden of proof. The UN Human Rights Committee's General Comment No 32 also stipulates that the presumption of innocence is a fundamental human rights principle. The burden of proving guilt is placed on the prosecution, which must prove guilt beyond reasonable doubt.[11]

## Search and Seizure Procedure

It has mentioned in the Preamble "Security Council of the United Nations requires the states to take action against certain terrorist and terrorist organisations to freeze the assets and economic resources." On the basis of this discretion of the Security Council, Indian Parliament incorporated section 51A in the said Act. The discretion given by the Security Council to freeze the assets of the member of the terrorist activities has confined up to freeze of the assets, however the provision incorporated in the UAPA, 2008 is wider than the discretion of the Security Council because the words used by the legislature under section 51A(a) are to freeze, seize or attach. This provision is made to exercise control over the finances or movements of an individual on the basis of mere suspicion, which is a subjective standard of proof. This is also the anxiety of human rights activists on the basis of violation of inherent human rights property.

Section 24 of UAPA, is about the expanded power to attach and seize property, that is deemed be from the proceeds of terrorist activities. This extra source of income can be quite a temptation dangling before the authorities. Also, because of the unintentional nature of the offence, this provision lacks any deterrent effect.

To this may be added the provisions related to the arrest, and search and seizure on suspicion, authorized by general or special orders by officers designated by the state and Union governments. Section 43C, makes the provisions of the Criminal Procedure Code, 1973 applicable, to all the arrests, searches and seizures made under this

11. HRC, "General Comment No 32 – Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial" (23 August 2007), UN Doc CCPR/C/GC/32 (2007), para 30.

Act. The wrath of subjective suspicion has the potential to override the due process enshrined in the Criminal Justice System.

## Other Provisions

One of the other features of UAPA which is worth mentioning is the requirement of giving information under Section 43A. Anyone can be charged under this law for not giving information that he "believes" to be of material assistance in the investigation of any terrorist Act. It gives the police enough opportunity to oppress; they having only to state that a particular individual has got some information and he has failed to supply it. So the individual's right to privacy is at stake for no rhyme or reason and ridiculously he has no remedy for the same. This also violates Article 20(3) of the Constitution of India, which guarantees that no person accused of any offence shall be compelled to be a witness against himself.

## Conclusion

UAPA needs to be suitably amended insofar to be compatible with the Constitution of India. It is proposed that in enacting such anti terror legislations, the members of the Parliament should be mindful of India's obligations under human rights treaties as well as its obligations to the people of India under the Constitution. Grafting past draconian and discredited, terrorist laws to the ordinary criminal justice system will not achieve this objective. Therefore, under no circumstance is the new Anti Terror Legislation, UAPA compatible with the Constitution of India. Its predecessors, the TADA and POTA having such similar unconstitutional provisions, have been repealed.

Making stringent arresting laws or tougher terror laws is not the solution for tackling the problem of terrorism. No law, however tough or draconian, can deter or deal with suicidal terrorist who are willing to die before they are caught. There should be multi-prolonged approach. A system of international cooperation is essential to curtail these activities. The police and investigation agencies must be accountable to the law and free them from the strangulating control of the political executive. ■

# Right to Information Act: A Tool of Management & Good Governance

**P.S. Bawa*, IPS (Retd.)**

## Keyword

Right of Information, Management, Good Governance, Transparency, Accountability, People.

## Abstract

*Taken in its true spirit, RTI Act has the potential to bring about the required change in the system of administration by shedding the cloak of the Official Secrets Act and getting under the obligation to do certain things that are generally ignored.*

The bureaucracy has viewed the Right to Information (RTI) Act, 2005, as antagonistic to its interests. It feels that there is an assault upon its bastion of privileges. The Act has made it accountable to people who may ask for information that was earlier the domain of only the legislature or seniors in the hierarchy, especially when the seeker 'shall not be required to give any reason for requesting the information or any other details except that those that may be necessary for contacting him' Sec. 6 (2).

The preamble to the Act does acknowledge certain inadequacies in administration that are required to be set right by promoting transparency and accountability, creating an informed citizenry, and to contain corruption, the over arching theme being to preserve 'the paramountcy of the democratic ideal'. The Act seems to have put

Author Intro. :

* Former Director General of Police, currently Vice Chairman, Transparency International India.

shackles upon the independence of the executive by mandating supply of information, unless exempted, within specific period, failing which penalties can be imposed for delay, mala fide denial , or giving incomplete or misleading information. So the bureaucracy considers the Act to be a bane. It has created tensions within the structure of the managements. The administration resents the power of people to gaze into their discretion, taken-for-granted privileges, perks of position, and an assault to their discretionary powers.

But the administration has missed the point by focusing only on the obvious and not getting deeper into the Act. It has thus shown a tunnel view of the Act. It has missed the opportunity of toning up of functioning and rejuvenation of the department by unnecessarily getting worried of exposure to the public. Taken in its true spirit, RTI Act has the potential to bring about the required change in the system of administration by shedding the cloak of the Official Secrets Act and getting under the obligation to do certain things that are generally ignored.

## Methods of reading the text

There are two ways of reading the text. One method is what the text contains, explains, and focuses. The object of law is contained in the preamble, followed by the contents of law. Reading the legal text, one is normally overtaken by the obvious, the overt, and the direct. The Act appears to be concerned with issues of permissions, prohibitions, time limits, penalties, processes for seeking information, and justice in case of denial or delay, or dissatisfaction. These are self-evident on the face of it. This is the letter of law. I would call it a static aspect of law. It has the potential. Like a cracker, it shall operate when ignited. In other words, some one must invoke it to operate.

The other method is getting into the text to see whether there is any hidden meaning that can be excavated for benefit. There is often more to the Act than meets the eye, or is obvious. What is not said but implied is equally important, perhaps more so, in the context of its automatic operation. The implicit is crucial too, for it may have unintended consequences. This is the dynamic aspect of law. Along with the normal provisions, there is thus a hidden treasure that

must be searched in all earnest. The meaning of the text, therefore, depends upon interpretation, derived from the letter of law but in the context of the spirit. This method can have synergic effect upon the achievement of objectives.

It is in this respect that Sec. 4 on 'Obligation of Public Authorities' is extremely important. It may seem marginal to the central theme of supplying the demand for information. But it is a 'how to' clause that mandates a few tasks on the public authority. Hidden within it is the transformative aspect of the Act that shall change the way bureaucracy works, thinks, responds, reacts, and delivers. This shall lead to an autonomous change in the ethos and processes of functioning. My task is to highlight the hidden potential of the Act.

Section 4 is a suo motu, proactive clause according to which all public authorities shall display all they do, plan, decide, spend, and the manner in which all these are done. The department shall showcase their wares under different heads. Hidden in these stipulations is a tool of management that shall enable the administrators to introspect, articulate, and document. This shall help them to set their house in order and conduct this operation periodically. It shall lead to self-improvement by the organization. Insistence upon its compliance shall bear ample results if pursued by the department and insisted upon by people. It is a clause that gives directions to all public authorities to do certain things and undertake some tasks within the organization. These are likely to lead to an autonomous change in the ethos and processes of functioning of officers, because this gives clear directions on what must be done. There is no discretion as it is a 'shall' clause and not a 'may' one. Critical expressions used in this context are 'maintain, publish, provide, disseminate', and 'update' information. This will surely work as piecemeal engineering thus leading to the administrative change.

A close reading of the clause shall convince one that all that is required to tone up the level of governance is contained in it. Though public authorities have been working in their own styles, there has been no uniformity and adherence to the principles of good management. Section 4 lays down standardized and essential processes to achieve the desirable. Therefore, at the level of the

denotation, the section implies the need for storing and updating information that should be available to the user so that information can be readily supplied with the object that, in the long run, there are less number of queries. But at the deeper level of connotation, the section signifies introspection, focuses on the essentials, and implies need for change. In view of the above, an attempt is made to spell out areas/principles for management of pubic authorities.

## Efficient and Modern Maintenance of Records

Sec 4 (I) (a) prescribes that every public authority is required to (i) 'maintain all its records duly catalogued and indexed in a manner and in form that facilitates the right to information under this Act' and (ii) to 'ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, are computerized and connected through a network all over the country on different systems so that access to such records is facilitated'. Inherent in this stipulation is the updating of records and proper maintenance thereof. This shall ensure that records are not forgotten in the backroom of stores but, on the other hand, are current in all respects. Moreover, the records shall have to be maintained for quick retrieval as information is to be supplied within a stipulated period failing which there are penalties.

It is for the first time that computerization has been ordained by law. Till recently, this area has been left to the initiative and good sense of the officials or departments. There was no sense of urgency in this respect and there would have been no time limit by which this it was to be accomplished. By this direction, all departments, by and large, shall have to go the computer way that could usher, on its own, a new work culture, inspired and facilitated by the computer and the Information technology. Secondly, development of comprehensive information system and database are necessary for planning and policy formulation. This is the crux of the management information system. Thirdly, this would also open possibilities of e-governance and application of computers and the information technology in management.

In view of the directions that all records are computerized, the

organization can seek finances under the schemes of modernization of records and, unlike other areas, there is the least likelihood of any difficulty in obtaining financial outlays.

## Essential Articulation

Though modern management demands that vision, mission, objectives, and goals of all organizations ought to be defined and kept in view, yet a few of the organizations are conscious about these items. Very few organizations have their mission statements. Sec 4 (b) ordains the publication of (i) the particulars of the organization, functions, and duties; (ii) the powers and duties of its officers and employees'; and (v) the norms set by it for the discharge of its functions'. Insistence on these is likely to ensure articulation that has been missing till now. The department's head would be compelled to indicate clearly on these aspects and make every employee conscious of his 'duties and functions' as well as 'powers' and the 'norms' by which he shall be judged.

This too lays down the manner in which work shall be evaluated. All this shall bring about self-consciousness if these spheres are crafted with care and circumspection and the employees informed about these. There is thus no choice with the organizations. They can no longer ignore this area or take a casual view. The law has not left it vague. The area is no longer a barren space but requires its filling up. No longer shall it be left to the discretion or initiative of the head of office. This too is an achievement of sorts.

There are two clues to the good management. One, it would lead the chief to consider the contents of the mission statement of the organization, an essential feature of modem management. Two, this would also enable evaluation of work, once the mission and objectives to be achieved are clear.

## Clarity of Procedures

Sec 4 (v) mandates that every public authority shall publish the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions. This is a crucial direction in law that will help the users

know their entitlements and the basis on which these can be denied or withheld. For instance, in the case of arrest in a bailable case, it is the right of a person to be released on bail. Or in compliance with the decision of the Supreme Court, no person shall be handcuffed ordinarily unless there is a justification to do so and that too under the information of the judicial authority. Similarly, if a person is entitled to a permit, a license, age certificate, a passport, a job-verification, school leaving certificate, etc., he shall get it in accordance with the procedures known to him. This knowledge of procedures shall help him comply with all the requirements so that his due is not delayed. This will also save the individual from being exploited by the secrecy of procedures that prevents him from knowing the reason of denial of a right.

The implication of this direction is that rules, wherever these do not exist, shall be framed. There are many enactments wherein rules have yet to be famed by the government. Without formulation of rules, the operation of the legislation is infractions. Secondly, this would ensure the preparation of citizen's charter so that people know of their entitlements and the procedures to get their due. There is thus an indirect insistence upon formulation of citizens' charters.

## Public Participation

There is often a call for public participation in government management. But this is never articulated in the functional form. Now the public authority is required to indicate and publish as per Sec 4 (b) (vii) the particulars of any arrangement that exists of consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof; (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of advice, and as to whether the meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public'.

There are two implications. One, this is likely to lead to

formalization of committees that must hold the meet periodically. This is important in view of the fact that many of the committees do not go for the meeting for a considerable length of time, even for years. This stipulation shall bring about a degree of regularity in the process. Secondly, most of the committees had not been drawing up proper minutes as if these used to be household affairs. No such casual approach would be admissible as the proceedings and the decisions shall be open, wherever prescribed. A corollary of this mandate is that the minutes shall help in the follow up of decisions and therefore a proper monitoring of the implementation. This is a professional approach to work. Drawing up the minutes shall make the department conscious of the need to comply with decisions and ensuring progress or indicating present difficulties, both of which are desirable for the final outcomes.

This is further relevant in view of the fact that many organizations still have not constituted various boards required to make the laws operational. This is true for the social legislation on children, women, senior citizens, and environment. In an unusual case the Committe on Environment did not meet for eight years. Ordinarily, public participation is more of a lip service than a serious effort at it. The stipulation in the section makes it obligatory to take it seriously. This is likely to ensure authentic public relations and participatory management.

## Transparency in Financial Dealings

The public authority shall also publish (xi) 'the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made'. In order to ensure that the budget is spent wisely, appropriately, and duly, sec 4 has laid down publication of `(xii) the manner of the execution of subsidy programs, including the amounts allocated and the details of beneficiaries of such programs' and `(viii) particulars of recipients of concessions, permits or authorizations granted by it'.

Transparency in financial dealings is crucial in the government schemes pertaining to the subsidies, and especially those for the poor with regard to employment, food, and shelter. The need for this

directive may be seen in the context of false muster rolls, defalcation of funds, and other financial irregularities that had been the norm in the developmental schemes with shoddy or no work on the ground, delays in the implementation, and misuse of the funds. The Member of Parliament Local Area Development Scheme (MPLADS) funds that were under severe scrutiny of the CA&G report would also fall under this category. Compliance with this section shall ensure more effective implementation of the NREGA.

## Speaking Orders

One of the problems of bureaucratic handling of issues has been lack of speaking orders. Hence many people have to appeal to the courts and get relief against orders that have no backing of reasoning. Sec 4 (d) lays down that the public authority shall 'provide reasons for its administrative or quasi-judicial decisions to affected persons'. This implies that in all matters relating to entitlements or decisions that can also affect the others, the authority so doing shall have to 'provide reasons' thereof.

All types of administrations and organizations are engaged in implementing the laws and percepts based on it . It is in this capacity that they grant or refuse a request. To some the right is granted, to others it may be denied. In all cases of refusal the petitioner has a right to know the reasons so that if the order does not appear just, reasonable, and fair, he could take recourse to appeal. And since the orders can be appealed against, the public authority shall have to record reasons of a decision.

This implies too an application of mind and the assurance that the order is not arbitrary or whimsical. All this would mean justice and a culture of making the speaking orders, a direction given by the apex court in many a decision.

The need for speaking the orders has been repeatedly stressed upon by the Supreme Court in various judgments. There may be cases when the orders are illegal, unreasonable, arbitrary, contravene prescribed procedure, cause breach in rules of natural justice, or prompted by mala fides or extraneous considerations that may

result in abuse of power. Therefore, the authority using discretion h been directed to ensure application of mind. (2006 AIR SCW 1672). The directions have been repeated in AOC v Santosh Kumar (2006 A IR SCW 2849), Union of India v Jai Prakash Singh (2007 AIR SCW 1692), and Daya Ram v Raghunath (2007 AIR SCW 4311). In MIS Gopal Enterprises v State of Jharkhand (2008 AIR SC 1609), the Supreme Court has held that summary disposal of application without assigning any reason in improper. It suggested that giving reasons is salutary requirement of natural justice. In another case, the apex court held that 'failure to give reasons amounts to denial of justice' (State of Meghalaya v Meeken Singh N. Marek 2008 AIR SCW 4726. 'Reason is the heartbeat of every conclusion and without the same it becomes lifeless' (Raj Kishore Jha v State of Bihar 2003 AIR SCW 5095). Speaking order is thus required to indicate the application of mind so that the affected party can know why the decision has gone against him.

Lord Denning has, in the context of administrative orders, said, 'The giving of reasons is one of the fundamentals of good administration'. The Supreme Court in another judgment has mentioned that 'Failure to give reasons amounts to denial of justice. Reasons are live-links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at' (2008 AIR SCW 2858). It further reiterated that reasons substitute subjectivity by objectivity. If the decision reveals 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function. The 'inscrutable face of the sphinx' is ordinarily incongruous with the judicial or quasi-judicial performance' (2003 AIR SCW 944). Hence there is a strict mandate to issue speaking orders.

## Supervision and Accountability

Contained in Sec 4 at sub-clause (b) (iii) is a direction that the public authority shall publish for the information of people 'channels of supervision and accountability'. Although supervision and accountability have often been used in management literature and official jargon, yet it had never found any space within legal

construction. The fact of appeal, in a way, is a supervisory function. But it is not a satisfactory method as many people are unable to resort to this method, scared of losing a battle with the authority. The supervision in the form of inspections and notes is lax and taken for granted. Sec 4 shall obligate upon the seniors and supervisory officers to be regular in their tasks because any citizen may require information on this aspect. They shall be conscious about the use of resources as someone might ask about the wrong or flagrant deployment of manpower, or the delay in the issue of completion certificate of construction.

Since seniors are accountable, they shall have to be careful about financial proprieties, disciplinary rules, personnel management, budget utilization, and matters of general administration. Therefore, in-built is the focus on follow up, evaluation, and monitoring that have been missing from the administration.

## Conclusion

Sec 4 is thus a boon as it shall lead to a refinement in the functioning of administration. What many administrative reform committees and commissions could not achieve may be accomplished by the Act that was not intended for this purpose but happens to be so. Therefore, the Act may be looked from the angle of achievement and not only its ability to get information expeditiously. One difference is that whereas the recommendations of committees and commissions are recommendatory, there is force of law behind section 4. It is a powerful clause that makes it incumbent and compulsory upon all depaitinents to know what they are, where they stand, and how to deal with the chinks that exist. It would usher in a culture of vigilance and vigilantism both within the organization and the public that is likely to seek accountability. The act thus invokes the latent potential of the administrative structure. It is an effort to enable the department to pursue the objectives by delineating a road map and prescribing a checklist. It has the potential to bring about good governance in accordance with law.

The reform might, hopefully, be initiated from within, failing which the enlightened citizens from the outside might build up an indirect

pressure by seeking information on all that is contained in sec 4, insist upon the organizations to go by its mandate, and even help in constructing the text, if the official language and response are inadequate.

Therefore, the Right to Information Act can also be taken to be the Right to Good Governance. One has only to realize its potentialities and not take it as antagonistic to the government's interests. An implementation of the provisions of the Act shall bring about the required change in the functioning of public dealing departments. The Act is also to be considered as a tool of management. Section 4 is a recipe for self-improvement. It is an occasion for introspection. This would usher in an era of transparency, integrity, accountability and effectiveness. Right to information is thus converted into a right to good governance and duty to do so. ■

# Study of Victims in Crime News in the Newspaper

**Dr. Lata Sharma***

## Keywords

Media, Crime News, Criminal Justice System and Victim.

## Abstract

*The proposed study is based on the collection, analysis and interpretation of the data from Newspapers representing the victims in crime news in print media. It compare the patterns of crime news in national and regional news papers in which content, coverage, frequency and manner of victims in crime news has been analyzed. The significance of present study can be underscored in terms of its applications highlighting the impact of crime news on society at large. The findings of the study emphasises the nature and manner in which victims in crime stories are presented. This feature will highlight the element of sensationalisation of victims in crime news in the print media. The study aspires to suggest ways and means in making victims' presentation in crime news socially fruitful and professionally facilitating to law enforcement agencies.*

## Introduction

The present study reveals various dimensions of the coverage of crime victims by the Indian media. Media is supposed to present events in an objective and fair manner because people are dependent on media to know the world and their opinion is

Author Intro. :

Ph.D., Department of Criminology & Forensic Science , Dr H S Gour University, Sagar (MP)

usually the results of news. But whether media really represent facts of an event in an objective and unbiased manner or its coverage of the events is influenced by the commercial or some other considerations of their organizations? It is proposed through this study that media while covering crime news prioritize many dramatic aspects of the incidence and bypass objective reality. Many time such dramatization go against the rights and interests of the victims of such crime events and these reports may lead to aggravate sufferings of victims. It has been stated under Section 228A of the Indian Penal Code that disclosure of the identity of a rape victim is punishable with imprisonment for up to two years and fine. The Supreme Court in the case *Delhi Domestic Working Women's Forum v. Union of India*[2] has also laid down that the identity of rape victims hold be protected.

The right to privacy has been recognized by the Norms of Journalistic Conduct released by the Press Council of India in 2010 which states; "while reporting crime involving rape, abduction or kidnap of women/females or sexual assault on children, or raising doubts and questions touching the chastity, personal character and privacy of women, the names, photographs of the victims or other particulars leading to their identity shall not be published." These laws and guideline have been flatly violated by the recent media reports of such incidents by disclosing personal details of the victim. For instance the media coverage of the crime of gang rape of a law student of the National Law School, Bangalore[3] and the molestation of the girl outside a

[2] (1995) 1 SCC 14

[3]The issue was highlighted by the Student Bar Association, National Law School of India University. Media assassinated the character of raped girl (Bangalore) and even wrote about her dressing sense. Since then, Journalists were trying to following the students of NLSIU, asking questions about girl and because of this incidence both the victim and students went through very difficult time. Media has been reporting this sensitive news in a reckless manner even though when the investigation of these crimes was not completed. This media hype had two effects. First it affected fair investigation from being conducted and secondly, it made impossible for the victim and the other students of NLSIU community to regain a sense of normalcy. Available at: https://www.change.org/en-IN/petitions/chairman-press-council-of-india-direct-the-indian-press-to-cover-sexual-offences-sensitively [Visited on 14/11/2012]

pub in Guwahati[4] are some of the recent instances which raise concerns about the violations of the victim's rights and interests by media. These media coverage and many more of the past are proofs that the legislative framework as well as the guidelines of the Press Council of India are hardly followed by the insensitive and irresponsible journalists covering these events and it surely undermines the consistent demand by the media groups for autonomous regulation and control over the media coverage and other related issues. In both the cases the privacy of the victim should have been maintained but it was disclosed by the media. Media reported both the news in very irresponsible, reckless and callous manner.

## Selective Coverage of Victims

When a crime is particularly heinous or brutal or if there were multiple victims, the media is more likely to report it. It is now widely acknowledged that, across news and entertainment formats, media focus overwhelmingly on the most serious examples of crime and victimization, foreg rounding images of violent and frequently sexual interpersonal offending (Marsh, 1991; Reiner et al., 2000a). By contrast, lower-level property offences that make up the significant majority of recorded crime

[4]Tehelka Magazine covered this issue in detail. In Guwahati molestation case Journalist himself involved with his friends in mistreating/molesting girl and showing it live on channel. The journalist was saying to his friends, to undress the girl and make her naked and also saying again and again that she is prostitute. Everyone in crowd making video film on mobile and nobody came forward to help her. After some time one senior journalist was passing by and helped the girl and called the police, than also the Journalist who manufactured the news has dared to ask the girl, what happened and she replied that, "you have done it when I was returning from party". Afterwards it was found that the journalist was behind this entire thing and he was trying to exploit the situation of teenage girl who was alone standing outside the pub. This type of media coverage is very insensitive, voyeuristic and uncaring about victim's emotional and mental suffering.

Available at: http://www.tehelka.com/story_main53.asp?filename=Ne280712MANUFACTURED.asp [Visited on 14/11/2012]

(Maguire, 2002), and white-collar and corporate offences that place a major social and financial burden on society (Hillyard et al., 2004; Tombs and Whyte, 2001, 2003; Croall, this volume), are given sparse attention, if not ignored altogether. However, the mass media focus on violent crime is also highly selective. Ferrell (2005: 150) points out that news media representation highlight 'the criminal victimization of strangers rather than the dangerous intimacies of domestic or family conflict'. News reporting of crime and, further, of the particular types of crime on which journalists disproportionately focus, is selective and unrepresentative.

Not all crime victims receive equal attention in the news media. Occasionally, intense media coverage may be devoted to victims who can be portrayed as 'ideal'.Christie (1986:18) describes the 'ideal victim' as 'a person or category of individuals who when hit by crime, most readily are given the complete and legitimate status of being a victim'. This group includes those who are perceived as vulnerable, defenceless, innocent and worthy of sympathy and compassion. Elderly women/men, young females and young children, it is suggested that they are typical 'ideal victims', whereas young men, the homeless, those with drug problems, and others existing on the margins of society may find it much more difficult to achieve legitimate victim status, still less, secure a conviction in court (Carrabine et al., 2004). In this sense, there exists a **'hierarchy of victimization'**, both reflected and reinforced in media and official discourses. At one extreme, those who acquire the status of 'ideal victim' may attract massive levels of media attention, generate collective mourning on a near global scale, and generate significant change to social and criminal justice policy and practice (Greer, 2004;Valier, 2004).

Crime involving high profile, violent and unusual news stories receive wide coverage in media because these types of

news stories interest the public and have some circulation or commercial values. For instance some of the cases involving high profile people such as Jessica Lal murder case[5] and Priyadarshini Mattoo murder case[6], the involvement of media were such that it led to reversal of the judgment of trial court by pressurizing the state machinery to pursue the matter to appellate courts. Victims having poor socio-economic back ground are not given proper space in news papers. The media has often shown insensitivity to victims of crimes as well.

[5] In *SidharthaVashisht @ Manu Sharmav.State (NCT of Delhi),* [(2010) 6 SCC 1] the victim JessicalLalwas a bar tender/model and was shot dead in a bar in 1999 by Manu Sharma, son of powerful politician and minister in Haryana. In the trial court, Manu Sharma was charged with murder (Section 302,201/120-B I.P.C.). Four of the key witnesses turned hostile in the court. The Sessions Court acquitted all the accused in 2006. Because of this acquittal, public opinion were made through e-mail and SMSs, their outrage on petitions forwarded by media channels and newspapers to the President and others for seeking justice to the victim Jessica Lal. Public pressure built up with newspapers splashing headlines such as "No one killed Jessica" and TV channels running SMS polls. Due to the pressure of public opinion, the Delhi Police appealed against the acquittal at Delhi High Court. Delhi High Court dismissed the prosecution application for introduction of additional evidence and reversed the order of acquittal passed by the trial court and sentenced the accused to undergo imprisonment for life (under sec. 302) and with the fine of 50,000 Rs that has to be paid to the family of victim and eight years of imprisonment for section 27, 201/120-B, which was affirmed by the Supreme Court.

[6] In Santosh Kumar Singhv.State through CBI, [(2010) 9 SCC 747], the trial court acquitted the accused Santosh Singh, who was son of Inspector General of Police. In the judgment Additional Session Judge said that he knew that Santosh Singh has committed the crime but he was forced to acquit him and giving him the benefit of doubt. The matter was handed over to CBI for investigation and a retrial was forced. All newspapers published the articles and stories of victim's suffering and published interviews of her father's and bringing the judiciary under intense pressure. Thus, what was started as a market gimmick changed the law course and induced one of the landmarks reversals in recent times. The High Court of Delhi in retrial convicted Santosh Singh under section 302 IPC for murder and section 376 IPC for rape and awarded him capital punishment. It was commented that the trial judge acquitted the accused amazingly taking a perverse approach and it murdered justice and shocked judicial conscience. Few years later accused went to Supreme Court and Santosh Singh's capital punishment has been converted into life imprisonment.

## Objectives of the Study

**Following are the objectives of the present study**

1. To study the coverage and patterns of crime news in national and regional news papers.
2. To examine the frequency, nature and pattern of coverage concerning crime victims in print media.
3. To examine victims status in national and regional crime news.
4. To examine behavior of the police with victims in national and regional crime news.

## Research Design

In order to attain the above mentioned objectives the following research design has been adopted.

## I. Methodology

The basic methodology for the analysis of the data from media sources and general public is content analysis of the collected data. A descriptive statistics of the data have been computed and the interpretation of the analysis has been done to measure the trends in the representation of crime news in the print media.

## II. Sample and Data Collection

### A. Crime News in Print Media

The data have been taken from four major newspapers of the country. Based on considerations of broad geographical diversity as well as diversity of ownership, following four major national and regional newspapers have been selected for inclusion.

| S. No | National newspapers | Regional newspapers |
|---|---|---|
| 1. | Times of India | DainikBhaskar |
| 2. | The Indian Express | Navbharat |

The crime news, news feature, editorial, articles published in above mentioned newspapers have been collected and analyzed. The data have been collected through a pre-structured proforma specifically devised for the study. The news content for this research covers the period between 1 January 2005 to 30 June 2005. During this period, each crime news figuring in the sampled news papers have been examined on a daily basis. Overall, the study examined 724 editions of newspapers which establish it as one of the largest empirical analysis of crime news coverage. The study resulted in a population of selective 1345 crime news stories which have appeared in two national newspapers and two regional newspapers for 6 months. The sample included **310 crime news stories from Times of India, 252 crime news stories from The Indian Express, 408 crime news stories from DainikBhaskar and 375 crime news stories from Navbharat.**

## III. Tools and Techniques of Data Collection

The major challenge in this study was to prepare tools capable of objectively measuring the variables chosen for the study. Much of time during this review period was therefore devoted to the process of designing the tools for this study. The construction of distinct sets of tools involved the identification of items, transformation into quantitative items, creation of variables, and finalization of tools with the help of repeated **pilot testing. On the basis of objectives prescribed for the study, tools have been devised for this study:**

- The news contents of four major national and regional newspapers (in Hindi and English) would be collected through a pre-structured proforma.
- **A Pre-structured proforma for Print Media:** The collection of data in the study assumes special significance as there were no live respondents in the exercise. The method of content analysis has been used in the study and this kind of study is very rare in India.The process was greatly facilitated by studying the pattern of news in **The Times of India, The Indian Express, Dainik Bhaskar and Navbharat.** The raw tool was then subjected to the pilot testing for five times.

After evaluation of the results of pilot study, the schedule has been finalized for the study. The questions in pre-structured proforma are close ended, so it will be easy to obtain answers. Based on considerations of broad geographical diversity as well as diversity of ownership, The Times of India, The Indian Express, Dainik Bhaskar and Navbharat have been selected for data collection.

The news content for this research covers the period of six months. During this period, each crime news figuring in the sampled news papers have been examined on a daily basis. The questions of pre-structured proforma are capable of assessing frequency of coverage (no. of times victims presentation in crime news in newspaper), content, nature and coverage of different victim related crime news in a day in newspapers and type of crime news covered in newspaper.

Finally, presentation of Criminal Justice Administration in crime news i.e. frequency of the appearance of various organs of Criminal Justice Administration in crime news has been studied. The simple descriptive analysis of the data has been done with **SPSS package.** It basically consisted of the trends and patterns of coverage of victims in crime news in print media.

## Presentation of victims in Crime News in Print Media

The starting point for assessing the news media's coverage of crime news is to examine the variation in presentation of victims with which different variety of crimes is reported in the four newspapers. From an overall perspective, 1345 news stories were identified across the 724 newspapers editions analyzed.

The findings are as follows:

**Presentation of Victims in Crime news**

The findings show the difference in the coverage pattern on the basis of gender, age and economic status, i.e. the presentation of male victims (N=324) and female victims (N=226), young adults (N=127), children's and old age victims (N=80) received the maximum coverage in crime news in four news papers during

the period of six months. Firstly, the presentation of **male victims received the maximum coverage in murder/attempted murder stories whereby total 228 murder/attempted murder** stories were published. In this highest percentage 67.5% (N=154) of male victims has been received coverage and lowest percentage. 4% (N=1) of juvenile victims has been received coverage in murder/attempted murder stories. Secondly, the presentation of **female victims received the coverage in sexual offence** stories whereby total 172 sexual offence stories were published. In this highest percentage 48.8% (N=84) of female victims has been received coverage and lowest percentage 1.7% (N=3) of old age victims has been received coverage in sexual offence stories. This will increase the fear among the women and young adults and old age people. The crime done against women was mostly sexual crime, eve teasing, dowry related and domestic violence. Thirdly, the presentation of male victims received the highest coverage in robbery/dacoity stories whereby total 130 robbery/dacoity stories were published. In this highest percentage 34.6% (N=45) of male victims has been received coverage in robbery/dacoity stories and lowest percentage .8% (N=1) of children and young victims has been received coverage in robbery/dacoity stories.

## Theme of the crime news

Theme of the crime and violence related news (N=677) received the highest coverage, in this highest percentage 32.2% (N=218) of crime related news has been published in Dainik Bhaskar and lowest percentage 12.1% (N=82) of crime related news has been published in The Indian Express. Secondly, Victim related news (N=409) received the coverage, in this highest percentage 28.1% (N=115) of victim related news were published in Dainik Bhaskar and lowest percentage 18.3% (N=75) of victim related news has been published in The Times of India and thirdly, criminal justice administration (N=162) related stories have received the coverage in four newspapers, in this highest percentage 27.8% (N=45) of criminal justice administration related news were published in The Times of India and lowest percentage 21.6% (N=35) of criminal justice administration related news were published in Navbharat.

Correctional Administration (prison news, parole, and probation) (N=52), Police related news (N=40) and Crime prevention and control (N=5) related news has been not given much space in all four newspapers. This trend show that violence and sex takes place due to there sensational, exciting and dramatic content. Preventive and correctional news need a lot of hard work and professional skills that is why nobody wants to work on this type of particular news.

## Presentation of Victims Status in Crime News

The middle class victim's related crime news and upper class related crime stories received the highest coverage in the four newspapers. Firstly, the middle class victims related crime news received the maximum coverage in all the four newspaper whereby total 408 of middle class victim's crime stories were published during the period of six months. In this highest percentage 30% (N=122) of middle class victims related crime news has been published in Dainik Bhaskar and lowest percentage 15% (N=61) of middle class victims related crime news has been published in The Indian Express. Secondly, the lower class victims related crime news received the second highest coverage in all the four newspaper whereby total 313 of lower class victims related crime stories were published. In this highest percentage 39% (N=122) of lower class victims related crime news has been published in Dainik Bhaskar and lowest percentage 10.9% (N=34) of lower class victims related crime news has been published in The Indian Express. Thirdly, the upper class victims related crime news received the third highest coverage in all the four newspaper whereby total 100 of upper class victims related crime stories were published. In this highest percentage 34% (N=34) of upper class victims related news has been published in Dainik Bhaskar and lowest percentage 14% (N=14) of upper class victims related crime news has been published in The Indian Express.

The total results shows that highest victims related crime news published in Dainik Bhaskar (N=408) and secondly, victims related crime news published in Navbharat (N=375) and thirdly, victims related crime news published in Times of India (N=310). This trend

shows that lower economic class people doesn't get much attention because media ignore their basic problems. Media generally take that news which has sensational and dramatic content.

## Presentation of Nature of Victims Loss in Crime News

The crime news related to emotional loss received the maximum coverage in all the four newspaper whereby total 327 of such stories were published during the period of six months. Out of this highest percentage 34.6% (N=113) of emotional loss related crime news has been published in Navbharat and the lowest percentage of 16.5% (N=54) on the Indian Express. Secondly, the Financial/Economic loss related crime news received the coverage in all the four newspaper whereby total of 244 such stories were published. In this highest percentage 35.7% (N=87) of Financial/Economic loss related crime news has been published in Dainik Bhaskar and the lowest percentage 14.8% (N=36) of Financial/Economic loss related crime news has been published in The Indian Express. Thirdly, the physical loss related crime news received the third preference coverage in all the four newspaper whereby total 162 of such were published. In this highest percentage 30.9% (N=50) of physical loss related crime news has been published in The Indian Express and lowest percentage 20.4% (N=33) of physical loss related news has been published in Navbharat.

