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Editorial

The three pillars of the Criminal Justice System are the police, the prosecution and the judiciary. The responsibility for justice not being delivered should be equitably shared among the three. However, due to their visibility, police has to shoulder a disproportionately large share of the blame. Police officers may find this to be irksome, but they should draw solace from the fact that citizens expect so much from them. Also, what may be an anodyne to their feelings is the fact that all police forces in the world face similar problem, *albeit*, in varying degree.

Every organization has its own culture. Organizational studies have repeatedly shown that if it is not taken into account and duly addressed, no change is possible. A 'live' organization like the police is also beset with these features. These need not necessarily be negative. Loyalty and self sacrifice comes to mind when one thinks of the police department. Therefore, when attempting to improve police performance through modernization, we must keep the prevailing 'culture' in our mind. This will allow us to make the most of the positives in our culture and subdue the negatives.

Police accountability is a matter of paramount concern in a system where the rule of law prevails. Democratic control is another byword for it. No one can object to this control. In fact, professional police officers demand these controls for they realize that the police is the only agency that exercises the use of physical force on its own citizens and is in a position to take away the liberty of an individual. Nevertheless, while accountability is necessary, so is functional autonomy. If the controls are so over-bearing that it impairs the effective functioning of the police, it will become counterproductive. This has happened in too many instances to be ignored. A dialogue in this regard between civil society, police and government is needed to strike the most appropriate balance.



It gives me immense pleasure to place before you the latest issue (April-June, 2010) of the Indian Police Journal. The issues mentioned above have been examined in the articles being published. As in the past, we look forward to your comments and suggestions.

Editor



Abstracts & Key Words

Police Sub-Culture : An Adaptation of A Scale for Indian Policemen

Dr. Anuradha Bhandari and Sarita Malik

Key Words

Police Sub-culture, Crime Fighting, Service, Culture, Organizational Change, Socialization, Policing.

Abstract

An understanding of police sub-culture is essential in order to understand the men in *khaki*. A police sub-culture not only socializes the new entrants but also teaches them the values, morals and various rules of policing. Adaptation to police sub-culture makes them more loyal, aggressive, develop a feeling of brotherhood. Police sub-culture adherence scale developed by Cochran and Bromley (2003) was tested on Indian police and an adaptation of this police sub-culture scale was developed for Indian policemen.

Singapore Community Policing Experiment

Sankar Sen

Key Words

Community Policy, Japanese Model, Random Patrolling, COBAN, Neighbourhood Policy Post (NPC)

Abstract

While police forces in USA and as well as in other western countries are still arguing over the meaning and desirability of community policing, the Singapore police boldly created

it. As the then Prime Minister of Singapore, Lee Kuan Yew said forthrightly, "*we have nothing more to learn from the west, it is time to begin to learn from the east*". Singapore decided to emulate the Japanese model and brought about a complete conversion of the system between the years 1983 to 1989. All these changes were made within a short period of time and without expenditure of resources beyond the normal budget.

Relevance of KPAs & KPIs in Policing-CID-AD

A Sivanarayana

Key Words

Key Performance Areas (KPAs), Key Performance Indicators (KPIs), Reactive, Extraveneous, CHRI, IPC, SMART Principles, Performance Management.

Abstract

The democratic policing in any country is meant for human security, protection and service to the people, in addition to maintaining order. The policing plays a vital role in the society from every sphere of development and change. The UK and USA measures victims' satisfaction with the service they receive from the police. This KPI forms part of a Public Service Agreement. The increasing victims' satisfaction is assessed and suggestions are made for future research and policy intervention to raise levels of satisfaction. In other countries like Canada, Australia, etc., different methods are adopted basing on number of cases reported, preventive measures achieved and the number of convictions attained in a year.



Abstracts & Key Words

Conviction Rate : A Reality Check

Shatrujeet Kumar

Key Words

Regular Case, Conviction Rate, Sentencing Policy.

Abstract

Large number of acquittals in criminal cases is widely perceived to be an important reason behind declining fear of law in our Society. Over the years, people have lost faith in the capacity of the law enforcement machinery to bring offenders to justice.

It is commonly believed that with money and muscle power, one can go scot free even after committing murder. Failure of the system to convict offenders has caused a huge dent in its credibility in the eyes of the public.

Cell Tower Radiation Hazard: Need of Legislative Action

Kanika Gaur

Key Words

Cell Tower, Radiation, Antenna, Fundamental Rights, Micro-frequency, Handset, Dumbness, Epilepsy, Palpitations, Bye-laws.

Abstract

It is generally an enlightening outcome when you write on an issue which is tagged as 'Superfluous Paranoia' and the issue in question was just that kind of genre. What irked me most was that amidst all the bye-laws manning the safeguards regarding the installation of cell towers on buildings, most of the personal injury suits are given in favour of radiation affected residents, even so that myriad mention of radiation hazard of handsets; a more grave issue of cell tower radiation hazard has escaped the attention of major blocks. There is no unitary policy or separate department in the central or state

Government until now, which could regulate and check the radiation pollution caused by Cell towers, Base stations, Antennas, Masts and Hubs. However, the issue is in direct conflict with the fundamental rights envisaged in our Constitution. This article attempts to examine hazards of Cell Tower Radiation in relation to law and policy.

The Detection of Lorazepam from Human Viscera by a New HPLC Technique

S. K. Chakrabarti, A. Debnath & A. Bhattacharjee

Key Words

Lorazepam, HPLC, TLC, GC-MS, Viscera.

Abstract

The present paper describes the methodology applied to identify lorazepam, a benzodiazepine derivative used in a case to kill a lady to take revenge of betrayal. Along with conventional techniques/methods adopted for examination of the case, a non-conventional mobile phase was used in HPLC, which has been successfully applied.

Domestic Violence against Women and Role of Counselling: Some Reflections

Hardeep Kaur

Key Words

Violence, Domestic Violence, Rapport, Empathy, Counselling.

Abstract

Domestic violence is a repeated pattern of behavior to gain power and control over another through the use of intimidation, emotional, verbal, physical or sexual abuse. Counselling on the other hand is a planned and systematic application of knowledge and skills. It helps not only to understand and alleviate a large number of problems causing disharmony but also maladjustments in the relationships. This paper



Abstracts & Key Words

describes how counselling, a solution focused approach can not only be used for preventing and managing domestic violence but also help women to rediscover and reconnect with their resourcefulness in resisting, avoiding, escaping and fighting against domestic violence. Which, in future, empower them to re-experience their personal power in bringing positive changes in their lives and develop a vision of life which is free of violence.

A Study of Burnout and Marital Adjustment of Police Personnel

Rekha Rani & Dr. Pooja Garg

Key Words

Burnout, Marital Adjustment, Gender and Rank.

Abstract

Police officers play a vital role in maintaining law and order in our society. As previous researches focused that the irregular work shifts, work overload, lack of administrative support, rapid transfers, inadequate work environment, more exposure to public matters, insufficient pay and lack of promotion leads to burnout which affects their family and marital life negatively. The present study is an attempt to examine the relationship between burnout and marital adjustment among police personnel. The sample consists of 128 police personnel including constable and sub-inspector. Maslach Burnout Inventory (MBI) has been used to measure burnout as the independent variable and Mishra's Marital Adjustment Scale (MAS) has been used to measure marital adjustment as dependent variable. Person was used to test the hypotheses. The results show that there is negative correlation between burnout and marital adjustment. Emotional exhaustion and depersonalization are negatively correlated to marital adjustment, while personal accomplishment is positively correlated to marital adjustment.

Budgetary Allocation for Prevention of Crime: A Flawed Model for Development

Dolly Sunny

Key Words

Terrorist Attacks, Obsolete Equipment, Estimated Loss, Budgetary Expenditure.

Abstract

Terrorist attacks of 26/11 in Mumbai took away the precious lives of dedicated police officers. They died due to deficient and obsolete equipment provided by the State. It is the need of the hour to provide specialised training, sophisticated equipments and enhanced manpower and fire power to police. The estimated loss in Mumbai alone from terror toll of the 60 hour ordeal is pegged at Rs. 4,000 crore. Additionally the closed stock exchange, national stock exchange and commodity exchanges markets halted trading worth Rs. 3,2710 crore ! While US earmarks about 20 percent of the federal budget, the budgetary expenditure in India on police as percentage of GDP is hardly 0.55 percent. The budget of the police needs to be given a higher priority. The process of economic liberalisation and globalisation set in motion cannot be carried forward, if law and order is not maintained.

Marital Rape : Assassination of a Woman's Dignity

Debdatta Das

Key Words

Rape, Marital Rape, Kinds, Effect- physical, psychological, etc., International View, Indian Response

Abstract

Marriage is the most sacred institution of social living. The basic edifice on which the sanctity of this institution rests is trust, respect and love. But often an insight into the reality of this institution makes us



Abstracts & Key Words

realize that virtues mentioned above often get evaporated and factors like adjustment, sacrifice, surrender play a predominant role. Marriage is not always all beautiful, but it is a bed of roses which has thorns too.

Rape, per se, is one of the world's most heinous crimes. Marital rape is one of the world's most draconian practices to which our society is a witness. Traditionally, culture, conservatism, social myths and taboos and male superiority are some of the factors which never let the fact of marital rape to surface in the society. Women either consider it to be a part of her fate or it is thought to be a part of the conjugal right of the man which licenses him to exert force or disregard the will of his conjugal partner.

It was only in the last few decades that the approach of the society towards this vice has started to undergo a change. The cry of international organizations and women emancipation groups towards this Issue are responsible for this positive movement. Different countries are incorporating respective changes in their legislations to criminalize this practice. But this consciousness is yet to be realized in the Indian legal system.

No country, no society, no neighborhood, no family is oblivious of this social malice of marital rape. But inspite of this fact, we still live in a society where it is thought better not to discuss it and indirectly, unknowingly and unwillingly we encourage it. This conservative outlook is getting reflected in our legal system too, which is a matter of concern. In U.K. it

was the year 1991 and in U.S. it was the year 1993, which recognized marital rape as a criminal offence throughout the country. It is high time that the required amendments need to be brought into our legislations so that a right response can be made to such social evils.

Silence of Law on Marital Rape

Gunjan Chowksey & Shantanu Srivastava

Key Words

Wife, Rape, Exemption, History, Crime, IPC, Penalisation, Arguments, Prevention, Justice

Abstract

This paper endeavours to strengthen the Criminal Justice System of our country by way of giving statutory recognition to the offence of marital rape on the lines of 'rape' as given under Section 376 of the Indian Penal Code. Although credit can be given for its recognition as a civil offence under the Protection of Women from Domestic Violence Act, 2005 but such piecemeal measures are inadequate. Thus, the criminalization of this offence in India has to be done on the model of certain other Nations where it has been criminalized (like England). In light of the above objective, the paper seeks to study the history of the marital rape exemption and sought to answer the question as to whether marital rape fits well within the traditional definitions of crime. Finally, the researchers have also sought to put forth arguments against the criminalization of marital rape and their rebuttals.



Key Words

Police Sub-culture,
Crime Fighting,
Service, Culture,
Organizational Change,
Socialization, Policing.

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Police Sub-Culture : An Adaptation of a Scale for Indian Policemen

Dr. Anuradha Bhandari* and Sarita Malik **

Introduction

No society can progress amidst lawlessness. One cannot visualize the existence of society in the absence of police, as maintenance of peace and order is the key to the development of all social, political, religious and economic functions of any democratic setup. Hence, it is an essential service. Although policing is a very vital aspect for the existence of a society, yet the police force as a whole is the target of criticism by all and sundry, including intellectuals, jurists, social activists, media, politicians and citizens (Malik, 2004).

In the Indian context, it is quite surprising that there is no definition of the police in the fundamental enactments concerning the police force, including the main Act on the statute Book that is the Police Act, 1861. However, the powers and duties of police officers/policemen are described at length in the Police Act, 1861 and the Rules framed hereunder, Criminal Procedure Code, Indian Penal Code, Indian Evidence Act and certain other Special and Local Laws, for example, Narcotic Drug Prevention and Smuggling Act, etc.

As per Section 23 of the Police Act of 1861 briefly state that the core areas of the role of the police are :

- Prevention and detection of crime;
- A collection of intelligence;
- Maintenance of law and order; and
- Compliance of all summons and warrants of courts.

As per the Haryana Police Act, 2007, the term "police officers" is defined in Section 2 (j) as follows: Any member of the police service of the State constituted under this Act and includes Indian Police Service (IPS) officers of the state cadre.

Police Sub-Culture

Police has a unique sub-culture. Crank (1998) suggested that the behavior of the police only makes sense when it is viewed through the lens of culture. Further, police officers are not inherently born with the personality traits of "police officer", but adopt police culture during formal and informal socialization (Mesko and Klemencic, 2008).

Like other organizations, a police agency possesses its own distinct culture, because of the unique characteristics of its working environments such as the continuous presence of danger, the use of coercive force, and multiple police roles (Paoline, 2001). The key aspects of police culture are crime fighting orientation; conflict with supervisors; and strong group loyalty and isolation from the general public (Paoline, 2003).

According to Dempsey & Forst (2005), a sub-culture may be defined as the culture of a particular group that is smaller than, and essentially different from the dominant culture in a society. The police culture or police sub-culture, then, is a combination of shared norms, values, goals, career patterns, lifestyles, and occupational structures that is substantially different from the combination held by the rest of society. The police sub-culture, like most sub-cultures, is characterized by clannishness, secrecy, and isolation from those not in the group. Police officers work with other police officers during their hours of duty. Many socialize together after work and on days off, often to the exclusion of others-even old friends and family. When socializing, off-duty officers tend to talk about their jobs.



Police Sub-Culture : An Adaptation of a Scale for Indian Policemen

Siddiqui (2004) stated that police leadership should develop an understanding of organizational culture and build and rebuild its trust on positive aspects. The police sub-culture in India gets reflected in the image of police in the society and police is not looked upon as something friendly and serviceable to the community. Most observers of police organizational development are of the view that without taking occupational culture into account, many attempts of reform shall be frustrated as most significant impediment to change within police organizations is police occupational (sub) culture (Skolnick, 1994).

Paoline (2003) asserts that as officers advance in rank, commitment to the occupational culture that served to manage the strains found at the entry level of policing wanes, as different cultural commitments emerge, based primarily on changes in one's work environments. Moreover, one might expect divergent street cop values (i.e., traditional culture prescriptions) for those officers with aspirations to advance in rank, as they might emulate the values of higher ranking officers.

Previous studies addressing police culture have found striking similarities between police cultures across countries such as the USA, Canada and Australia (Waddington, 1999; White and Alder, 1994). Even in socially, politically, and culturally different countries, like Japan and India, studies have found remarkable similarities with western police culture, noting the existence of characteristics such as machismo, a sense of "us against them", and cynicism (Miyazawa, 1992; Bayley, 1991).

Cochran and Bromley (2003) proposed that the police sub-culture is presumed to be made manifest in the manner by which officers perceive their role as police and the scope of this role; their beliefs regarding how their role should and should not be performed; and their attitudes toward the criminal law, criminal procedures including departmental policies, the police and other criminal justice practitioners, criminal offenders, victims, and witnesses, even citizens as a whole.

Adherence to this police sub-culture includes :

- ❖ Negative attitudes towards the various legal restrictions placed upon their efforts to effectively fight crime : "Handcuffing the police;"

- ❖ Negative, skeptical attitudes toward legal institutions and other elements of the criminal justice system : "The courts are too lenient;"

- ❖ Negative and suspicious attitudes toward police administration and the police bureaucracy : "Departmental policies and procedures are too burdensome and ineffective;" and

- ❖ Negative, cynical attitudes toward the citizenry : "They are all a bunch of liars and crooks."