## Presentation of Police Behavior with Victims in Crime News

The presentation of police negligent and uncaring behavior received the maximum coverage in murder/attempted murder stories whereby total 228 such stories were published. In this highest percentage 14% (N=32) of negligent and uncaring police behavior with victims has received the coverage and the lowest percentage 6.6% (N=15) of indifferent police behavior with victims. The presentation of indifferent police behavior received the second highest coverage in sexual offence stories whereby total 172 such stories were published. In this highest percentage 30.8% (N=53) of indifferent police behavior with victims has been received coverage

in sexual offence stories and the lowest percentage 14% (N=24) of attention and sympathy with victims.

The presentation of indifferent police behavior received the third highest coverage in robbery/dacoity stories whereby total 130 such stories were published. In this highest percentage 24.6% (N=32) of indifferent police behavior with victims has received the coverage in robbery/dacoity stories and the lowest percentage 13.1% (N=17) of negligent and uncaring police behavior with victims.

## Discussion on the Findings of Study

The fact remains that the news industry is a business, and crime sells. From the findings of present study, it is shown that middle class victims and lower class victims' get coverage in local newspapers, while high profile crimes were published in the National Newspapers. Male victims' get the highest coverage in murder crime news and the female victims' in sexual offence related news. Media mostly print that crime news having dramatic, sexual and sensational elements. Inaccurate information can shape wrong public opinion and wrong government policies for example, excessive coverage of young people as offenders plays down the fact that they are the group most likely to experience the victimization. Media coverage can re-victimize the victims, especially if overly sensational or inaccurate. It can create misconceptions and misgivings in reader's minds about the crime victims. Emotional loss related crime news has been frequently covered in local newspaper and the lowest percentage of emotional loss in National newspaper. Economic loss and physical loss related news has been highly visible in local newspaper and lowest percentage in National newspaper.

This shows that crime news has been presented just to attract readership and gain profits and media didn't present facts in a proper way and in proper perspective and thus distorts the reality of crime event and victims. The media will interact with certain types of victims, particularly sexual assault victims, domestic violence victims, victims of simple assault and victims of property crimes with sexual interest because these type of crimes involve lot of emotional and dramatic conditions which give media juicy stories

and sometime they themselves develop/manufacture stories of their own which have little bit of truth. In crime news, murder related news received the highest percentage whereas victims related news get second highest coverage and criminal justice administration/crime prevention and control/correctional administration received very less coverage in newspapers. This shows that local newspapers are not interested in publishing public welfare news which will control crime and prevent crimes from happening and also not writing about criminal justice system for creating public opinion on policy making because they don't have the analytical and policy analysis capacity giving the impression that the public is not interested in crime prevention/control measures and neither interested in correctional administration/ criminal justice administration.

Local/National newspapers are giving juicy and entertaining news about cricket celebrity, film stars and astrology. They are not writing about massive poverty, farmers' suicide, malnourishment, health care, education, dowry death, domestic violence, female foeticide, labors issues, crime against women, unemployment, hunger and terrorism because these type of issues demands a hard labour and investigation about facts and data. It also requires in-depth knowledge of particular socio-economic issues and also demands analytical skill of laws and policies of our nation and other countries.

The presentation of police's negligent and uncaring behavior towards victims received the maximum coverage in murder/ attempted murder and received second highest coverage in the sexual offences. This type of presentation of police in newspaper gives them negative publicity and this is the one reason common person seems to have lost their faith in police. Most of the public form their opinion by reading news, when they read that victim has been harassed by police in many ways such as not writing FIR and not investigating the case properly and misbehaving with victims of crime, so this behavior of police creates panic, helplessness and insecurity among the victims and readers. Sometime victims fear that he/she may not be taken seriously or of being humiliated by the same institution which is meant to uphold and enforce the law and another is the fear of reprisals.

## Recommendations

Freedom of speech and expression vide Article 19 (1) (a) of the Indian Constitution is a very important right but media deliberately overlook or underplay Article 19 (2) which says that the above right is subject to reasonable restrictions in the interest of sovereignty and integrity of India, state security, public order, decency, morality or in relation to defamation or incitement to an offence. Media need to be regulated but not to be controlled. The difference between the two is that in control there is no freedom, in regulation there is freedom but subject to reasonable restrictions in the public interest. We have various laws to enforce law and order in the society like IPC, CrPC, Evidence Act, Domestic Violence Act etc. But we did not have any substantial law for media regulation which strictly punish those who prints wrong or distorted news. Media always resist any type of regulation on it and prefer practice the self-regulation, but if that is the case then why should not we abolish all laws and practice self-regulation?

In a recent case of the year 2012 i.e. Sahara India Real Estate Corporation Ltd. and Ors. v. Securities and Exchange Board of India[7], the Supreme Court of India grappled with the intricate issue of laying down guidelines regarding reporting in media (print and electronic) of the matters which are sub-judice in a court, including public disclosure of documents forming part of court proceedings. The Apex Court ruled that court can order postponement of publication or publicity of the trial as a preventive measure for fair and proper administration of the justice. The test for determining the postponement of publication is that the publication (actual and not planned publication) must create a real and substantial risk of prejudice to the proper administration of justice or to the fairness of trial. The principle underlying the postponement orders is that it prevents possible contempt. Such orders generally direct the postponement of the publication for a limited period.

The Court interpreted such postpone order as a reasonable restriction as per Article 19 (2) on the fundamental right of free speech and

[7]2012 (8) SCALE 541

expression as provided through Article 19 (1) (a). Such restriction, the Court said will prevent any prejudice to the administration of justice or fairness of trial. The Court noted thus:

"Therefore, in our view, such orders of postponement, in the absence of any other alternative measures such as change of venue or postponement of trial, satisfy the requirement of justification under Article 19(2) and they also help the Courts to balance conflicting societal interests of right to know vis-à-vis another societal interest in fair administration of justice."

The Apex Court however added in this case that it would be open to media to challenge such orders in appropriate proceedings. The fact is that there are laws which are not sufficient; there must also be some external regulation and fear of punishment. However, the issue that such regulation protecting the rights and interests of victim should be in the hands of government or an independent statutory authority like the Press Council of India, is a debatable proposal and beyond the scope of present study.

While the media may have a right to print the sensational aspects of a case, it also has a moral and ethical obligation to respect the victims and their sensibility. An ethical practice can be evolved by which media representation of crime news can be beneficial for the victims[8] of crimes. The aspects of rehabilitation and compensation for victim is usually ignored by the media as it follows an event for a limited time and very rarely do follow up of the crimes investigation and other measures by government to rehabilitate and compensate the victim. Media house must realize their responsibility towards

[8]Section 357A of the Code of Criminal Procedures provides for establishing compensation fund for victims of crimes in each state. The legal services authorities established under the Legal Services Authorities Act, 1987 have paramount role in rehabilitating and compensating the victim through such funds. This session also makes provision for immediate medical relief to the victims of crimes. Similarly the Supreme Court of India in Delhi Domestic Working Women's Forumv.Union of India (UOI) and Ors.[(1995) 1 SCC 14] laid down several guidelines to assist the victims of rape which need to be implemented by the court in every incidence of rape. These guidelines emphasize for providing legal assistance to victims during pretrial and trial stages and maintaining anonymity of victims of rape.

this and should expose the rhetoric of government about the rehabilitation and compensation of victim.

Timely and sensitive coverage of victims' cases can be helpful, particularly in emergency situations where the public need to be made aware of the abduction of a missing child or needs information on emergency crisis services in the aftermath of a disasters like natural ones, road accidents and man made disasters such as Bhopal gas tragedy and other such eventualities resulting from the activity of the industries dealing in the hazardous substances. By focusing on the only sensational (murder and sexual offences), high-profile crimes, the coverage ignores other victims because they belong to poor socio-economic background whose suffering seemingly nobody wants to pay attention.

In most of the sexual assault/eve teasing/rape, the victims have been blamed for her victimization. The reporting details about what a victim was wearing or their height and weight or their presence at the crime scene at the wrong time, literally suggesting that victim was herself responsible for her plight. Media sometime publish news stories in very irresponsible way like putting blame on the battered wife who murdered her husband and did not see the abusive situation in which she might have been living for many years. These issues are very sensitive and require a journalist's sensitivity and knowledge about the gender issues. Every media house needs to follow all the guidelines which have been laid down by Supreme Court of India and Press Council of India that victims name, address and photos should not be published or shown or disclosed by anyone. Their right to privacy and fair trial should be respected by media. ■

## References


- Croall, H. (2001a) Understanding White Collar Crime. Buckingham: Open University Press.
- Ferrell, J. (2005) 'Crime and culture', in C. Hale, K. Hayward, A. Wahadin and E. Wincup (eds), Criminology. Oxford: Oxford University Press.
- Greenfield, J. (1986); "TV: The Medium Determines Impact of Crime

Stories." Crime Victims & the News Media. Fort Worth, TX: Texas Christian University.

- Hillyard, P., Pantazis, C., Tombs, S. and Gordon, D. (eds) (2004) Beyond Crimonology: Taking Harm Seriously. London: Pluto Press.
- Marsh, H.L. (1991)'A comparative analysis of crime coverage in newspapers in the United States and other countries from 1960–1989: a review of the literature', Journal of Criminal Justice, 19(1): 67–80.
- Maguire, M. (2002) 'Crime statistics: the ''data explosion'' and its implications', in M. Maguire, R. Morgan and R. Reiner (eds), The Oxford Handbook of Criminology, 2nd edition. Oxford: Oxford University Press.
- Reiner, R., Livingstone, S. and Allen, J. (2000a) 'Casino culture: media and crime in a winner-loser society', in K. Stenson and D. Cowell (eds), Crime, Risk and Justice. Cullumpton: Willan.
- Tombs, S. and Whyte, D. (2001) 'Reporting corporate crime out of existence', Criminal Justice Matters, 43: 22–4.
- Tombs, S. and Whyte, D (eds) (2003) Unmasking the Crimes of the Powerful: Scrutinising States and Corporations. New York: Peter Lang.

# Criminal Investigation

**Tushar Gupta***

## Keywords

Proper, Scientific, Procedural Law, Due Process, Securing the Crime Scene, Evidence Gathering, Strip, Zone, Grid, Code of criminal Procedures

## Abstract

*Though this paper, the author has highlighted various steps, procedures and precautions that the investigators can and should follow in the investigation process. Today's police force are increasingly becoming smarter and tougher, and with small little precautions, they can ensure that their efforts don't go in vain.*

## Introduction

In today's times, crime has become an unavoidable and a deplorable element of every society. Irrespective of the degree of development in the society, no society is free from its vices. This obligates a nation to therefore have a strong criminal justice system. This can only be possible if the process of crime investigation is highly advanced, in tune with the legal requirements of the country and free from faults and doubts. This would resultantly ensure a good conviction rate in the courts.

In any legal system; whether civil law or common law; there exists certain commonality; especially as regards the mandatory nature

Author Intro. :

BA.LL.B (Final year), Law Faculty, Delhi University.

of credible evidence in the trial of a person, who is accused of an offence, in order to obtain a conviction. Every society, including the Anglo-American tradition, as well as other traditions, has long regarded evidence as being of central importance to the law. Every trial brings forth a set of facts before the court which can only be proved by some evidence. The evidence which is collected by the investigators is used to establish a given fact in a case. It is the facts, supported by the evidence that enables the court to form a definite opinion upon any matter.

However, good and cogent evidence can only be collected only if the investigation process is prompt, elaborate and diligently effected. According to Section 2(h) of the Code of Criminal Procedure, 1973, investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. Investigation is the exclusive domain of the investigating agencies and is essentially concerned with search and collecting evidence in relation to an offence that has been committed. It means a search for material and facts in order to find out whether or not an offence has been committed.[1]

The process of crime solving is a technical and laborious process. It not only involves a lot of efforts and time, but also requires a great amount of skill and perseverance. The investigators have to proceed with the investigation in a very systematic manner and also ensure that in that process, the requirements of law are duly met. The success or the failure of any investigation depends on the mindfulness and thoroughness shown by the investigator at the crime scene. Any laxity by the investigator during the investigation stage may have a great impact on the entire case, not just on proper or further investigation in the matter, but also at the trial. There cannot be anything more disheartening for an investigator than to have the Judge turning down the evidence in a case as immaterial or inadmissible on grounds of technical defects which he could have avoided or taken steps to avoid. Therefore, on reaching the crime scene, the foremost duty of the

[1]Directorate of Enforcement v. Deepak Mahajan and another, AIR 1994 SC 1775,

police officer or the investigating officer is to protect and preserve the crime scene. The officer should secure the area and ensure that it is free from any external or unnecessary interference. The efficacy of the process of crime solving is essentially determined in the first few hours following the commission of crime. Any pilferage or disturbance of the crime scene leads to destruction and disappearance of evidence and therefore, it would ultimately affect the prosecution in their case in the court. Such disturbance may result in failure to establish the identity of the perpetrator of crime or to link him to the crime/crime scene. These are fundamental defects in any prosecution story and therefore have a large bearing on the overall case adjudication. It therefore becomes utmost important to protect and preserve the crime scene.

## Protection of Crime Scene

The very first step in criminal investigation is to cordon off the area of the crime scene and to prevent any on-lookers, media persons or unauthorised persons to enter the crime scene. This step is very fundamental in investigation and plays a very vital role in ensuring the preservation of evidence. Cordoning off the area ensures that unauthorised persons do not gain access to the crime scene and unintentionally disturb or tamper with the same. It is extremely essential for proper investigation to take place that the crime scene has not been disturbed. The crime scene is full of evidences and at the stage of collection of evidence, it is not possible to categorise the importance of any evidence found on the spot. Each and every piece of evidence is vital and has its own value and importance. The relevance and the effect of such evidence can give a new dimension or direction to the entire investigation or the absence of the same may hinder the completion of the investigation. Various articles that are found or the manner in which they are found reveal a lot about the perpetrator of crime or the modus operandi, and therefore can become extremely important in cases where habitual or serial offenders are involved. Access to the crime scene to persons other than investigators can result in loss of clinching evidence. For example, the owner of a burglarised safe is primarily interested in what was taken, and, if not prevented, may start an immediate inventory to ascertain his loss. Footprints on papers strewn in front of the safe or fingerprints on various objects within the safe may be

obliterated by this carelessness.[2] Therefore, it is the responsibility of the first officer at the scene, whether he is in uniform or plain clothes, to protect that scene until sufficient help arrives.

According to the Coimbatore City Police Commissioner, *"Scientific investigation helps to gather authentic and clinching evidence at a scene of crime and hence the scene of crime should be cordoned off to prevent onlookers disturbing the evidence, while forensic and finger print experts, besides canine squad should be allowed to carry out the investigation.....unlike in developed countries, where 80 to 90 per cent of the physical or material evidence was collected from the scene of crime by forensic experts, only 40 per cent of the evidence was collected in India and 60 per cent depended on eye-witness accounts. He added that eye-witnesses may turn hostile in a few cases, but scientific evidence can be authenticated and preserved for any number of years. Crime scene preservation is very essential and the police personnel who are the first respondents should cordon off the area and allow the professionals to carry out their investigations."* [3]

One of the few problems in respect of crime investigation in India is the lack of Political Will to give due weightage and respect to it. The police officials are expected to be at the vigil at all times and to have a track record of 100% case solving without giving them the necessary facility to ensure the same. According to The Telegraph, the State of Bihar as recent as in 2012 did not have the "Do Not Enter" tapes for cordoning off the area. [4]

## Photographing and Sketch

Photographing and sketching of the crime scene is an important part of the investigation process. Photographs and sketches provide a

[2]Leland V. Jones, Scientific Evidence and Physical Evidence, : A Handbook for Investigators, Charles Thomas, 1959

[3] Official website of Coimbatore city police Viewed on 1/1/13 at 8:24 PM

http://www.coimbatorecitypolice.com/seminar-on-preserving-scientific-evidence-at-crime-scenes---coimbatore-city

[4]The telegraph, Calcutta, 10th Feb 2012 viewed 1/1/2013 at 7:32 PM http://www.telegraphindia.com/1120210/jsp/bihar/story_15115347.jsp#.UOMNUuSTySo

visual and a graphical representation of the crime scene respectively. The importance of photographing and sketching the crime scene depends upon the ingenuity of the investigator. Quite often, a thorough examination of the photograph and/or the sketch can reveal much more than was originally perceived by the investigator at the crime scene.

## Photograph can be used:

- As a means of documenting the crime scene
- For refreshing the details of the crime scene
- To work on the progress of the case and to think of new or re-evaluate the case theory
- To understand modus operandi of the offender
- To record as evidence
- Co-relate and compare with the notes made and physical evidence collected at the crime scene
- To assist the advocates and the Judge at the trial

The crime scene should be photographed before removing the body from the spot (unless required to be sent for treatment/first-aid) and other object at or in the vicinity of the crime scene which are likely to be collected as evidence. The photographing should be undertaken in such way that the entire crime scene is covered along with other relevant and supplementary objects so as to provide the investigators a complete profile of the crime and information as to the modus operandi of crime and the victim. In respect of clicking snaps, it is essential that large number of photographs is taken which range from shots taken of general crime scene to specific and important objects at the crime scene like broken glass, finger print, blood spot, etc. This assists the investigators by providing them a detailed and yet thorough pictorial record of the scene of occurrence. Where possible, photographs should be taken by experts.

The current problem in relation to photographing, as explained by Mr. Dinesh, a PSO with the Delhi Police, is that there are no more than one or two photographers per the district, each of which includes atleast 5-10 police stations. Therefore, in most cases, the

police have to rely on public photographers who are not trained or equipped to deal with photographing crime scenes. Apart from such shortfall, these police photographers are given only given a short course on photographing which can raise serious doubts as to its effectiveness and viability.

This problem gains importance for the fact that the photographs are of great investigative as well as evidentiary value. They can help the investigators to gather information or place their theories as to the sequence of events at the time of commission of offence and thereby, proceed to look for related evidences. Many times, a re-evaluation of the overall appearance of the scene is required, and without photographs, this study is practically impossible.[5] According to clause 9 of Rule 25.33 of the Punjab Police Rules, the photographing of the body should be done in the position it is found and of the scene of the occurrence may prove of great evidential value. The basic purpose of photographing is to document and preserve in a pictorial form, any evidence found at the crime scene before any possibility of destruction or tampering with the same.

The court in **State v. Miller,**[6] as regards the use of photograph as an evidence, said that, "Generally, they may be used to identify persons, places, and things; to exhibit particular locations or objects where it is important that the jury should have a clear idea thereof, and the situation may thus be better indicated than by testimony of witnesses, or where they will conduce to a better or clearer understanding of such testimony." However, the court also cautioned the use of photographs by laying that it would be "erroneous to admit a photograph which did not accurately reproduce the appearance of the wounds, and which presented a gruesome spectacle of a disfigured and mangled corpse, very well calculated to arouse indignation in the jury." The Supreme Court of India in the case of **Laxmipat Chorariaand Ors.v. State of Maharashtra**[7] held that if the court is satisfied that there is no trick photography and the

[5]John J. Horgan, Criminal Investigation, McGraw Hill Book Company, 1974

[6]43 Oregon 325

[7]1968 SCR (2) 624

photograph is above suspicion, the photograph can be received in evidence. The apex court in the matter of N. **Sri Rama Reddy v. Shri V. V. Giri**[8] laid down that, "We think that the time has come when this court should state its views of the law on a matter which is likely to be increasingly raised as time passes. For many years now photographs have been admissible in evidence on proof that they are relevant to the issues involved in the case and that the prints are taken from negatives that are untouched. The prints as seen represent situations that have been reproduced by means of mechanical and chemical devices... We can see no difference in principle between a tape recording and a photograph."

The preparation of a Sketch of the crime scene is also an integral part of the investigation process. A sketch is an accurate portrayal of the physical facts relating to the sequence of events at the scene of crime and establishes the precise location and relationship of objects and evidence found thereon.[9] It provides the investigator with a graphical representation of the crime scene which can serve the purpose of a case record that can be used for various purposes. According to Richard H. Ward (former detective, NYPD), a crime scene sketch can be put to the following use:

> *"Combined with photographs, sketches can be used to analyse the scene or to determine the relative probability of various aspects concerning the scene. Sketches might be used to refresh the memory of the investigator or witnesses, as well as, to develop a clearer understanding of the occurrence.... In some crimes, the position of objects or items may be inconsistent with the statement of witnesses or may indicate a "staged" scene. Examples of this occur sometimes in apparent suicides. What may appear to be suicide may be murder. Thus, the position of weapons, furniture or other items may be improbable and readily apparent in sketches."* [10]

[8]1971 SCR (1) 399

[9]http://www.bcps.org/offices/science/secondary/forensic/Crimescene%20Sketch.pdf Viewed: 30th Jan 2013 at 1:32 AM

[10]Richard H. Ward, Introduction to Criminal Investigation, Addison Wesley Publishing Company, 1975

In India, there are generally two type of sketches made-in-any criminal case. The first is a rough sketch of the crime scene which is made by the officer in charge as part of his own notes and assistance. According to clause 5 of Rule 25.33 of the Punjab Police Rules, on reaching the spot, the police officer investigating the offence shall draw a correct plan of the scene of death including all features necessary to a right understanding of the case.The other is made by a specially skilled police officer called draftsman who prepares a measured sketch of the crime scene which is upto scale, mentioning various details including dimension of the room, distance between objects and the body, etc. The later is a more authentic sketch and is often used by the courts in decision making. The Hon'ble Supreme Court in **Jagdish Narain and Another v. State of U.P.** [11] held that a Site plan has corroborative value. The case of **Sunil v. State**[12] is a classic example of use of site plan wherein the Delhi High Court referring to the site plan along with the testimonies of the prosecution witnesses rejected the plea of self-defence of the accused persons.

## Search and Examination

After securing the crime scene, by cordoning off the area, and photographing the same, the investigator or the police officers should proceed to examine the area and search for the clues and other non-apparent evidences. This is one of the most important phases of investigation and any error at this stage would ultimately affect the trial of the case. This stage requires great precision and swift mind on the part of the investigator in order to collect evidence and to anticipate where evidence could be found on the crime scene. It is a tedious task and therefore warrants a high degree of professionalism from the investigative team.

A basic practical problem with criminal investigation is the fact that the investigators may not know what is important as regards the case, and what is not. The investigator does not know what is relevant or not, and hence, almost everything from the crime spot needs

[11](1996) 8 SCC 199

[12]Crl. Appeal no. 962/2004

to be seized. This is the reason why it is often said that the initial part of investigation is the most difficult. The entire investigation revolves around information and evidence that is collected from the crime scene and thereafter proceeds by joining links and arriving at conclusions. It is very easy to overlook certain kind of physical objects at crime scene like fibre, hair, debris. It is therefore important that the investigators take the pain of collecting whatever physical objects (potential evidence) which they may come across at the crime scene because it is easy to discard or return objects which later on prove to be valueless or of no relevance rather than find those objects at the crime scene once they have been ignored in the initial investigation.

However, it is a golden rule of investigation that the investigators should not directly proceed to collect and catalogue any physical evidence found at the spot. The procedural requirements mandate the investigator to make notes of the crime scene. It is improper for an investigator to rush with the process of investigation. He should be patient and methodical. The investigator should make proper field notes of the various physical evidences recovered from the spot. These notes should be thorough, complete and made as soon as possible, when the memory is fresh. Proceeding with collecting evidence and sending them for analysis can destroy their significance in the process. The value of evidence lies not only in its character but its relation with the scene of crime and therefore, proper documentation of the physical appearance of the crime scene along with the manner and way in which evidences have been found become important. In this respect, it is important to remember the teachings of Prof. Hans Gross who is regarded as the father of criminal investigation. He said that, "Never alter the position of, pick up, or even touch any object before it has been minutely described in an official note and a photograph taken."

According to John J. Horgan, documentation of crime scene is important. He says that:

*"If every iota of information which is available is not collected and recorded, the investigation conducted thereafter suffers. The protection and preservation of the crime scene should be*

*maintained while the investigators and technicians proceed to make notes, sketch, photograph, prepare casts, and search the area. Very often the position of the articles in a room, on a lot, or throughout a building will relay to the trained eye the events preceding the commission of the crime. Never touch, change, or alter anything until identified, photographed, measured and recorded.....Before the actual collection of evidence is started, it is necessary that:*

- Unauthorised persons be prevented from crime scene
- Precautions be taken to prevent contamination.....
- Photographs of the scene should be obtained from a number of angles. Many times, a re-evaluation of the overall appearance of the scene is required, and without photographs, this study is practically impossible
- Photographs should be identified by numbers
- A general survey of the premises should be made
- A sketch should be prepared to show scene conditions, items of importance, and measurements." [13]

The officer making the search should take down accurate and detailed notes, supported by accurate sketches drawn to scale, showing the whole layout and the exact places where the articles, etc. were found. It is not sufficient to say that an article was in a certain room or on a particular table, but its exact position must be noted and, if necessary, an enlarged sketch of that portion of the scene must be drawn.[14]

After preliminary examination of the spot is done and the notes of the same are entered in the Case Diary, the investigators should then proceed for a careful examination of the spot, and to collect and catalogue any evidence found. This stage involves a careful examination of the crime scene which may require the investigator to look in every nook and corner. The entire crime scene, whether

[13]John J. Horgan, Criminal Investigation, McGraw Hill Book Company, 1974

[14]Model Police Manual II, Bureau of Police Research and Development.

it is a small room or a large factory, has to be examined in and out in search for any evidence in relation to the offence. When examining the crime scene, the investigator is essentially looking for answers to the following questions:

- Number of offenders
- Identity of offenders
- Intent of offenders
- Point of Ingress
- Point of Egress
- Chain or sequence of circumstances before, at and after the commission of offence
- Connection of offender to victim and/or offence

When conducting investigation, the investigator should bear in mind that the manner of his searching the crime scene is not based on a random search pattern. That is to say, the investigator should not proceed to search the spot as and where he likes or believes the evidence to be, without following a set pattern of search in order to ensure that the entire area is covered. The problem in conducting a search of the crime scene on a random search method basis is that such kind of examination would only result in chancing upon the evidence rather than an effective and a more probable search for it. Various authorities and investigators have suggested that there should be a proper and a set pattern of conducting the search of the crime scene. A more definitive and a defined searching pattern ensures that the entire crime scene is covered with would resultantly lead to an increased chance of finding evidence pertaining to the offence.

According to various writers,[15] the investigators can employ various methods of searching the crime scene, depending upon its type and the nature of the offence:

[15]Bruce Berg, Criminal Investigation, McGraw Hill Book Company, 4thed, 2008

1. **Spiral:** The spiral search pattern is typically used in an outdoor crime scene and is initiated by a single investigator. He or she begins at the outermost corner and walks in a decreasing spiral toward a central point. Following the spiral from the outermost edge to the centre provides a detailed search. This pattern should not be undertaken in reverse. That is, you should never begin at a central point and spiral outward; in entering the central area to begin, you are likely to trample or destroy evidence.

2. **Strip:** The strip search pattern, like the spiral, is typically used outdoors, but it may be used in large open indoor areas, such as a warehouse or factory, or even in smaller areas, such as a room. Strip searches may be undertaken by a single officer or several officers. This search pattern involves imagining a series of lanes dividing up the entire space to be searched. The searchers move up and down each lane, continuing until the area has been completely searched. When more than one person is searching and one person finds evidence, all the other searchers should freeze until the evidence has been properly collected. Then they can resume the search from the points where they stopped.

3. **Grid:** The grid search pattern begins like a strip search. However, after completing the search by horizontal lanes, the searchers double back at right angles to the original strip search. In effect, the searchers are conducting another strip search, perpendicular to the first. The grid search pattern is both more time consuming and more thorough. Often, simply looking at the same area from two different angles yields evidence that would be missed in a simple strip search.

4. **Zone:** In a zone search pattern the investigator creates two imaginary axes, which divide the area into four quadrants. Each quadrant can then be examined with one of the previously described patterns. When the area is particularly large, a zone search pattern is sometimes used to create four smaller and more manageable search areas.

5. **Pie or Wheel:** The pie search pattern, like the zone pattern, involves dividing the search area into smaller sections. In the pie

pattern, the sections are pie slices, or sections of a wheel, usually six in number. Each slice of the pie is then searched with a variation of the strip search.

The strip and grid search patterns are most commonly used by investigators. When search areas are very open or large, the spiral, zone, or pie patterns prove productive.

When searching the crime scene, the investigator should be alert to those things that appear to have been recently disturbed. He should watch for indications of tampering, such as loose mouldings, detached light fixtures, uncovered air ducts, splintered floorboards, new nails or screws, and patches in plaster or cement. He should also be alert to new paint, fresh stains, soil disturbances, new grass or sod, broken twigs, freshly turned soil, and recent scratch marks on window frames or walls. The unusual arrangements, dust disturbances, outlines missing from wall hangings, and tool marks should all be carefully examined as they can provide valuable information as to any evidence or tampering with the same. However, the investigators should not forget to look in obvious places, such as furniture, beds, vacuum cleaners, ice trays, food boxes, and other containers, for these are the most commonly used items and a higher possibility of the victim/accused being near them and coming into contact with them at the time of commission of offence.

As regards the legal provisions concerning evidence collection and investigation, Chapter XII of Code of Criminal Procedure, 1973 which deals with Information to the Police and their power to investigate is important. A conjoint reading of Section 154, 155 and 156 of the code makes it clear that the code has created a clear distinction between a cognizable offence and a non-cognizable offence (the classification of an offence as cognizable or non-cognizable is dependent upon Schedule I of the code as is stated therein). The police officers are empowered to investigate only a cognizable offence and in case of non-cognizable offences, investigation can proceed only on the basis of an order of the magistrate to that effect. However, we are here concerned with Section 157 of the code which deals with procedure to investigate.

It says that, "If, from information received or otherwise, an officer in charge of a police station has reasons to suspect the commission of a cognizable offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may by general of special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary to take measures for the discovery and arrest of the offender..."

Therefore section 157 not only lays down the procedure for investigation but also empowers the police officer to commence with the investigation by way of either proceeding to the spot (power to officer in-charge of a police station) or deputing an officer of a sub-ordinate rank to proceed to the spot in order to investigate the facts and circumstances of the case. Thus, where any information is received about the commission of a cognizable offence, the section puts the law into motion in so much as it provides for the officer in-charge of a police station or a sub-ordinate officer so deputed to proceed to the crime scene. It is imperative for the police officer to investigate the offence irrespective of the fact of whatever the source of information may be, subject to the requirement of such information disclosing the commission of a cognizable offence. Even if the first information report suffers from an infirmity of not containing factual allegations constituting a cognizable offence, that would not debar a criminal investigation altogether.[16] The illegality or the irregularity of the information will not have any effect on the power of the police officer to undertake investigation under this section. The language of the section is peremptory and in case of cognizable offence, the investigating officer must forthwith proceed to the spot and without delay take all necessary measures for the discovery and arrest of the offender.[17]

[16](1974) 78 CWN 121

[17]Madheswardhari Singh v. State of Bihar 1986 (3) Crimes 591

The section provides the manner in which investigation is to be conducted where the commission of a cognizable offence is suspected. However, the section also authorises an officer-in-charge of police station not to investigate if he considers that there is no sufficient ground for such investigation and regulates his procedure in such case. [18] The police officer has to satisfy himself and form opinion only on basis of allegations made in the F.I.R. as to whether those allegations constitute cognizable offence warranting investigation. If there is no sufficient ground to enter into investigation, he must follow the procedure as envisaged u/s 157 (2) of the Criminal Procedure Code i.e. sending report to the magistrate along with the reasons and also inform the informant.[19]

As soon as the officer reaches the spot, the processes earlier stated in the section need to be followed i.e. preservation of the crime scene, photography, sketching, etc. It is thereafter that the officer should proceed to collect any evidence that may be found at the crime scene. However, only the officers empowered under the act can take steps regarding the entry, search, seizure, and arrest and that the relevant provisions of the act are mandatory. The three classes of officers who can conduct investigation:

- Officer-in-charge of a police station
- Officer below the rank of such officer as the State Government may prescribe in this behalf
- Officer superior to an officer-in-charge of a police station by virtue of S.36 of the code.20

Rule 25.33 of the Punjab Police Rules provides that an Investigating Officer shall undertake the following action at the scene of death: - On arrival at the place where the body of a deceased person is lying, the police officer making the investigation shall act as follows :-

[18]AIR 1970 SC 786

[19]MC Mehta vs. UOI, 2007 1 SCC 110

[20]AIR 1961 SC 1117

- *He shall prevent the destruction of evidence as to the cause of death.*
- *He shall prevent crowding round the body and the obliteration of foot- steps.*
- *He shall prevent unnecessary access to the body until the investigation is concluded.*
- *He shall cover up footprints with suitable vessels so long as may be necessary.*
- *He shall draw a correct plan of the scene of death including all features necessary to a right understanding of the case.*
- *If no surgeon or other officer arrives, he shall, together with the other persons conducting the investigation, carefully examine the body and note all abnormal appearance.*
- *He shall remove, mark with a seal, and seal up all clothing not adhering to, or required as a covering for, the body, all ornaments, anything which may have caused or been concerned in the death of the deceased and shall make an inventory thereof.*

*In the inventory shall be described the position in which each thing was found and any blood-stain, mark, rent, injury or other noticeable fact in connection with such thing. The number and dimension of such stains, marks, rents, injuries, etc., shall also be given in the inventory.*

*A counterpart of the mark and seal attached to such thing or to the parcel in which it has been enclosed shall be entered in, or attached to, the inventory.*

*Such inventory shall form part of the inquest report.*

- *He shall take the finger prints of the deceased person if the body is unidentified.*
- *The photographing of the body in situ and of the scene of the occurrence may prove of great evidential value.*

For the purpose of carrying out investigation, the investigating officer

requires certain aid and assistances of logistics. Rule 25.58 of Punjab Police Rules makes provision for an Investigation bag for the Investigating officer. It says that the investigating officer shall be provided with an investigation bag of approved pattern containing:-

| | |
|---|---|
| *(1) One bottle of grey powder* | |
| *(2) One bottle of graphite powder* | |
| *(3) One camel hair brush* | |
| *(4) Folien paper* | |
| *(5) Finger print form & Finger print material* | |
| *(6) Finger print ink* | |
| *(7) Appliance for finger printing dead bodies* | |
| *(8) One magnifying glass* | |
| *(9) One finger print impression pad and roller* | |
| *(10) One electric torch.* | *1-9 for finger print* |
| *(11) One knife.* | |
| *(12) One pair of scissors.* | |
| *(13) One measuring tape 60′ long.* | |
| *(14) One foot-rule 2 feet long* | |
| *(15) Sealing wax and candles* | |
| *(16) Formalin diluted to 10 per cent together with chloride of lime to counteract decomposition of corpses* | |
| *(17) Cotton wool and 112 yards cloth for packing exhibit* | |
| *(18) Case diary book with plate, pencil or pen, carbon paper and the usual forms required in investigation* | |

As stated earlier, it is extremely important to make notes of any search and investigation made. The investigating officer has to ensure that the entire process of examination of the crime scene is

documented. All the details should be entered in the case diary like body sketch (in case of deceased victim), site plan, photographs, details of investigation etc., including other documents like witness statements, documents seized, etc. The Case Diary not only plays an important part in the effective investigation and prosecution of the case; they also serve as a ready referencer for the investigators in the case to refer to them later on as means of refreshing memory or for confirming/co-relating to other evidences found.

Apart from the spot, the investigating officer may be required to proceed or conduct searches in other places in order to look for evidence. There is every likelihood that some evidence may be found in other places which are frequently visited by the victim or the accused person and therefore, taking custody of such evidence is not just essential but also a must. In the most cases of pre-planned murder, the weapon of offence is usually carried away by the accused to a place where he knows he can safely hide the same and therefore, the investigating officers are required to search such others places as well in search for incriminating evidences.

Section 91 of the Code of Criminal Procedure, 1973 provides that a court may issue a summon or the officer in charge of a police station may issue an order requiring a person, whom it believes, is in possession of a document or thing to produce the same. Subsequently, section 93 of the Code provides that where any court has reasons to believe that any person to whom a warrant or an order under section 91 was issued would not comply with the same, it may issue a general or a specific search warrant and the person to whom it is issued shall carry out the search in accordance with the same. These provisions have to be read along with Section 100 of the code which says that:

- Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

- If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47.
- Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.
- Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do.
- The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witness; but no person witnessing a search under this section shall be required to attend the court as a witness of the search unless specially summoned by it.
- The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person.
- When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person.

Furthermore, the power of the police officer to search the crime scene and any other place where he has reasons to believe that anything necessary for the purposes of investigation into an offence

may be found is contained in Section 165 of the code. There however exists a slight difference in power of the police officers to search any place as contemplated by Section 91 read with Section 93 and 100 of the Code as compared to Section 165 of the Code. The former applies to cases where the officer has reasons to believe as to the existence of any evidence and yet, the circumstances are not so grave as to warrant him to proceed urgently in fear of disappearance or destruction of such evidence. However, Section 165 is applicable to aforesaid situations wherein the police officer may not be able to procure the same by reason of any delay which may occur on account of obtaining the warrant/summon or issuing order under Section 91 of the Code. Section 165 provides that, "Whenever an officer-in-charge of police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence he is authorised to investigate may be found in any place within the limits of the police station of which he is in-charge, or to which he is attached, and that such thing cannot in his opinion be obtained otherwise without undue delay. Such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station."

Section 165 provides for searches by an officer-in-charge of a police station or an investigating officer, without warrant in course of investigation of an offence. It authorises a police officer/investigator to conduct a search on the chance that something related to the matter at hand may be found. It is not just the crime scene but various other places where there exist tremendous possibility of the existence of some evidence. This can be the accused person's or the victim's place of residence or work as well as common public places like streets, construction sites, canals, etc. The section is a mandatory provision requiring a police officer, who has reasons to believe that any material which is relevant to the investigation at hand may be found in any place within the local limits of his police station, to record the reasons for search and the object sought to be discovered at such place before proceeding to inspect such

premise. The provision is put into action only for places where the police officer is of the opinion that any evidence connected with the case being investigated may be found and such place/premise is under the control and/or occupation of a private individual. There is no discussing the fact that the provision is not required for a public place and the police officers can directly proceed to collect evidence from such places without the requirement as contemplated by the section. The provisions of this section are mandatory and not directory and its requirements must be complied with before a police officer can validly institute a search of the nature mentioned in this section.[21]

As regards the procedural safeguards while conducting searches at other places, it is not necessary for the police officers to comply with all of the steps mentioned above in the in full spirit, though partial compliance thereof is still a necessity. That is to say, conducting a general search in other places, cordoning off the area is not of utmost necessity, yet it has to be ensured that the owner of the premises or neighbours are not unnecessarily interfering or creating the possibilities of disappearance of evidence sought to be recovered. Further, there also does not arise a need of photographing or sketching the area unless some highly incriminating evidence is found such as suspected weapon of offence, blood stained clothes, etc. In fact, it is in these cases that photography should necessarily be done before they are handled and seized to prove the genuineness of the search as well as to maintain it in digital format.

## Seizure

Whenever any object or thing is found pursuant to a search conducted by the police officers, they should take such object or thing in its custody for the purpose of evidence and seize the same. However, the purity of the evidence would only be maintained if the seizure is as per law and steps are taken to ensure that there is no lapse or chances of tampering or destruction of evidentiary value.

[21]New Swadeshi Mills of Ahmedabad v. S.K. Ratton (1967) 9 Guj LR 364

When such an object is being taken into custody by a police officer, he is required to prepare a Seizure memo. The Seizure memo is a document prepared by the police officer at the time of seizing any article listing various details such as the case number, police station, name of the police officer, item seized, date, place, etc. The Seizure memo is a documentary proof of detailing as to the carrying out of the search, the result of the search i.e. what was found and the manner of the search. It is utmost necessary to prepare the Seizure memo on the spot. There is no irregularity in having the same prepared afterwards, however, such delay gives a rise to a suspicion that the search could be planted or was not in reality effected. To maintain and prove the genuineness of the search and seizure, the police can resort to having the search memo countersigned by the accused person or the person from whose place the search and seizure has been effected as well as from the independent witnesses. The independent witnesses are people to work or stay near the place of search and appending their signatures lends a whole new level of credence to such search given the fact that such independent persons are unbiased and therefore will not depose wrongly, irrespective of in whose favour they depose, in a Court of law. It is obligatory to prepare inventory or seizure memo of the articles seized during the search.[22]

While conducting search and seizure of physical evidence, the police officers should look to establish the fairness and validity of such search/seizure by involving an independent witness. This can be done by calling an independent and respectable person from the neighbourhood of the crime scene or the place being searched, and in his presence, carry out such operations. If the witnesses refuse to sign as witness to the search or are not examined, it cannot be deemed to be fatal but the courts then proceed to examine such evidence carefully and with criticism. However, non-appearance or non-examination of witness, if duly explained, exonerates the police officials from this duty. Similarly, non presence of an independent

[22]R. Ratheesan vs. State of Kerala 1994 CriLJ 1738

witness to a search or seizure is not a grave irregularity so much so if such absence is duly explained. After the search/seizure had been carried out, the signature of such witness should be taken on the search memo/seizure memo (if any) as a proof of his presence.

Thereafter, once an article has been seized, it should be deposited in the *Malkhana* (property room). An officer-in-charge of the police station should take charge of the articles so seized and shall affix his seal to such articles. This would remove the possibility of tampering and would ensure that the actual articles seized are produced at the time of trial. Also, it would be a sufficient proof that the samples of the articles which were sent for analysis to the expert have not been substituted by some other articles. These safeguards have been provided both for prosecution and the accused and have to be followed scrupulously. According to para 14.21 of the CBI Manual,[23] *"all the documents/material objects/other items seized during the course of investigation should be promptly sealed/ packed in a scientific manner and deposited in the Property Room (Malkhana). The details of these must be entered in the Malkahna Sub-Module of CRIMES or in the Malkhana Register, wherever the Sub-Module is not operational. The documents/items could be got issued by the Investigating Officer, as and when required, for the purpose of investigation etc. against proper receipt. These must be returned to the Malkhana as soon as these are no longer required by the Investigating Officer. All such issues and receipt shall be entered in the Malkahna sub-module of CRIMES or in the Temporary Issue Register, wherever the Sub-Module is not operational. Every I.O. shall be personally responsible for the safe custody of these documents, at all stages of the investigation. Property Room incharge will ensure that the issued items are not retained by the I.O. for an unduly long time and are returned to the Malkhana promptly. He will make sure that the Officer, who is transferred from the Branch/Unit, has returned all the documents/items issued him to the Property Room before he is relieved by the Branch/Unit. The Branch SP will monitor this matter."*

[23]CBI Manual, Chapter 14, page 5

The importance of depositing the seized goods in the *Malkhana* or the property room can be seen from the brief compendium of following cases:

The Supreme Court in the case of State of Rajasthan v. Gurmail Singh, (2005) 3 SCC 59, upholding the High Court's verdict, held that

*"...we find that the link evidence adduced by the prosecution was not at all satisfactory. In the first instance, though the seized articles are said to have been kept in the Malkhana on 20th May, 1995, theMalkhana register was not produced to prove that it was so kept in the Malkhana till it was taken over by PW-6 on June 5, 1995. We further find that no sample of the seal was sent along with the sample to Excise Laboratory, Jodhpur for the purpose of comparing with the seal appearing on the sample bottles. Therefore, there is no evidence to prove satisfactorily that the seals found were in fact the same seals as were put on the sample bottles immediately after seizure of the contraband. These loopholes in the prosecution case have led the High Court to acquit the respondent."*

The Delhi High Court in Zohra v.The State, 83 (2000) DLT 177 held that:

"It was incumbent uponthe prosecution to prove that not only the seized contraband was duly sealed and duly deposited in the Police *Malkhana* untempered but it was also necessary to prove that the sampled contraband which had been sealed on the spot remained intact till it reached the office of the CFSL. Further it was necessary to prove that the CFSL form containing the specimen seals which was duly filled at the spot at the time of taking of the sample also remained intact till it reached the office of the CFSL. In the instant case there is not an iota of evidence to show as to where CFSL form containing the specimen seals had remained till the sampled contraband was examined by the Chemical Examiner. Thus, the vital link between the contraband seized and the report of the Chemical Examiner (Ex. PW-3/A) was missing in the case. There is absolutely no link between the seizure with all the safeguards against tempering of the contraband articles till the sample was sent

for Chemical analysis. Needless to add that the provisions of the Act are so stringent that it cast a duty on the prosecution to rule out any possibility of tempering with the sample, and false implication of the accused. It must be borne in mind that severer the punishment, the greater care has to be taken to see all the safeguards provided in a Statute are scrupulously followed."

Not just the chain of depositing the sample in malkhanabe complete, but the samples should be kept in such a container/cloth as would preserve the same and prevent any internal or external interference with the same. Rule 25.41 (2) of the Punjab Police Rules provides that as regards the packing of articles sent for chemical examination, following rules shall be observed:-

- Liquids, vomit, excrement and the like, shall be placed in clean wide-other boltless of glazed jars, the stoppers or clerks which shall be tied down with bladder, leather or cloth, the knots of the cord being sealed with the seal of the police officer making the investigation. Such bottles or jars shall be tested by reversing them for a few minutes to see whether they leak or not.
- Supported medicines or poisons being dry substances, shall be similarly tied down in jars or made by into sealed parcels.
- All exhibits suspected to contain stains should be thoroughly dry before being packed and dispatched for examination. The safest way of drying exhibits is to expose them to the sun. In case of exhibits that become brittle on drying, they should be carefully packed in cotton wool and then in a wooden box
- Blood-stained weapons, articles or cloth, shall be marked with seal and made up into sealed parcels. The entries articles shall be sent.
- Sharp-edged and pointed exhibits like swords, spears, etc. should be packed in boxes and not bound up into cloth packages. In their transit through the post they are liable to cut through the packing material and the exhibit is exposed. 302
- On each bottle, jar and parcel and also on each articles or

set of articles contained therein, the separate identification of which has to be proved, shall be affixed a label describing the contents giving full particular and stating where each articles was found.

On such label shall be impressed a counterpart of the seal used to secure the fastening for the bottle, jar or parcel. A copy of each label, and a counterpart impression of the seal shall be given in the inquiry report and, in the case of cattle poisoning in the case diary.

(vii) As far as possible, no letter should be glued on to exhibits as they interfere with analysis.

(viii) Exhibits such as clods of earth should be packed carefully in wool and placed in a wooden box

It is very essential that the prosecutors are following the rules of investigation. They should be thorough with the investigation process and should ensure that not only evidence is collected, but the manner in which it is collected is also as per law. Though, if there is any illegality or irregularity in the process of carrying out search and seizure, the same does not vitiate the trial, however, it throws a serious doubt as to the genuineness of the trial or the evidence collected. The courts in deciding whether an evidence collected, which is not as per law, should be considered or not, effect of such illegality or irregularity is seen upon the accused i.e. whether or not the same has prejudiced his defence. If the same is not proved by the defence, it does not authorise refusing the evidence or vitiating the trial. The Supreme Court has held that the illegality in the method, manner or initiation of a search does not necessarily mean that anything seized during the search has to be returned. Illegality of the search does not vitiate the evidence collected during such illegal search.[24] The Constitution Bench in the case of **Pooran Mal v. Director of Inspection, New Delhi**[25] held that the Courts in India and even in England have consistently refused to exclude relevant evidence merely on the ground that it is obtained by illegal search or seizure.

[24]Partap Singh v. Director of Enforcement, FERA AIR 1985 SC 989

[25]AIR 1974 SC 348

## Case Diary

Section 172*(1) of the Code says that, "Every police officer making an investigation under this Chapter shall day by day enter his proceeding in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation."*

Rule 25.53 of the Punjab Police Rules provides that:

- Section 172(1), Code of Criminal Procedure requires that a case diary shall be maintained and submitted daily during an investigation by the investigating officer. In such diary shall be recorded, concisely and clearly, the steps taken by the police, the circumstances ascertained through the investigation and the other information required by Section 172(1), Code of Criminal Procedure.
- Case diaries shall be as brief as possible; shall not be swollen with lengthy explanations and theories, and shall be written either in English or in simple Urdu.

Only such incidents of the investigation shall be included as have a bearing on the case.

- Detailed lists of stolen property, or of property seized in the course of a search, shall be entered in the first case diary submitted after the facts relating to such property were reported to, or discovered by, the investigating officer.
- The fact that copies of the record prepared under the provisions of section 165 or 166, Code of Criminal Procedure, have been sent to the nearest Magistrate empowered to take cognizance of the offence shall also be noted.

Further, Rule 25.54provides for Record of Case Diaries. Sub rule (1) states that the Case diaries shall ordinarily be submitted in Form 25.54(1) and each sheet shall be numbered and stamped with the station stamp. The officer writing a case diary shall enter in such diary a list of the statements, recorded under section 161, Criminal

Procedure Code, which are attached to such diary and the number of pages of which each such statement consists.

- They shall be sent from the scene of investigation to the police station without delay.
- On arrival at the police station, the number and date of each case diary shall be recorded on the reverse of the police station copy of the first information report and the date and hour of receipt shall be entered on each copy of the diary.
- The original shall be despatched with as little delay as possible to the inspector or other superior officer as may be ordered after the time of despatch has been entered in the space provided in the form on both the original and the copy or copies.

**25.55 Files of Case Diaries.**

(1) When a case is sent for trial, the police station file of case diaries shall be forwarded with the *chalan* to the magistrate, and on completing on the trial shall be returned to the police station for record.

(2) Such files when received back at the police station as also files of other cases in which the final report has been submitted, shall be filed at the police station in an annual bundle A in accordance with the serial number of their first information report.

(3) Copies of case diaries in pending cases shall be kept in files at the police station in a separate bundle B in accordance with the numbers of their first information reports.

(4) A list shall be kept in each bundle A and B of all the files contained therein, merely quoting the numbers of their first information reports. Should it be necessary to remove a file from the bundle the fact will be noted in the list.

Though the need does not arise, yet as the issue is at hand, it may be mentioned that the case diary is essentially a document of the public over which the accused does not have a right to rely or

refer. Section 172 clearly provides that the case diary is only an aid in enquiry or trial and not evidence. The accused cannot call for them or even see them even if the police or the court uses it. The importance of case diary is that it contains all the information relating to the matter under investigation, detailing each and every fact and therefore acting as an aid in investigation process for the police. It is not possible for human memory to remember everything and therefore the case diary helps to document the crime scene and evidence for an easy reference as need arises.

With the spread in education and the advent in science and technology, the criminals are becoming smarter day by day. Most of the offences today are pre-planned ; with every effort made to ensure that no evidence is left behind by the accused. In these circumstances, the police are expected to deliver result and produce evidence before the court relating to the offence and the accused. After all the hard work of collecting the evidence and arresting the accused, the police would not desire him to walk free simply because there were certain procedural lapses in evidence collection which gave him the benefit of doubt. Though this paper, the author has highlighted various steps, procedures and precautions that the investigators can and should follow in the investigation process. Today's police force are increasingly becoming smarter and tougher, and with small little precautions, they can ensure that their efforts don't go in vain. ■

# Woman, Crime and Victims

**Dr. R. Dhakshina Murthy***

## Keywords

Women Murderer, Victim, Abettors of Crime, Ladettes and Laddish Attitude.

## Abstract

*The world of crime was viewed as male enterprise in all nations, in all community, and in all the periods of history. The sub-culture of delinquency was uniquely male in character (Cohen, 1955). The basic role of wage earning by men lends greater opportunity to get engaged in crime. So, the act of crime remains androcentric in its operational bastions. But, the transgression of traditional values and the changing socio-economic conditions of women emanating out of the industrialization and urbanization have altered the scenario drastically. These conditions have led to the emergence of new concepts and patterns of life for all, particularly the attendant responsibility of women in the family and society. Women's role change and opportunities associated with male role opened the way for economic independence of women. Consequently women seem to have accrued masculine traits and encouraged to have their share in the volume of crime. The masculinization of women folk has increased the diverse ramification and dimension of their criminal tendency. We are now witnessing a pronounced growth in female lawbreaking behavior. With this backdrop, the researcher has taken up the present study on female murderer'in Tamil Nadu.*

Author Intro. :

* Reader, Centre for Study of SE&IP, Bharathidasan University, Tiruchirappalli-23

## Introduction

The world of crime was viewed as male enterprise in all nations, in all community, and in all the periods of history. The sub-culture of delinquency was uniquely male in character (Cohen, 1955). The basic role of wage earning by men lends greater opportunity to get engaged in crime. So, the act of crime remains androcentric in its operational bastions. But the transgression of traditional values and the changing socio-economic conditions of women emanating out of the industrialization and urbanization have altered the grim scenario drastically. These conditions have led to the emergence of new concepts and patterns of life for all, particularly the resultant responsibility of women in the family and society. Women's role change and opportunities associated with male role opened the way for economic independence of women. Consequently, women seem to have accrued masculine traits and encouraged to have their share in the volume of crime. The masculinization of women folk has increased the diverse ramification and dimension of their criminal tendency. We are now witnessing a pronounced growth in female lawbreaking behavior.

Crime among women albeit constitutes only a small portion of the total crime, it is increasing much faster than that of men in all nations, all communities within a nation, all age groups, all periods of history and all types of crimes. The growing opportunities for an equal participation of women in all walks of life and the resultant changes in their socio-cultural circumstances paved for new forms and dimensions of female criminality. In many cases women have been figured as aides or abettors of crime. Women may aid or abet either directly or indirectly. It is not an exaggeration to say that female influences are obviously in a good deal of crime for which women can seldom be punished under the law for want of evidence.

However, conventional female crimes such as infanticide, child abuse, adultery, abortion, prostitution, petty thefts etc., have a place in many countries and several others faced with a rising trend of female indulging in the drug trafficking, organized crime and acts of violence. Indeed, female criminality in developed countries

seems to acquire an alarming propensity with an increasing number of young females being drawn into the organized crimes such as murders. The higher participant of women in organized crime shows the progressive equalization of the sexes and the degree of permissiveness in that society. However in developing countries the problem of destitution, deprivation and neglect continue to play a major part in the causation of crime.

## Aims and Objectives

- To uncover the mode of commission of murder by women.
- To unearth the causes for committing murder
- To find out the victim-offender relationship in women criminality.

## Methodology of Research

## Research Design

The present study is exploratory in nature. The researcher by keeping the objectives of the study in mind has chosen both the special prison for women, Vellore and central prison for women in Tiruchirappali, Tamilnadu for this research. As all the convicted women prisoners of the state were accommodated only in these two central prisons, they have been chosen for sample selection as they form the research universe.

## Sampling

As the convicted inmates' size was not large enough in both the prisons and there was a lot of heterogeneity in crimes committed by the convicted offenders, it was difficult to give adequate representation to all types and kinds of criminals either in drawing a simple random or stratified random sample. Therefore, it was decided to study entire universe applying census method rather than any other sampling technique. There were 175 convicted prisoners; consisting of 88 in Tiruchirapalli central prison and 87 in Vellore central prison. Thus, all the 175 respondents have been taken for the present study.

## Tools of Data collection

Interview was a major method used for collecting data from the female offenders. For conducting interview, a well structured interview schedule was constructed to elicit the information. The interview schedule was dominated by open-ended questions that have given freedom to the respondents to explore her own thoughts and memories, to respond the interviewer's probes.

## Collection of Data

In every interview, virtually there was a caution and reservation in giving information by the respondents appeared as an inhibition in the interview process. After having overcome the initial hang-up through the rapport, the respondents was bit causal in the dialogue had with the researcher. This technique enhanced the purpose of educe data much easier from the respondents. More over the interviewee's were facilitated to break their ice in the process of interview by the verbal affidavit for the secrecy over their personal information.

## Findings & Discussion

In the wake of modernism, women are taking part in all types of criminal activities akin to men involving physical prowess (Rani, 1977) and the use of strong weapons. The murder is not an exception one. Such violent behaviors of women are argued to results from the adoption of laddish attitudes. Hence, the aggressive images of women are termed as Ladettes by the (Campbell, Anne 2001) western media. Of the crimes committed by the women, murder is considered as more serious one. Because the social position occupied by the women and pivotal roles played by her, as mother, wife and caretaker in the family makes to view her criminal tendency as so disastrous to both family and society.

Table No-1 shows that 30% women offenders were in the age group of forty years and below, 54.9% illiterates, 49.1% married, 61.1% hail from rural area and 87 % of the respondents from nuclear family.

## Table No.1- Respondents by their demographic status

| Sl. No. | Age | Frequency | Percentage |
|---|---|---|---|
| 1 | Below 30 years | 44 | 25.1 |
| 2 | 31 – 40 years | 53 | 30.3 |
| 3 | 41 – 50 years | 36 | 20.6 |
| 4 | 51 – 60 years | 20 | 11.4 |
| 5 | Above 60 years | 22 | 12.6 |
| | Total | 175 | 100.00 |
| **Sl. No.** | **Age** | **Frequency** | **Percentage** |
| 1 | Hindu | 160 | 91.4 |
| 2 | Muslim | 9 | 5.1 |
| 3 | Christian | 6 | 3.4 |
| | Total | 175 | 100 |
| **Sl. No.** | **Age** | **Frequency** | **Percentage** |
| 1 | Illiterate | 96 | 54.9 |
| 2 | Primary | 35 | 20 |
| 3 | Secondary | 36 | 20.6 |
| 4 | Higher Secondary | 2 | 1.1 |
| 5 | Diploma/collegiate | 6 | 3.4 |
| | Total | 175 | 100 |
| **Sl No.** | **Marital Status** | **Frequency** | **Percentage** |
| 1 | Unmarried | 9 | 5.1 |
| 2 | Married | 86 | 49.1 |
| 3 | Divorced | 3 | 1.7 |
| 4 | Separated | 15 | 8.6 |
| 5 | Widowed | 62 | 35.4 |
| | Total | 175 | 100 |
| **Sl. No.** | **Place of Abode** | **Frequency** | **Percentage** |
| 1 | Rural | 107 | 61.1 |
| 2 | Semi-urban | 15 | 8.6 |
| 3 | Urban | 53 | 30.3 |
| | Total | 175 | 100 |
| **Sl. No.** | **Family Type** | **Frequency** | **percentage** |
| 1 | Joint Family | 21 | 12 |
| 2 | Nuclear Family | 152 | 86.9 |
| 3 | Extended Family | 2 | 1.1 |
| | Total | 175 | 100 |

This shows that rural women with poor educational qualification are often become the victims of criminal justice system.

## Commission of Murder

Like any other offence murder is hard to predict. It is categorized into premeditated and emotional. Generally almost all the murders result from social interaction between two or more than two individuals in which they perceive violence as a means to solve the problems and commit murder. In the occurrence of an incident of murder, large number of factors involved in more ways than one. In this, the method adopted to commit murder plays significant character. Through the following table an attempt is made to describe the methods adopted by the respondents to commit murders.

### Table No.2-Respondents by mode of committing murder

| SI. No | Commission of Murder | Frequency | Percentage |
|---|---|---|---|
| 1 | Stabbed to Death | 39 | 22.3 |
| 2 | Poisoned to Death | 10 | 5.7 |
| 3 | Burnt to Death | 21 | 12.0 |
| 4 | Bludgeoned to Death | 24 | 13.7 |
| 5 | Hanged to Death | 9 | 5.1 |
| 6 | Accidental Murder | 9 | 5.1 |
| 7 | Strangulated | 10 | 5.7 |
| 8 | Pushing into well | 5 | 2.9 |
| 9 | Accomplice | 44 | 7.5 |
| 10 | Attempt to Murder | 2 | 11 |
| | Total | 175 | 100 |

It is seen from the above table (No:2) that a considerable proportion of (22.3%) the respondents have committed murder by stabbing their victims with sharp weapons followed by13.7% of the respondents who are reported to have caused death with use of Bludgeoned, 12 percent of the respondents admit that they caused death by burning the victims .The other techniques includes the use

of poison, strangulation and pushing into the well and so on.

## Causes of Crime

It is very hard to determine the causation of crime and to pin point any particular factor as the cause for a particular act of crime. However, sometimes a specific factor in a particular condition becomes the cause for the specific form of criminal's behaviour. The extent of women's participation in an assortment of crimes varies from individual to individual. In India women's taking part in crime is considered socially very grave and their contribution to criminal homicide is considered as most personalized crime in our society. The process that impelled the respondents to commit murder is more intriguing and complex Phenomenon. An attempt is made in this study to unearth the dynamics of the respondents.

**Table No. 3 - Respondents by the causes for crime**

| S.No | Causes of crime | Frequency | Percentage |
|---|---|---|---|
| 1 | Sex | 32 | 18.2 |
| 2 | Money | 33 | 18.9 |
| 3 | Domestic Violence | 47 | 26.9 |
| 4 | Revenge | 5 | 2.9 |
| 5 | Poverty | 11 | 6.3 |
| 6 | Self-Defense | 2 | 1.1 |
| 7 | Land dispute | 20 | 11.4 |
| 8 | Traditional Feuds | 4 | 2.3 |
| 9 | Dowry | 21 | 12.0 |
| | Total | 175 | 100 |

The Table clearly reveals the important factors which led the female inmates to crime. The leading heads are domestic violence (26.9%), money (18.9%), sexual behavior (18.2%), dowry (12.0%), Land dispute (11.4%),poverty (6.3%), revenge (2.9%) and traditional feuds (2.3%). This shows that more number of respondents did commit crime out of family violence. It is precisely here the role of family gains predominant in women criminality.

## Murder-Victim Relationship

It may be restated that crime is not always a chance of occurrence. Particularly the occurrence of homicide and murder is premeditated event .The crime doer and the victim, more often than not, may have prior interaction or may have known each other. Therefore, the dynamic relation and face-to-face interaction between the two or more person have great significance in the case of murder and other crimes against human lives.

### Table No. 4 - Respondents by their relationship with victims

| SI.No | Relationship with victims | Frequency | Percentage |
|---|---|---|---|
| 1 | Husband | 32 | 18.2 |
| 2 | Daughter in Law | 20 | 11.4 |
| 3 | Children | 13 | 7.4 |
| 4 | Other Family Members | 29 | 16.5 |
| 5 | Boy/Girl Friends | 1 | 0.6 |
| 6 | Acquaintance | 23 | 13.1 |
| 7 | Stranger | 11 | 6.2 |
| 8 | Attempt to Murder | 15 | 8.5 |
| 9 | Accomplice | 31 | 17.7 |
| | Total | 175 | 100 |

The distribution of data clearly illustrates the victim offender relationship. In our study most of the victims (18.2%) are the spouses of the respondents. The other family members (16.5.4%) and daughter in laws (11.4%)form the next position in the victim's list. Next to the family members, acquaintance also been victimized with (13%) more numbers. Strangers (6%) forms only very less percent in the victims list This shows that the prey of criminal propensity of women offenders is used to be their kith and kin rather than stranger. The studies of Wolfgang (1962), Singh. D.P. (1980) and Ram Ahuja (1967-68, 1985-86) also established that family members, relatives, close relatives, and acquaintances are the

specific relationships between victims and offenders both in victim-precipitated and non-victim precipitated groups. . This underlines the victim offender relationship in female criminality.

## Conclusion

Crime is the price paid for the advantage of civilization. Albeit, there was crime in the primitive societies, it was not a major social problem. In primitive societies, the mores are strong enough to control the individual behavior effectively. But the modern societies have population which is heterogeneous in racial and cultural background and is differentiated in to various classes. These classes have several norms which often clash with one another; and have limited control over the behavior of other members. So, the crime is increasing day by day. The social problem of crime can be reduced either through preventive or remedial measure uses. But, this cannot be erased from the society as the civilization grows on and on. ■

### Reference


1. Ahuja, Ram, 'Female Murders in India.' The Journal of social work Vol. VLII; No.20, 1970.
2. Bajpai, Anju, et al., 'Female Criminality in India', Rawat Publications, Jaipur, 2000.
3. Chesney, Linda, 'The Female Offender: Girls Women and Crime', Thousand Oaks, CA, Sage, 1997, PP-220.
4. Cohen, Albert K. 'Contemporary Social Problems', 3rd Ed, Harvard Bruce Jovanovich, New York, 1955
5. Henry A.F. and J.F. Short, 'Suicide and Homicide' Free Press, New York: 1954
6. Konopka, G 'The Adolescent Girl in Conflict' Englewood Cliffs, NJ: Prentice Hall.1966
7. Katambi.J,et al, 'Mortality Statistics of Homicide', Contemporary Criminology, John Willey & Sons, New York, 1976.
8. Mani, K, 'Direction of Aggression among Murderers', Indian Journal of Criminology, 3, 1975, pp52-56.

9. Prasad, S.K.K., 'A Study of Women Murderers in Tamil Nadu', Readings in Criminology, Souvenir Volume, Indian Society of Criminology, 1982.

10. Rani Bilmoria M, 'Homicides by Females', Indian Journal of Criminology Vo.2. No.1 PP.8-17, 1983

11. Robert K. Shirer, Murder and Suicide Revisited: Johannes R. Becher's Literary Treatment of a Youthful Tragedy, by the Board of Regents of the University of Wisconsin System, Monatshefte 81, and No. 2 - 1989, PP. 175-185.

12. Sohoni .N.K, 'Women Prisoners', Indian Journal of Social Work Volume: 35 Issue: 2, - 1974, PP. 137-148.

13. Sharama, Shridhar, 'Mass Murder by women', Indian Journal of criminology Vol.13. No.1 January - 1985, PP.11-15.

14. Trived V.B and K.P. Krishna, 'Murderer and her Victims' Indian Journal of Criminology, Vol.2, No.2, July-1983, PP. 115-118.

15. West D.J, 'Murder Followed by Suicide', Heinemann, London, 1965.

16. Wolfgang, Marvin, E., 'Victim-Precipitated criminal Homicide', Sociology of Crime and Delinquency, Johan Wiley and sons, New York, 1962.

# Sexual Offences Against Women With Special Reference to Term Consent Under the Law of Rape

**A. Velan* & Piyush Khanna****

## Abstract

*The article studies the trend of sexual crimes against women over the years, it also analyses the reason for this trend. The main theme of the article is the interpretation of the term consent under the law of rape. The most debatable point as to whether sexual intercourse with a promise to marry amounts to rape has also been dealt with. In the last, the study provides for the suggestion for the improvement in implementation of various provisions dealing with sexual offences against women.*

## Introduction

Women Constitute about one half of the global population, but they are placed at various disadvantageous positions due to gender difference and bias. They have been the victims of violence and exploitation by the male dominated society all over the world. Ours is a tradition bound society where women have been socially, economically, physically, psychologically and sexually exploited from the time immemorial, sometimes in the name of religion, sometimes on the pretext of writings in the scriptures and sometimes by the social

Author Intro. :

* Fourth Year BA LLB (HONS) Rajiv Gandhi National University of Law, Patiala, Punjab. E-Mail ID-athenamlvelan(ii)sniail.com

** Fourth Year BA LLB (HONS), Rajiv Gandhi National University of Law, Patiala, Punjab. E-Mail ID- pivushkhanna89@vahoo.co.in

sanctions. The concept of equality between male and female was almost unknown to us before enactment of the Constitution of India. Of course, the Preamble of the Constitution, which is the supreme law of the land, seeks to secure to its citizens including women folk, j.ustice--social, economic and political, liberty of thought. expression, belief, faith and worship, equality of status and opportunity, and promote fraternity assuring dignity of the individual.

## Constitutional Mandate in Favour of Women

The rights of women have the originating source in the Constitution of India. The difference in treatment between men and women by the state is totally prohibited by the Constitution of India.[1] The Constitution has guaranteed the fundamental right to every female citizen to enter into any shop, public restaurant, hotel and any other place of public entertainment even if owned by private individuals. Similarly, no restriction can be imposed on female citizens with regard to use of any public place maintained wholly or partly by state fund. However, special provisions can be made by legislation to protect the interest of women. The legislators are permitted to enact any law for reservation in favour of women in public employment[2]

[1]Article 15 of Constitution of India, 1950 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sen, place of birth or any of them, be subject to any disabili[y, liabihty, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainmem; or

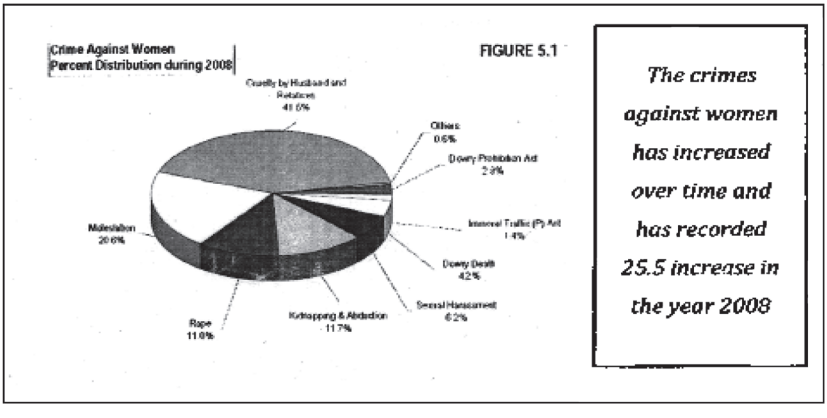
(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public (3) Nothing in this article shall prevent the State from making any special provision for women and children.

[2]Article 14 of Constitution of India, 1950- Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

To improve women's access to decision making structures, the Constitution has been amended in 1992 to reserve 33 per cent of the seats in their favour in panchayats and municipalities, which is considered as major steps for socio-economic empowerment of the women of India.[3]

The Constitution has also cast the duty on every citizen to renounce practices derogatory to the dignity of women.[4]

This duty is not enforceable in a court of law, but if the State makes any law to prohibit any act or conduct in violation of this duty, the court would uphold the law as a reasonable restriction of the fundamental rights just as it upheld the law implementing Directive Principles of State Policyl And the state has taken various measures including enacting various enactments protecting the rights of women, but unfortunately the efforts of legislature has not got the desired results due to various reasons.