This culture idealizes aggressive and authoritative or take-charge approaches to policing such that crime fighting is accorded very high priority and the laws & order maintenance and service elements of the police role are devalued. This strong orientation toward crime-fighting and the accompanying negative attitudes towards due process limitations placed on the police by the appellate courts give rise to additional elements of the police sub-culture. A primary element of the police sub-culture is a great level of cynicism and suspicion which is carried by them into their encounters with the citizens they have been employed to serve and protect. This, in turn, only adds to the tensions between the police and their community. Finally, the police sub-culture stresses an orientation which simultaneously grants autonomy to each officer yet demands from them unyielding loyalty to the group (Manning, 1995). Hence, Khan & Bhandari (2006) have suggested that an understanding of Indian police sub-culture is essential as it affects the overall psychological and physical well-being of police functionaries.

Need of Present Study

Every organization has its own sub-culture and so does the police that have its own unique police sub-culture. Police sub-culture has such a great impact that even personality traits and predispositions are not all that relevant to the often stressful and difficult job of policing. This is so as a backward organization or corrupt peers could potentially cause even an honest, intelligent, conscientious recruit either to adapt that deviant culture or leave the job of policing (Sanders, 2003). Hence, a need was felt to understand the Indian police sub-culture and develop a standardized measure to assess the adherence to police sub-culture in the Indian policemen.

Abstract

An understanding of police sub-culture is essential in order to understand the men in *khaki*. A police sub-culture not only socializes the new entrants but also teaches them the values, morals and various rules of policing. Adaptation to police sub-culture makes them more loyal, aggressive, develop a feeling of brotherhood. Police sub-culture adherence scale developed by Cochran and Bromley



(2003) was tested on Indian police and a adaptation of this police sub-culture scale was developed for Indian policemen.

Police Sub-Culture : An Adaptation of a Scale for Indian Policemen

Method

Sample

The sample comprised of 168 non-IPS male police functionaries belonging to the State of Haryana and Union Territory of Chandigarh. These police functionaries ranged in rank from Constable to Deputy Superintendent of Police.

The mean age of police functionaries was 43.35 years (SD = 8.95). Only those police functionaries were included in the present study who had a minimum of at least three years of continuous service in the police organization. The mean average length of service was 21.29 years (SD = 9.91).

Test

Police Sub-Culture Adherence Scale (Cochran and Bromley, 2003).

The Police Sub-Culture Adherence Scale consists of a total of 46 items. In this scale, functionaries, degree of adherence to the sub-culture of policing is measured by five distinct work/role orientation scales: Crime control, service, cynicism, traditionalism, receptivity to change. 13 items measure crime control, 14 items measure service, 9 items measure cynicism, 6 items measure traditionalism, 4 items measure receptivity to change. The functionaries are required to indicate their responses to the items along a 5-point Likert-type scale, ranging from 'strongly agree' to 'strongly disagree'.

Procedure

The aim of the study was to develop a standardized measure to assess the police sub-culture of Indian policemen. For this purpose, 168 non-IPS male police functionaries were administered the adherence to police sub-culture scale developed by Cochran & Bromley (2003). Initially, the scale was given to five senior police functionaries, in order to assess the items and their relevance for use to measure adherence to police sub-culture on Indian policemen. Based on the recommendations, some minor changes were made. Thereafter, the test was

administered to groups of functionaries of varying ranks ranging from Constable to Deputy Superintendent of Police. Data was collected in small groups of functionaries.

Scoring of the scale was done as per the specifications given by the authors. The raw data was analysed, means and standard deviations and Cronbach Alpha reliability estimates of each of the sub-scales were computed.

Results and Discussion

Table 1 shows the number of items of each sub-scale namely crime control, service, cynicism and receptivity to change and an example of a sample item of each. Table 2 shows the Means of the individual scales and the Cronbach Alpha reliability estimates of the total sample.

The Cronbach Alpha reliability of Traditionalism sub-scale was found out to be 0.04 and thus it has not been retained in the Indian adaptation of the scale. The final version of the scale consists of a total of 36 items and four sub-scales.

Table 1: Modified Indian Police Sub-Culture Scale

Sr. No.	Sub Scale	No. of Items	Sample Item
1.	Crime Control	12	An aggressive, tough bearing is more useful to a law enforcement police officer than a friendly, courteous manner.
2.	Service	14	Law enforcement should be seen primarily as a service oriented profession rather than a crime control profession
3.	Cynicism	6	Most people would steal if they knew they would not get caught
4.	Receptivity to change	4	Most changes make my work more efficient (i.e. saves time, effort, money)

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Table 2
Means and Cronbach Alpha of the Four Sub-scales

Sr. No.	Scale	Means	Cronbach Alpha
1.	Crime Control	41.60	0.67
2.	Service	58.44	0.83
3.	Cynicism	21.30	0.64
4.	Receptivity to change	15.84	0.69

Crime control orientation refers to the importance police functionaries place on the law enforcement and crime control functions of their jobs. High values on this scale indicate a strong preference among respondents for the crime-fighting aspects of their roles as law enforcement officers. Service measures the extent of orientation towards community-oriented policing. Functionaries' work orientation toward service-related activities is an indicator of disagreement with the police sub-culture. High values on this scale are indicative of a strong pro-service work orientation commensurate with the ideals of community-oriented policing and antagonistic to the police sub-culture. Cynicism refers to cynical perception of the public by the Police. High values on this scale are indicative of a strong agreement with cynical attitudes of law enforcement officers. Receptivity or openness to organizational change refers to openness towards modern organizational changes occurring within law enforcement. High values on this scale indicate a high level of receptivity to modern organizational changes occurring within law enforcement, which are antagonistic to the police sub-culture.

It is recommended that this Police sub-culture scale is now ready for use on Indian policemen.

Conclusion

A reliable and valid assessment tool of the police sub-culture is crucial to understand twenty first century policing. This is because the methods,

functioning and style of policing have changed in India with the changing times. The present study was 'therefore' an attempt to develop an Indian adaptation of adherence to police sub-culture scale for police functionaries. It is felt that this assessment tool will help to reach a deeper understanding of the police organization, its problems and unique challenges.

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Singapore Community Policing Experiment

Sankar Sen*

Introduction

Singapore is the most dramatic instance of a major police force deciding in a short period of time that it wanted to change its fundamental system for delivering police service, and is successfully doing so. Since 1981, Singapore police have shifted from reactive incident-driven policing to full-scale community policing. Earlier system was largely reactive and based on deployment of a large number of patrol vehicles.

Singapore is a developed nation and like the United States a melting pot of diverse races and cultures. Its population is 76% Chinese, 15% Malaya, 6% Indians and 3% other races. Like New York and London, Singapore is one of the world's major commercial, financial and trading centres. It is second to Rotterdam with the number of ships calling at its port everyday².

Before transition to community policing, police operations in Singapore were done at two command levels—central headquarters and dispersed precincts. Both the headquarters and the precincts perform the functions of foot patrolling, criminal investigation, control of law and order situations, etc. Patrolling was random motorized patrolling and supplemented in some areas by bicycle and scooter patrolling.

Neighbourhood Police Post (NPP)

In November 1991, a number of Japanese experts were invited to help implementation of COBAN

system in Singapore. On the recommendation of the study team, 8 NPPs were established in 1983 as a pilot to assess the impact of the system. Positive public response to the NPP led to the acceleration of the final implementation phase, ending in December 1994. There were now 91 NPPs throughout the island. Singapore redeployed personnel into NPPs by reducing the number of officers assigned to motorize petrol and reducing the number of support units, and by dissolving precinct task forces. The purpose of the system is as follows:

- To improve police-community relations in Singapore.
- To prevent and suppress crime through the co-operation of and support from the community and
- To project a better police image and win confidence of the public in the police with more community-oriented services.