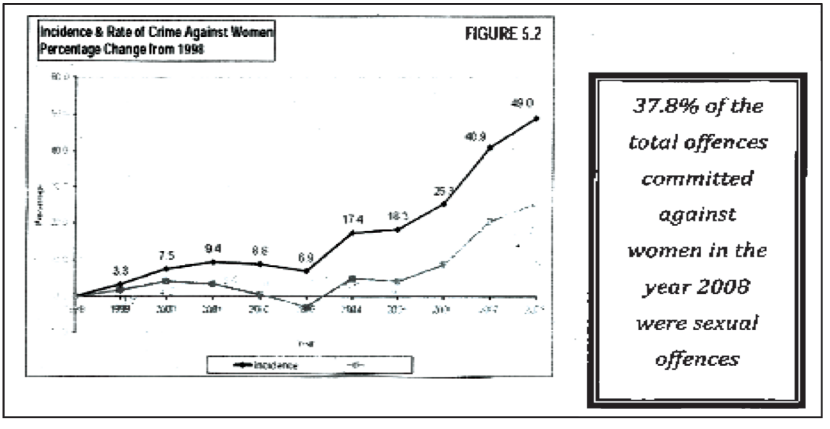

[3]**Article 243D (2) of Constitution of India-** Not less than one third of the total number of ~eats reserved uncler clause ( ! ) shall be reserved for women belonging, to the Scheduled Castes or, as the case may be, the Scheduled Tribes;

**Article 243T**- Not less than one third of the total number of seats reserved under clause ( I ) shall be reserved for women belonging to the Scheduled Castes or, as the Case may be, the Scheduled Tribes

4 Art. 5 IA(e)- to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignl .ty of women;

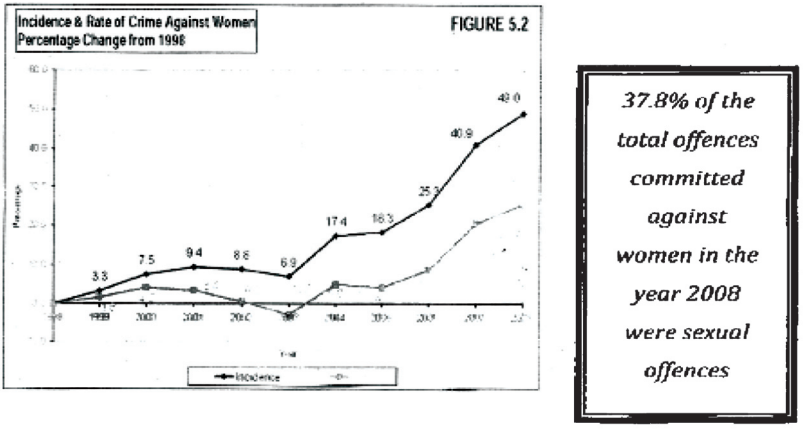
## Some Statistics on the Prevalence of Crime in India

The above figure is an indication of alarming situation of crime prevalent in India. If we look at the scenario of crime against women




than the situation get worse. Following graphs indicates that worse situation:

The women is mainly a victim of sexual offences but crime against women is not limited to only sex. It has many more forms which raised the percentage of crime against women in total. The following graph is an indication of it. Here, it is important to mention that



women from villages or from small town is worst affected from such crimes. The percentage from such areas amounts to around 87.3% of total victims.[5]

As earlier said, women is mainly a victim of sexual offences especially rape. The some of the reasons of increasing such offences day-by day are:

- Low disposal rate by the police.
- Low disposal rate by the court.
- Most of these crimes occur in small towns or villages, which usually lack modern forensic facilities.
- Disadvantageous position of women in the society.
- Lack of judicial sensitization.

A brief discussion on sexual offences especially with respect to rape is as below:

## Different Types of Sexual Offences

Rape is the most reprehensible atrocity committed against a woman. The crime of rape can be regarded as the highest torture inflicted upon virginity, youth, motherhood and womanhood itself. Rape is not only an act of monstrosity against the woman-victim herself but also a crime against the entire society which even attaches a social stigma to her. It causes not only physical torture to the body of the woman but also intrusion upon her mental, 'psychological and emotional sensitivity, which certainly is irreversible. It is the crudest and' sure mode of entirely destroying her personality, self-confidence and self-respect, and throwing her into deep emotional crisis. Rape is, therefore, the most hated crime against the very basic human right and violative of the woman's most important fundamental right, namely, the 'right to life' guaranteed under Article 21 of the Constitution. In the eyes of psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. It is extremely unfortunate that the respect and honour for womanhood is on the great decline and the cases of molestation and rape are on the steady growth in India.

In criminal law, rape is an assault by a person involving sexual intercourse with another person without that person's consent. Outside of law, the term is often used interchangeably with sexual assault, a closely related (but in most jurisdictions technically distinct) form of assault typically including rape and other forms of non-consensual sexual activity.[6]

The ugly picture of rape is the marital rape. When one mentions the word' rape, the tendency is to think of someone who is a stranger, an evil, malicious person. No one ever thinks of rape in the context of marriage. Women themselves find it difficult to believe that a husband can rape hi~ wife According to section 375 of the Indian Penal Code:

A man is said to commit "rape" who, except in the case hereinafter, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

1. **Against her will**
2. **Against her consent**
3. **Consent due to fear of death or by hurt**
4. **Consent under the belief that the ravisher was her husband**
5. **Consent of girl by reason of unsoundness of mind or in state of intoxication plied to her**
6. **Consent of girl under sixteen years old**

It is sufficient to have penetration to constitute intercourse. In a rape case penetration is needed in the technical sense and even the slightest penetration is sufficient for conviction.[7] Partial penetration of the penis within the labia majora of the vulva or pudendum with or without the emission of semen is sufficient to constitute penetration for the purpose of law.[8] The only thing which has to

[6]Raping, 'Definition of Rape' < http; //raping.hpagecom/> assessed 10 April 2011

[7]Mayilsami v. State ofTamil Nadu (1970) 2 Mad. L.J 422

[8]Ratanlal and Dhirajlal, --The Indian Penal Code-Il, Lexis Nexis Butterworths Wadhwa, New Delhi, 2008,719

be ascertained is whether the private part of the accused did enter the person of the women, it is immaterial how far did it enter.[9] According to the section, sexual intercourse by a man with his own wife, not being under 15 years of age, is not rape. On the other hand, the Criminal Procedure Code states that it is rape if the girl is not the wife of the man involved and is below 16. This means that if the girl is not the wife of the man involved and is below 16, it is rape even if she consents. Whereas if she is a wife and below 15 years of age, it is not rape even if she does not consent.

A woman who has been raped by her husband cannot count on the legal system coming to her aid. Not only are there no laws to protect her interests, the large number of loopholes make it difficult for her to seek protection under the law. These include:

- Though protection of the dignity of women is a fundamental duty under the Constitution, domestic violence and rape do not come under the definition of dignity;
- A husband cannot be prosecuted, for raping his wife because consent to matrimony presupposes consent to sexual intercourse.

Accepting that women go through the most heinous forms of abuse under the name of marriage may be the first step towards protecting women. Until then women will continue to be abused and raped by the one person they trusted enough to want to spend the next seven lifetimes with.[10]

Except m0.rital rape, custodial rape is another heinous form of rape which is dealt under section 376 of IPC. In accordance with section 376(2), established aggravated situations of custodial rape, as narrated hereunder:

I. **S. 376 (a)** - Rape by a police officer on a woman in his custody.[11]

[9] Ry. Hill (1781)1 East PC 439

[10] < http://karmayog.org/woman/woman/1546.btm> accessed 10 April 2011

[11] Ram Kumar v. State ofHimacha[ Pradesh, AIR 1995 SC 1995

II. **S. 376 (b)** - Rape by a public servant on a woman in his custody.

III. **S. 376 (c)** - Rape by a superintendent 0f jail, remand home or institution of women or children on a female inmate.

IV. **S, 376(d)** - Rape by a member of the management or staff of a hospital on a woman in that hospital etc.

Other aggravated forms of rape, shocking the victim, are as follows:
a) Rape by a man on a woman knowing her to be pregnant[12];

b) Rape on a girl before her puberty (under 12 years ofage)[13];

c) Gang rape[14].

Except the above offences, unnatural offence also comes under the ambit of sexual offences which is dealt under section 377 of IPC. This section deals with unnatura canal intercourse against the order of nature. It consists of penetration per anus. The offence consists in a carnal knowledge committed against the order of nature by a person with a man, or in the same unnatural manner with a woman, or by a man or woman in any manner with an animal.[15]

The section requires proof of the following conditions to hold a person liable for the offence Viz.,

1) The accused must have a carnal intercourse with a man, or woman or an animal.

2) The act was against the order of nature

3) The act was done voluntarily by the accused.

4) There was proof of penetration.

[12]Pratap Mishra v. State of Orissa, AIR 1977 SC 1377

[13]Maclan Gopal v. Naval, JT 1992 (3) 2701

[14]Gadan Bihari v. State of Orissa, (1991) 3 SCC 562

[15]Ratanlal and Dhirajlal, --The Indian Penal CodeH, Lexis Nexis Butterworths Wadhwa, New Delhi, 2008, 719

Consent of the parties here is immaterial and the party consenting is equally liable as an abettor but in other sexual offences, as discussed above, interpretation of consent is an important concept to understand because generally, in the cases of rape, the easiest escape route has been the victim's inability to establish 'that she did not consent to the sexual act. So, the term consent is interpreted as follow:

## Interpretation of Term Consent

The most important question of substantive law relates, then, to the concept of consent in the context of the offence of rape. Consent must be real. Often, it is vitiated by circumstances that take away the freedom of choice. Taking note of this aspect, the third clause of section 375 provides that sexual intercourse with a woman amounts to rape if it is -with her consent, when her consent has been obtained by putting her in fear of death or of hurt. The vitiating factor here is duress or coercion, but only one specific aspect of it is dealt with. In contrast. the matter is dealt with more comprehensively in section 90 of Indian Penal Code which is too often overlooked by courts. The section reads as under:

*A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury. or under a misconception of fact, and if the person doing the act knows or has reason to believe, that the consent was given in consequence of such fear or misconception: or if the consent / is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent.*

In the Mathura rape case[16] wherein Mathura- a sixteen year old tribal girl was raped by two policemen in the compound of *Desai Ganj Police station in Chandrapur district of Maharashtra*.

Her relatives, who had come to register a complaint, were patiently waiting outside even as the heinous act was being committed in the police station. When her relatives and the assembled crowd

[16]Tukaram v State of Maharashtra AIR 1979 SC 185

threatened to burn down the police chowky, the two guilty policemen, Ganpat and Tukaram, reluctantly agreed to file a panchnama. The case came for hearing on 1 st June, 1974 in the Sessions Court. The judgment however turned out to be in favour of the accused. Mathura was accused of being a liar. It was stated that since she was habituated to sexual intercourse her consent was voluntary; under the circumstances only sexual intercourse could be proved and not rape.

On appeal the Nagpur bench of the Bombay High Court set aside the judgment of the Sessions Court, and sentenced the accused namely Tukaram and Ganpat to one and five years of rigorous imprisonment respectively. The Court held that passive submission due to fear induced by serious threats could not be construed as consent or willing sexual intercourse. However, the Supreme Court again acquitted the accused policemen. The Supreme Court held that Mathura had raised no alarm; and also that there were no visible marks of injury on her person thereby negating the struggle by her. And passive submission due to fear induced by serious threats Comes within the ambit of consent. [17]

The Court in this case failed to comprehend that a helpless resignation in the face of inevitable compulsion or the passive giving in is no consent.

However, the Criminal Law Amendment Act, 1983 has made a statutory provision in the face of Section. 114 (fA) of the Evidence Act, which states that if the victim girl says that she did not consent to the sexual intercourse, the Court shall presume that she did not consent. Ifit is proved that she was subjected to sexual intercourse.

The insertion of Section 114 fA) of Indian Evidence Act, 1872[18] did not solve the interpretational problem of the term consent. As this consent, was not qualified nor various circumstances were added to the section.

[17]Bharwada Bhoginibahi AIR 1983 SC 753

[18]Presumption as to absence of consent in certain prosecutions for rape

Sexual Intercourse under Violence Overt violence or that matter, violence of any particular category, is not a necessary criteria of rape. The cardinal fact is absence of consent on the part of the woman. There can be cases of consent even when there is no violence. Violence or, for that matter, marks of insistence are contusive of consent. The honourable Supreme Court in various cases has held that absence of injury on the victim is an indication of consent on the part of the victim. It would, of course, be realistic to state that most women in our society are not equipped to repel an attempt at rape, even for self-defence. When attacked, they might succumb in terror and are unable to muster .enough physical strength for offering effective resistance.

## Sexual Intercourse with a Promise to Marry

There is difference in opinion among various High Courts as to whether a sexual intercourse by a man with a woman on the promise to marry her and later refusing to marry her fall within the four wall of section 375. The Patna High court in the case of *Saleha Khatoon v. State of Bihar*[19], held that

*Sexual intercourse with a women on a alse promise to marry her amounted to fraud or she was deceived by a, false assurance. Consent obtained by deceitful means is no consent and the offence comes within the ambit of ingredients of the definition of rape*

The honorable Calcutta High Court in the case of, layanti Rani v State of West Bengal[20], held that

*Sexual intercourse with a women on a,false promise to marry her amounted to t misconception of fact and the offence does not fall within the four walls of rape*

The honorable Supreme Court in the case of *Bodhisatwa Gautam v. Subhrachakravarty*[21] *held that Sexual intercourse with a women*

[19]1989 Cr.L.J 202

[20]1984 Cr.L.J 1535 (Cai)

[21]AIR 1996 SC 922

*on a false promise to marry her does not amount to rape and but a conviction for cheating under section 415*

The inadequacy in the rape laws is evident and various attempts have been made by various people to avail, In the year 2000 witnessed yet another instance of the Law Commission of India being directed to suggest amendments to the existing rape law. Again women's groups pressed for two specific recommendations emerging from 20 years of experience. Consent in rape had created an easy entry point for defence counsel to introduce women's sexual life and history to discredit her complaint. That allowance made it impossible to secure convictions in the absence of any clear definition. Women's groups therefore proposed a specific definition of consent as -unequivocal voluntary agreement. Unfortunately, the latest Law Commission of India Report rejected this proposal:

We are however of the opinion that no such definition is called for at this stage, for the reason that the said expression has already been interpreted and pronounced upon by the courts in India in a good number of cases[22].

It was precisely because of such adverse pronouncements of the courts that a clear definition was being called for. Yet the Law Commission refused to consider a pattern of decision-making which clearly illustrated this need. In 2005 that a notable step exploring remedies beyond criminal law came about with the Protection of Women from Domestic Violence Act. Apart from covering a broad spectrum of relationships, the Act is inclusive in defining of domestic violence as all forms of abuse physical, sexual, verbal, emotional and economic. Physical violence is defined as "beating, pushing, shoving and inflicting pain" while sexual violence covers a slew of offences such as "forced sex, forced exposure to pornographic material or any sexual act with minors".

The Act also seeks to offer women victim's civil remedies hitherto unavailable to them. Until recently, Indian women could only seek recourse in Section 498A of the Indian Penal Code (IPC) to file a

[22]The Law Commissior~ of India, 172nd Report on Sexual Assault Law Reform, 2000

complaint against an abusive spouse.

## Conclusion

In the end, it can be said that Crimes against women and especially sexual crimes are growing at an alarming pace. There is a desperate need to arrest this trend, and the implementation of the following could help the cause.

- Establishment of special courts to try sexual offences against women.
- Establishment of special police stations exclusively dealing with sexual offences against women.
- Equipping the investigating officer to collect evidence by providing him with the requisite training and equipment (evidence collection kit).
- Establishment of special procedure for these special courts.
- Criminalization of marital rape.
- Qualify the term consent as specified in section 376.
- Evolving a uniform procedure to be followed for the medical examination of rape victim and the accused throughout the country.
- Law should be enacted to limit the time period within which the trial must be concluded, and the period within which the appeal must be disposed of by the High Court and Supreme Court.
- National women commission should be given more powers.

# Rape Victims and Major Offenders in India An Empirical Study

**Dr. Kuldip* S. Chikkara** & Anand S. Kodan*****

## Keywords

Rape, Major Offenders, Human Rights.

## Abstracts

*The study analyzes the major offenders behind the rape incidences among different geographical regions in India with the help of appropriate statistical tool and techniques such as average, ACGR, step-wise regression analysis, etc; and found that 'Other Known Persons' were the major 'Offenders' of Rape in the Indian States and Union Territories (UTs). While in Major Cities, 'Neighbors' were the major 'Offenders'. Further, 'Others Known Persons' were major 'Offenders' of Rape in 'North-Region, Eastern-Region, while 'Neighbors' were the major 'offenders' of Rape in 'Northern-Eastern Region', 'Southern-Region' and 'Central-Region'. Moreover, 'Relative' is the major 'offenders' of Rape in 'Western-Region'*

## Introduction

Human right is essential and inspirable for human beings for their economic, social and political development, and also for the formation of society and its institutions. But the need, nature and implementation of human rights depend on social, political, cultural and economic factors which vary from place to place. Hence, the women seem to be at receiving end due to the domination of

Author Intro.:

* Associate Professor, Doctorate Degree Students respectively in the Department of Commerce, MD University, Rohtak (Haryana).

male in the society in general and in India in particular. The Indian women used to enjoy a very high status and importance during 'Vedic Period' where it was assumed that 'Yatra Naariustupujayante, Ramante Tattar Devta' i.e., God lives over there where the women are worshiped. But as the time changed, India was invaded and ruled over by various foreign rulers for a long time, apart from the social cleavers and fault lines due to which the position of women got worse and various ill systems like 'Sati Pratha', 'Parda Partha', 'Marriage in Childhood', etc. were created which grabbed women tightly and made them miserable.

Beside, the universal acceptance of human rights by the UNO in 1948 and the Constitutional Rights under article 14 to 21 to every citizen of India, the Indian government has also passed several laws for the protection of rights of women such as 'Prevention of Immoral Trafficking Act, 1956', 'Anti Dowry Act, 1961/84', 'Prevention of Sati Act, 1934', 'Special Marriage Act, 1956', 'Hindu Succession Act, 1956', 'the Medical Treatment of Pregnancy Act, 1972', etc. However, in spite of such a big number of laws and legislations, the crime against women seems to be uncontrolled and due to the unfavorable sex ratio and male domination, the number of rape cases against the women are at surge.

## Rape Incidents in India: A Bird Eye's View

Rape is the fastest growing crime against women in the country. A rape case is being reported in every 30 minutes. In India, the rape incidents have increased nearly by 700 per cent since 1971. According to the National Crime Record Bureau (NCRB: 2006) 19,365 incidents of rape were registered in the country in 2006. An 8.2 per cent (1,593) of the total rape victims were the girls under 15 years of age, while 17.4 per cent (3,364) were teenage girls (15-18 years). Nearly two-third (11,312 or 58.4 per cent) was Women in the age-group of 18-30 years. 3,002 victims (15.5 per cent) were in the age-group of 30-50 years while only 0.5 per cent (111) was over 50 years of age. In case of child rape, a total of 4,721 cases were reported in the country during 2006 as compared to

4,026 in 2005 accounting for a significant increase of 17.3 per cent during the year.

Madhya Pradesh reported the highest number of cases (829) followed by Maharashtra (655).These two States taken together accounted for 31.4 per cent of the total child rape cases reported in the country. Further, offenders were known to the victims in as many as 14,536 (75.1 per cent) cases. Parents/ close family members were involved in 3.0 per cent (431 out of 14,536) of these cases, neighbors were involved in 36.8 per cent cases (5,351 out of 14,536) and relatives were involved in 7.6per cent (1,106 out of 14,536) cases (NCRB: 2006). It is clear from the above discussion that the rape incidents have emerged as a major issue in front of our society, police and policy makers in the country. The present study is made to attempt to answer of following question:

## 'Major Offenders of Rape are same in all States, UTs, Major Cities or Geographical Regions or Not?'

## Objectives of the Study

- To examine the trends in growth of women rape incidence in India.
- To find out the major offenders of rape in Indian States, UTs, Major Cities and in different Geographical Regions of India.

## Research Methodology

The present Study is based on secondary data which were collected from the Annual Report of National Crime Record Buru (NCRB), 2006. To achieving the above said objective, Step-wise Regression Approach of Regression Analysis has been used with the help of SPSS (Computer Software) and further, the Cross-Section Data has also been used.

## Data Analysis Tool and Techniques

Average Compound Growth Rate (ACGR)

The average compound growth rate was compounded by the following formula:

$Y = ab$

By using logarithm, it may be written as:

$\log y = \log a + t \log b$

$Y^* = a^* + t.b^*$ (where $\log y = y^*$, $\log a = a^*$ and $\log b = b^*$)

The value of $b^*$ is computed by using OLS Method. Further, the value of ACGR can be calculated by followed method:

$ACGR = (\text{Antilog } b^* - 1) \times 100$

## Regression Analysis

Multiple regressions represent a logical extension of more than two variables regression analysis. Instead of more than one independent variable and one dependent variable is used to estimate the values of a dependent variable. The multiple regression equation describes the average relationship among more than two variables and this relationship is used to predict or control the dependent variables. The formula for calculating multiple regressions as follow:

The general form of the regression equation is

$Y = a0 + a1X1 + a2X2 + \ldots anXn$ .....(i)

Where

X1, X2 etc. are regresses variables, a1, a2 and so on are the parameters to be estimated from the data.

## Scope of the Study

- The study is very useful for commencing the initial inquiry of rape incidents at various places.
- The study is useful to cut the cost and to increase the work efficiency of police department in general, and in rape cases in particular.

## Table 1
## Trends in Growth of Rape Incidents in India

| Year | Total Crime Against Women | Total Incidents of Rape | Rape Incidents Per cent to Total Crime Against Women |
|---|---|---|---|
| 2002 | 143034 | 16373 | 11.44 |
| 2003 | 146001 | 15847 | 11.27 |
| 2004 | 154333 | 18233 | 11.81 |
| 2005 | 155553 | 18359 | 11.80 |
| 2006 | 164765 | 19348 | 11.74 |
| Average | 164765 | 17632 | 11.61 |
| ACGR | 2.87 | 3.40 | - |

Source: Report of National Crime Record Bureau, 2006

## Table 2
## Children Rapes in India: Trends

| Year | Total Crime Against Children | Total Incidents of Rape Against Children | Rape Incidents Per cent to Total Crime Against Children |
|---|---|---|---|
| 2004 | 14423 | 3542 | 24.55 |
| 2005 | 14975 | 4026 | 26.88 |
| 2006 | 18967 | 4721 | 24.89 |
| Average | 16122 | 4096 | 25.44 |
| ACGR | 1.26 | 10.05 | - |

Source: Report of National Crime Record Bureau, 2006

It is evident from table 1 that the total crime and rape incidents against women increased steadily over the period under study. The ACGR of total crimes and rape incidents has been 2.87 and 3.40 per cent respectively from 2002 to 2006. Through the percentage of rape incidents remain almost constant at around 12 per cent of the total crime against women but yet it was minimum in 2003 and maximum in 2004. Hence, it can be said that the incidents of rape cases are not controlled efficiently and the women fall prey to the miscreants as and when.

Table 2 expresses clearly that the crime and the incidents of rape against children is also at surge. While the total crime against the children increased at ACGR of 1.26 per cent over the years under study, the rape incidents increased at an alarming rate of

10.05 per cent. The percentage of rape incidents to total crimes against the children had been very high throughout the period under study which was minimum (26.88 per cent) in 2004 and maximum (26.88 per cent) in 2005. The analysis also indicates that the incidents of rape cases against the children are almost double the same incidents against women, out of the total cases of crime reported against them. It should be considered as a national shame as we are unable to control such serious crime against the weak section of the society.

## Table 1

## Major Offender of Rape in India

| Particular | States Data | UTs Data | Cities Data | Pooled Data |
|---|---|---|---|---|
| Constant | 7.689*** | -6.726*** | 13.591* | 11.234 |
| Parents/ Close Family Members | - | - | - | - |
| Relatives | - | - | | - |
| Neighbors | - | - | 1.599* | - |
| Other Know Persons | 1.838* | 3.360* | - | 1.864* |
| R-Square | .942/94.20 % | .999/99.90% | .968/96.80% | .946/94.60% |
| Adj. R-Square | .940/94.00% | .999/99.90% | .967/96.70% | .946/94.60% |
| F-Statistics | 421.902* | 6927.456* | 992.046* | 1220.357* |
| Std. Err. | 114.489 | 6.500 | 15.41 | 87.410 |
| No. of Obser. | 28 | 7 | 35 | 70 |

Source: Authors Calculations

**Note:**

- State Data Included: Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Utter Pradesh, Uttaranchal Pradesh and West Bengal.

- UTs Data Included: A&N Islands, Chandigarh, D& N Haveli, Daman& Diu, Delhi, Lakshadweep and Pondicherry.
- Cities Data Included: Agra, Ahmadabad, Allahabad, Amritsar, Asansol, Bangalore, Bhopal, Chennai, Coimbatore, Delhi (City), Dhanbad, Faridabad, Hyderabad, Indore, Jabalpur, Jaipur, Jamshedpur, Kanpur, Kochi, Kolkata, Luchnow, Ludhiana, Madurai, Meerut, Nagpur, Nasik, Patna, Pune, Rajkot, Surat, Vadodara, Varanasi, Vijayawada and Vishakhapatnam; Pooled Data Included: All States, UTs and Cities.
- *, ** and *** Significant at 1%, 5% and 10 % Respectively.

## Table 2

## Major Offender of Rape in Indian Regions

| Particular | Northern-Region | Northern-Eastern Region | Eastern-Region |
|---|---|---|---|
| Constant | 15.336* | 14.524 | 12.741 |
| Parents/Close Family Members | - | - | - |
| Relatives | - | - | - |
| Neighbors | - | 11.092* | - |
| Other Know Persons | 1.769* | - | 1.661* |
| R-Square | .918/91.80% | .999/99.90 | .926/92.60 |
| Adj. R-Square | .910/91.10% | .999/99.90 | .911/91.10 |
| F-Statistics | 112.105* | 6067.349* | 62.181* |
| Std. Err. | 97.11 | 13.81 | 147.13 |
| No. of Obser. | 12 | 7 | 7 |

Source: Authors Calculations

**Note:**

- Northern-Region Included: Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab, Rajasthan, Chandigarh, Delhi (City), Amritsar, Faridabad, Jaipur, Ludhiana and Rajkot.
- Northern-Eastern Included: Assam, Meghalaya, Manipur, Nagaland, Tripura, Arunachal Pradesh and Mizoram.
- Eastern-Region Included: Bihar, Orissa, West Bengal, Andaman and Nicobar, Jamshedpur, Kolkata and Patina.

- *, ** and *** Significant at 1%, 5% and 10 % Respectively.

## Table 3

## Major Offender of Rape in Indian Regions

| Particular | Western-Region | Southern-Region | Central-Region |
|---|---|---|---|
| Constant | 33.916*** | 22.205 | 8.858** |
| Parents/Close Family Members | - | - | - |
| Relatives | 14.813* | - | - |
| Neighbors | - | 2.482* | 3.057* |
| Other Know Persons | - | - | - |
| R-Square | .995/99.50 | .984/98.40 | .999/99.90 |
| Adj. R-Square | .994/99.40 | .981/98.10 | .999/99.10 |
| F-Statistics | 1838.506* | 418.391* | 13686.711* |
| Std. Err. | 32.257 | 49.275 | 10.175 |
| No. of Obser. | 12 | 9 | 9 |

Source: Authors Calculations

**Note:**

- Western-Region Included: Gujarat, Maharashtra, Goa, Daman and Diu, D & N Haveli, Ahmadabad, Mumbai, Nagpur, Nasik, Pune, Surat and Vadodara.
- Southern-Region Included: Andhra Pradesh, Kerala, Karnataka, Tamil Nadu, Pondicherry, Lakshadweep, Bangalore, Chennai and Hyderabad.
- Central-Region Included: Madhya Pradesh, Utter Pradesh, Agra, Allahabad, Bhopal, Jabalpur, Lucknow, Meerut and Varanasi.
- *, ** and *** Significant at 1%, 5% and 10 % Respectively.

## Result and Discussions

To find out the major 'Offenders' of Rape in Indian States, Union Territories (UTs), Major Indian Cities and in different Geographical Regions (Northern-Region, Northern-Eastern Region, Eastern-

Region, Western-Region, Southern-Region and Central-region of India), Step-Wise Regression has been used (See detailed Table 1, 2 and 3). Table 1 shows that in Indian States and Union Territories (UTs), 'Other Known Persons' is the major 'Offenders' of Rape, while in Major Cities of India, 'Neighbors' is the major 'Offenders' in 2006.Table 2 and 3 reveals that the 'Others Known Persons' is the major 'Offenders' of Rape in 'North-Region, Eastern-Region, while 'Neighbors' is the major 'offenders' of Rape in 'Northern-Eastern Region', 'Southern-Region' and 'Central-Region'. Table 3 further reveals that 'Relative' is the major 'offenders' of Rape in 'Western-Region' of India during the period under consideration.

## Conclusion

Through this study we have analyzed the major offenders behind the rape incidences among different geographical regions in India with the help of appropriate statistical tool and techniques such as-average, ACGR, step-wise regression analysis, etc. and found that 'Other Known Persons' were the major 'Offenders' of Rape in Indian States and Union Territories (UTs), while in Major Cities, 'Neighbors' were the major 'Offenders'. Further, 'Others Known Persons' were major 'Offenders' of Rape in 'North-Region, Eastern-Region, while 'Neighbors' were the major 'offenders' of Rape in 'Northern-Eastern Region', 'Southern-Region' and 'Central-Region'. Moreover, 'Relative' is the major 'offenders' of Rape in 'Western-Region'. On the base of foregoing analysis we concluded that the reason or motive behind the rape incidents is not similar in different geographical regions of India. So, we suggest that the government of India should use psychological and sociological studies as tools to resolve the problem of rape crime in India.

### References

1. National Crime Record Bureau Various Issues.

2. John E, Hanke and Dean W, Wichern (2007) 'Business Forecasting' Eight Edition Published by Pearson Prentice Hall New Delhi.

3. Ramanatam, Ramu (2002) 'Introductory Econometrics with Application' Fifth Edition Published by Thomson Asia Pvt. Ltd., Singapore.

4. Wayne W, Daniel (1990) 'Applied Non-Parametric Statistics' published by PWS-KENT Publishing Company, Boston.

5. Saraswati Poudel H. Basavaraja, L.B. Kunnal, S.B. Mahajana shetti and A.R.S Bhat (2011) 'Crop Diversification in Karnataka: An Economic Analysis', Agricultural Economics Research Review, Vol. 24 July-December 2011 pp 351-357.

# Crimes Against Women in Chandigarh

**Kuldeep Singh* & Kaveri Tandon****

## Keywords

Crime, Eve-teasing, Kidnapping, Molestation, Sexual Harassment, Incurred

## Abstract

*The crime against women is as old as civilization. The condition of women is very miserable in the whole world. The birth of girl child is greeted with silence, even sorrow in many parts of our society. Discrimination begins at time of birth and continues till her death. The life of woman is surrounded by violence, neglect, exploitation and crime. The reward to a woman for her day and night services within the house, is not love, perhaps, the violence and fire on her clothes and on her body. In the workplaces, women has to face different kinds of problems like teasing, sexual harassment, exploitation etc. These kinds of incidents are increasing rapidly in the society day by day. Not only the illiterate women, but the educated women are also exposed to such kinds of crimes. Even the promulgation of the laws and empowerment policies has failed in changing the situation of woman.*

Crime is anti- social behaviour which a group rejects and to which it attaches penalties. In this way all those activities for which state lays down punishments are crime.[1] According to Paul Tappan

[1]Rajender K Sharma (1988), Criminology and Penology, Atlantic Publishers & Distributor, Delhi, p.1.

Author Intro. :

* Kuldeep Singh, Assistant Professor, Centre for Police Administration, UIEASS, Panjab University, Chandigarh, email- kuldeepnada@pu.ac.in

** Kaveri Tandon, M. Phil, Centre for Police Administration, UIEASS, Panjab University, Chandigarh, email- kaveritandon@gmail.com

crime is "An intentional act or omission in violation of criminal law committed without defence or justification and sanctioned by the state for punishment as a felony or a misdemeanor."[2]

In other words, Crime generally consists of various elements like external consequences, **Actus Reus, Mens Reas, Prohibition, Act and Punishment.** But Actus Reus and Mens Reas both are most important element of the crime. These both are the Latin words Actus Reus means 'guilty of act' and Mens rea means 'guilty mind'. Any wrong act without any intention is does not called crime.

## Indian Penal Code (IPC) classified crime broadly in seven categories:

1. Crimes Against Body
2. Crimes Against Property
3. Crimes Against Public order
4. Economic Crimes
5. Crimes Against Women
6. Crimes Against Children
7. Other IPC crimes.[3]

This paper related to special kind of crime, which is known as "crimes against women".

## Crimes against Women

Although Women may be victims of any of the general crimes such as 'Murder', 'Robbery', 'Cheating', etc, only the crimes which are directed specifically against Women are characterised as 'Crimes Against Women'. Broadly, crimes against women are classified under two categories:

[2]Ram Ahuja (2010), "Criminology" Crime against Woman, Rawat Publication, Jaipur, p. 19.

[3]Crime under IPC, retrieved from http://ncrb.nic.in/CII2010/cii-2010/Chapter%201.pdf last accessed on May 5, 2012.

## Crimes against women under the IPC are

- Rape ( section 376)
- Kidnapping and abduction (section 360)
- Dowry deaths (section 304 B)
- Cruelty by Husband and Relative (section 498A)
- Molestation (section 354)
- Sexual harassment (section 294)
- Outraging the modesty of women (section509)

There is another classification of crimes against women, which comes under Special and Local Laws (SLL), which include seventeen kinds of crimes.

Mostly, the 'crimes against women' and 'violence against women' are used inter changeably. So, it is equally important to clarify the concept of 'Violence against Woman'. The operational definition of violence, "a force whether overt or covert, used to unrest from the individual (the woman) something that she does not want to give of her own free will and which causes her either physical injury or emotional trauma or both." [4]

Thus rape, abduction, kidnapping, murder (all cases of criminal violence), dowry death, wife battering, sexual abuse, maltreatment of a widow and an elder women (all cases of domestic violence) and eve teasing, forcing wife/ daughter-in-law to go for foeticide, forcing a widow for commit Sati etc (all cases of social violence)[5]

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

[4]Ram Ahuja (2010), "Criminology" Crime against Woman, Rawat Publication, Jaipur, pp. 215-241.

[5]ibid

On the basis of these crimes, in this paper, an attempt has been made to study the crime against women in Chandigarh. An attempt has been made to discuss the definition of the particular crime and status of that particular crime with examples in Chandigarh.

## Crimes Against Women in Chandigarh

1. **Rape:** Section 376 of IPC defines rape. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following de¬scriptions:—

**First** — against her will.

**Secondly**— without her consent.

**Thirdly**— with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

**Fourthly**—with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

**Fifthly**— with her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupe¬fying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

**Sixthly**— with or without her consent, when she is under sixteen years of age.

On the basis of above definition of rape, the cases registered in Chandigarh from 2009 to 31 August 2012 are shown in table below.

**Table- 1**

**Number of rape cases registered by Chandigarh Police from 2009 to 31 Aug, 2012**

| S.No | Year | Case Registered |
|---|---|---|
| 1. | 2009 | 29 |
| 2. | 2010 | 31 |
| 3. | 2011 | 27 |
| 4. | 2012 (upto 31 Aug) | 17 |

Source: Chandigarh Police

Table-1 shows that highest number of rape were registered in 2010 i.e. 31 then in 2009, 29 cases were registered and in 2012 till Aug 31, 17 cases has been registered. Two famous cases of rape in Chandigarh which is not easy to forget, these cases are:

## Case I

A shocking rape case in Chandigarh was of Nari Niketan, where an employee raped a mentally challenged girl in 2009 which results the victim to a mother of a girl. A local court awarded 10-year rigorous imprisonment to nine people, including two women. The accused were booked for offences like rape, criminal conspiracy and destruction of evidence. Besides the jail term, court has also slapped a fine of Rs 2,000 each on all accused.

## Case II

Neha Alhawat case, where a 21 year old girl was raped and then murdered near a taxi stand in sector 38 in year 2010. Even after two years Central Forensic Science Laboratory (CFSL) is not able to deliver the report in this case.

2. Dowry death: Section 304 B of IPC defines dowry death. Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or har¬assment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be

called "dowry death", and such husband or relative shall be deemed to have caused her death. In Chandigarh, the cases of dowry death are found very less as we can see in table given below:

### Table-2

### Number of dowry death cases registered by Chandigarh Police from 2009 to 31 Aug, 2012

| S.No | Year | Case Registered |
|---|---|---|
| 1. | 2009 | 02 |
| 2. | 2010 | 05 |
| 3. | 2011 | 02 |
| 4. | 2012 (upto 31 Aug) | 04 |

Source: Chandigarh Police

Table-2 shows that highest number of dowry death was registered in 2010 i.e. 05 and till Aug. 31, 04 cases has been registered. The latest famous case in Chandigarh is given below:

## Case

Poonam committed suicide by hanging herself from ceiling fan on Sep 25, 2012 and her husband and father-in-law booked for abetting her to commit suicide just because she was unable to fulfill their dowry demands.

3. **Molestation:** Section 354 of IPC defines Molestation. Molestation is the sexual exploitation of a child or a woman by an adult for sexual gratification or for profit. Sexual abuse may include: fondling, mutual masturbation, sodomy, coitus and child pornography and child prostitution. Section 354 of the IPC considers the assault or criminal force to woman with the intention to outrage her modesty. This offense is considered less serious than Rape and cases of molestation from 2009 are given below in table- 3.

## Table-3

## Number of molestation cases registered by Chandigarh Police from 2009 to 31 Aug, 2012

| S.No | Year | Case Registered |
|---|---|---|
| 1. | 2009 | 26 |
| 2. | 2010 | 29 |
| 3. | 2011 | 21 |
| 4. | 2012 (upto 31 Aug) | 12 |

Source: Chandigarh Police

Table-3 shows that highest number of cases of molestation were registered in 2010 i.e. 29 then in 2009, 26 cases were registered and till Aug. 31, 12 cases has been registered and some selected famous cases are discussed below.

## Case I

The Ruchika Girhotra Case involves the molestation of 14-year-old Ruchika Girhotra in 1990 by the Inspector General of Police Shambhu Pratap Singh Rathore (S.P.S. Rathore) in Haryana, India. After she made a complaint, the victim, her family, and her friends were systematically harassed by the police leading to her eventual suicide. On December 22, 2009, after 19 years, 40 adjournments, and more than 400 hearings, the court finally pronounced Rathore guilty under Section 354 IPC (molestation) and sentenced him to six months imprisonment and a fine of Rs 1,000. The CBI had opposed Rathore's plea and had sought an enhancement of his sentence from six months to the maximum of two years after his conviction. Rejecting his appeal against his conviction by a Central Bureau of Investigation (CBI) special court, Chandigarh District Court on May 25 sentenced the disgraced former police official to one and a half years of rigorous imprisonment, enhancing his earlier six-month sentence and immediately taken into custody and taken to the Burail prison. On 11 November 2010, the Supreme Court granted bail to S P S Rathore on the condition that he should not leave Chandigarh.

## Case II

Molestation of girl outside a discotheque at sector 26 on July 14, 2012 by a group of youth where she was rescued by her boss and friends. The assailants tried to molest other girls, who managed to flee. The incident occurred when 25-year-old came to the discotheque for a party. She came out at 1:20 am when a dozen youths surrounded her as she was about to sit in her car. She worked with a software firm in the city.

4. Sexual harassment: Section 294 of IPC defines sexual harassment. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, of that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or both.

In lay man language, sexual harassment is termed as eve- teasing, with use of the word 'Eve" being reference to the biblical Eve, the first woman. It implies that the woman is in some way responsible for the behaviour of the perpetrators of this act.

In Chandigarh, from the last few years the number of cases of sexual harassment and eve- teasing are increasingly. The cases of sexual harassment in Chandigarh are discussed in Table- 4.

### Table-4

### Number of sexual harassment cases registered by Chandigarh Police from 2009 to 31 Aug, 2012

| S.No | Year | Case Registered |
|---|---|---|
| 1. | 2009 | 11 |
| 2. | 2010 | 06 |
| 3. | 2011 | 34 |
| 4. | 2012 (upto 31 Aug) | 11 |

Source: Chandigarh Police

Table-4 shows highest number of cases were registered in 2011 i.e. 34 and till Aug 31, 11 cases has been registered. The latest cases of sexual harassment are discussed below.

## Case I

Komal where she was attacked with a sharp weapon causes her injure on her head by three youths just because she answer back to their comment. Not just they hurt her; even they tried to drag her in their car. All this happened near Government College for Girls- 42. A case was registered at police station in Sector 36.

## Case II

A BBA student and a resident of Sector 46, was on her way to attend classes at a private education institute in Sector 47 when Randeep Singh cornered her at 12 noon. The youth, son of a leading sweet shop owner in Sector 46, first snatched the girl's mobile phone and keys of her Honda Activa. When she resisted, he sped away from the spot with her Activa.

Within minutes, Randeep returned in a black-coloured Alto car and dragged her into the vehicle and drove away. Inside the car, Randeep assaulted the girl with an iron rod. When girl raised an alarm, she was thrown out from the moving car in Sector 34. Girl suffered injuries in the attack.

5. Cruelty by husband and relatives: Section 498 A of IPC defines cruelty by husband and relatives. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be pun¬ished with imprisonment for a term which may extend to three years and shall also be liable to fine.

For the purpose of this section, "cruelty" means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

The cases of cruelty by husband and relatives registered in Chandigarh are given below in Table- 5.

**Table-5**

**Number of cruelty by husband or relatives of husband cases registered by Chandigarh Police from 2009 to 31 Aug, 2012**

| S.No | Year | Case Registered |
|---|---|---|
| 1. | 2009 | 51 |
| 2. | 2010 | 41 |
| 3. | 2011 | 46 |
| 4. | 2012 (upto 31 Aug) | 44 |

Source: Chandigarh Police

Table-5 shows that highest number of cases of cruelty by husband registered in 2009 i.e. 51 then decreased to 46 in 2011 and till Aug 31, 44 cases has been registered. The latest example is discussed below.

## Case

The resident of Maloya was registered for cruelty against her wife for the demand of dowry.

6. Kidnapping (female): Section 360 of Indian penal code describes kidnapping from India: Whoever conveys any person beyond the limits of India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from India. Section 361 of Indian penal code defines the kidnapping from lawful guardianship: Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the

keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

The status of kidnapping in Chandigarh is given in table- 6.

**Table-6**

**Number of kidnapping cases registered by Chandigarh Police from 2009 to 31 Aug, 2012**

| S.No | Year | Case Registered |
|---|---|---|
| 1. | 2009 | 35 |
| 2. | 2010 | 28 |
| 3. | 2011 | 46 |
| 4. | 2012 (upto 31 Aug) | 31 |

Source: Chandigarh Police

Table-6 shows that 46 cases of kidnapping were registered in 2011 and theses were the highest number of cases compared to other years and till 31 aug 31 cases has been registered. The famous case of kidnapping of girl in Chandigarh is given below.

## Case

A sector 23 businessman had alleged that his 16 year old daughter has been kidnapped by a Zirakpur resident with help of his relative. The complainant today Rupinderpal had complained to the police that Inderjit Singh Malik and Sangeeta, both residents of Orbit Apartment 1, VIP Road, Zirakpur has allegedly kidnapped his daughter from the Carmel Convent School, Sector 9, on Oct 14, 2011. The girl has been recovered from Giderbaha, Punjab.

7. Outraging the modesty of a woman: Section 509 of IPC defines the word, gesture or act intended to insult the modesty of a woman: Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, of that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall

be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

If talk about Chandigarh, the number of cases of out ragging the modesty of a women are increasing day by day, which we can see in Table- 7.

**Table-7**

**Number of outraging the modesty of a woman cases registered by Chandigarh Police from 2009 to 31 Aug, 2012**

| S.No | Year | Case Registered |
|---|---|---|
| 1. | 2009 | 02 |
| 2. | 2010 | 04 |
| 3. | 2011 | 12 |
| 4. | 2012 (upto 31 Aug) | 11 |

Source: Chandigarh Police

Table-7 shows that in 2011, 12 cases has been registered and these are the highest number as compared to other years. Till august 31, 11 cases has been registered. The latest example of this kind of crime is discussed below.

## Case

A car dealer was arrested from his shop, sec-7 against the complaint of 22 year old woman working in NGO, who passed her obscene comments outraging her modesty. The victim initially went to his shop at around 2:30 pm but the accused asked her to come back later in the evening to collect a cheque of Rs 3,000 that he wished to donate.

The woman alleged that when she returned later, the accused was alone in the shop, made lewd remarks and obscene gestures.

## Suggestions to control Crime against Women

The following measures may be suggested for reducing the crime against women in India:-

- The accused should be given the stiff penalty for their heinous crime against women.

- The helpline number and laws which are implemented for the women should be advertised through the local media so that women should be aware about the helpline number and laws which are implemented for their welfare.
- The cases of eve- teasing should be registered in section 509 of Indian Penal Code, outraging the modesty of women, rather than in section 294 of Indian Penal Code, sexual harassment.
- A special women protection and justice cell should be established by the Government at district or block level for investigate the special cases e.g. rape, murder, sexual harassment etc. All the top level authorities especially women from the legislative, executive and judiciary should be the members of this cell.
- A women police official should also be there in Police Control Room (PCR) to keep a check on eve teasing etc.
- Beat box should be there in each and every sector with lady constable so it would become easy for women to approach them.
- Tight security should be provided in sensitive areas especially in the evening.
- Night patrolling should be provided in girls as well as in women hostel by women police official.
- The number of women personnel should be increased in the police force to control the crime against women.
- The camp providing training of self defence should be organized by the police for the women to make them bold and courageous to deal out with odd situations.
- Special women's police station should be established with properly trained and adequate police force to deal with the cases of crime against women with empathy and training.
- There is a need to sensitize the media on gender issues. Media should be their own ombudsmen in ensuring that women are not depicted in poor light. Media should play a proactive role in inculcating gender sensitivity even from childhood and within family. Media should devote special slots for crimes

against women and discuss all proactive aspects. There must be mechanisms to sensitize Censor Boards and bringing about a working dialogue between members of the Censor Board and citizen's groups.

- Prosecutors need to be sensitized to appreciate the importance of in camera trial, keeping in mind the traumatic condition of the victim. Prosecutors need to ensure that the identity of the rape victims should not be disclosed. More women prosecutors should be appointed so that they could handle all crimes against women.
- The role of NGO's and voluntary organizations should be strengthening so that women should be aware about their rights and laws prevailing for the protection of them.
- Family counseling centre should be establish in every city to help the women victim and their family to overcome the stressed situation they are facing and help them to register a case against the guilty.
- Women should use any spray or weapon which has been given approval by the Supreme Court to protect them from the evil things of the society.

## References


1. Kelly Dawn, Askin (1997), War Crimes Against Women: Prosecution in International War Crimes Tribunals, Martinus Nijhoff Publishers, Netherland.
2. P.C., Tripathy (1998), Crime against working women, APH Publication, New Delhi.
3. Rajender K Sharma (1988), Criminology and Penology, Atlantic Publishers & Distributor, Delhi.
4. Ram Ahuja (2010), "Criminology", Crime against Woman, Rawat Publication, Jaipur.
5. National Crime Record Bureau, "Crime under IPC", retrieved from http://ncrb.nic.in/CII2010/cii-2010/Chapter%201.pdf

# Jurisprudence of Child Care & Protection

**Dr. K.P. Singh*, IPS & Chitrangada Singh****

## Keywords

Child in Need of Care and Protection, Juvenile Justice, Rehabilitation, Social Re-integration, Child Welfare Committee, , Child Protection Unit, Child Welfare Officer, Social Audit, Inspection Committee, Children Home, Shelter Home, Place of Safety, Special Juvenile Police Unit, Juvenile Justice Fund.

## Abstract

*The Children in Need of Care and Protection are not getting the due attention as they deserve from the Society and the State despite the best of laws enacted by the Legislature to protect them. The Juvenile Justice Act 2000is complete code to deal with the Juveniles & the Children in need of Care and Protection . An attempt has been made in this article to examine the existence of the Child Care Institutions as envisaged under the Act, and bring out the gaps in the theory and the practice. Complete reading of this article would enable the readers to understand the Jurisprudence of Child in Need of Care and Protection in the relevant context. At the same time, it will also provide useful information to the State Instrumentalities for their guidance and action in their day to day working.*

## Introduction

Hardly a day passes when newspapers do not carry any story about abuse and exploitation of Children in Need of Care

Autohr Intro.:

[1] ADGP (Prisons), Haryana.

[2] Chitrangada Singh, Legal Assistant, ICTY, The Hague.

and Protection (CNCP). A 52 years old peon employed at the state government's juvenile home for girls in Shiv Kuti area of Allahabad was arrested on 5 April 2012 for allegedly raping two girl inmates.[3] 'Juveniles languish in Tihar in breach of law' was the caption of a news item in The Times of India of December 12, 2011. Another story in The Tribune[4] revealed sexual abuse of minors in a shelter home at Gurgaon. Haryana cops sent an accused couple's 8 year old son to Borstal Jail Hisar when he refused to part with his parents at the time of their arrest. His photograph along with the arrested parents and the cops appeared prominently in the Chandigarh edition of the Indian Express on April 3, 2012. The recent reports relating to the large scale violations of human rights of minors, torture, sexual abuse, selling of off springs etc at the 'Apna Ghar', a shelter home at Rohtak in Haryana, are horrifying and have shaken every sensitive individual. If the newspaper reports are to be believed, the Apna Ghar episode has revealed the most heinous of all the crimes against children. Haryana government has decided to hand over the investigation of the case to the Central Bureau of Investigation (CBI) in view of the alleged involvement of some Haryana police officials in the whole affair. These stories are only the tip of the iceberg. There are ample evidence to suggest that children are being abused and exploited in the entire country at a very large scale.

Declaration of the Rights of the Child adopted by the League of Nations in 1924, exhorted the world by declaring-'mankind owes to the child the best it has to give'. Since then, child centric human rights jurisprudence had developed and added a new dimension to the fast emerging social order throughout the world. Laws relating to children have become the change agents in the scheme of social engineering adopted by the international community. The Universal Declaration of Human Rights 1948 (UDHR), The Riyadh Guidelines[5], the Beijing Guidelines[6] and several other instruments

[3]A news item in the English daily, The Tribune, April 6, Chandigarh

[4]Chandigarh, Tuesday, May 8, 2012

[5]The United Nations Guidelines for the Prevention of Juvenile Delinquency.

[6]UN General Assembly Resolution No. 40/33 of 20 November, 1985.

of the United Nations emphasize unambiguously that the CNCP are the sole and exclusive responsibility of the state. Articles 15(3), 21, 21A, 22(1), 22(2), 23,24,39(e), 39(f),45,47 and 51 A(k) of the Constitution of India also impose a primary responsibility on the state to ensure that all the needs of the children are met and their basic human rights are fully protected.

Unfortunately, the CNCP are not getting the due attention they deserve from the society and the state, despite the best of the laws enacted by the legislature to protect them. Child labourers are working in both the hazardous and the non-hazardous industries in violation of the labour laws. Child battering at home and corporal punishment in schools are common practices. Sexual abuse of children, even within the family, is prevalent. Children can be seen begging at every junction on roads and railway stations. Children are being used as carriers by the drug traffickers and liquor peddlers. Trafficking in children is going on unabated at a very large scale. Justice Shiv Raj Patil, former judge of the Supreme Court, quoting Gabrial Mistral, the Noble Laureate, has very rightly said-

'We are guilty of many errors and faults but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait, the child cannot. Right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we can not answer 'tomorrow', his name is 'today'[7].

The need to provide care and protection to children has been universally acclaimed and accepted. In Bandhua Mukti Morcha V UOI[8] the Supreme Court of India observed-

'The child of Today can not develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to

[7]From the 10th Sunanda Bhandra Memorial Lecture on 8 November 2004 at New Delhi.

[8](1997) 10 Sec 549.

him. Every nation, developed or developing, links its future with the status of child.'

Childhood is the stage of life where personality development is at fast forward mode. Everything happens so quickly that one can not afford to stop to think even for a while. That is why the principles of juvenile handling are very well established in the Rules[9] made the Juvenile Justice (Care and Protection of Children) Act 2000[10] (JJ Act 2000). Children certainly need the care and protection of the state. In this background, it is imperative to understand the Jurisprudence of Child Care and Protections and review the implementation of the laws relating to the CNCP.

## Children in Need of Care and Protection (CNCP)

As per the J.J. Act 2000[11] , child means a person who has not completed eighteenth year of age. In Indian Laws, definition of child has been associated with the purpose attached with the particular law. Under the Prohibition of Child Marriage Act 2006, child means a female below 18 years and a male below 21 years of age. The Child Labour Prohibition and Regulation Act, 1986 and the other labour laws, including the Plantation Labour Act 1951, The Motor Transport Workers Act 1961 and the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, define a person below 14 years of age as child. The definition of the CNCP under the J Act 2000[12] is very wide. It covers following types of children:

- Who is found without any home or settled place or abode and without any ostensible means of subsistence;
- Who is found begging or who is either a street child or a working child;

[9]Rule 3, the Central Juvenile Justice (Care and Protection of Children) Rules 2007 (JJ Rules 2007)

[10]Act No. 56 of 2000.

[11]Section 2 (k)

[12]Section 2 (d)

- Who resides with a person (whether a guardian of the child or not) and such person (a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out; orhas killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person;
- Who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after;
- Who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child;
- Who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and ran away child and whose parent cannot be found after reasonable inquiry;
- Who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts;
- Who is found vulnerable and is likely to be inducted into drug abuse or trafficking;
- Who is being or is likely to be abused for unconscionable gains; or
- Who is victim of any armed conflict, civil commotion or natural calamity.

From the above definition of the CNCP, it is clear beyond doubt that the state is the foster father of all the above types of children who are in need of care and protection. Chapter III of the J.J. Act 2000 (from sections 29 to 39) elaborates on the detailed scheme for care and protection of the CNCP.

## Jurisprudence of Child Care and Protection

The United Nation's declaration of the 'Right of the Child' on 20 November 1958 provides the basis for the development of the Jurisprudence of Child Care & Protection. The declaration

mentioned-

'The child shall enjoy special protection and shall be given opportunities and facilities, by law and other means, to enable him to develop physically, mentally, morally, spiritually and socially in a normal manner and conditions of freedom and dignity'

In 1974, the Government of India adopted the National Policy for the welfare of Children to give effect to the Directive Principle of State Policy enshrined in Article 39 (f) of the Constitution of India. The preamble of the National Policy declares-

'Children programmes should find a prominent part in our national plan for the development of human resources, so that our children grow up to become robust citizen and physically fit, mentally alert and morally healthy endowed with the skills and motivation needed by the society'

The perambulatory declaration was honoured by the legislature and the commitment can be traced in the beneficial provisions of the J.J. Act 2000 and the rules made there under. Rule 3 of the J.J. Rules 2007 is the repository of the principles of child care and protection. The jurisprudence has been further developed and enriched by the Supreme Court of India in its various judgments. It is universally accepted that the primary responsibility of bringing up children, providing care, support and protection lies with the biological parents. In exceptional situations, this responsibility may be bestowed on willing guardians or foster parents. In rest of the cases, the state in under legal obligation to create institutions to ensure proper care and protection of the CNCP as per the provisions of the J.J. Act 2000[13] .

Treatment that is consistent with the child's sense of dignity and worth is the important fundament principle of juvenile Jurisprudence. Respect for dignity includes not being humiliated, personal identity, boundaries and space being respected, not being labeled and stigmatized, being offered information and choices and not being blamed for their acts.[14] The right to dignity and worth has to be

[13]Chapter III of the Act

respected by the state agencies throughout the stages in the process of handling the CNCP.

The Principle of Best Interest[15] of the CNCP entails the safety and well being of each child and thus enabling each child to survive and reach his or her full potential. Every child's right to express his views freely in all matters affecting his interest shall be fully respected. The Right to be Heard includes creation of appropriate tools for development and processes of interaction with the child, promoting children's active involvement in decisions regarding their own lives and providing opportunities for discussion and debate[16] .

The State has the responsibility for ensuring safety of every child in its care and protection, without resorting to restrictive measures and processes in the name of care and protection[17]. The CNCP shall not be subjected to any harm, abuse, neglect, maltreatment, corporal punishment and, solitary or otherwise, any confinement. The state should mobilize all possible resources, including the family, the volunteers and the other community groups for promoting the well being of the CNCP. Positive measures for ensuring well being of the CNCP include avenues for health, education, relationship, livelihood, leisure, creativity and play. Such measures are essential for development of the identity of the CNCP[18]. One of the most important aspects of the jurisprudence of child care and protection is the Principle of Non-Waiver of Rights. The child's rights cannot be waived off by the child himself or the competent authority or anyone acting on behalf of the CNCP[19].

Revealing the identity of a CNCP is a criminal offence punishable

[14]Rule 3 (II) JJ Rules 2007

[15]Rule 3 (IV) ibid

[16]Rule 3 (III) ibid

[17]Rules 3(VI) (b), ibid

[18]Rules 3 VII, ibid

[19]Rules 3 IX, ibid

with a fine of Rs. Twenty five thousands under the provisions of the J.J. Act 2000[20]. The CNCP should be repatriated and restored back at the earliest, to his family. The right of every CNCP to be re-united with his family and restored back to the same socio-economic and cultural status is the aim of all care and protection measures[21]. Institutionalization of the CNCP should be a step of last resort after reasonable enquiry and that too for the minimum possible duration. Every child has right to be reunited with his family and restored back to the same socio-economic and cultural status unless it is against the best interest of the child[22]. As per rule 79(5), a juvenile or a child who is foreign national shall be repatriated at the earliest to the country of his origin in co-ordination with the respective Embassy or the High Commission.

Confidentiality is the hall-mark of all programmes relating to the CNCP. The identity of the CNCP should not be disclosed to anybody. Their right to privacy and confidentiality should be protected by all means[23]. After the age of 18 years, the past record of the CNCP should be erased as per the principle of fresh start[24].

The Supreme Court has helped in further development and enrichment of the Jurisprudence of Child Care and Protection. The apex court has issued directions in different cases from time to time for the protection of the CNCP. *In R D Upadhyay V. State of AP*[25] the Supreme Court issued detailed guidelines on maintenance of the infants staying in jails with their prisoner mothers. The court observed that such children were entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of

[20]Section 21, JJ Act 2000

[21]Rule 3 (XIII) & 3 (XII) of JJ Rules 2007

[22]Rule 3 (XIII) ibid

[23]Rule 3 (XI) ibid

[24]Rule 3(XIV) ibid

[25](2007) 15 SCC 337

right. In *Bachpan Bachao AndolanV UOI*[26] , the Supreme Court issued directions in a Public Interest Litigation filed to ensure rehabilitation and social reintegration of children working in circuses in India. The court directed that such children should be rescued and kept in care and protection of the state agencies till they attain the age of 18 years. Parents of the children should be contacted and in case they are willing to take their children back to their homes, they may be allowed to do so after proper verification. The court further directed the states to frame proper scheme of rehabilation of children rescued from the circuses.

In *Gaurav Jain V UOI*[27], the Supreme Court directed the states to provide care and protection to children of prostitutes without any stigma attached to them. In *Childline India Foundation V Allan John Walters*[28], the Supreme Court pronounced that happy and healthy childhood, free from abuse and exploitation is the basic right of every child. Right to life for children guaranteed under Article 21 of the Constitution of India includes education, prohibition against child labour and trafficking, eradication of child prostitution and provisions for adequate rehabilitative homes well managed by qualified trained workers, psychiatrists and doctors. In *Sampurna Behura V UOI*[29] , the apex court exhorted the state agencies and the State Legal Services Authorities to ensure proper implementation of all the provisions of the J.J. Act 2000 for ensuring care and protection to the CNCP. The State Governments and the Union Territories were also asked to file affidavits regarding compliance of the provisions of the J.J. Act 2000.

The Jurisprudence of Child Care and Protection is well established in the law and duly validated by the Courts in a number of pronouncements. It is, however, unfortunate that, at the ground level, implementation of these provisions and directions is tardy in

[26](2011) 5 SCC 1

[27](1997) 8 SCC 114

[28](2011) 6 SCC 261

[29](2011) 9 SCC 801

some cases and non-existent in most of the cases. It would be in the fitness of situation to understand the scheme of care and protection for the CNCP as provided in the J.J. Act 2000 and the rules made there-under.

## The CNCP: Whose Responsibility?

Section 63 of the J.J Act 1986 declared that all the existing central and state laws corresponding to juvenile justice and care and protection of children stood repealed. The Children Act 1960(Central Act) was, thus repealed. Similarly, the J.J. Act 2000(Section 69) repealed the J.J. Act 1986. The J.J Act 2000 is the repository of all the laws and procedures relating to the juveniles and the CNCP.

As per the J.J. Act , the CNCP are the sole and exclusive responsibility of the state if their parents are incapable or incapacitated or not willing to undertake their responsibility, for whatever reasons. As per section 29 of the J.J. Act, the state governments are under legal obligation to constitute child welfare committees (CWCs) for every district within one year from the date of commencement of the J.J. Amendment Act 2006[30]. The core function of the CWCs is to discharge duties conferred on them in relation to the CNCP under the Act. It is declared in section 31(2) of the Act that the CWCs shall have the power to deal exclusively with all proceedings relating to the CNCP under the Act. The committee shall have the final authority to dispose of the cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights[31]. It would be the duty of the state and central government to prevent sexual abuse of the CNCP by issuing guidelines from time to time and ensuring their compliance. Accordingly the central government issued an Advisory to all the states to comply with the provisions of the J.J. Act 2000 while dealing with the juveniles and the CNCP.

It is, therefore, established beyond all doubts that the CNCP should

[30]Act No. 33 of 2006 came into force w.e.f. 22.8.2006

[31]Section 31, JJ Act 2000

be handled exclusively by the CWCs as per the J.J. Act 2000. Their handling by any other institution created by the state or otherwise, is in violation of the law. Lodging of children in jails, Borstal jails and institutions like the Apna Ghar of Rohtak is a culpable negligence. It would be worthwhile to examine whether the state mechanism for child care and protection, as envisaged under the Act, is in place or not.

## State Mechanism for the Care and Protection CNCP

### 1. Child welfare committee (CWC)

The CWCs have been given the responsibility to take all decisions under the J.J. Act for the rehabilitation and social reintegration of the CNCP. The CWC shall consist of a chairperson and four members, including one woman and one child expert[32]. The CWC shall be appointed on the recommendation of a selection committee headed by a retired High Court Judge[33]. None of the CWC Member should be from an adoption agency[34]. State Government shall arrange for training of the CWC members[35]. The tenure of the committee may be as prescribed by the respective governments. The chairperson and the members of the committee can have maximum of two consecutive terms[36]. The tenure of CWC members and the chairperson is to be co-terminus[37]. The Chairperson and the members, however, can resign by giving one month notice.

The qualifications for appointment as chairperson or member of the CWC are prescribed in rule 22. A person who is holding a full time occupation is not eligible to be appointed in the CWC[38]. This rule clearly prohibits the ex-officio appointment of the District Magistrate

[32]Section 29, JJ Act 2000

[33]Rule 91, JJ Rules 2007

[34]Rule 20 (3), ibid

[35]Rule 20 (4), ibid

[36]Rule 21 (2), ibid

[37]Rule 21 (1), ibid

[38]Rule 22, ibid

or any other Government Official as chairperson or member of the CWC because of they being full time public servants. It is fact that most of the states the CWCs are either not constituted and, if constituted, are headed by the District Magistrates in their ex-officio capacity. The CWC should be headed by a full time chairperson in order to do justice to the job. Every member of the committee is required to attend minimum of 3/4th of the total sittings of the committee in a year[39]. The CWC shall have the powers of a Judicial Magistrate First Class as given in the Criminal Procedure Code 1973[40].

The CWC has been conferred with vast powers under the Act[41], in order to ensure safety, security, welfare, rehabilitation and social re-integration of the CNCP. The powers and functions of the committee include the followings:-

- Take cognizanceand receive children.
- Decide on matter brought before it.
- Reaching outto children in need of Care & Protection.
- Conduct necessary enquiry.
- Seek social enquiryfrom Probation Officer (PO), Child Welfare Officer (CWO) and Non-governmental organizations (NGOs)
- Ensure necessary care of children.
- Rehabilitation and Restoration of Children.
- Issue directions to children's home in charge.
- Maintaining record of every children.
- Provide child friendly environment.
- Recommend 'Fit Institution'.

[39]Section 29 (4), JJ Act 2000

[40]Section 29 (5), ibid

[41]Rule 25 of the JJ Rules 2007

- Declare 'Fit Person'
- Declare a child free for adoption.
- Keep information and take follow up action about missing children.
- Liaison with J.J. Board.
- Visit institutions where children are kept, at least once in 3 months.
- Monitor associations and agencies to prevent abuse and exploitation of children.
- Co-ordination with the police, the labour department and other agencies concerned.
- Liaison with corporate sector and NGOs.
- Maintain Suggestion Box and take necessary action on complaints received.

Having spotted or coming in contact or taking into custody of a CNCP, any police officer or public servant or a member of Childline and government recognized organizations or any social worker or a public spirited citizen can produce him/her before the CWC without loss of anytime, within 24 hours[42]. Even the CNCP can appear directly before the CWC for help. On information, the CWC can also reach out to the CNCP at his/her location.

A CNCP may be produced before an individual member of the CWC for interim order. But such order passed by the individual member needs ratification in the next meeting by the CWC. The quorum required for the meeting is 3 members including the chairperson. While taking decision, the CWC may also consider the report/recommendations sought from the child welfare officer or the case worker[43].

[42]Section 32 of the J.J. Act 2000 read with Rule 27 of the J.J. Rules 2007

[43]Section 30 of J.J. Act 2000, read with Rule 26 of JJ Rules 2007

If no member of the CWC is available, in odd hours, the CNCP may be taken to an appropriate institution for children registered under the Act until he/she is produced before the CWC[44]. It is the duty of the manager of such institution to produce the CNCP before the CWC within 24 hours. A report shall also be produced before the CWC by the manager giving details of efforts made by them to locate the parents of the CNCP, information given to the police and report filed before the Missing Persons Squad, as the case may be[45].

Once the CNCP has been produced before the CWC, it shall facilitate filing of police complaint, missing person's report and First Information Report to police through the District/State Child Protection Unit or the State Legal Services Authority. Child friendly environment is to be provided during all the proceedings[46].

The CWC is required to make all efforts to trace the parents of the CNCP with the help of police and non-governmental organizations. For medical and legal interface, the CWC shall have a list of empanelled lawyers, social workers and mental health workers[47]. If the parents are untraceable or are unwilling to take the responsibility, the CNCP may be sent to a state institution or a place of safety registered under the Act for care and protection[48]. The Police/Social worker may be asked to escort the CNCP for the CWC office to the place of safety. Girls are to be escorted by a female. The State Government/District Child Protection Unit (DCPU)/State Children Protection Unit (SCPU) are under obligation to provide a list to the CWC[49] of recognized child care institutions along with the capacity and the resources available there in and the list of all CWCs across the country.

[44]Rule 27 (5), JJ Rules 2007

[45]Rule 27 (7), ibid

[46]Rule 27 (10) & 27 (11), ibid

[47]Rule 27 (12) & 27 (13), ibid

[48]Rule 27 (14), ibid

[49]Rule 27 (15), 27(16) and 27(20), ibid

While sending a CNCP to a place of safety, the CWC is required to pass an enquiry order. The enquiry may be conducted by a social worker or child welfare officer or a case worker or officer in charge of the institution or any recognized agency. The enquiry report is required to include Individual Care Plan and Rehabilitation Plan for the CNCP. The enquiry is to be completed within 4 months. The officer in-charge of the institution where the CNCP is lodged, is to submit a Quarterly Progress Report of the CNCP and produce the child before the CWC for Annual Review. State Government should review the pending cases before the CWC on six monthly basis. The CWC may allow a CNCP to remain in the Children Home or Place of Safety till suitable rehabilitation is found but not later than he/she attains the age of majority.

## 2. Child Protection Unit (CPU)

The legislature realized very soon that the provisions of the J.J. Act can not be implemented is letter and spirit by the CWCs alone. They created another institution named the Child Protection Unit, by way of amendment[50] in the J.J. Act in 2006.The Units were to be constituted at the State and the District level. The core function of the CPU is to ensure the implementation of the Act, including the establishment and maintenance of homes, notification of competent authorities in relation to the CNCP and their rehabilitation and co-ordination with various official and non-official agencies concerned. As per rule 80 of the J.J. Rules 2007, the functions of the State CPU include-

- Implementation of the Act and supervision and monitoring of the agencies and the institutions established under the Act;
- Set-up, support and monitor the District Child Protection Units;
- Represent State Child Protection Unit as a member in the Selection Committee for appointment of members of Boards or Committees;

[50]Act No. 33 of 2006 (w.e.f. 22.8.2006). Section 61 A was added in the Act.

- Make necessary funds available to the District Child Protection Units for providing or setting up required facilities for implementation of the Act;
- Network and co-ordinate with all government departments to build inter-sectoral linkages on child protection issues, including the departments of health, education, social welfare, urban basic services, backward classes & minorities, youth services, police, judiciary, labour, state AIDS control society, among others;
- Network and co-ordinate with civil society organizations working for the effective implementation of the Act;
- Training and capacity building of all personnel (Government and Non-government) working under the Act;
- Establish minimum standards of care and ensure its implementation in all institutions set up under the Act;
- Review of the functioning of the CWCs; and
- All other fu nctions necessary for effective implementation of the Act;

The functions of the District Child Protection Unit are as under-

- ensure effective implementation of the Act at district or city levels by supporting creation of adequate infrastructure, such as, setting up Boards, Committees, Special Juvenile Police Units and Homes in each districts;
- identify families at risk and children in need of care and protection;
- assess the number of children in difficult circumstances and creating district-specific databases to monitor trends and patterns of children in difficult circumstances;
- periodic and regular mapping of all child related services at district level for creating a resource directory and making the information available to the Committees and Boards from time to time;

- implement family based non-institutional services including sponsorship, foster care, adoption and after care;
- ensure setting up of district, block and village level Child Protection Committees for effective implementation of programmes;
- facilitate transfer of children at all levels for either their restoration to their families or placing the child in long or short-term rehabilitation through institutionalization, adoption, foster care and sponsorship;
- support State Adoption Resource Agency in implementation of family based non-institutional services at district level;
- network and coordinate with all government departments to build inter-sectoral linkage on child protection issues;
- network and coordinate with the civil society organizations working under the Act;
- develop parameters and tools for effective monitoring and supervision of agencies and institutions in the district in consultation with experts in child welfare;
- supervise and monitor all institutions or agencies providing residential facilities to children in the district;
- train and build capacity of all personnel (Government and Non-government) implementing the Act;
- organize quarterly meeting with all stakeholders at district level including Child line, Specialized Adoption Agencies, Officer-in-Charges at homes, Non-governmental organizations and members of public to review the progress and implementation of the Act; and
- Liaison with the State Child Protection Unit, State Adoption Resource Agency at State level and District Child Protection Units of other districts.
- Unfortunately, the Child Protection Units, which are the key

to effective implementation of the programmes for the CNCP, have not been established so far in most of the states.