Staffing

After years of carefully studying, Singapore police decided to staff each NPP with 20.5 officers-4 teams and 4 constables and corporals. Four sergeants supervised the teams with an inspector in charge. These teams serve respective 8 hours when the 4th team has a rest day. All officers serve in NPPs sometime in their careers but preference is given to good officers who are keen to serve in this kind of assignment. Since 1993 all recruits undergo a six weeks training course in the NPPs. In Singapore

Key Words

Community Policing, Japanese Model, Random Patrolling COBAN, Neighbourhood Policy Post (NPC)

¹ Jerome H. Skolnick and David H. Bayley, "Community Policing: Issues and Practices Around the World" (Washington, D.C.: National Institute of Justice, forthcoming, 1988)

² Model of Community Policing: The Singapore Story. The US Department of Justice.

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Abstract

While police forces in USA and as well as in other western countries are still arguing over the meaning and desirability of community policing, the Singapore Police boldly created it. As the then Prime Minister of Singapore Lee Kuan Yew said forthrightly, "we have nothing more to learn from the west, it is time to begin to learn from the east". Singapore decided to emulate the Japanese

Singapore Community Policing Experiment

the police have given NPPs a special status and taken all steps to see that younger officers do not view NPP appointment as a dull job which they must perform before moving to other interesting assignments.

Female officers also function in NPP and get an excellent opportunity to display their skill and initiative. Women constitute 14% of the Singapore police force, a percentage high by world standards. Women comprise almost 20% of NPP personnel. They work alongside men night and day.

Functions and Duties

NPP officers conduct foot patrols, bicycles, scooter patrols so as to interact with the community and enhance their rapport with the residents. They also provide wide array of services in order to attract the community to visit the NPP. Foot patrols provide the traditional visible presence and allow the officers to watch for suspicious persons. David Bayley says that patrolling officers are much assertive than their Japanese counterparts in stopping people to ask their identity and purpose³.

NPP officers also conduct house visits which help the residents to know the NPP officers personally as well as the services provided by them. Each officer is responsible for a particular area, visit all premises at least once a year and homes of neighbourhood watch and grass root leaders twice a year. To enhance community's awareness on crime prevention, the NPP officers conduct crime prevention exhibitions, school talks, crime risk surveys as well as distribution of crime prevention pamphlets and newsletters.

Results of NPP System

The NPP system has certainly brought about revolutionary changes within the realm of policing. According to Jarmal Singh⁴, it has transformed a

reactive or incident-driven policing approach to a proactive approach, which mobilized the community to play a part in the crime prevention and control. It has brought about decentralization in police work and operations. Frontline officers now function with greater autonomy and exercise their discretion more proactively. Police penetration into the society has now deepened and the flow of information to the police from the public has improved. The public has also become aware of its role and responsibility in crime prevention.

With the community policing, the public have also become more aware of its role and responsibility in crime prevention and detection. The number of public assisted arrests has steadily increased. This also reflects the evolving partnership between the public and the police in crime busting. In 1996, Global Competitiveness Report ranked Singapore as the safest city in the world in terms of its residents' confidence that their person and property are protected⁵.

The surveys conducted in 1987 and 1991 confirmed that NPP has forged closer contact between the public and the police, and there is now increased confidence of the general public in the police. It has further enhanced the image of the police in the minds of the public. The public perception surveys in 1996 and 2001 show that there is a high level of public trust in Singapore Police Force. More than 95 per cent of the respondents rated their perception of safety and security "as good or better". Crime rate of 100 per 1,00,000 population is one of the lowest in the world.

Community Policing in Singapore is more than a police strategy. "It is" says David H. Bayley "Police contribution to the creation of the new Singapore man. Community policing is part of civic development. It is a component in the growth of a new moral awareness that Singapore's leaders hope will unite its diverse people. Community

3. ibid

4 Jarmal Singh, "Community Policing in the context of Singapore", Resource Material Series No. 56, pp. 140-50

5 ibid, p.131



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policing is linked, then, to morality and through it to patriotism. Preventing crime is what good citizens must do, just as they must work hard, be courteous, and limit the size of their families. Crime prevention is an aspect of national ambition, and the police and the public recognize that the police make a direct contribution".

Accountability

As the NPPs are part of the patrol branch of the police force, they report to the patrol commander as at precinct police stations when they carry out crime prevention duties or interact with the community. NPPs have also improved substantially the willingness of the public to report matters to the police. Reports from the public have increased from 12 per cent to 56 per cent in areas where NPPs have been established⁶. It is also very gratifying that close links with community organizations have not bred corruption in the police or resulted in the unequal enforcement in the law.

Training

Community policing requires new forms of training. For community policing to work successfully, Singapore police felt that all personnel have to be properly trained. Every one must know the nature of duties to be performed by the police in community policing. This had the effect in preventing any growth of gulf between those in the new program and officers assigned to customer duties. This also created a receptive climate for it within the force. Singapore police also use evaluation as a tool for persuading people to opt in favour of community policing. The new police techniques were evidence based. Evidences were collected about the pilot project before a decision was taken to make community policing an operational strategy. Community policing was not however, used to challenge the

position of politicians. Politicians were allowed to take full credit for the initiatives launched by the police. The police "strove for a cooperative rather than a competitive relationship with the local politicians"⁷.

Problem Solving

The NPP system of community policing served the Singapore Police Force (SPF) well from 1983 to 1997. The SPF undertook a survey of its operational strategy and realize that future would not be built through perfecting the past, though it had been quite successful. There is a need for innovation to meet new policing challenges and public needs. Community policing has also been refined incrementally in Singapore. Police now seek to play problem-solving role and endeavour for resolution of certain community law and order problems that emerged from systemic causes. This proactive problem-solving approach establishes stronger bonds between the police and the community.

An example of a good problem-solving case is that by Hong Kah, South NPP. The NPP used to receive complaints about the coffee-shop visitors drinking after mid-night when coffee shops were closed. Their unruly behaviour caused public unease and frustration. NPP officers, instead of merely taking action against the lawbreakers, sought the cooperation of the owners of the coffee shops to stop the sale of the beer half-an-hour before the end of the stipulated licensing time; to stack up the chairs and chain them up before closing the coffee shops; and remove all empty bottles from the tables to prevent their use as weapons. The police also exerted peer group pressure on the owners of problematic coffee shops. They were asked to follow the good practices of their counterparts. The above measures were successful in curbing the problems and the residents of the area now enjoy restful nights.

model and brought about a complete conversion of the system between the years 1983 to 1989. All these changes were made within a short period of time and without expenditure of resources beyond the normal budget.

⁶ Singapore Police Evaluation Reports on NPP, 1984.

⁷ David H. Bayley: Research Report - A Model of Community Policing: The Singapore Story



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Inadequacies of NPPs

A key feature of the NPP system is a compartmentalization of functions. Each officer handles only a small piece of the entire service process. This limits the contribution of the officers. It also dilutes the ownership over the case. The NPP officers' local knowledge is not tapped always in the cases, as their participation at the crime scene is only transient. Further, crime victims are also inconvenienced and may even get confused with the service delivery due to the internal inefficiencies in police work processes.

In October, 1997, the Singapore Police Force made a significant and bold move to re-design the NPP system in a bid to strengthen its community policing approach, in the light of changing environment and factors. The Neighbourhood Policing Centre (NPCs) system has

Neighbourhood Policing Centre (NPC) has now been created to improve and enhance community policing. NPCs will be the sole vehicle for frontline policing to ensure the community's safety and security. The NPC will also be accountable for the total outcome of policing in the community.

Emergence of NPC as the instrument for policing services means that NPP will cease to be the sub-unit of a bigger police unit. Officers manning the NPPs will come from NPC itself. More attention and time is accorded to proactive functions in NPP system.