## 3. Advisory Boards

Section 62 of the J.J. Act, provides for constitution of Central, State, District and City Advisory Boards, by the respective governments to advise them on matters relating to the CNCP. The boards are to be set up by the state governments through the selection committee set up under Rule 91 of the J.J. Rules. The tenure, qualification and functions of the boards etc. are given in Rule 93 of the J.J. Rules. The Central Advisory Board is to be constituted through the Union Ministry of Women and Child Development. There is no need to establish separate boards at district and city levels. The Inspection Committees established under section 35 of the Act shall also discharge the functions of the boards at that level[51]. Unfortunately, the boards have not been constituted in most of the states.

## 4. Inspection Committee (IC)

The State Governments are under legal obligation to appoint Inspection Committees for the Children's Home at the State, the district and the city level. The ICs may consist of representatives from the state government, non-governmental organization, medical experts and social workers[52]. It can not be said with certainty that any of the states have appointed the ICs.

## 5. Social Audit

Section 36 of the Act provides for social audit of the functioning of the Children Homes, at such a period as prescribed, through such persons and institutions as may be prescribed. There is doubt if the respective government department is aware of this provision in the Act.

## 6. Juvenile Justice Fund

The State Governments were required to create a Juvenile Justice

[51]Rule 29 (10), JJ Rules 2007

[52]Section 35, JJ Act 2000

Fund for the welfare and rehabilitation of or the CWCP. Individuals and Organizations other than the government can also contribute to this fund. The fund shall be administered by the State Advisory Board.[53] It is to be seen how many states have established this fund so far.

## 7. Annual Performance Review

The District CPU, State CPU and the State government are required to make Annual Performance Review of the running of Children Home in the State.[54]

## 8. Linkage and Co-ordination

It is the important responsibility of the state to develop a co-ordination mechanism between various institutions constituted under the J.J. Act and the rules made there-under for the benefit of the CNCP[55]. This responsibility remains un-discharged in almost all the states.

## 9. Children Home

Section 34 of the Act prescribes that State itself or in association with the voluntary organizations may establish and maintain Children Home in every district or group of districts. The CNCP may be housed in the Children Home during pendency of enquiry and subsequently for their care, treatment, education, training, development and rehabilitation. State is required to recognize voluntary organizations for registration of homes under the Act[56]. All Children Homes existing prior to the J.J. Amendment Act 2006 were to register afresh with the government within 6 months from the date of commencement of the Amendment Act. Separate Children Home are to be established for children up to 10 years of age and older children. Up to 10 years, boys and girls can be housed in the same institution. Separate Children Homes are to be established for boys and girls in age group of 10 to 18 years[57]

[53]Section 61 of JJ Act read with Rule 95, JJ Rules 2007
[54]Rule 29 (2), JJ Rules 2007
[55]Section 45, JJ Act 2000
[56]Rule 71, JJ Rules 2007
[57]Rule 29, ibid

The Children Home plays a very important role in the scheme of rehabilitation of the CNCPs Focus of the Children Home has to be on –

- Preparing Individual Child Care Plan
- Arrange for family based non-institutional services such as foster family care, adoption and sponsorship
- Specialized services for needy CNCP like counseling, health, psycho-social interventions etc.
- Emergency outreach service through Toll Free Helpline No. 1098
- Linkage with Integrated Child Development Services for children below 6 years of age
- Linkage with organization/individual who can provide support services to children
- Opportunities to volunteers willing to provide services to children

## 10. Shelter Home

Shelter Home is different from Children Home in its purpose. Shelter Home is basically to function as drop-in centers. They are the centers to cater to the urgent need of care and protection of street children and run away children. The Shelter Homes are to be established by the voluntary organizations only and the state may recognize and provide assistance to them[58]. Shelter Homes may be of three types. Short-stay Homes are to house the CNCP up to one-year duration. Another type of shelter home called the Transitional Homes are meant for housing the CNCP up to four months. The third category of shelter homes are the Drop-in Centers for dropping the CNCP by their parents and guardians.[59]

[58]Rule 30, *ibid*

[59]Rule 30 (3), *ibid*

Shelter Homes for boys and girls should be established separately for different age groups[60]. The Shelter Home managers are required to provide facilities for education, vocational training, counseling and recreation with the help of the voluntary organizations and the corporate sector. The Shelter Home manager shall submit report about the inmates to the CWC, the Missing Persons Bureau, the State Juvenile Police Unit (SJPU) and the CPUs. Any member of the CWC and the SJPUs, a public servant, any social worker, a Childline member or any member of a social or voluntary organization may refer a CNCP to the Shelter Home. A CNCP himself also can report at the Shelter Home for care and protection[61].

## Rehabilitation and Social Reintegration Measures

It is the cardinal principle of child care and protection that the primary responsibility of bringing up a child lies with the family. The aim and objectives for the rehabilitation and social re-integration schemes envisaged under the Act are to restore the dignity and worth of the CNCP in the family itself, wherever possible, or through alternate care programmes in absence of family support. The following four different types of rehabilitation and social integration programmes are prescribed in section 40 of the Act.

1. Adoption;
2. Foster care;
3. Sponsorship; and
4. After-care organization.

### 1 Adoption

Adoption proceedings are strictly legal in nature. A child can be given in adoption only by order of a civil court having jurisdiction in matters relating to adoption and guardians ship. The court may undertake such enquiry and investigation as required before making

[60]Rule 40 (2) (d), ibid

[61]Rule 30 (6), ibid

the adoption order. Only three types of children who are either orphan, or abandoned or surrendered can be given in adoption[62]. The State government concerned are required to formulate Adoption Guidelines. The Central Government may notify a Central Adoption Resource Agency (CARA). The CARA may also issue adoption guidelines. In order to assist and facilitate adoption proceedings, the state government may recognize one or more of its institutions or non-governmental organizations in each district as Specialized Adoption Agency (SAA).[63]

Section 41(6) of the Act prescribes that any person irrespective of marital status and any childless couple may adopt a child. It is further provided that any parent may also adopt a child of any sex irrespective of their own living biological sons or daughters.

Conditions for offer of adoption are prescribed in section 41(5) of the J.J. Act. Before offering an abandoned child for adoption, it is mandatory that the child is declared free for adoption legally by two members of the CWC. A surrendered child can not be offered for adoption till 2 months period for reconsideration is over for the parents to have a review of their decision to surrender the child. A child who can express and understand consent can not be offered for adoption without his/her consent. A surrendered child[64] means a child:-

(i) Born as a consequence of non-consensual relationship;

(ii) Born to unwed mother or out of wedlock;.

(iii) A child whose one of the parents is dead and the live parent is incapacitated to take care ; or .

(iv) A child where the parents abandon the child because of physical, emotional or social factors beyond their control.

In the J.J. Rules, separate procedure for adoption is prescribed[65] for the different type of children. The following procedure for their adoption is prescribed for orphan children -

[62]Section 41 (2), JJ Act 2000

[63]Section 41 (3), *ibid*

[64]Rule 33 (4) (a) JJ Rules 2007

[65]Rule 33 (3), ibid

- The SAA shall produce all orphan children before the CWC within 24 hours of receiving such children for declaring the child to be legally free for adoption.
- The CWC conducts its enquiry/investigation and declare the child legally free for adoption in the prescribed form XIV (given in the schedule attached to the Act).
- Production of child before the CWC is must for the declaration.
- The SAA shall persue the case in the civil court for adoption.

For abandoned children, the following procedure for adoption proceedings shall be followed-

- On receiving information about an abandoned child, the police shall take charge of the infant and arrange for immediate medical attendance.
- Thereafter, the custody of the infant shall be given to the SAA or to the manager of a children home or to a pediatric unit in Government hospital. Then, the infant is to be produced before the CWC within 24 hours by the custodian. The police is also to be informed.
- The CWC to enquire/investigate through the PO/CWO. The report to be prepared within one month.
- The SAA should issue advertisements in the newspapers for the infant, who is below 2 years, for locating the parents within 2 months. For children above 2 years, Missing Persons Squad should be informed and announcement on radio and TV should be made in addition to advertisementsin newspapers within 4 months.
- After the enquiry is completed within 2 months/4 months, as the case may be, the CWC may declare the abandoned infant legally free for adoption if the parents are not found.
- No child above the age of 7 years, who can understand and express consent, shall be declared free for adoption without

his/her consent.

- For a surrendered child, the following separate procedure for adoption is prescribed under Rule 33(4) of the J.J. Rules -
- The CWC should counsel the parents to retain the child. If no result, the CWC shall place the child initially in foster care or arrange for sponsorship.
- A deed on a non-judicial stamp paper is to be executed for surrender in presence of the CWC.
- The SAA has to wait for 2 months after the surrender to allow reconsideration by the biological parent before executing the surrender deed.
- The CWC may declare the child free for adoption after enquiry after that.

In case of adoption of Indian children by foreigners, the Supreme Court has issued guidelines in *Lakshmi Kant Pande V UOI*[66] . The court emphasized that the primary purpose of giving a child in adoption is to provide a better future to the child and a great care must be taken which permitting foreigners to adopt Indian children.

## 2 Foster Care

Foster care is the rehabilitation programme aiming at providing family atmosphere to the CNCP. Two types of foster care programmes have been prescribed under the Act. The first type of foster care programme is meant for those children who are to be given in adoption to a family. Such a child is given in foster care to the family before the adoption proceedings. The objective of this type of pre-adoption foster care is to help the child adjust in the family where he/she is going to stay after the adoption proceedings[67]. The second type of foster care programme is for those children who are not to be given in adoption. These children are those who are neglected by their parents and guardians. A proper family is selected for foster

[66]AIR 1984 SC 469

[67]Section 44, JJ Act

care of such children. Rules 34 to 36 of the J.J. Rules provide for detailed guidelines for selection of a suitable family for such foster care programme. Such children are temporarily shifted to the family selected for foster care. The biological parents are allowed to meet the child staying with the foster family. After rehabilitation, the child may go back to his biological parents[68]. State governments are required to frame rules for foster care programmes. It is very much doubted if all the states have framed such rules.

## 3 Sponsorship

The sponsorship programmes is to provide supplementary support to the families, the Children Homes and the Special Homes to meet nutritional, educational, medical and other need of the children to improve their quality of life. State governments are required to make rules in this regard[69]. Sponsorship programmes are designed to seek support from individuals, organizations and corporate sector.

## 4 After-Care Organization

A CNCP can stay in a Children Home up to the age of 18 years. He/she shall be repatriated from the Children Home after that. There would always be some unfortunate children who do not have any body to support them after they are repatriated from the Children Home. In order to take care of such children, section 44 of the Act read with Rule 38 of the J.J. Rules imposes a responsibility on the state to establish, or help some non-governmental organizations to establish under recognition of the government, After Care Organizations. A CNCP, after repatriation from the Children Home can stay in the After Care Organization up to the age of 21 years. The CWC shall have control over such persons through the After Care Organization. The programme to be undertaken by the organization for the benefit and skill up gradation of the repatriated CNCP shall be designed by the CPU in co-ordination with the voluntary organizations. The purpose behind such programmes is to help the CNCP acquire economic, emotional and social independence so

[68]Section 44 (2), JJ Act 2000

[69]Section 43, JJ Act 2000 read with Rule 37 of the JJ Rules 2007

that he/ she may become a useful citizen. It is true that not all the states have established such After Care Organizations.

## Duties of the CWC towards children victim of abuse and exploitation

The CWC is the guardian of all the CNCP staying in various institutions within its jurisdiction. In case of any incident of abuse and exploitation of the CNCP coming to notice, the CWC shall ensure due investigation by the local police or the Special Juvenile Police Unit. It may seek report from the officer in charge of the institution and take all necessary steps required including transfer of the CNCP to another institution. The local police may be asked to register first information report if any cognizable offence is committed in relation to the CNCP. The committee can also undertake enquiry by itself and consult the Children's Committee in order to ascertain the facts relating to the allegations of abuse and exploitation of the children. The Children's Committee are to be constituted in every institution, consisting of the representatives from amongst the inmates.

## Conclusion

Children are the future of the country, preserved in the hands of their parents. Khalil Gibran said- 'children are not from you, they are through you'. Every person owes to the mankind to give healthy, developed and well, cared children who have the potential of becoming good citizens. Delivering 10th Sunanda Bhandare lecture on 8th November 2004, Justice Shiv Raj Patil of the Supreme Court of India said:

'We must remember that children can not and should not be treated as chattels or saleable commodities or playthings. They are in flesh and blood with life as much as we elders are and they are also capable of becoming as great, as good or as useful as we are and even more. Therefore, they are to be provided with all necessary facilities and atmosphere to grow into responsible and useful citizen of the country. For the full and harmonious development of his or her personality, a child shall grow up in a family environment, in an atmosphere of happiness, love and understanding. Adults can not

barter away the future of the children. There must be conscious efforts by all concerned to take care of children to ensure wholesome development of their personalities.'

It is unfortunate that not all children are lucky enough to be born to the caring and protective parents. Due to various socio-economic reasons, a large number of children do not get the due care and protection they are entitled to from their parents. The State is under legal obligation to provide care and protection to all the CNCP. The Juvenile Justice Act 2000 read with the Juvenile Justice Rules 2007 is a complete code on juvenile justice and care and protection of children. It is the most sacred and important of all the duties of the state instrumentalities to enforce each and every provision of the Act in the same spirit and zeal in which these were envisaged. Unfortunately, it is not happening. The institutions prescribed under the Act for ensuring justice to the juveniles and for the rehabilitation and social re-integrators of the CNCP are not in place due to ignorance, negligence and apathy on part of the state machinery. This situation has to change. The 'Apna Ghar' episode of Rohtak in Haryana is an eye opener for all of us. The state administration has to take a call and ensure that the legal, and basic and fundamental rights of the children are made available within their reach without any hindrance. Otherwise, the future generations would not forgive us for playing with the future of the country. ■

# Observatory Homes for Juvenile Delinquents: Institutions of Behavioural Correction or Exploitation?

**Suchet Kumar***

## Keywords

Juvenile Delinquency, Juvenile in Conflict with Law, Juvenile Justice, Juvenile Welfare Board Observatory Homes.

## Abstract

*This article examines the working of Juvenile Observatory Homes of Punjab with respect to the changes in the juvenile justice system after passage of the comprehensive Juvenile Justice (Care and Protection of Children) Act, 2000 and Rules, 2007. It will examine the impact of these amendments on juvenile offenders kept in the various juvenile observatory homes of Punjab. The major questions posed through this study is that how far these juvenile observatory homes provide just and humane facilities for behavioural correction of the juvenile offenders or on contrary have they become institutes of exploitation and torture for the youngsters? Is malfunctioning of these observatory homes is due to the various shortcomings or lacunae of our legal system? Data was collected through interview of about 100 juvenile inmates and juvenile officials of observatory homes of Punjab and situational factors[1] operating within the family like living with criminal parents, harsh discipline, physical abuse and neglect, poor family management practices, low levels of parent involvement with the child, high levels of family conflict, parental attitudes favouring violence and family separation. Academic failure, low commitment to schooling,*

[1]Rolf Loeber, David Farrington(eds., *Serious and Violent Juvenile Offenders,* Sage Publications Inc., 1998

Author Intro.:
* Assistant Professor (Sociology) Rayat College of Law, Ropar

*truancy, and early school leaving also predict delinquency. Delinquent siblings, delinquent peers, and gang membership foster delinquency especially in adolescence. Finally poverty, community disorganization, vulnerability to the drugs, and neighbourhood adults involved in crime are also linked to the increased risk for later violence.*

*The problem of Juvenile Delinquency which always has been a grave concern for countries like America and Britain today have become an emerging social problem for adolescents and youths in India. The National Crime Bureau's latest report on crime in India reports around 25,125 of cases of juvenile delinquency in India (National Crime Records Bureau Report, 2011).*

## Ideology of Juvenile Legislation in India

Children can not be subjected to punishment or treated as the same with adults. Keeping this in view there are special laws for the treatment of juvenile delinquents. The Children Acts, the Juvenile Justice Act, and the Juvenile Justice (Care Protection) Act contain the seeds of the Juvenile Justice system in India. The Juvenile Justice system, as conceived by legislation, aims at providing care, protection, treatment, development, and rehabilitation of delinquent and neglected juveniles. The purpose is not to impose severe punishment such as rigorous long term punishment but to provide just and humane conditions or environment for their behaviour correction and to provide specialized and preventive treatment services for children and young persons as means of secondary prevention, rehabilitation, and improved socialization[2]. The Juvenile Justice Act has established two bodies - the Child Welfare Committee (CWC) to specifically address the needs of 'children in need of care and protection' and the Juvenile Justice Board to look into matters concerning 'children in conflict with the law'. In the case of 'children in conflict with the law', the Act mandates that after being apprehended the child must be brought before the Juvenile Justice Board (JJB) within 24 hours, or a metropolitan court that may be holding charge of the JJB. Section 10 of the Act further mandates that in no case, juvenile in conflict with law shall

[2]Kumari, Ved , 'The Juvenile Justice System in India: From Welfare to Rights, Oxford, 2004

be placed in a police lockup or lodged in a jail.

The Juvenile Justice Act can be described as:

An Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent children and for the adjudication of certain matters relating to, and disposition of delinquent children

Though neither the JJA and the JJ(C&P) define the terms 'care', protection', 'treatment', and 'rehabilitation' these terms, however, may be understood by reference to the statements in the National Policy and other related schemes. Hence, care ought to include the survival needs of children, that is: adequate food, clothing, and shelter. They ought to be protected against neglect, cruelty, and exploitation. Provisions ought to be made for proper programmes for reforming the behavior and attitude of the delinquent children. Such programmes ought to aim at instilling in children the values of honesty and industrious life so that they become robust citizens, physically fit, mentally alert, and morally healthy, endowed with the skills and motivations needed by society. Measures necessary for their all-round development and growth ought to be made part of the juvenile justice schemes and programmes.

## Observatory Homes

One of the major provisions under the JJA is the provision of three sets of homes for keeping the children. An observatory home or Juvenile Jail is established or recognized for keeping children during the pendency of their proceedings unless they were kept with their parents, guardians, or at place of safety. A juvenile or observatory home is established or recognized for the housing neglected children and a special home for delinquent children. The observatory homes are required to take care of the short term needs of the children, while the other two categories of homes provide care and facilities for development on a long term basis.

## Review of Literature

To date, very little research has examined the impact of new

juvenile legislation governing the treatment of juveniles in India (Hartjen, 1993; Kumari, 1991; Mitra, 1988). Research on juvenile justice in India has focused primarily on incidence and prevalence of delinquency rather than on processing of juvenile court (Hartjen & Kethineni, 1992, 1993, 1996; Hartjen & Priyadarsini, 1984). Primarily, this paucity has been due to the lack of available data and the presumption that in comparison to the United States and other Western countries, India has very little juvenile delinquency. The relative inaccessibility of data on juvenile processing has dissuaded researchers from examining the delinquency problem closely over time.

In India, prior to the passing of the comprehensive Juvenile Justice Act of 1986, almost all laws pertaining to the juveniles were based on the British laws. Those laws were made applicable to India with or without modifications (Sarkar, 1987).The first such legislation pertaining to juveniles was the Apprentice Act of 1850, which dealt with both delinquents and destitute children. This Act had very little impact in India in comparison to similar legislation in the United States and England (Sarkar, 1987). The second legislative effort in the treatment of juveniles came in the form of the Reformatory School Act in 1870, aimed at removing juveniles from adult penitentiaries. This Act, however, did not make striking changes except incarcerating juveniles in separate facilities, which ironically, in many instances, resembled those of adult prisons (Sarkar, 1987). Appalled at the treatment of juveniles in police lockups and facilities, the 1919 Indian Jail Commission provided several reform motive recommendations. Those changes included the enactment of a Special Children's Act, the establishment of separate juveniles courts with special court procedures, and the development of separate institutions for children (Sarkar, 1987). By the 1920s, although still under British rule, Indian provincial (regional) governments could exercise limited self-government. The province of Madras (currently known as Tamil Nadu) enacted Madras Children's Act of 1920 as one of the first provincial pieces of legislation dealing with minors.

The Madras Children's Act provided a distinct legal status to young persons. Under this Act, the state had to incarcerate young

offenders in separate facilities from the adult criminals. Moreover, the Act allowed the state to have legal guardianship over dependent and neglected children. Finally, the Act served as a model for other jurisdictions developing their own children's legislation (Hartjen, 1993). Based on this model, Bengal passed an act in 1922, followed by Bombay in 1924 (Sikka,1982).

The provincial legislation, 1920s remained largely in place for years after India's independence from British rule in 1947 (Sikka, 1982). The first national effort to standardize the juvenile laws occurred with the passage of the Children's Act of 1960, four decades after the ground breaking model of Madras was set up. This 1960 act was made applicable only to union the territories, which were and still are directly under central (federal) administration. At the more independent state level, however, the unification of India's juvenile laws came into effect more than a quarter of a century later with the passage of the 1986 Juvenile Justice Act. The Act laid down a uniform framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock up. It also provided a specialized approach for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and adjudication of certain matters relating to disposition of delinquent juveniles, In 1992, in accordance with International convention on Rights of the child passed by UN in 1989, the Parliament of India enacted the Juvenile Justice (Care and Protection of Children) Act, 2000.

## Juvenile Justice Act

The word delinquency was introduced in Indian law in 1954. The term was initially applied in reference to a child offender and later used in reference to a youthful offender culminating in the JJA of 1986 (Sen., 1993). The JJA defined a male juvenile as younger than the age of 16 and a female juvenile as younger than the age of 18. The reasoning behind this gender difference revealed that differences in socialization practices for males and females in Indian society probably caused the difference. Indian girls are rarely alone or allowed to venture out on their own. In almost all cases, their relatives or responsible adults accompany them (Hartjen &

Kethineni, 1996; Hartjen & Priyadarsini, 1984). The patriarchal nature of Indian society limits the freedom of young girls, and as a result, their emotional and maturational development is delayed in relation to the young boys (Sandhu, 1987). Discrepancy between the boys and girls was removed with the passing of Juvenile Justice ( Care and Protection of Children) Act in the year 2000. The new Act defined a child as person who had not completed eighteen years of age [Section 2(k)] whereas the 'juvenile in conflict with law' means a person who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commencement of such offence. [Section 2(l)].

To give further effect to the provisions of the Constitution and relevant international instruments, the Juvenile Justice ( Care and Protection of Children) Act,2000 was amended in the year 2006. The new Act now called as Juvenile Justice ( Care and Protection of Children ) Amendment Act,2006( 33 of 2006) was enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their developmental needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation. The new amended act has laid down the major fundamental principles such as Principle of presumption of innocence ( Section 3(I)), Principle of dignity and worth ( Section 3(II) ), Principle of Right to be heard ( Section 3 (III) ), Principle of Safety ( no harm, no abuse, no neglect, no exploitation and no maltreatment) Section to be followed in administration of Juvenile Justice and Protection of Children. Principle of presumption of innocence makes a presumption of a juvenile or child or juvenile in conflict with law to be innocent of any mala fide or criminal intent up to the age of eighteen years while Principle of dignity and worth conjures of treatment that is consistent with the child's sense of dignity and worth which is a fundamental principle of juvenile justice. The juvenile's or child's right to dignity and worth has to be respected and protected throughout the entire process of dealing with the child from the first contact with law enforcement agencies to the implementation of all measures for dealing with

the child. Principle of Right to be heard gives every child right to express his views freely in all matters affecting his interest shall be fully respected through every stage in the process of juvenile justice. Under Principle of Safety at all stages, from the initial contact till such time he remains in contact with the care and protection system, and thereafter, the juvenile or child or juvenile in conflict with law shall not be subjected to any harm, abuse, neglect, maltreatment, corporal punishment or solitary or otherwise any confinement in jails and extreme care shall be taken to avoid any harm to the sensitivity of the juvenile or the child.

The JJ Act has created a two-tier system in which cases of juveniles are to be taken up. The cases of Juvenile in conflict with law is adjudicated upon the Juvenile Justice Board as described in Section 4 of the Act whereas the cases of children in need of care and protection are taken up by the Child Welfare Committee as described in Section 29 of the Act.

## Juvenile Jails in Punjab: an Empirical Study

The present study makes an analysis of the juvenile Justice Care and Protection Act 2000 highlighting the various aspects of its malfunctioning with the core focus on the juvenile jails or observatory homes of Chandigarh and Punjab. The data was collected through the interviews of the official staff in charge of these observatory homes (Superintendent and wardens) and about 100 juvenile inmates picked random from the three observatory homes of Chandigarh, Ludhiana and Hoshiarpur. The study highlights certain shortcomings and lacunae in the functioning of juvenile homes of these areas. The following were the major pitfalls:

### I) Lacuana in Functioning of Juvenile Welfare Board

According to the [ Section 4(2) ] of the Act, a Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench. Magistrate on the Board shall be designated as the Principal Magistrate. The magistrate is required to have special knowledge or training in child psychology or child

welfare and the social worker should be actively involved in health, education or welfare activities pertaining to children for at least seven years. (Section 4(3) of Juvenile Justice Act ). Moreover, social worker shall be a person not-less than 35 years of age, who has a post graduate degree in social work, health, education, psychology, child development or any social science discipline and has been actively involved and engaged in planning, implementing and administering measures relating to Child Welfare for at least seven years ( Juvenile Justice( Care & Protection) Rules, 2007)

The major flaw with functioning of the juvenile board is the total absence of the information about its working especially in the Union Territories. *There is no information whether a panel of two social workers to assist the juvenile court, as required by the JJA, were appointed in any of the Union territories or states. Nor is there information as to whether the persons manning the juvenile court/board has the necessary qualifications as mandated by the JJA. Similarly, no information is available as to whether the juvenile boards, as constituted under the JJ(C&P), have the mandatory two social workers with one stipendiary magistrate*[3].

The above fact is a testimony to my observation regarding malfunctioning of the juvenile welfare board at Chandigarh. It was found that the magistrate dealing with everyday cases of juvenile in conflict with law is necessarily not have been trained or has knowledge in neither child psychology or child welfare. Secondly the woman social workers neither have had any experience in any such activities involved of health, education or welfare activities. According the superintendent's statement the woman social workers are always promoted to the bench on Sipharish basis but not on the basis of merit or knowledge of the welfare activities pertaining to children and the juvenile system.

### ii) Violation of the Dress Code by Special Juvenile Police

The police are the primary agency to bring children under the purview of the children Acts. The JJ (C&P) Act 2006 requires that

[3]Kumari, Ved The Juvenile Justice System in India: From Welfare to Rights, Oxford, 2004

every police station should have a juvenile justice/welfare officer and every police district should have a juvenile police unit consisting of these officers. All these officers should be given special training. The behavior of the police personnel and the environment in the police station, for howsoever a brief period, are the first encounters of these children with state machinery and these determine to a large extent the attitude of the children towards the so called parents patriae regime of the JJS.

Rule 11 (c) of the Act states that as soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer who shall immediately report the matter to a member of the board. On interview with the police officials and juvenile staff it was observed that the special juvenile police squad was picked from the normal police who handled the adult criminals. Neither these special juvenile officers were trained in dealing with the young children. As stated by the law the special juvenile police officers were suppose to be in their unofficial dress at the time of catching and apprehending juvenile to the court and then bringing them to juvenile observatory home. But they always remained in their official dress during the entire course . The observed fact reveals that it is due to absence of manpower in police stations to appoint special juvenile police officers . Under the JJ (C&P) Act , 704 special juvenile police units are needed and the number of police officers needed training is estimated to be 2112[4]. There is no information available as to how many police stations in any state have a juvenile welfare/justice officer.

### iii) Delay in Bringing the Juveniles to the Courts

As soon as a juvenile alleged to be in conflict with law is apprehended by the police, the concerned police officer shall inform the designated juvenile or the Child Welfare Officer in the nearest police station to take charge of the matter. He is also required to inform the parents

[4]K.S. Shukla, 'Juvenile Delinquency in India: Research Trends and Priorities' mimeo 1983.

or guardian of the Juvenile about the apprehension of the juvenile, about the address of the Board where the juvenile will be produced and the date and time when the parents or guardian need to be present before the Board. (Rule 11(a) and (b). He is also to inform the concerned probation officer, of such apprehension to enable him to obtain information regarding social background of the juvenile and other material circumstances likely to be of assistance to the Board for conducting the inquiry. (Rule 11 (C)]

Soon after apprehension, the juvenile is to be placed under the charge of juvenile or Child Welfare Officer from the nearest police station, who shall produce the juvenile before the Board within twenty four hours as per sub section (I) of section 10 of the Act[5]. The police apprehending a juvenile shall in no case send the juvenile in lock-up or delay his charge being transferred to Juvenile or the Child Welfare Officer from the nearest police station, if such an officer has been designated. ( Rule 11(3), JJ ( C&P) Act, 2006)

From the interview of the juveniles kept in the observatory home and the Superintendent of that home it has been reported that how ruthless and inhumane are these juvenile police officers in their treatment to the caught juveniles. Soon after the apprehension of the juvenile by the police, many of them have been subjected to severe torture and beating by the police. They, are in fact, treated more of as an adult criminals. The matter is not immediately reported to the board on catching of these juveniles and in fact they are kept for a long period of eleven to twelve's hours in police custody. Even after the courts decision to send a juvenile delinquent immediately to the observatory home these juveniles are kept in police custody during the entire day and at odd hours in night are dropped to the juvenile home. As told by the juvenile home authorities they have never seen the special juvenile police unit in their civil clothes. They are always having been seen in their police uniforms.

## iv) Encouraging Juvenile Inmates For Wastage

In his statement, the superintendent of juvenile observatory home of

[5]The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006

Chandigarh states the peculiar practice of wastage of the domestic items ( Soaps, toothpaste, brushes, oil) by the juvenile inmates on regular basis. Firstly the most expensive brands of soaps, pastes and oils would be issued for the juvenile home. The young children who have seen these items either in television advertisements or at somebody's home enjoy this kind privilege of using the most expensive daily use products freely. They are further encouraged for this wastage by the high authorities who deliberately want the products should finish as soon as possible so that they can sanction the next lot. The idea behind is clearly of earning a high profit motive of these officials who while sanctioning the items and purchases for juvenile home show much higher prices of these items than their actual quoted price in official records. The more early the items would be finished the earlier their profits would come into their pockets by next sanctioning of the lot. In one such instance, the juveniles were caught by the superintendent throwing the bottles containing oils away from the periphery of the observatory house. "They are encouraged to waste" states the superintendent especially when high officials come for their visits. These officials have given them such liberty and also security that in case of any objection by any person the matter should be reported to them.

### V) Understaffing & Low Salaries of The Employees

None of the observation homes except (at Chandigarh) has a full time superintendent with the posts lying vacant for years. Work is managed through caretakers, clerks and additional charge holders. A superintendent was managing four institutes of the department. The observation home meant for girls had 25 of these girls locked up in one small room. Low wages of, especially the caretakers and security guards employed at the observatory home accounts for less dedication and commitment of these employees. The workforce currently employed for this observatory home comprises of one superintendent, one warden, six caretakers and four security guards. For a duty of full twenty-four hours the superintendent is paid a monthly salary of Rs 8000/. The warden comes for just his seven hours of duty is equally paid as that of the superintendent. On the other hand the six caretakers for their eight hours, duty are just paid

a meager salary of Rs 3000. The four security guards employed for the full time job are also paid very less. Against the prescribed salary of Rs 6500/ the placement agency offers them Rs 3600 at the time of their selection but actually pays them Rs 2640.

The lack of sincerity and full dedication of these employees for taking care of the juveniles is clearly visible owing to the less wages being paid, says the superintendent. The economic exploitation is clearly seen in case of the security guards whose 12% of the salary is deducted every month which in not any of their provident fund savings. The poor security guards have no knowledge that where their 12% of the savings goes. It is believed that the placement organization which sends the names of theses security guards for recruitment into various government offices keeps this 12% of their savings with them. Moreover the employees and staff at juvenile home have developed a sense of inferiority complex when they see the items of daily use ( Soaps, Toothpaste, Oil) given to juvenile inmates are of high quality.

### vi) Juvenile Home More Being A Luxurious Hotel

The juvenile observatory home of Chandigarh has a well built building spreading in quite a large area with spatial lawns on its front. The big rooms with proper beds, bathrooms with hot water facilities, Proper food, Recreational room having television, small library, indoor games provide good services for the juveniles. However this good maintenance of the juvenile home has backfired the authorities.

According to the Juvenile Justice Act a juvenile refers to the boy or a girl who is less than the age of 18 years. Therefore any boy or a girl less than the age of eighteen if commits a crime is send to the juvenile observatory home for his behavioral correction. The environment and services offered at a juvenile home is far different from that of the normal prison. It has been observed that in quite a number of cases the offenders who happen to above the age of 18 are brought to the juvenile homes. Their age is distorted through production of false birth certificates mentioning their age much less than their actual age so that they come under the ambit of juvenile

delinquents and are send to juvenile homes rather than the normal prison. Lawyers and NGO's having been playing a major role in helping such type of adult offenders to seek false certificates and stay at juvenile home with much liberty and comfort for a shorter duration. It has been also reported by the staff that some juveniles especially coming from slums will deliberately commit a crime to earn a comfortable stay at juvenile home. Some also do it at a particular season e.g. in one case a juvenile offender had fixed his winter's home as the juvenile house.

The Juvenile observatory Home of Chandigarh which has become a boon for juvenile offenders, on other hand presents a dismissal picture at Ludhiana, Fardikot, Hoshiarpur. In gross violation of the Juvenile Justice ( Care and Protection Act 2000, the Department of Social Security has housed more than 200 juvenile delinquents in its observation homes in pathetic condition. The children, some as young as a six and seven years old, are living in inhuman conditions, surviving on low-quality food with no facility for education, recreation and virtually no medical kit. A majority of the inmates are being tried for petty crimes and are being treated like hardened criminals in jails. In Faridkot, 35 inmates are cramped in three dingy cubicles of a house with a grill gate locking them inside. Most of the inmates here are suffering from scabies ( a skin disease ) and only after the insistence of the inmates did the in-charge get a doctor to see them. Doctors do not visit these homes regularly though the staff everywhere claimed that they had in-house pharmacists who give medicines. "Even in case of serious injuries we have to wait for days before a doctor comes." Reported inmates at Faridkot and Ludhiana. Bathroom without doors remain full of filth with the overpowering stench spread through the rooms. Due to an acute shortage of staff, the inmates act as sweepers, cooks and in some cases even run errands for the staff.

### vii) Negative Role of the Ngo's

Many NGO's (Non Government Organisations ) running in Chandigarh are performing their role to the contrary. Each and every NGO has been assigned a stipulated objective by the government with certain time constraints. Therefore in order to

meet their targets certain NGO have resorted to some unfair means and inhumane practices. In some of the cases, these NGO's have deliberately picked up young boys and girls from their neighbourhood in slums and have given them to Juvenile Homes for their care and Protection under a wrong address. They have been made orphans by NGO's itself so as to attain their own project targets. Besides this, it has been reported that some missionaries/ NGO's on their visits to juvenile home have been using ceratin tactics and practices to influence the young children to get converted into Christanity. They instigate young juveniles to live with much desired liberty and report any type of strictness and harshness inflicted by the juvenile staff.

### viii) Problems by Higher Aged Juveniles

With help and support of the local NGO's and lawyers many parents have placed their children in juvenile home those whose ages have been above 18 years. Through fake certificates and manipulations the higher aged juveniles in order to escape the custody of normal prison are found in juvenile homes.

Therefore under these conditions higher aged juveniles have been found bull eying the younger juveniles. Some of them have been seen indulged in homosexuality. These higher aged juveniles are even not scared of the juvenile staff and authorities and have been misbehaving with them also. The problem of higher aged juvenile is not only due to the age distortions done by their parents, NGO's and lawyers but also due to the non-classification of the categories of juvenile delinquents.

According to [Section 8(4)] in the observation homes it is mandatory to have classification according to the age groups such as 7 -12 years, 12-16 years and 16-18 years of juvenile delinquents. While doing such classification, due consideration has to be given to physical and mental status and degree of offence committed, for further induction of the juvenile into observation home. In the juvenile observatory home, Chandigarh no such classification has been made.

### ix) Absence of Teachers & Vocational Training

In most homes there are no teachers or a facility for vocational training. In Ludhiana, a teacher visits the home each day but according to the inmates does not teach anything. There are no indoor games anywhere. Functioning water coolers, fridges, desert coolers and even fans and tube lights are luxuries.

## Conclusion

The sole objective of the Juvenile Homes is to ensure care, protection, development, and rehabilitation of its inmates. Despite a decade of a separate act meant to deal with juvenile delinquency, the situation on the ground has not changed much. India's juvenile justice system calls for complete overhauling to tackle the sluggish pace of judicial processes and lack of proper care at observation homes. The present statement is testimony to the fact of dismal picture juvenile homes of Punjab on the basis of the study. The homes rather providing just and humane conditions for behavioural correction of juvenile delinquents have become the institutes of torture, exploitation and corruption. Any victimization or abuse that youngsters suffer in a correctional facility can be expected to leave psychological scars and undermine their chances of changing their ways and becoming productive members of society. Despite a juvenile home providing all adequate facilities with good infrastructure as in the of case of Chandigarh has turned to out to be bane by attracting juveniles hailing from poor families to deliberately commit crime so as to spend few months in a well furnished juvenile jail for proper food and shelter. This has also encouraged corruption amongst the juvenile officials, the torture of the police due to non existence of special juvenile force, inhumane deeds of NGOs by abduction of juveniles, manipulation of the ages, understaffing of employees and slow justice system are some of the major areas of grave concern in juvenile homes. At the time of writing this article, there were over 3,000 cases pending with the juvenile justice court. The victimization of youngsters in correctional facilities should be of concern not only to the scholars, but also to judges, probation officers, parole officers, and practicing social workers. The juvenile justice system relies heavily on residential services for adolescent

offenders and the rise in juvenile crime over the years has led to increasing incarceration. It is important that professionals in both the judicial and the correctional systems be aware of the violence and abuse that juveniles in correctional facilities may suffer. Above all, a change in the mind set is the need of the hour. Children who have committed offences have to live with the guilt all their lives. They must be shown some direction as they are unable to cope with life outside once they are released. Therefore, the change in attitude is required at all levels.

## References

Chatterjee, G. 1995. Child criminals and the Raj. New Delhi, India: Akshaya Publications.

Emile Durkheim , The Rules of Sociological Method

Government of India. 1999. India [On-line]. Available: http:/www.madras.com

Hartjen, C. 1993. 'Legal change and juvenile justice in India'.International Criminal Justice Review, 5, 1-15.

Hartjen, C., & Kethineni, S. 1992. 'Delinquency in comparative perspective: India'. International Journal of Comparative and Applied Criminal Justice, 16, 317-327.

Hartjen, C.,&Kethineni, S. 1993. 'Gender, culture and delinquency: A study of youths in the United States and India'. Women and Criminal Justice, 5, 37-70.

Hartjen, C., &Kethineni, S. 1996. Comparative delinquency: India and the United States. NewYork: Garland.

Hartjen, C.,&Priyadarsini, S. 1984. Delinquency in India. New Brunswick, NJ: Rutgers University Press.

Janeksela, G. 1991. Descriptive analysis of five juvenile justice systems: United States, Scotland,

England, Indian, and South Africa.International Review of Modern Sociology, 21, 1-19.

Krishna, U. 1993. 'Adolescents'delinquent behavior and personality'. Indian Journal of Criminology,21(2), 90-94.

K.S. Shukla, 1983. 'Juvenile Delinquency in India: Research Trends and Priorities' mimeo

Kumari,V. 1991. 'Constitutionality of sex-based definition of juvenile under the Juvenile Justice Act', 1986.Delhi Law Review, 13, 95-108.

KumariVed , 2004 The Juvenile Justice System in India: From Welfare to Rights, Oxford

Mitra, N. L. 1988. Juvenile delinquency and Indian justice system. NewDelhi, India: Deep and Deep Publications.

Mohan, V., &Nalwa, K. 1992.'Delinquency proneness as related to deprivation'.Indian Journal of Criminology, 20(2), 93-98.

Mookerjee, A. 1989. 'Juvenile justice: An in-depth study on matters related to children'. Calcutta, India: S. C. Sarkar& Sons Private Ltd.

Nagla, B. K. 1981. 'The Juvenile Delinquent in Society'.Indian Journal of Criminology, 9(1), 44-49.

Rolf Loeber, David Farrington (eds). 1998. Serious and Violent Juvenile Offenders, Sage Publications Inc.,

Sandhu, H. S. 1987. 'Low rates of delinquency and crime in India'. Indian Journal of Criminology, 15(1), 9-16.

Sarkar, C. 1987. Juvenile delinquency in India. New Delhi, India: Daya Publishing House.

Sen, S. 1993. 'Juvenile delinquency'.Indian Journal of Criminology, 21(2), 82-89.

Sikka, K. D. 1982. 'Juvenile justice system reexamined' Indian Journal of Social Work, 43, 253-260.

Sivanandam, C. 1990. 'Frustration-reaction patterns in women criminals and girl delinquents'. Indian Journal of Criminology, 18(1), 28-35.

# Police Trainees & Stress: A Study With Special Reference to Kerala Armed Police Battalion

**Suraj Kushe Shekhar***
**Siby Joseph K****

## Keywords

Stress, Police, Trainees

## Abstract

*Stress is an integral part of Police personnel. This paper focuses on stress among Police Trainees and identifies the factors causing stress along with the strategies adopted to reduce the stress. Descriptive research with judgmental sampling technique was employed to select a sample of 65 Police Trainees in Kerala Armed Police IVth battalion, Kerala, India. Findings revealed that 'Pressure from the instructor' ( $\beta$ =.786), was the prime cause of stress. It was also found that 'Low salary' ($\beta$ = -.144), was insignificant as a cause of stress. Regardless of the source of stress, most Police Trainees used variety of sensory pursuits to manage stress. The positive sensory pursuit followed by the trainees was exercise (63%), followed by outings (37%) on weekend days and then TV/ music. Multiple regression analysis, ANOVA, t test, etc were used to interpret the results.*

Author Intro. :

* Junior Research Fellow of the UGC (PhD Scholar), Department of Management Studies, Kannur University, Kannur, Kerala-670661, INDIA. surajkushe@gmail.com

** Asst. Professor, Department of Management Studies, St. Berchmans College, Changanacherry, Kottayam, Kerala- 686101, INDIA. sibyjoseph_k@yahoo.co.in

## Introduction

The seventeenth century has been called the age of enlightenment; the eighteenth century as the age of reason; the nineteenth century as the age of progress; and the twentieth, the age of anxiety. It is not surprising that interest in 'stress' has been rising with the advancement of the present century. Stress is becoming a global phenomenon affecting every country, professions and all categories of workers. Technological and information revolution, fast materialistic life, innovation and growing competition have generated in man a feeling of powerlessness, helplessness, meaninglessness and in turn a source of consequent stress. As a result, today man experiences unprecedented turmoils, traumas and psychological conflicts.

Toffler (1970) in his famous book 'Future Shock' explained shattering stress and disorientation subjecting the people, so much of the change in too little time. Toffler exclaimed that change will be continuous and that the pace will even accelerate in future. Employees constantly complain of conflicting goals, work overload, difficult bosses/colleagues/ subordinates, and lack of adequate participation in decision making which dampen their spirit in work, and thus reduce them to glorified industrial mannequins.

In India, the law enforcement personnels are exposed to high levels of stress in their professional years. Personnel who belong to uniformed services, and are allotted field responsibilities are even more prone to stress and its adverse effects. The job performed by a typical Police personnel, whose delegated field duties involve day-to-day physical dangers and psychological discomforts which results into a range of attitudinal, behavioral and relationships problems. The task performed by personnel who are in Indian Police Service range from detection, control and monitoring the anti-social elements, so that the members of the society feel protected, safe, and secure. The Police personnel act as the white blood corpuscles to wage their defenses against anti-social elements whose primary task is to disrupt the day to day functioning and social fabric of the civilization.

Armed Police Battalions are formed to assist the local Police in

emergency situations like communal disputes, elections, natural calamities and law and order problems. In case of crisis, the force is also deployed outside the state. Armed Police Battalions are the feeder units for the district Police force. The Armed Police Battalion is the sole entry point for personnel recruited into the Kerala Police, India. These battalions have their origin at the evolutionary stagees of the Kerala Police. It has eight Battalions functioning under the Director General of Police, Kerala State, India.

Kerala Armed Police (KAP) IVth Battalion was formed with headquarters originally at Aluva, Kerala, India. The camp was subsequently handed over to Superintendent of Police, Kannur District, Kerala State, India, for the use of the armed reserve sub camp of Kannur District. Temporary contingents of Central Reserve Police Force (CRPF), Madhya Pradesh Special Armed Force (MPSAF), etc were also accommodated here during the period of their deployment in the District. The battalion headquarters was later shifted to the present location, Mangattuparamba, Kannur District in 1983. The total area of the camp is about 87.78 Acres

The job expected to be performed by Police personnel are sometimes dangerous wherein the situations often becomes unpredictable, unique and demanding. Exposed to myriad range of occupational stressors, the cognitive mechanism which is an innate property of human mind is very often thrown into turmoil, resulting into unpleasant consequences on health and well-being. However, an equally compelling body of research provides sufficient evidence that occupational stress is not always awful; in fact, reasonable level of stress, sedentary life styles and physical work out contributes to facilitate the efficiency of cardiovascular system and its performance. The present paper focuses on the stress among the Police Trainees and identifies the factors causing stress along with strategies adopted to reduce the stress.

## Literature Review

Research studies on stress and health have grown in voluminous proportion and comprehensive review are available in the literature (Nagar & Sharma, 2005; Dalal& Ray 2005). A review of literature

of Indian Police specific studies indicated that Police personnel are faced with the grim reality of occupational stressors, which consists of job and role related stressors. For example, a latest study conducted by Siwach (2001) attempted to explore the impact of police specific stress and burnout stress syndrome on the well being of Police personnel. The researchers empathetically argued that particular attention should be given to the stress in policing because its potential negative consequences affect their well-being in more direct and critical ways relative to stress in other professions. Pillai (1987) in his study suggested exploring the need for periodical diagnosis of stress and related symptoms to strengthen the improved functioning of system and enhance the health and job satisfaction among police personnel. Mathur & Pragya (1993) opined that longitudinal studies would give better insights to identify the impact of Police work on individual. They also suggested that the family members of police personnel must also be included in future studies.

Police personnel operating under severe and chronic stress and burnout syndrome are at great risk of errors. Accident and over-reaction can bring hindrance to their well-being and performance, jeopardizing the public safety and posing significant liability to the organization. Maria (2005) investigated the stress profiles of Police personnel posted in the Police station in Hyderabad, India. The major stressors affecting the life of the Police personnel were related to the inadequate time for family, work surplus, accommodation problem, lack of confidence of superiors, no time for cerebral development and recreation, to keep everyone satisfied, unsafe situations, problem of job harmonization, lack of clarity in expectation and coping with superiors. A number of scholars have focused their studies on stress, coping tolerance and health of personnel who are performing duties in the uniform services like Police and military (Paulus, Nagar, Larry & Camacho, 1996; Alam, 2006 & Swanson, 1998). The study of Swanson (1998) had focused on various steps related to reducing the adverse effects of stress. The researchers have noted that rigorous physical exercise that last for 20 to 30 minutes at least three times per week, maintain a proper diet, getting adequate rests, avoiding caffeine within

five hours of going to bed, developing leisure interest such as hobbies, gardening etc, meditating praying, establishing support system, using relaxing techniques and so forth as potent factors that tend to reduce the adverse effects of stress and promote wellness. It is evident from scanning the literature that very few studies were conducted to explore the stress of Police Trainees. Based on the review of relevant literature, the present study identified the following objectives.

- To identify most important factors causing stress amidst the Police Trainees.
- To identify the various strategies adopted by the Police Trainees to reduce the stress.

## Methodology

To achieve the research objective, a cross sectional survey was conducted amidst the Trainees of the Kerala Armed Police–IV$^{th}$ Battalion. A well structured questionnaire was designed to understand the demographic variables, factors causing stress, and the methods adopted by the Trainees to manage the stress individually. A five point Likert's scale was developed to measure the level of stress among the Police Trainees. With the population of 650 police trainees, a batch was taken as sample for study. 10% of the batch size was taken as sample. Secondary data were collected from various articles and journals.

Multiple regressions are statistical techniques that allow predicting someone's score on one variable on the basis of their scores on several other variables. It includes many techniques for modeling and analyzing several variables, when the focus is on the relationship between a dependent variable and one or more independent variables. A multiple regression analysis was carried out on four critical identified factors /variables ( predictor variables) causing stress namely 'Long training hours', 'Pressure from instructor', 'Low salary' and 'Competition'. 'Factors causing stress' was designated as the criterion variable. ANOVA, t tests were also used to predict the results. SPSS version 12 was used as the software to carry out the analysis. Results were interpreted at 95% confidence interval.

## Findings

The average age of Police Trainee was 26 years and 80% of the trainees fell in the age group of 18-24 years. Of the difference levels of education, 34 % of Police Trainees had completed Higher Secondary (12 years of schooling) followed by 30% of Degree holders. 93% of the Police personnel trainees were not married.

Being aware of the factors causing stress is an important step in managing and mitigating its negative effects. To ascertain this, a multiple regression analysis was performed and yielded the following result. The model summary indicated the following result as shown in Table 1;

### Table – 1: Model Summary

| Model | R | R Square | Adjusted R Square | Std. Error of the Estimate |
|---|---|---|---|---|
| 1 | .923(a) | .852 | .838 | 9.63770 |

a. Predictors: (Constant), Long training hours, Pressure from instructor, Low salary and Competition

Source: Survey data

The Adjusted R Square value (.838) from Table 1 indicated that the model accounted for 83.8% of variance. ANOVA result from Table 2 indicated an overall significance ($p < 0.05$) for the model.

### Table – 2: ANOVA (b)

| Model | | Sum of Squares | Mean Square | F | Sig. |
|---|---|---|---|---|---|
| 1 | Regression | 22447.277 | 5611.819 | 60.417 | .000(a) |
| | Residual | 3901.149 | 92.884 | | |
| | Total | 26348.426 | | | |

a. Predictors: (Constant), Long training hours, Pressure from instructor, Low salary and Competition

b. Dependent Variable: Factors causing stress

Source: Survey data

Standardized beta coefficients which give a measure of contribution of each variable to the model (Table 3), indicated that the variable named 'Pressure from instructor' had the highest beta coefficient. This clearly dictated that a unit change in this predictor variable had a large effect on the criterion variable. Variable named 'Competition' between the Trainees to excel well above one another in training had second largest beta coefficient followed by variable named 'Long training hours'. The t and Sig (p) values which gives an indication of the impact of each predictor variable indicated significance for all the variables ($p < .005$) except 'Low salary' ($p > .005$).

## Table – 3: Coefficients (a)

| Model | Unstandardized Coefficients | | | Standardized Coefficients | t | Sig. |
|---|---|---|---|---|---|---|
| | | B | Std. Error | Beta | | |
| 1 | (Constant) | -232.079 | 30.500 | | -7.609 | .000 |
| | Competition | 1.298 | .252 | .406 | 5.159 | .000 |
| | Low salary | -.162 | .110 | -.144 | -1.469 | .149 |
| | Long training hours | .530 | .156 | .394 | 3.393 | .002 |
| | Pressure from instructor | 1.254 | .165 | .786 | 7.584 | .000 |

Regardless of the source of stress, most trainees used variety of sensory pursuits to manage stress. Sensory pursuits are described as an activity that produces physical stimulation. The positive sensory pursuit followed by the Trainees was exercise (63%), followed by outings (37%) on weekend days and then TV/ music.

While individuals took responsibility for managing their own stress, they also expected support from their organization. The survey asked the Police Trainees to rate the ways how their organization helped them to combat Stress. 63% responded that' Games' organized by the organization was the most important way to manage the stress.

## Conclusion

Work occupies a major portion of one's life, in terms of both time spent and importance. It contains the potential for many

forms of gratification and challenge and harm. It is not surprising that many people find work life stressful. Indeed, stress at work is so common place that one tends to accept it as part of the necessary frustration of daily living. It is often assumed that police personnel because of the typical nature of their work are more vulnerable to the ravages of stress.

Findings revealed that 'Pressure from the instructor' (β =.786), was the prime cause of stress. It was also found that 'Low salary' (β = -.144), was insignificant as a cause of stress. Regardless of the source of stress, most Police Trainees used variety of sensory pursuits to manage stress. The positive sensory pursuit followed by the trainees was exercise (63%), followed by outings (37%) on weekend days and then TV/ music. 'Games' organized by the organization was the most important way to manage the stress.

This study focused on factors causing stress amidst the Police Trainees and also identified the various strategies adopted by the Police Trainees to reduce the stress. The central purpose of the study was to evaluate the mean dimensions of stress and its role in balancing the work life. The study supported the existed body of literature that Police Trainees too had a similar pattern towards the cause of stress and strategies to combat the stress like 'Police Men' who had completed the training and deployed in their duties. ■

## References


1. Alam.S.(2006). Influence of Occupational Stress on Adjustment: A Study of Police Personnel. The Indian Police Journal,1, 50-61.
2. Dalal, A. K., & Ray, S. (2005). Social Dimensions of Health,Jaipur: Rawar Publications.
3. Mathur & Pragya (1993).Stress in Police Personnel: A preliminary Survey. NPA Magazine. 45(2),12-16
4. Maria B. (2005). Applications of Psychological Principles in Maintenance of Law and Order.,Bhopal: Balaji Publications..
5. Nagar, D. & Sharma, A. (2005).Influence of the Community Living and Environmental Stressors on Health Well-being, Jaipur: Rawat Publications.

6. Paulus, P., Nagar, D., Larey, T., & Camacho, M. (1996).Environmental, Lifestyle and psychological Factors in the Health and well-being of Military families. Journal Applied Social Psychology.26,2053-2075.

7. Pillai (1987).Applications of Psychological Principles in Maintenance of Law and Order,Bhopal:Balaji Publications.

8. Siwach, S. (2001).Major Stressors in Police Organization. The Indian Police Journal, 50(1),47-56.

9. Swanson S. (1998). Police specific stress, Burnout stress syndrome: Effect on Well-being. The Indian Police Journals. 48, 18-26.

10. Toffler, A. (1970), Future Shock, New York.

# Work Stress in Police Personnel The Role of Job Hierarchy and Job Tenure

**Abhay Pratap Singh* & Sushma Pandey ****

## Keywords

Job Hierarchy ,Organization ,Police Personnel, Tenure, Work Stress.

## Abstract

*Present study is aimed to investigate the level of work stress in police personnel. A 3x2 factorial design with three levels of job hierarchy (i.e., officers, sub inspectors & constables) and two levels of job tenure (i.e., short job tenure & long job tenure) was used. A total of 240 police employees were randomly selected from various police stations of Eastern U.P. Objective work stress scale and work stress profile (Carry Cooper, 1983) were used to determine the level of stress in employees.*

*Results revealed that the extent of work stress varied significantly in various group of police employees. Objective work stress was found greater in sub- inspectors than constables and officers respectively. Whereas, feeling of work stress was also found higher in constables than sub inspectors and officers respectively. More specifically, stress caused by interpersonal, physical condition and job interest were found grater in constables as compared to sub inspectors and officers respectively. Job tenure also exercised impact on stress level of employees. Short job tenure group reported more stress caused by job*

Author Intro. :

* Dr. Abhay Pratap Singh , Lecture, Akhilbhagya P.G Collage Gorakhpur. e- mail- singhabhay203@rediffmail.com

** Dr. (Mrs.) Sushma Pandey , Associate Professor , Dept. of Psychology, DDU Gorakhpur University, Gorakhpur. e -mail - sushma_35gkp@rediffmail.com

*tenure as compared to long job tenure group. The role of job hierarchy and job tenure in work stress have been proved on the basis of present results. Findings have been discussed in the light of organizational and personal factors.*

## Introduction

High pressure at work place has been identified as taxing and challanging to any organization. Worldwide statistics concerning the dynamics of stress at work place and its consequences, reveals that work stress has emerged as one of the most acute problems throughout the world and damaging the health and performance of employees and organization too (Cartwright et al., 1993; Pandey & Srivastava, 2004; Rice, 1987; Singh,2010; Tiwari,2006).

The police force is one of the largest organizations in India and the work of police personnel is very challanging and also necessary for preventing crime and providing security to public. In spite of great efforts by the government and the police organization, the crime rates are increasing rapidly day by day. The police has to encounter not only traditional types of crimes but also deal with socio-economic crimes, white collar crimes, blue collar crimes, organized crimes, abuse of drugs and narcotic, trafficking, crimes against women and children, crimes related to slum and so on. Police employees are also found busy in VIP securities; they also control various religious processions as well as maintain law and order in society.

In brief, the day-to-day work and its constant reallocation bring police personnel directly in contact with a number of anti social activities. Police personnel ranging from officer class to constable level have to work in emergency facing a lot of constraints including long duty hours, political pressure and strain. Such stressors cause high level of work stress in police employees. Despite this, the inherent nature of their job is such that they are exposed to high degree of work stress irrespective of the rank they hold, which cause mental pressure, physical exertion and low level of performance.

During the last few decades, organizational psychologists have

shown their interest to identify the causative roots of the problems and their consequences on police personnel and the organization too( Singh,2010). According to the National Police Commission "police men work for long and arduous hours on the most days of duty, very much in excess of the normal eight hours". (National Police Commission, 1979). A survey carried out by the national productivity council has revealed that the normal working time put in every day by an average subordinate police officer employed in public order or crime investigation duties is anywhere between 13 to 16 hours on an average. The police job is said to be 'twenty four hours duty'.

The policeman works over even on gazetted holidays, when others celebrate their festivals. They are sometimes not able to avail their normal entitled leave every year. The upcoming trend of suicides or killing of superior officer on refusal of leave amply testifies the frustration, stress and strain caused by unfavorable work culture prevailing in police force. Even the peons and clerk employed in private and public sectors enjoy better quality of work condition than policeman serving the country. The prevailing capture and callous work culture had made the police force the democratic slaves. They are bound to confront with excessive work stress.

## Work Stress

Stress is a widely studied area in psychological researches. It is a dynamic condition in which an individual is confronted with an opportunity, constraint or demand related to what he or she desires and for which the outcome is perceived to be both uncertain and important.

Consistent with recent conceptualization, Beehr and Bhagat (1985) defined, "work stress is a psychological state experienced by an employee when faced with demands, constraints, and/or opportunities that have important but uncertain outcomes". Job/ work stress has been conceptualized on the basis of numerous theoretical perspectives i.e., The Response Based Approach ( Selye ,1956) . The Stimulus Based Approach ( Welford ,1973) , Transactional Model of Stress environment (Cox & Mackay, 1978), Cognitive Energetical Model ( Sanders ,1983), Social Environmental Model ( French & Kahn ,1962) , Managerial

Oriented Model of Stress (Matteson & Ivancevich ,1982) , P. E. Fit Approach ( Caplan, Naidu & Tripathi, 1984; French, Rogers & Cobb, 1974) Bounce Model ( Pestonjee ,1983) and Workplace Related Model of Stress ( Cooper ,1989)

Cooper (1989) propounded Workplace Related Model of stress to explain the dynamics of work stress on workplace and its consequences . This model represents three interrelated stages, viz.; source of stress, symptoms of stress and diseases (outcome). First level of the model denotes six major sources of stress. These sources are: Stress intrinsic to the job, role in the organization, relationships at work, career development, relationship with co-workers and boss at work, stress related to carrier development, stress caused by organizational structure and climate and non-work factors. These stressors cause symptoms at individual and organization levels. Individual related symptoms include raised blood pressure, depressed mood, excessive drinking, irritability and chest pains whereas, organization related symptoms are found in the form of high absenteeism, high labor turnover, industrial related difficulties and poor quality control. Disease is the outcome of the dynamic relationship of stressors and symptoms. At individual (employee) level, it causes mental illness and coronary heart disease and at organizational level, prolonged strikes, frequent and severe accidents, apathy etc. are found as the outcomes of stress. Cooper et al (1996) identified three types of negative personal outcomes of work stress viz; behavioral symptoms, physical health symptoms and psychological health symptoms.

Thus, work stress is opined as a perceived dynamic state involving uncertainty about something important. The dynamic state can be associated with opportunities, constraints or demands. The state of opportunity is perceived by the individual to offer the potential fulfillment of important needs and values. States of constraint are perceived to be blocking or preventing current fulfillment of important needs and values. States of demands are those of the physical environment of the work place such as noise, heat and toxic chemicals which influence important needs and values both perceptually as well as objectively (Schuler, 1980).

A study was carried out on police professionals and it was found that non gazetted officers were carrying more organizational role stress than gazetted officers (Singhvi & Mathur, 1997). Pillai (1987) studied stress in constables and found that the extent of stress is greater in short job tenure employees as compared to long job tenure group. Deb et al.(2006) carried out a study on the traffic constables and officers of Kolkata city. It was found that traffic constables were more stressed than traffic police officers. Singh (2007) also pointed out that the level of stress vary among different group of police employees. Ramachandran (1989) evinced that type and intensity of problems related to stress varied across different age groups of constables. Saxena (2000) revealed that constables have high degree of derivational stress and organizational role stress than sub inspectors. A sizeable number of researchers have identified the influence of job category duration, coping, control and personality factors on work stress (Mishra &Srivastva,1997; Pandey & Srivastava, 2004; Tiwari, 2006; Tiwari & Mishra, 2008; Singh,2010).

## Objective

Against this backdrop, this study was carried out to investigate the influence of job hierarchy and job tenure on the work stress in police personnel.

Hypotheses : On the basis of above objective, following hypotheses were formulated. It was hypothesized that-

- The work stress would vary among three job hierarchy groups. More specifically, the level of stress would be found greater in Constables than Sub-inspectors and Officers respectively.
- The extent of work stress would also differ in two job tenure groups .More specifically, Stress would be found higher in short job tenure as compared to long job tenure groups.

## Method

### Design

This study is based on a 3x2 factorial design with three level of job hierarchy i.e. officers, sub inspectors and constables and two level

of job tenure i.e. short job tenure (below 10 yrs) and long job tenure (above 10 yrs) .

Sample: A total of 240 male police personnel participated as respondents in this study. Stratified random sampling technique was used. The sample was selected from various police stations, traffic offices , fire stations, PAC offices of Eastern U.P.

## Measuring Tools

Work Stress Measure : In order to assess objective as well as feeling of work stress, two measures were used.

### (i) Objective Work Stress Scale

This scale was used to assess the actual position of stressors at work place. This scale contains eight items to determine the level of objective work stress. Responses given by participants on each items of objective work stress scale were scored following 1, 2, 3, 4 and 5 order. In scoring pattern . Total summated scores obtained on each item were considered the level of actual work stress in participants.

### (ii) Work Stress Profile

The feeling of work stress was measured by using Work Stress Profile (Cooper, 1983). This profile includes three sub-scales and consists of 57 items. The first sub-scale is intended to assess stress due to problems in interpersonal relationship and job satisfaction or dissatisfaction, as the case may be. The second sub-scale measures the physical demands of work that wear on the person daily. The third sub-scale measures job interest and involvement. Items pertaining to these areas were rated on five point scale.

Scoring: In this profile 14 items are positive and remaining 43 items are negative. In the first sub-scale i.e. interpersonal, 8 items are positive and remaining 18 items are negative. In the second subscale i.e. physical condition, all the 22 items are negative. Furthermore, in the third subscale, i.e., job interest, 6 items are positive and 3 items are negative. Positive items are scored in terms of 5, 4, 3, 2, 1 whereas, negative items were scored following 1, 2,

3, 4 and 5 order. Total summated scores obtained on each sub-scale were considered the level of stress related to particular dimension. Higher scores denoted more stress and lower scores indicated low stress level in participants. On the basis of obtained scores on each subscale, the stress caused by interpersonal, physical condition and job interest, were determined.

## Procedure

Respondents were contacted at their workplaces. They were introduced about the problem of the study. Each participant was promised that his personal views and information would not be disclosed at any cost. After receiving the initial willingness of the respondents to participate in the study, their background information's were collected on the basis of Personal Data Sheet (P.D.S) . Then, they were requested to respond on objective work stress scale and as they completed their responses on this scale again they were requested to respond on work stress profile. As soon as , they completed their responses on above said measures, data were collected and respondents were thanked for participation. Obtained data were scored according to defined rules as given in manuals.

## Results

Obtained scores were treated statistically in terms of Means, S.Ds and ANOVA analyses. Results includes the comparative analysis of the studied variable i.e.; work stress, in different groups of police personnel. Results are displayed in tables and figures.

Table 1 displays means and SDs of work stress, responded by participants belonging to different groups (Fig.1). Results show that the level of work stress varied across different groups of police personnel.

**Table 1: Means and SDs of work stress as a function of job hierarchy and job tenure**

| Variable | | Officers | | Sub Inspectors | | Constables | |
|---|---|---|---|---|---|---|---|
| | | S.J.T. | L.J.T. | S.J.T. | L.J.T. | S.J.T. | L.J.T. |
| Objective work | Mean | 20.53 | 22.70 | 25.97 | 26.71 | 23.74 | |
| stress | S.D. | 4.47 | 7.02 | 6.61 | 7.23 | 5.39 | |

N = 240, S.J.T. = Short Job Tenure, L.J.T. = Long Job Tenure

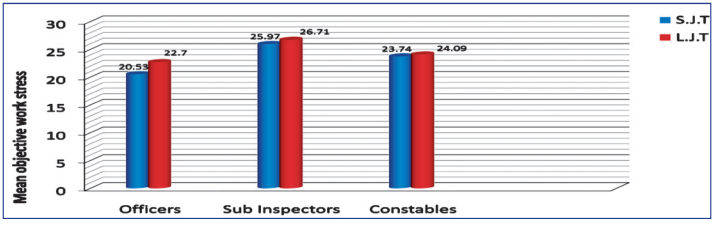



**Fig. 1: Shows objective work stress as a function of job hierarchy and job tenure**

Results (Table 2 & Fig. 2,3, 4,5) display means and SDs of feeling of work stress, responded by participants belonging to different groups. Results show that the level of work stress varied across different groups of police personnel.

## Table 2: Means and SDs of feeling of work stress as a function of job hierarchy and job tenure

| Dimensions of Feeling of work stress | | Officers | | Sub Inspectors | | Constables | |
|---|---|---|---|---|---|---|---|
| | | S.J.T. | L.J.T. | S.J.T. | L.J.T. | S.J.T. | L.J.T. |
| Interpersonal | Mean | 54.00 | 57.5 | 68.44 | 70.73 | 72.34 | 67.94 |
| | S.D. | 16.58 | 16.7 | 19.84 | 17.76 | 14.65 | 20.36 |
| Physical condition | Mean | 51.26 | 48.57 | 61.33 | 65.37 | 65.09 | 62.91 |
| | S.D. | 14.84 | 16.72 | 19.72 | 17.0 | 17.58 | 15.16 |
| Job interest | Mean | 20.65 | 16.57 | 22.82 | 22.71 | 24.62 | 22.33 |
| | S.D. | 4.92 | 5.17 | 5.27 | 6.4 | 5.21 | 5.67 |
| Work stress as a whole | Mean | 125.91 | 122.63 | 152.59 | 158.8 | 162.04 | 153.18 |
| | S.D. | 30.93 | 33.64 | 37.82 | 33.61 | 29.35 | 35.74 |

N = 240, S.J.T. = Short Job Tenure, L.J.T. = Long Job Tenure

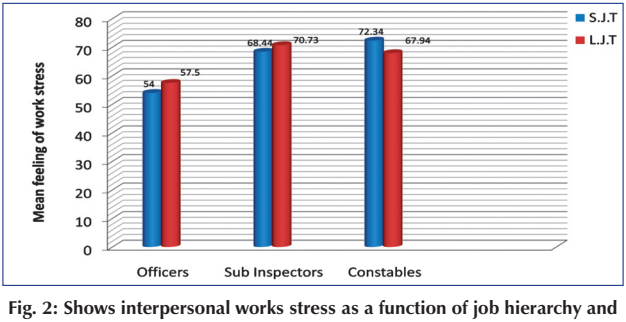



**Fig. 2: Shows interpersonal works stress as a function of job hierarchy and job tenure**

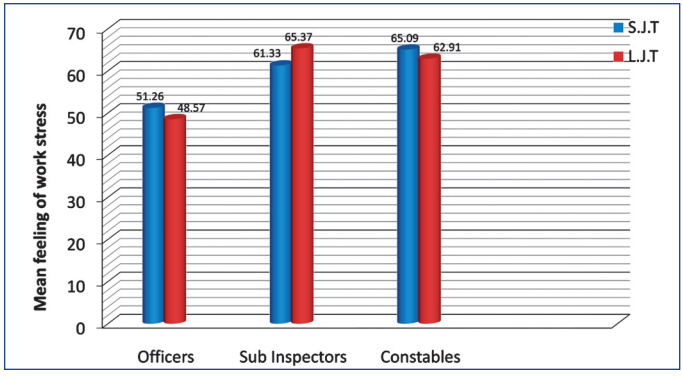



**Fig. 3: Shows work stress caused by physical condition as a function of job hierarchy and job tenure**

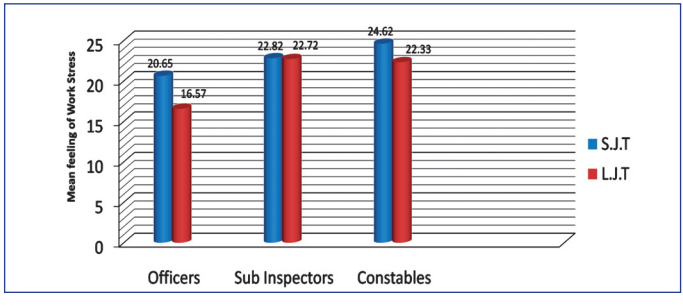



**Fig. 4: Shows work stress caused by job interest as a function of job hierarchy and job tenure**

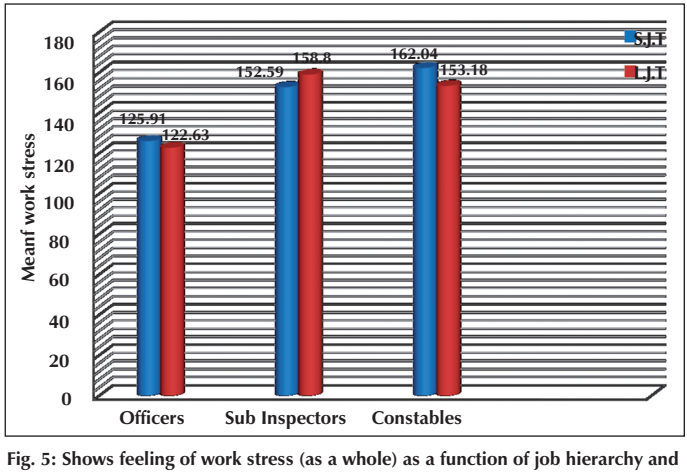



**Fig. 5: Shows feeling of work stress (as a whole) as a function of job hierarchy and job te**

A 3 x 2 ANOVA (three job hierarchy x two job tenure) was done to determine the significant differences among groups. Obtained results are presented in tables.