In order to deliver decentralized, flexible, integrated and community-focused capabilities, the existing structure and land divisions of the NPPs will be modified. NPCs will be accountable for the total outcome of policing in the community. It will serve as centers of total policing and perform duties like

Table-1: Key Differences between NPP and NPC

NPP System	NPC System
Community policing post with limited services	One-stop total providing the full range of policing service.
Disparity in workload due to electoral based boundaries	More efficient pooling of manpower resources to serve the community manpower resources to serve the community
General services to attract residents and establish points of contact.	Focused on services that are critical to safety and security
Low value tasks and narrow job scope	High valued, broad job challenge, better quality officers
Compartmentalization of services with many offices each performing a separate task	Integrated service process with one NPC officer handling the entire service process
Lower priority on proactive work	Dedicated resources for proactive work community focused policing.
Community-based policing	

now been created to enhance the community policing approach by strengthening the SPFs frontline operating system, building a strong service organization and optimizing the value contributed by each police force, to the policing process.

reactive patrol and investigations as well as proactive police activities. The basic unit of the NPCs is a group of those front line officers led by a group leader. This group of officers undertakes the entire range of different police responsibilities.

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Each group will also develop and nurture teamwork of community relationships within its allotted area.

In sum, community policing in Singapore had produced, noticeable improvements in public safety and public cooperation in a short period of time, and with very little addition of cost. It has achieved realistic objectives. But community policing in Singapore is more than a new deployment scheme or a command reorganisation. It marks a profound change in the orientation of police officers. Singapore police no longer see

themselves as law enforcement specialists. They have embraced the notion that for successful policing close cooperation between the police and the community is needed. This marks a change in the quality and nature of police professionalism. Thus, community policing requires change in the behaviour of the police officers. The Singapore police fully embraced it only when they were sure of the improved behaviour of police personnel. Community policing program will not succeed, if their practitioners fail to behave in a disciplined and principled manner.





Key Words

Key Performance Areas (KPA), Key Performance Indicators (KPIs), Reactive, Extraneous, CHRI, IPC, SMART Principles, Performance Management.

*IPS, Addl. DGP, AP

Relevance of KPAs & KPIs in Policing – CID-AP

A Sivanarayana*

Introduction

The domain of Key Performance Areas (KPAs) and Key Performance Indicators (KPIs) are ignored by many with a wrong notion that they are meant for profit making business organisations. But in fact, they are the measuring scales of every organization to identify its primary goals, devise analytical strategies, implement and achieve measurable success. Neely (1998) of Cambridge University, believes that measuring the performance of human resources (HR) is not confined to the business sector but to Governments and their agencies, which are increasingly recognising the value of measuring performance all over the world¹. Extensive research informs that HR, a strategic asset, managing performance and implementing overall strategy is attained through this process of KPI. Becker (2001), says, many managers believe that *'people are our most important asset', but they find it difficult to understand how the HR function makes that a reality*. The problem is that the 'asset' that is most important has been the least understood, least prone to measurement, and therefore, least susceptible to management.² The relevance of KPAs and KPIs in policing is briefly discussed in this paper, with an aim to sensitise the decision makers to realize its importance and their application. It is not that we do not know, or we are not applying, but to ensure that refined blend of quality of output with necessary cutting edge of service to the humanity.

An overview

Japan, where conviction rate is supposed to be the highest (80-90%), appears to have shaken the Parliament when the conviction rate fell just by 2 to 4%. In Australia, incidence of a murder will be week-long hot news in mass media throughout the country.

Indian Scenario

Though the primary role of police is twin in nature (punitive and preventive), the present focus in India appears to be containing trouble after it occurs, whether mob violence or individual criminal act. It is 'reactive' in dealing with situations except when it is influenced by 'extraneous' factors. Various Public Interest Litigations (PILs) filed in the Apex court of India, constant and active initiatives of Commonwealth Human Rights Initiative (CHRI) in campaigning for police reforms in India and others may point towards such lacunae in the system. The 'political-organizational' characteristics of the inherited Indian police structure from colonial ruler includes strict subordination to the civilian administration, unaccountability to the public, coercive strength and disposition and frequent use of violence, institutionalization of an armed police within the civilian wing, an 'eyes and ears' function on behalf of the government, pervasive secrecy and close identification with propertied interests are some of the laments that public attribute to the police organisation. These characteristics are not sustainable in a democratic, republican India and must be got rid of (Arvind Varma, IPS' 2008)³.

Conviction Rate – Ultimate Litmus Test

One of the quantifiable priorities of police can be said as 'achieving conviction of offenders' and protection of citizens. Most of the crimes reported in India are dealt with under Indian Penal Code (IPC). A cursory look reveals that the over all conviction rate of IPC cases in India is about 42% and the diminishing rate of conviction of heinous crimes like murder, rape, kidnapping, white collar crimes is 27-30% which is alarming and speaks of pathetic state of performance across the country.

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Another disturbing factor is increasing carnage of innocents due to fatal road accidents. Though the loss of life to a family does not change whether it is by murder or accident, the focus on 'prevention of fatal road accidents', though it constitutes more than a million cases in a year, appears to be negligible, which can be quoted as the best example. In AP alone 25% of the total FIR crime (1,60,000) per year is the fatal & non-fatal road accidents resulting in 13,787 deaths and 63,070 injured (many of them permanently immobilised). Therefore, accountable policing through KPA and KPI is an essential element for Indian policing.

What is KPA and KPI

As per Economic dictionary, "specific measures of the performance of an individual, team, or department are defined as key performance areas (KPAs). Measures of achievement that can be attributed to an individual, team or dependent is known as Key Performance Indicators (KPIs). They should be constructed using the "SMART principles of objective-setting, and are normally developed as part of a performance management system". The public sector defines performance indicators as to establish whether the envisaged performance was achieved and at what cost⁴. Performance measurement can cover a number of functions: making action transparent, becoming a basis of learning about what works best; appraising progress, providing a foundation for positive or negative sanction. Sunil Gupta (2005) says, employee and customers are assets and expenditures related to acquiring and maintaining them should be treated as 'investments', not expenses. The organisations must recover this investment over the long run.⁵ It is unfortunate that the many state police organisations are yet to identify the potency of their own employees, their capabilities, expertise, commitment, etc. However, the push and pull factors are playing the major role of designating or appointing a person to an assignment or position irrespective of his capability according to public opinion and mass media reports.

KPAs & KPIs in CID

As already discussed, KPAs and KPIs in any organisation are meant to achieve the professional excellence and achieving the organizational goals. When police organisation is the life line of society, goals are sacred and the words "Woods are lovely dark and deep but I have promises to keep and miles to go before I sleep" are apt to remind the police that we have still promises to keep sincerely. There are three characteristics of KPA & KPI: priorities are set according to organizational goals, Goals are set and assigned to right people/unit/team for implementation, and finally measures the quantifiable success and the cost within the set time frame.

Role of Leadership

The role of leadership plays a vital role in identifying the priorities of organisation, identifying the right resources within available constraints, teams, infrastructure, institutional facilities, etc. and to extend over all support to achieve the goals. The key to selecting KPI lies in selecting indicators that are quantifiable, and critical to the organization's goals. A hit-or-miss approach simply does not work; by making sure that KPIs can be measured. Selecting the right key performance indicators, however, is only half the battle. As a head of unit or organisation one must also know how to handle these indicators effectively.