**Table 3: Summary of 3 x 2 ANOVA (three job hierarchy x two job tenure) of objective work stress**

| Source of Variation | Sum of squares | df | Mean Square | F |
|---|---|---|---|---|
| Between A (job hierarchy) | 884.203 | 2 | 442.102 | 11.45** |
| Between B (job tenure) | 68.949 | 1 | 68.949 | 1.79 |
| A x B | 35.913 | 2 | 17.96 | .47 |
| Within | 9035.34 | 234 | 38.61 | |

N = 240, ** = P< .01, * = P< .05

A close perusal of ANOVA results (Table 3) indicate that respondents differed significantly on objective work stress. The main effect for job hierarchy was found to be significant [F (2, 234) = 11.45, P< .01], which revealed that objective work stress was found greater in sub-inspectors (M = 26.34) than constables (M = 23.91) and officers (M = 21.62) respectively. Furthermore, A 3 x 2 ANOVA analysis was done for each domains of feeling of work stress. Results are shown in Tables 4,5 , 6 & 7 respectively.

**Table 4: Summary of 3x2 ANOVA (three job hierarchy x two job tenure) of feeling of interpersonal work stress**

| Source of Variation | Sum of squares | df | Mean Square | F |
|---|---|---|---|---|
| Between A (job hierarchy) | 10412.22 | 2 | 5206.11 | 16.84** |
| Between B (job tenure) | 12.74 | 1 | 12.74 | .04 |
| A x B | 706.09 | 2 | 353.05 | 1.14 |
| Within | 72325.57 | 234 | 309.08 | |

N = 240, ** = P< .01, * = P< .0

ANOVA results (Table 4) revealed that on feeling of interpersonal work stress, main effect for job hierarchy [F = (2, 234) = 16.84, P< .01] was found to be significant, which revealed that constables reported more stress (M = 70.14) than sub-inspectors (M = 69.56) and officers (M = 55.75) respectively.

## Table 5: Summary of 3 x 2 ANOVA (three job hierarchy x two job tenure) of work stress related to physical condition

| Source of Variation | Sum of squares | df | Mean Square | F |
|---|---|---|---|---|
| Between A (job hierarchy) | 9900.92 | 2 | 4950.46 | 17.1** |
| Between B (job tenure) | 4.65 | 1 | 4.65 | .016 |
| A x B | 555.79 | 2 | 277.89 | .96 |
| Within | 67756.49 | 234 | 289.56 | |

N = 240, ** = P< .01, * = P< .05

Results (Table 5) evinced that physical condition, main effect for job hierarchy [F (2,234) = 17.1, P< .01) was found significant, which evinced that constables reported high stress (M = 64.0) than sub-inspectors (M = 63.35) and officers (M = 49.92) respectively.

## Table 6: Summary of 3 x 2 ANOVA (three job hierarchy x two job tenure) of work stress related to job interest

| Source of Variation | Sum of squares | df | Mean Square | F |
|---|---|---|---|---|
| Between A (job hierarchy) | 1081.84 | 2 | 540.92 | 18.16** |
| Between B (job tenure) | 274.77 | 1 | 274.77 | 9.22** |
| A x B | 156.23 | 2 | 78.11 | 2.62 |
| Within | 6971.74 | 234 | 29.79 | |

N = 240, ** = P< .01, * = P< .05

ANOVA result displayed in Table 6 showed that work stress caused by job interest was also significantly influenced by job hierarchy and job tenure. Significant main effect for job hierarchy [F (2, 234) = 18.16, P< .01] indicate that constables reported more stress (M = 23.48) than sub-inspectors (M = 22.77) and officers (M = 18.61) subsequently. Similarly, significant main effect for job tenure [F (1, 234) = 9.22, P< .01) evinced that employees of short job tenure group (M= 22.7) reported more stress than those of long job tenure group (M = 20.54).

**Table 7: Summary of 3 x 2 ANOVA (three job hierarchy x two job tenure) of work stress as a whole**

| Source of Variation | Sum of squares | df | Mean Square | F |
|---|---|---|---|---|
| Between A (job hierarchy) | 54894.82 | 2 | 27447.41 | 24.46** |
| Between B (job tenure) | 229.96 | 1 | 229.96 | .205 |
| A x B | 2292.95 | 2 | 1146.47 | 1.022 |
| Within | 262546.15 | 234 | 1121.99 | |

N = 240, ** = P< .01, * = P< .05

Work stress (as a whole) was also significantly influenced by job hierarchy (Table 7). Significant main effect of job hierarchy [F (2, 234) = 24.46, P< .01) revealed that constables reported more stress (M = 157.61) than sub-inspectors (M = 155.7) and officers (M = 124.27) respectively.

## Discussion

Results revealed that the level of work stress varied across different group of employees in accordance with their job hierarchy and job tenure. The feeling of work stress was found higher in constables than sub inspectors and officers. More specifically, the objective work stress was reported at high level by sub inspectors than constables and officers. But feeling of interpersonal work stress was found greater in constables than sub inspectors and officers. Constables reported high work stress related to physical condition than sub inspectors and officers. Likewise, job interest related stress was also found more in constables than sub inspectors and officers respectively.

Present results have ample support by other researchers (Pandey & Srivastava, 2004; Srivastava, 2002; Tiwari, 2006; Tiwari & Misra, 2008). In a recent study, Tiwari and Mishra (2008) identified that work stress (overall and domain wise) was found higher in class 4th and clerks than officers of railway organization. Furthermore, employees of short job tenure expressed more stress than their long job tenure counterparts. In a study, it was reported that clerks experienced more role stress as compared to teachers, therefore, the nature and place of work may buffer against the stress (Yogrecha

& Misra, 1990). In another study, Lam (1988) found that various occupational groups expressed different levels of work stress. Nurses experienced maximum stress than other groups. The presence of social support from other co-workers, management, family and friends tends to relieve stress and strain. This result is consistent with many research findings (Ahmed & Mishra, 2002; Cobb's, 1970; Khan & Mishra, 2002; Khanna, 2000; Mehra & Mishra, 2003; Mishra & Shyam, 2005; Pandey & Srivastava, 2000, 2004; Srivastava, 1999; Vashistha & Mishra, 2004; Vashistha & Mishra, 1999; Yogrecha & Misra, 1990).

Since, physical condition of work place itself is a potential source of stress (Cooper & Smith, 1985 ; Rice, 1987). Researchers have attempted to identify the sources of stress on the job/ work. It should be noted that how individuals perceive the conditions of work related to their own skills is more critical to a determination of whether stress will occur than the actual conditions of work. Thus, the list of sources of work stress provided here does not imply that these sources alone are responsible for job stress. Rather, they add to the potential for stress and combine with worker traits, coping ability, control etc. to produce stress. Therefore, several mediating and moderating factors exercise influence on the feeling of stress related to physical condition. Each occupation has its own potential environmental sources of stress. For example, certain jobs require close detail work, poor lighting can create eye strain. Conversely, extremely bright lighting or glare can present problems for many marker dealers (Cooper, 1987).

Pandey and Srivastava (2004) identified different physical conditions of offices and teaching institutions, office work requires hrs. of sitting at same place and doing file work, while in teaching organizations variety of activities like delivering lectures in class rooms, group discussion work shops/seminars and field work or laboratory work etc. As a result, physical condition related stress was found low in teachers than clerks. The variation in design of physical setting of the work place might be major source of stress. If an office is poorly designed, with relevant personnel spread throughout a building, poor communication networking can also arise, resulting in role

ambiguity and poor functional relationships than educational institutions.

This problem is not restricted to offices. As Cooper (1987) pointed out that one company had high turnover and absenteeism among its assembly line workers, most of them were females, when researchers looked into the problem, they discovered that the women were isolated from each other, they felt bored and lonely working without human interaction. Once the assembly line was recognized to put them into groups, absenteeism dropped substantially. In support of this study, Cooper (1987) evinced that blue collar workers tended to be high on boredom while professionals tended to be low on boredom. In most discussions of this issue three terms seem to be used interchangeably; boredom monotony and repetition. It may be more accurate to say that repetitive and low complex jobs are perceived as monotonous and lead to a psychological state of boredom. In this way, the characteristics of job are kept distinct from subjective feelings of the employee. Boredom seems to have some but side effects. Monotonous jobs appear to be associated with low self-esteem, job dissatisfaction, and also have low satisfaction with life in general.

However, whether a monotonous job leads to physiological arousal, as predicted by stress certain other factors, such as the complexity and/ or risks involved in the job itself are also equally important. Boredom does not appear to be capable of producing stress itself. In a related study, Thackray (1981) showed that boredom and monotony in job conditions that seldom change are highly repetitive. Lack of change produces a desire for change or variety in the employee. Therefore, such jobs cause stress feeling. Nevertheless, results of this study evince that constables who used to perform repetitive and less complex duties expressed more stress related to job interest as compared to sub-inspectors and officers.

Many researches have supported the influence of job hierarchy on work stress. Deb et al. (2006) pointed out that constables feel greater stress than officers. Another study also showed that non gazetted officers of police expressed high stress than gazetted officers (Singh, 2007; Singhvi & Mathur, 1997). Pillai (1987) also revealed that the first symptoms of stress appeared in early age of

constables than head constables and officers. Saxena (2000) also pointed out that higher level of frustration and inter role distance leading to more stress was found in constables than head constables and sub-inspectors.

Another findings as well as present study evinced that work stress related to job interest also varied across short and long job tenure group of police employees. Present study revealed that employees of short job tenure group were found in high stress than long job tenure group. This finding is in close consonance of other research findings (Pandey & Srivastava, 2004; Srivastava, 2002; Tiwari, 2006). Powell (1992) indicated the sources of stress in police employees which may produce job dissatisfaction are : Poor task environment and lack of definition of objectives; e.g., more emphasis on routine tasks, poor problem solving environment; e.g., with reference to investigate of sensational and controversial cases; poor development environment, e.g., lack of further training, acquisition of newer technology; poor communication, non-supportive culture. In the decision latitude/ control source i.e., low participation in decision making, lack of control, over work; e.g., inability to redress the genuine grievances of sub-ordinates, little decision making in work; lack of scope for free expression. In the work load source i.e., lack of control over pacing over load. In the work schedule source, long and inflexible work schedule : wearing of uniform for long hours; shift working : no fixed sleeping hours, unpredictable work hours : due to unforeseen developments every day.

Since, young employees face the inevitable conflict between organizational and family demands during the early development of their careers. Under normal circumstances, individuals find home as a refugee from the competitive and demanding environment at work, a place where they get support and comfort. But when there is a career crisis, tension of the job do not left behind and soon affect the family and home environment in ways that may imperil this last "sanctuary". As a result employees of short job tenure are found stressed and worried about their career, economic, educational and social status of the family. Apart from this, Short job tenure employees may feel availing an unusual number of sick leave,

excessive use of force, and resentment against any advise, feeling of depression and too much subordination, lack of interest in work, poor reflexes, grandiose behavior, complaining against everything, distorted and manipulated relations with the public and fellow officers. Pillai (1987) showed that stress was found to affect 82.53% of constables within less than five years of service and 74.56% of constables with 6 to 10 years of service. The findings of present study have ample empirical supports.

## Conclusion and Recommendations

Present findings revealed that objective work stress was found greater in sub-inspectors than constables and officers respectively, whereas feeling of work stress were found greater in sub –inspectors and officers. Furthermore, Work stress was found more in short job tenure group of employees as compared to long job tenure police personnel.

On the basis of findings of the present study certain recommendations have been made:

- Authorities of the police organization should pay attention to create a healthy work environment by maximizing better opportunity of interpersonal relationship with co- workers and subordinates.
- By improving the quality of work place and providing innovations and stimulation in job and better opportunities of personal growth/promotion, Police organization actively can minimize the high feeling of work stress in police employees.
- Job demands and work culture in police organization are very much challenging and risky therefore, high feeling of work stress is very natural. It is essential to provide a platform for the police employees of all levels to share their problems with the higher authorities frankly and openly which will be one of the outlets of releasing work related stress.
- On the basis of these results, it is suggested to police employees and higher authorities of police organization to develop and

exercise active and adaptive coping strategies like active coping, planning, and suppression of competing activities, positive reframing, use of instrumental support and use of emotional support, which are more adaptive to confront with stressful episodes.

- Perceived control as a cognitive construct has been identified to buffer against stress (Pandey & Srivastava,2004).Therefore, it is suggested to educate high risk group of police personnel to develop cognitive and behavioral control to confront with stressful situations.

## References


1. Ahmad, K., and Mishra, P.C. (2002). Work motivation, occupational stress and mental health as predictor of organizational commitment. Unpublished Dissertation, Department of Psychology, Lucknow University, Lucknow.
2. Beehr and Bhagat (1985) Quoted in. Singh (2010) 'Modifying rile of perceived control and coping in the work stress-commitment relationship'. Unpublished Doctoral Dissertation DDU Gorakhpur University Gorakhpur.
3. Caplan, R.D., Naidu, R.K., and Tripathi, R.C. (1984). Coping and defence : Constellations Vs. Components. Journal of Health and Social Behaviour, 25, 303-320.
4. Cartwright, S., Cooper, C. L., and Barron, A. (1993). Manager stress and road accidents. Journal of General Management, 19(2), 78-85.
5. Cobb, S. (1970). Class A Variable from the Card Sort. Ann Arbor : University of Michigan. Institute of Social Research.
6. Cooper, C.L. (1983). Identifying stressors at work : Recent research developments, Journal of Psychosomatic Research, 27, 369-376.
7. Cooper, C.L. (1987). Identifying stressors at work : Recent research developments, Journal of Psychosomatic Research, 27, 369-376.
8. Cooper, C.L. (1989). Managing People at Work. London Routledge (in association with the British Psychological Society).
9. Cooper, C.L., and Smith, M.J. (1985). Job Stress and Blue Collar Work. New York : John Wiley.

10. Cox, T. and Mackay, C. (1978). A Transactional Approach to Occupational Stress. In stress work design and productivity edited by E.N., Carlett, and J. Richardson (London : John Willey).

11. Deb, S., Chakroborty, T., Chatterjee, P., and Srivastava, N. (2006). Stress of traffic police officers and traffic constables under Kolkata Police : A comparative study. The Indian Police Journal, BPR & D, MHR.

12. French, J. R. P., Rogers, W. and Cobb, S. (1974). A model of person environment fit in Caltho G. V. Gamburgh, D. A. and Adams, J. E. (eds.). Coping and Adaptation. New York, Basic Books.

13. French, J.R.P., and Kahn, R.L. (1962). A programmatic approach to studying the Industrial environment and mental health. Journal of Social Issues 18, 1-47.

14. Khan, S.M., and Mishra, P.C. (2002). Need satisfaction and organizational commitment-canonical correlation analysis. Journal of Community Guidance and Research, 199-208.

15. Khanna, H. (2000). Occupational stress, social support and job involvement as predictors of organizational commitment of residents male doctors. Unpublished Dissertation. Department of Psychology, Lucknow University, Lucknow.

16. Lam, D.J. (1988a). The Occupational Stress Inventory. Department of Psychology, University of Hong Kong.

17. Matteson, M.I. and Ivanevich, J.M. (1982). Managing Job Stress and Health, New York, Free Press.

18. Mehra, G., and Mishra, P.C. (2003). Participation as a moderator variable of job satisfaction-occupational stress relationship. Indian Journal of Psychology and Education Vol. 34, No. 1, 73-76.

19. Mishra, P.C., and Shyam, M. (2005). A correlational study of social support and job involvement in Prison officers. Journal of Indian Academy of Applied Psychology (In Press).

20. Mishra, P.C., and Srivastava, S. (1997). Organizational Commitment in relation to occupational stress and mental health of doctors. 84th Session of Indian Science Congress Association, University of Delhi, Delhi.

21. National Police Commission, (1979). First Report. Government of India.

22. Pandey, S. and Srivastava, S. (2000). Coping with work stress in career oriented females. Published Paper in Journal of Community Guidance and Research. Vol. 17, No. 3, pp. 313-323.

23. Pandey, S. and Srivastava, S. (2004). Role of coping in work stress-health relationship : A study on career woman. Akbar Husain and Tabassum Rashid (Eds.). Stress Behaviours : The Coping Strategies, Vol. 2.

24. Pestonjee, D.M., and Singh, U.B. (1983). EDP Manager : An organizational behavior study. Unpublished Manuscript IIM Ahmedabad..

25. Pillai, V.K. (1987). A diagnosis of police stress : The case study of Ahmedabad city police. Paper Presented at the xx All India Police Service Congress.

26. Powell, T. (1992). Stress Management. London, MC. Million.

27. Ramchandran, G. (1989). Can't we reduce stress factors in the police. Administrative Issues, SPIPA, Ahmedabad.

28. Rice Phillip, L. (1987). Stress and Health : Principles and Practice for Coping and Wellness. Books/Cole Publishing Company California, U.S.

29. Sanders, A.F. (1983). Towards a model of Stress and human performance. Acta Psychological,53, 61-97.

30. Saxena, A.K. (2000). Quoted in "stress management in police" by A. K. Saxena, (2003) Indian Police Journal.

31. Selye, H.J. (1956). The Stress of Life. New York, Mc-Graw-Hill.

32. Singh,A.P (2010) . Modifying Role of Perceived Control And Coping in the Work Stress Commitment Relationship. Unpublished Doctoral Dissertation DDU Gorakhpur University Gorakhpur.

33. Singhvi, M.K. and Mathur, C.N. (1997). Role stress in central reserve police officers. In D.M. Pestonjee and U. Pareek (Eds.), Studies in Organizational Stress and Coping. Jaipur / New Delhi : Rawat Publications.

34. Srivastava, A.K. (1999). Management of Occupational Stress : Theories and Practice, New Delhi : Gyan Publication House.

35. Srivastava, S. (2002). Work stress, coping and health status among career oriented females. Unpublished Doctoral Dissertation,

Department of Psychology, D.D.U. Gorakhpur University.

36. Thackrey, R.I. (1981). The stress of boredom and monotony : A consideration of the evidence. Psychosomatic Medicine, 43, 165-176.

37. Tiwari, S. K. and Mishra, P. C. (2008). Work stress and health as predictors of organizational commitment. Indian Academy of Applied Psychology.

38. Tiwari, S.K. (2006). Psychological correlates of organizational commitment : a study on railway personnel. Published Doctoral Dissertation. Lucknow University, Lucknow.

39. Vashishtha, A., and Mishra, P.C. (2004).Occupational stress and social support as predictor of organizational commitment. Psychological Studies, Vol. 49, No. 2-3, 202-204.

40. Vashistha, A. and Mishra, P.C. (1999).Tangible support as a moderator variable of the occupational stress and organizational commitment relationship. Psychological Studies, Vol. 44 (3), 51-54.

41. Welford, A.T. (1973). Stress and Performance, Ergonomics. 16-567.

42. Yogreche, Y.S. and Mishra, S.P.A. (1990). Comparative study of organizational role stress between clerical and teaching female personnel. Personality Study and Group Behaviour. 10, 59-65.

# Objectifying the Subjectivity in Polygraph Examination Procedure in context of Personality Patterns

**Dr. Aruna Mishra*, Devinder Singh****
**Dr. Himakshi Bhardwaj*****

## Keywords

Polygraph, Personality Patterns, Detection of Deception, Discretion of Expert, Scoring Method.

## Abstract

*Polygraph is one of the modern techniques in present era, for detection of deception. It is based on the theory of psychosomatic changes within a person while in fear of exposure of his deception. Polygraph is popular amongst lie-detection experts due to its precise and non invasive procedure. There are lots of factors that affect the results of polygraph examination. Some of them are even beyond the control of examiner as well as examinee, & personality is one of the most influencing factors among them. Personality pattern may bring the opinion of expert toward inconclusiveness in some cases. Due to its subjectivity and some other reasons, it is used merely as corroborative evidence in criminal justice system.*

*Keeping in mind, the above mentioned limitations, this paper would contribute to attenuate the subjectivity, therefore, to strengthen its authenticity to help significantly in police investigation. PolyGram*

Author Intro. :

* Sr. Scientific Officer (Lie-Detection) Forensic Science Laboratory, Govt. of NCT of Delhi, Delhi-85.

** Director, Forensic Science Laboratory, Govt. of NCT of Delhi, Delhi-85.

*** Sr. Scientific Officer (Lie-Detection) Forensic Science Laboratory, Govt. of NCT of Delhi, Delhi-85.

*charts, selected from some specific cases are illustrated in the paper revealing the effect of personality patterns on polygraph pattern.*

Lying is a common phenomenon in human beings and therefore the drive of Detection of deception is always remained alive. Rice test, holy spirit, hitting the gong, divine justice, and third degree method [Mishra A. (2011)] are some old methods of detection of deception. At present, three methods are in use by professionals working in this area – polygraph examination, BEOS (Brain Electrical Oscillation Signature Technique) and Narco Analysis Test. The first technique, amongst all, which comes to mind for purpose of detection of deception, is Polygraph. It is based on the theory of psychosomatic changes within a person while in fear of exposure of his deception. Polygraph is well-liked amongst lie-detection experts due to its precise and noninvasive procedure.

However, this technique is remained in question for a long time for two major setbacks, Inconclusiveness, and subjectivity while making an opinion. Yet, it is popular corroborative evidence in police investigation process and judicial systems, and efforts are being done nationwide to overcome such issues. In fact, in view of other technologies used in forensics, it is almost impossible to design a full-fledged scientific technology without confines of inconclusiveness and subjectivity in the area of lie-detection. It may be due to fact that human is itself the most complicated creation in the universe and so its examination is. Lot of variables, even beyond the control of examinee and the examiner, work simultaneously, during lie-detection examination in laboratory set-up. And, such variables may not be avoided when making an expert opinion after the examination. It is therefore not possible to remove entirely the limits of subjectivity and inconclusiveness but surely those can be reduced up to a desired level with dedicated efforts in this area.

Nationwide efforts are being done for refinement and enhancement in this area, such as the experimentation on questionnaire techniques, criminal profiling, construction of assessment tool and others. The authors have also appended their contribution by revealing the common ground of influence of personality patterns in lie-detection examination. The authors, on the ground of, comparison of

differences in Polygram of different kind of personalities, have come to the opinion that personality patterns have major influence on intensity of psychosomatic reactions during polygraph examination. It happens due to various conscious and unconscious variables remain activated during the examination irrespective of individual's involvement in crime. Those must necessarily be kept in mind while interpreting Polygram, in order to get more conclusive opinions with higher objectivity. In present study, personality pattern is considered as most influential variable by the authors on following grounds:

- The science behind polygraph stands on the activity of Autonomous Nervous System and fight or flight response [Matte, (1996); Veeraraghvan, (2009)].
- Personality patterns are found in close relation to functioning of autonomous nervous system and fight or flight response [Kobasa, (1979); Rosenman, (1978); Eysenck, (1988)].
- Directive indication of association between personality patterns and Polygram patterns is seen in observation during polygraph examination.

Personality is a very broad concept and it is defined in various ways by prominent psychologists [Allport, (1937); Goldberg, (1992); & Carver & Scheier, (2000) etc.]. However, the term 'personality pattern' has its specific meaning in this study. Here, personality pattern is considered as 'a multidimensional structure consisted of genes, personality traits, perception style and cognitive patterns.' Authors are concerned here with the interactional effect among components of personality pattern on stress threshold, sensitivity of the nervous system, and response of the person towards stressful event which determine the fight & flight response also. Similar findings were also revealed in other past studies [Lazarus & Folkman, (1984); Canon, (1929)].

It has been established by some studies that the brain itself cannot distinguish between a real or potential threat. It can only respond to both, by triggering the fight/flight response. Not even it, a research has also shown that our levels of stress hormones rise when we watch a horror film even though we are not physically

experiencing the stressor.

The science behind polygraph is rooted in the principal of psychosomatic interaction. Any mental stress produces physiological reaction within an individual, which gets normal as the stress becomes over. If a person tries to conceal or suppress any fact by some conscious effort, it resulted into certain involuntary physiological changes within the person. Scientific measurement of such involuntary changes with the help of an instrument is the base of polygraph examination. When an untruthful person, in forensic set-up, tries to pretend as innocent, and does conscious effort to deceive, his/her ego defense mechanism becomes activated. It consequently triggers fight or flight mechanism and therefore certain involuntary changes within the person. Some of those as, increase in blood pressure, changes in respiration rate and increase of galvanic Skin response (GSR) are measured by Polygraph equipment. Higher disturbances on relevant issues in PolyGram charts indicate higher chances of lying and fear of being caught (Veeraraghvan, 2009).

'Reactivity patterns' i.e. disturbances (i.e. changes in intensity, duration and pattern) of such involuntary changes are always more or bit different in view of personality patterns. It, in fact, depends on the attention, perception of threat/stress, cognitive interpretation of the event, intention & motivation behind the act, and accordingly emotion and action of the person. Different kind of individuals, involved in different kind of crimes, in different set-up, with different motivation, cannot produce same pattern of involuntary changes on Polygram. The interpretation of PolyGram, is therefore is a bit complicated task, than conducting the polygraph examination on the equipment. All such factors and variables may not be ignored in the entire procedure.

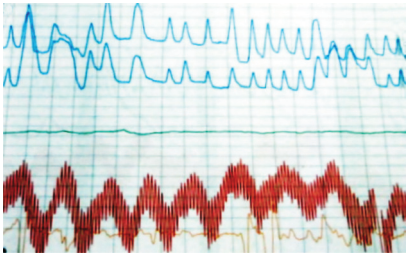
Keeping the above facts in mind, the authors on the basis of degree of reactivity classified the subjects into three major categories. i.e. subjects with High reactivity pattern; Normal reactivity pattern and Low reactivity pattern, which is based on the interaction amongst all dimensions of personality patterns. In other words, the subjects of high reactivity pattern would have greater chances of exhibiting more disturbed PolyGram charts even being truthful, and, the

subjects of low reactivity pattern would have greater chances of exhibiting smooth PolyGram charts than others, even being deceptive. It may obstruct the right interpretation of charts and lead the results towards inconclusiveness creating such equations:

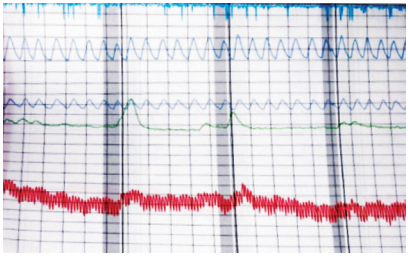
1. Less Reactive; Truthful - Truthful (Directive)
2. Less Reactive; Deceptive - Deceptive (Inconclusive)
3. High Reactive; Truthful - Truthful (Inconclusive)
4. High Reactive; Deceptive - Deceptive (Directive)

Some PolyGram Charts showing different reactivity patterns are presented here for illustration and brief explanation.

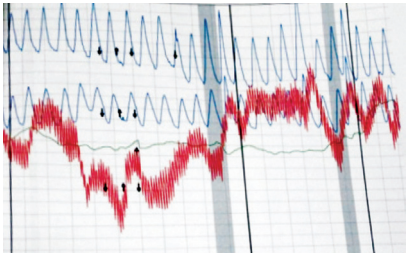
## PolyGram Charts showing different Reactivity Patterns



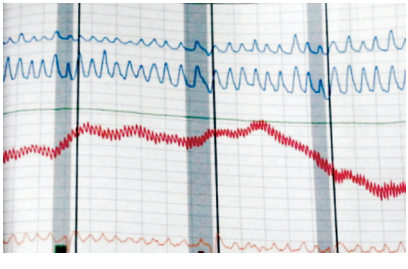
(Truthful: High reactivity pattern)



(Truthful: Low reactivity pattern)



(Deceptive: High reactivity pattern)



(Deceptive: Low reactivity pattern)

Though it is difficult to find out all common grounds for diversity in reaction pattern of the subjects, yet authors have tried to present some findings here below on the basis of comparison and analysis of the data:

- Reactivity pattern of Stubborn, rigid and uncompromising subjects was frequently found to be disturbed (High/Low), whether they were truthful or deceptive.
- Reactivity pattern of subjects fearful of losing their prestige/ relations/assets was generally oriented towards higher side, whether they were truthful or deceptive.
- Reactivity pattern of subjects preoccupied with negative emotions was mostly oriented towards higher side, whether they were truthful or deceptive.
- Reactivity pattern of subjects with higher conscience was repeatedly found to be normal, whether they were truthful or deceptive.
- Reactivity pattern of subjects having oblivious/unconcerned/ detached attitude was generally oriented towards lower side, whether they were truthful or deceptive.

Findings, mentioned above, are also supported by results of past studies conducted on personality variables such as hardiness (Kobasa, 1979), type A personality: competitive, impatient and hostile (Rosenman, 1978), Type C personality (repressors) (Eysenck, 1988) etc. Apart from these findings, authors are working on identifying more traits, more patterns and more factors so as to make interpretation of PolyGram more objective and authentic.

## Conclusion & Recommendations

In lie-detection examination procedure, hidden subjectivity i.e. discretion of expert takes the authenticity of report in question. It is, therefore required to collect, analyze and compare enough data to convert this subjectivity into objectivity and if possible, could be added as reference in the manual for scoring. It would uniform the opinion of experts, even on complicated PolyGram charts; increase the number of conclusive opinions; control undue discretion of experts in making the opinion and therefore improve reliability and authenticity in crime investigation and judicial procedure.

## References


- Allport, G.W. (1937), Personality: A Psychological Interpretation. New York: Henry Holt & Company.
- Carver, C. S., & Scheier, M. F. (2000). Perspectives on personality (4th ed.). Boston: Allyn & Bacon.
- Eysenck, H. J. (1988) Personality, stress and cancer: prediction and prophylaxis. British Journal of Medical Psychology, 61, 57 -75. Medline
- Goldberg, L.R. (1992), The development of markers for the Big Five factor structure. Psychological Assessment, 4, 26-42.
- Matté, J A (1996). Forensic psychophysiology using the polygraph: scientific truth verification, lie detection. J.A.M. Publications, p. 22. ISBN 0965579409
- Mishra, A. (2011), Review of Scientific practices of detection of deception. Handbook of Forensic Sciences. In press.
- Roseman, R. H. (1978), The interview method of assessment of the coronary-prone behavior pattern. In: T. M. Dembroski et al., eds. Coronary-prone Behavior. New York: Springer-Verlag.
- Veeraraghavan, V. (2009), Handbook of Forensic Psychology (1st ed.). Selective & Scientific Books: Delhi.
- Websites
- Stress Management for Health Course. The Fight Flight Response http://stresscourse.tripod.com/id11.html


Book Review

# "Internal Security Threats to South Asia" Manan Dwivedi, Devaditya Chatterjee, (Gyan Publications, 2013)

**Dr. C. Sheela Reddy***

The notion of internal security is deeply intertwined with the much larger pretext and the hallowed context of the theme of national security. Internal security involves great deal of concerns of nation states in a specifically given regional context. The lore and practice of asymmetric warfare, low intensity conflict and internal disturbances of all kinds are posing a threat to the internal security framework of all South Asian nation states, India being no exception to the deluge of challenges that are being posited before it. The Indian foreign policy too is inextricably linked with the notion of internal stability and security in the nation state and the South Asian sub – continent as a whole.

The book "Internal Security Threats to South Asia", by Manan Dwivedi, Devaditya Chatterjee, attempts to provide insights into the pro and cons of South Asian internal security paradigm, comprehensively covering the concerns of law and order, the upkeep of security and peace in the nation state along with the notion of tackling the scourge of terrorism, drug trafficking, energy security, food security and the attendant concerns of gender empowerment and human rights consciousness in a nation and a region at large.

The book begins with a veritable choice which is doled out before the citizens of a besieged Nation which is India. Shri KPS Gill contends as related by the author in the context of the Punjab

Author Intro.:

* Associate Professor, Indian Institute of Public Administration (IIPA) I.P. Estate Ring Road New Delhi - 110002

militancy, "The Youth in the country are provided with a choice and a kind of natural selection. Either you be with the militants and die an unrecognized death with your kith and kin uncared for and ending up as an unattended corpse. If you choose to be a militancy container and you happen to perish in the line of duty, then you will perish a martyr and a slain patriot who laid down his sacred life for a noble cause for country love." The excerpt sets the trend for more provocative renderings by the authors who tend to take repetitive barbs at the sub national and anti national discourse of the insurgents and the separatists lying all across the length and breadth of the nation's body politique. The book intertwines the rubric of conflict and International Relations theory with the narrative of several South Asian nation states of the order of India, Pakistan, Bangladesh, Maldives, Bhutan and the Emerald Isle, Sri Lanka.

The book weaves around the societal and political themes of caste and communal divisiveness along with the interesting hypothesis which goes untested by evidence that the regional nature of the Indian political and federated existence along with the spawning of smaller states of the order of Jharkhand, Chattisgarh, Uttarakhand and now the debate surrounding the creation of Telangana out of Andhra Pradesh comes as a provocative eye opener and reeks with the candour of a rebel and an iconoclast. The general narrative of small and micro states serving as useful and efficient administrative units has been strangely negated by the authors. The book takes care of chronology too and the narrative on Maldives is scenically intertwined with a Tourist web site's content writer's zeal, which also sheds light on the contemporary political vitriol between Nasheed and Waheed in Maldives.

The chapter titled as, "Red Star Over India" too sheds useful and incisive light on the scourge of naxalism in the tarred hinterland of the Nation with a poetic and nostalgic interpretation of the lost innocence and tribal beauty of Chattisgarh which the authors bring to life with the cinematic and musical, folk instances out of rural India in the infested terrain. The contemporary context could have been complete if more light could have been shed on the ideology and the urban strategy of encirclement by the Maoist planners. The solution heralded by the writers through the defense, development and law and order approach appears too hackneyed but the

chapter nevertheless has a reflection of originality and pathos for the troubled livelihoods of the Maoist infested regions. The chapter on Bhutanese turmoil sheds useful light through the citing of Bhutanese Radio coverage along with the elaboration of the refugee problems being faced by a weakening monarchy. The chapter makes for a traditional but informative reading of the subject matter of internal security of the Bhutanese hilly billy Kingdom.

The chapter on Afghanistan though laboured is informative as it leads to the NATO intervention and the problem of drug lordism in the nation state with an evocative initiation about the Kabuliwala linkage with the Indian Union. The authors wind up with the solution of unified co-existence for the Indian nation state where –in an interesting connection is drawn up between the internal house keeping in India and how it is linked to the new look foreign policy of India with a larger than life power projection of India in the international firmament. The conclusion attempts an espousal of the cause of a détente between the twin warring neighbours of India and Pakistan.

Threats in South Asia are both external and internal in nature which destabilise the nation states and tend to engender a negative public opinion against them in the international system. The nations must embark on a road map for incremental changes including more of an accountability, transparency and democratisation in their internal security establishments and frameworks. Then alone, the themes of nationalism, unity, integrity and prosperity can be enhanced and sustained as an efficient bedrock for the peace in South Asian security environment. The themes and actualities of political maturity coupled with modernisation of South Asian societies will play a strong and unequivocal role in the furtherance of a stable and peaceful political culture in these nations.

The book is consistent in its content offering but more of a logical rationale for nationalist arguments and hyperboles could have added to the narrative more. The book certainly attempts at an integrative and innovative approach to internal security in the nation and the South Asian region as a whole.