KPAs of CID

The primary goal of CID, Andhra Pradesh can be broadly described in five points: investigation of specialized cases of public importance, maintenance and updating of data warehouse on crime and criminals so as to act as a catalyst to improve prevention, investigation and prosecution, coordination of investigation in the state and national institutions, efficient, professional and independent functioning of SCRB and FPB through modernization process and advise and assist DGP and Government on matters concerning investigation and prosecution



Abstract

The democratic policing in any country is meant for human security, protection and service to the people, in addition to maintaining order. The policing plays a vital role in the society by ushering in development and change. The UK and USA measures victims' satisfaction with the service they receive from the police. This KPI forms part of a Public Service Agreement. The increasing victims'



satisfaction is assessed and suggestions are made for future research and policy intervention to raise levels of satisfaction. In other countries like Canada, Australia, etc., different methods are adopted, depending on number of cases reported, preventive measures achieved and the number of convictions attained in a year.

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(PSO 861 - 1 of APPM). Coming to the point of KPA's and KPI's, the first point of consideration to the leadership is to make priorities in consonance with the goals.

Priorities

The Andhra Pradesh CID made its priority on five measurable points: to protect the state against the cyber based attacks and high technology crimes, to protect civil rights, to combat major white collar crimes and bank frauds, to support central, state, local and internal partners, and upgrade the technology and infrastructure to achieve the targets. The other point of importance is to identify the right team and the leadership to achieve the goals set.

HRD-PDR

An integral aspect of Human Resources Development (HRD) is the Performance Development Review (PDR) which in turn constitutes performance priorities, development objectives, and additional needs of the Organization.

To achieve PDR we must have the Key Performance Indicators which include

- Operational efficiency.
- Public satisfaction
- Victim satisfaction (both in terms of police investigation and response)
- Accountability
- Use of resources and
- Human rights records

KPIs in CID

C.I.D., A.P. has the following wings:

- (i) EOW (Economic Offence Wing), (ii) GOW (General Offences Wing), (iii) WPC, (Women Protection Cell) (iv) Cyber PS (v) Anti Human Trafficking, (v) FICN (Fake Indian Currency Notes) Investigation Unit, (vi) Narcotics Invn. Unit, (vii) Interpol Liaison, (viii) Investigation of Specific Human Rights Violation cases, (ix) PRC (Police Research Centre) (x) SCRB (State Crime

Records Bureau), (xi) FPB (Finger Prints Bureau) with FACTS (Fingerprints Analysis and Criminal Tracing System), (xii) A.D. Cell (Anti-Dacoity Cell) (xiii) Specific ISI (Inter Services Intelligence) cases.

We would like to confine to five wings in defining KPIs and the same may be extrapolated to other wings with appropriate changes.

Overview of Pending Cases and other matters

	%
1. Cases pending as on date. Cases you would finalize by the end of 31st Dec.	
2. Pending trial cases as on date you would like to complete by producing witnesses, executing NBWs, objecting to defense advocates, Cr.PC petitions, etc., by 31st Dec.	
3. Number of cases you would personally intervene to secure reports to speed up final reports/ charge-sheets.	
4. Victim satisfaction levels from poor - average - satisfactory-good-very good-outstanding (to be elicited from the victims in a proforma and kept in the CD file).	
5. No. of in-service empowerment programmes law, procedure, etc. proposed/conducted by 31st Dec (Minimum of one result oriented programme per quarter)	
6. Evaluation process adopted - frequency per year (written skills/ oral interviews/presentations, preparation of handouts etc)	
7. No. of personal interviews with junior colleagues to develop 'ownership' and bring about behavioural/attitudinal changes.	
8. Number of NBWs pending within the State/Outside the State.	



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II. EOW (Economic Offences Wing)

	By June	By Dec.
1. No. of EOW cases pending and to be finalized by the end of June and Dec.		
2. No. of pending trial cases and % which would be finalized by adducing timely evidence by June and Dec.		
3. No. of NBWs pending execution by the end of June/Dec.		
4. No. of suo motu cases registered by the end of June/Dec.		
5. No. of in-service empowerment: training programmes to be conducted by June/Dec.		
6. No. of reviews taken up with subordinates by the end of June/Dec.		
7. No. of handouts/circulars circulated among the SsP/CsP and among subordinate CID officers about new developments, Supreme Court judgments, proactive work, etc by the end of June/Dec.		

Anti Human Trafficking Unit

(Target: 700 AHT cases, 1500 traffickers to be arrested, 1000 victims to be rescued by Dec 08)

	By June -08	By Dec -08
1. No. of rescues made within the State and outside by the end of June/Dec.		

2. No. of traffickers arrested by the end of June/Dec.	397	
3. No. of victims: (VOCSETs) including rescued by the end of June/Dec.	298	
4. No. of sessions cases (SC Nos) come up for trial by the end of June/Dec.		
5. No. of calendar cases (CC Nos) come up for trial by the end of June/Dec.		
6. No. of sessions cases that ended in conviction of above 7 years imprisonment.		
7. No. of CC No. cases that ended in conviction upto 3 Years.		
8. No. of victims given witness / victim support fund to enable them to come to court.		
9. No. of VOCSETs rehabilitated. I reintegrated by the end of June/Dec.		
10. No. of empowerment programmes conducted for Police Officers by the end of June / Dec. with CID interface at A.P. Police Academy.		
11. No. of national/international workshops held where A.P. Police Officers represented.		

Technological Advancement

(Mandatory Online Data Transfer)

The KPI's in the field of upgrading the technology and creating infrastructural facilities, the state of Andhra Pradesh developed as number one in the country, facilitating the investigating officers to get every support online through 'the program of Police Applications, A.P. Police Messaging System connecting all the (1639) Police Stations, with 22



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District Head Quarters, 4 Commissionerates, 3 Railway districts, State Officers, etc. under one group user mode, Intranet, e-CIG, Criminal Intelligence Information System, 3rd Eye Investigation Tool providing additional online information about the addresses of all cellular and land line telephones, registration particulars of motor vehicles, Household supply card (Ration Card) details and Election Card details for the state of Andhra Pradesh for identification of individuals, Online Library of Books and Journals, Case Status of High Court and Supreme Court Cases, Telephone Directories, etc. The present project of Mandatory online data transfer, periodical returns on crime and criminals is another innovative improvement empowering the DCRB and SCRIB, a paperless office and it is likely to commence operation by the end of this year. As the details of improvement in IT are voluminous, I recommend the readers please to visit our websites; www.cidap.gov.in, www.apolice.gov.in, and sometimes when you visit Hyderabad to have a glance of our website containing above mentioned Police Applications.

State Crime Records Bureau (SCRIB)

	By June	By Dec
1. No. of PSs (out of 1639 PSs in AP) brought on to mandatory online data transfer (MODT) by the end of June/Dec.		
2. No. of Returns (out of 57 monthly returns incl.MCR) sent through MODT by the end of June/Dec.		
3. No. of IT Core Team district Units/DCRBx/CCRBx officers trained in MODT in e-governance lab of SCRIB by the end of June/Dec.		

4. No. of active criminals data entered into CIS by the end of June/Dec.		
5. No. of stolen/recovered vehicles based on SCRIB data by the end of June/Dec.		
6. No. of portraits drawn and accused identified by the end of June/Dec.		
7. No. of handouts circulars given to Unit Officers for enhancing computer applications by the end of June/Dec.		
8. No. of liaison meetings held with IG PC&S regd developing user-friendly software for retrieval of information by the end of June/Dec.		
9. No. of LAQs/ LCQs/ RSQs,/ LSQs replied by the end of June/Dec.		
10. No. of research projects taken up by the PRC by the end of June/Dec.		
12. No. of offenders identified based on prisoners release data sent by Prison Superintendents.		
13. No. of acquittal judgments in heinous offences being scrutinized and action initiated against the IOs.		
14. No. of innovative measures adopted by SCRIB by the end of June/Dec.		
15. Have you adhered to the cut off data of bringing down		



Relevance of KPAs & KPIs in Policing – CID-AP

crime in A.P. Book by the end of April every years? (Yes/No)		
16. Have you uplinked the crime in A.P data into CID Web www.cidap.gov.in by the: end of April (Yes/ No)		
17. Have you updated the website information every quarter (Yes/No)		

Chance Print through digital camera through data as SOC-FACTS programme implemented in A.P. in Feb-08.		
7. No. of officers sent for in-service training to New Delhi and other places by the end of June/Dec-08 and from Jan to Dec-07.		

Finger Prints Bureau (FPB)

	By June	By Dec
1. No. of Chance Prints lifted from SOC and No. tallied with the FACTS database by the end of June/Dec-08 and from Jan to Dec-07.		
2. No. of court documents regarding disputed FPs examined and results submitted by the end of June/Dec-08 and from Jan to Dec-07.		
3. No. of FPs of convicted offenders entered into FACTS by the end of June / Dec-08 and from Jan to Dec-07.		
4. No. of inter-State FP slips verified by the end of June / Dec-08 and from Jan to Dec-07.		
5. No. of empowerment programmes conducted for FPB officers by the end of June/ Dec-08 and from Jan to Dec-07		
6. No. of FPB Inspectors collecting Chance Prints and sending them to FACTS server from SOC in liaison with CLUES Team within one to 3 hours of lifting the		

Notable Achievements: (Criminal Cases)

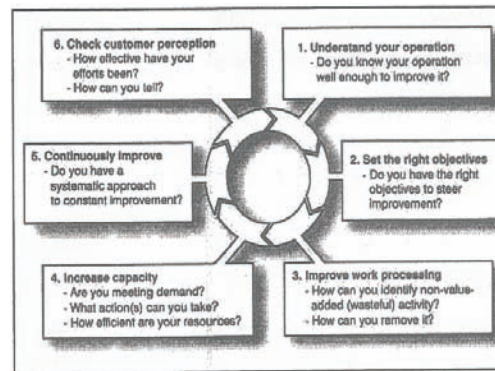
- Case regarding Misappropriation of Government Funds from SSA (Sarwa Shiksha Abhyan) taken over on 10.4.07 and charge sheet filed on 04.06.07.
- Inquiry under Sec. 45 (S) of RBI Act against Margadarsi Financiers initiated with IGP-EOW as Authorized Officer
- High Court Division Bench supported application of MLM Act to 'Amway' on 19.7.07
- Hon'ble Supreme Court upheld the High Court judgment regarding 'Amway' on 14.08.07
- Convictions obtained in the Hon'ble VI Addl. CMM Court against all the 6 accused in 7 cases concerning realtors - M/s Sri Laxmi Priya Town Ship Ltd on 25.10.0.
- Out of 14 cases, 3 cases registered against banned outfit Deendar Anjuman ended in conviction. 39 accused were convicted (crime in 35/2000 of CID PS)
- 2 cases of ISI including murder of Mahalaxmi Jewellery Shop owner Modi (Cr.No. 172/2000 of Afzalgunj PS) ended in conviction with life imprisonment.
- The publication of Crime in AP, a ready reckoner. in a record time of 4 months with new features facilitating investigating officers and SsP/CsP.



Relevance of KPAs & KPIs in Policing – CID-AP

Philip Holman and Derek Snee (2004)⁶ rightly said that KPIs help an organization to define and measure progress towards organizational goals and once it can analyze its mission, identify stake holders, define goals, it needs a way to measure progress towards its goals. They recommend a route to improve efficiency in six points as shown in the fig. below.

Route to Efficiency



Cursory of the above diagram is an index to the leadership to understand and learn about the activity of the assignment and then to set the right objectives for improvement. The other point is shedding out the waste and refining or taming the tools through different process of improvement, thereby the capacity building is developed to meet the challenges with efficiency. The continuous improvement is the

hallmark of success in any organization and periodical review is the constant yardstick of effective achievement of goals.

It is hoped that the police organization today in India on the whole will realize the importance of KPAs and KPIs, and improve the service delivery to the public.

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Conviction Rate : A Reality Check

Shatrujeet Kapoor*

Introduction

Large number of acquittals in criminal cases is widely perceived to be an important reason behind declining fear of law in our Society. Over the years, people have lost faith in the capacity of the law enforcement machinery to bring offenders to justice. It is commonly believed that with money and muscle power, one can go scot free even after committing murder. Failure of the system to convict offenders has caused a huge dent in its credibility in the eyes of the public.

A logical corollary of the argument is that high conviction rate can reverse this trend and bring back the much needed credibility in the system. In order to test this hypothesis and identify factors that determine the effectiveness of the criminal justice system, a study was conducted in a branch of the Central Bureau of Investigation (CBI) on the basis of five year data of registration, investigation, prosecution and outcome of trials, appeals and revisions pertaining to the year 1980 to 1984.

The study has revealed that there are several factors, other than conviction rate, which have an adverse impact on the public perception, namely, inordinate delay at various stages of prosecution, absence of sound sentencing guidelines, leaving the issue of quantum of sentences completely at the discretion of the courts, too many options to file appeals and revisions against the order of sentence, and so on. In other words, improving conviction rate alone may not help the system in attaining its rightful glory unless it is accompanied with certain policy level interventions, details of which will follow:

Findings

Important findings of the study are as under :

- Even though 144 out of 275 accused persons prosecuted during the period under study were convicted (57.37%), less than 4% of them actually spent time in prison.
- The sentence awarded to a convicted accused, on an average, was less than 13% of the maximum sentence prescribed for the offence for which s/he was convicted.
- More than 86% of the convicted offenders were sentenced to undergo three years' or less imprisonment, allowing them the benefit of automatic bail under section 389(3) of CrPC.
- Average time taken for completion of investigation was 13.4 months. Trials were far slower and took on an average 7 years 4 months.
- More than 75% (111 out of 144) of the convicted accused persons challenged their conviction by the trial court by way of filing appeal. Those, numbering 33, who accepted the conviction included 25 persons who were released on probation and another 6 who were convicted till rising of the court. Thus, only the remaining two convicted offenders out of 144 (less than 1.5%) accepted substantive (read real) sentences.
- The data pertained to the year 1980 to 1984. However, only 37 appeals have been decided so far.
- Average time taken in deciding an appeal was 9 years 11 months. 66 appeals and 5 revisions are still pending in the High Court, even after more than 20 years of institution of criminal proceedings against the accused persons.

Flawed Justice Delivery System

Clearly, the justice delivery mechanism in our country is badly flawed. There is inordinate delay

Key Words

Regular Case,
Conviction Rate,
Sentencing Policy.

*IPS, IG (Telecom)
Panchkula, Haryana



Abstract

Large number of acquittals in criminal cases is widely perceived to be an important reason behind declining fear of law in our Society. Over the years, people have lost faith in the capacity of the law enforcement machinery to bring offenders to justice.

Conviction Rate : A Reality Check

at every stage. Few offenders are convicted. Fewer actually spend time in prison. The rest, especially, the white collar variety, are able to take advantage of a host of lacunae in the system and manage to avoid incarceration. An innocent person wrongly prosecuted by the police, on the other hand, has to struggle for years to prove his innocence. These distortions are hitting at the root of our Criminal Justice System, highlighting pressing need for reforms.

As per official statistics, conviction rate in the Central Bureau of Investigation in the last 10 years has been as under:

Table-1: Conviction Rate in CBI

Year	Percentage
1998	72.0
1999	57.1
2000	71.9
2001	70.0
2002	68.7
2003	68.4
2004	66.3
2005	65.6
2006	72.64
2007	67.25

The above table demonstrates that the Bureau has achieved an impressive conviction rate between 57.1% and 72.64%. In the States, barring a few like Tamil Nadu where they still have the old system of Police Officers heading the Directorate of Prosecution resulting in better coordination, conviction rate is much lower.

Calculation of Conviction Rate

Further, as the readers would know, conviction rate is calculated on the basis of cases resulting in conviction as a percentage of total number of

cases disposed off by the courts in a calendar year. Clearly, the focus is on *cases ending in conviction*, rather than *accused persons being convicted*. Following are a few limitations of this approach:

- Only if one accused is convicted in a case, the whole case is deemed to have resulted in conviction, even though rest of the accused have been acquitted.
- At times, accused persons confess after an informal understanding is reached with the court and the Public Prosecutor. Only a mild sentence is imposed in such cases like 'till rising of the court, etc. Such cases inflate the conviction rate.
- Conviction rate takes into account only the outcome of trial at the first stage i.e. judgement of the trial court. In several instances, convicted persons are later acquitted by the appellate court. Official conviction rate at present does not reflect decisions of the appellate courts.
- There is another important aspect relating to convictions. A majority of the convicted accused persons are sentenced to three or less number of years of imprisonment and therefore granted bail forthwith in accordance with Section 389(3) of the Criminal Procedure Code, 1973, which reads as suspension of sentence pending the appeal; release of appellant on bail.
- Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall :
 - (i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
 - (ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,



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order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under subsection (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended."

Clearly, arrest is the only time when an offender spends any time behind bars. However, with the amendments in section 41 (2) of CrPC, the situation is bound to change. Arrests would be made only in rare cases. The likely outcome of such a legal regime, coupled with inordinate delays in trials and disposal of appeals, is that the accused persons will remain at large (on bail) even after their conviction by the trial court.

Cutting a long story short, the official conviction rate presents a rosy picture and hides many uncomfortable realities. It generates a false sense of achievement and thus causes complacency. Further, since emphasis in our country is invariably on crime statistics, the focus remains on proceedings in the trial court. Appeal matters do not receive the attention these deserve because decisions in appeals do not affect statistics. Over the years, officers have developed skills to show good results *statistically*, rather than focus on improving core aspects of criminal investigation and prosecution. As findings in later paragraphs would show, trial proceedings take years. Appeals take even longer. The whole system appears to be heavily in favour the guilty.

New Conviction Rate

The instant study was carried out in one of Anti Corruption branches of CBI on the basis of five year data for the period 1980-1984. For the

purpose of this study, the following two new terms have been defined:-

- **It is the accused wise conviction rate** percentage of accused persons (rather than cases) convicted by the trial court out of the total number of persons charge sheeted in a given year.
- **Substantive conviction rate** : It is the percentage of accused persons convicted and actually sent to prison for undergoing sentence (excluding convicted accused who are let off on probation, sentenced 'till rising of the court' etc.), out of the total charge sheeted accused persons.

Findings

Year wise result of analysis is given in the **Annexure**. Gist of findings is as under:-

Regular Cases (FIRs) registered: 264

Total number of accused persons investigated: 698

This included:

Public Servants: **486**
(Central Govt: 484, State Govt: 02)

Private Persons : **212**

Result of Investigation:

Number of accused persons charge sheeted: 273 (39.11 % of 698)

Average time taken to complete investigation: 13.4 months

Outcome of Trial of 273 charge sheeted accused:

Convicted: 144

Acquitted: 78

Discharged: 29

Accused expired during trial: 06

Pending trial: 16

It is commonly believed that with money and muscle power, one can go scot free even after committing murder. Failure of the system to convict offenders has caused a huge dent in its credibility in the eyes of the public.



Conviction Rate : A Reality Check

Accused wise conviction rate($144/251 \times 100$)
= **57.37 %**

Average time taken for trial: **7 years,
4 months**

Break up of 144 convicted persons:

Underwent imprisonment: **02**

Released on probation: **25**

Convicted till rising of the court: **06**

Appeals filed: **111**

Result/status of 111 appeals:

**Conviction upheld, and accused
underwent imprisonment:** **01**

**Conviction upheld but accused
released (already undergone):** **05**

(These persons actually spent
10, 10, 19, 19 and 488 days in
JC respectively)

Acquitted by appellant court: **18**

**Conviction upheld, but accused filed
revision in HC:** **05**

**Conviction upheld, but accused
released on probation:** **07**

**Conviction upheld, but accused
sentenced 'till rising of the Court':** **01**

**Conviction upheld, but accused
fined Rs.10,000/- only:** **01**

Accused expired during appeal: **07**

Appeals still pending
(even after 26 years!): **66**

**CBI filed revision in HC against
acquittal:** **03**

**Average time taken in 9 years, 11 months
deciding appeals:**

(Calculated on the basis of 37 appeals which
have been decided)

As may be seen, out of the 273 charge sheeted
accused persons, only 8 have actually spent
time in prison after conviction. Thus,

Substantive Conviction Rate = $8/202 \times 100$
= **3.96%**.

(66 appeals and 5 revisions pending in the HC
have been excluded from this calculation, as
their outcome is still not known. That is why
the denominator has been taken as 202 = 273
minus 71.)

**Substantive Conviction Rate of less than 4%
is a telling commentary on the state of affairs
of our judicial system.**

Out of the 45 appeals decided so far, 18 have
resulted in acquittal. However, significantly, even
out of the 17 convictions which have been
upheld, only one accused was actually sent to
prison. The rest were let off on probation,
sentenced till rising of the court, already
undergone etc. Clearly, there is an element of
arbitrariness in sentencing. Courts have too
much of discretion. It is this arbitrariness which
brings down the substantive conviction rate to
less than 4%.

Quantum of Sentence

The element of arbitrariness in sentencing
the convicted accused persons is not
limited to decisions of the appellate courts.
Decisions of the trial courts are equally
afflicted with this malady. To highlight this
fact, quantum of sentence awarded by the
trial court was calculated as a percentage



Conviction Rate : A Reality Check

of the maximum punishment prescribed in the law for the said offence for each convicted accused. Annual average is given in the following table:

Table-2: Annual Average of Sentence

Year	Average quantum of sentence awarded as % age of maximum punishment
1980	10.1%
1981	16.1%
1982	17.28%
1983	09.0%
1984	04.05%
Overall	12.86%

Thus, on an average, a convicted accused was sentenced to undergo only 12.86% of the maximum sentence prescribed for the offence for which he was convicted. This shows that courts take an extremely lenient view. It almost amounts to negating the objects in furtherance of which the law was enacted in the first place.

It is pertinent to mention that while calculating the figures given in the above table, the actual sentence awarded to the convicted accused has been compared with the maximum punishment prescribed for the most severe offence for which he was convicted. For example, if an accused was convicted on three counts, the maximum punishment prescribed for the **most severe offence** was taken as the denominator. Courts in India generally sentence convicted accused persons to undergo sentences concurrently. However, as per section 31 Cr. PC, the court may sentence an accused to undergo imprisonment on each count consecutively i.e. one after the other. If the figures in the above table

are recalculated on the basis of this permissible maximum i.e. sum total of maximum prescribed punishment for each offence, the results will be even more disappointing.

Justice Delayed is Justice Denied

As already reported above :

Average time taken in investigation: 13.4 months

Average time taken in trial: 7 years 4 months

Average time taken in deciding appeal: 9 years 11 months

The Sixty Six appeals are still pending. Average time taken in deciding appeals has been calculated on the basis of only 37 appeals which have been decided so far. Once the remaining appeals are also decided and reflected in the calculations, the average time taken in deciding appeals is likely to go up further.

The above figures show that trial and appeals together have taken 17 years on an average which is more than 15 times the time taken during investigation. In the police, delays in investigation are viewed seriously. Taking longer than a few months to complete investigation is considered as a professional sin. However, the above figures clearly show that investigation takes far less time than trial and appeals. Even if time taken to complete investigation is halved, it will not make any significant dent in the overall time taken by the judicial process. Moral of the story (for CSI top brass) is: **Focus on quality of investigation, rather than emphasizing on statistics which has no impact on the ground situation !**



Conviction Rate : A Reality Check

From the above figures, it becomes clear that, on an average, a case instituted in the year 1980 was sent up for trial in 1981, trial proceedings were completed on an average in the year 1988 and appeals filed by the accused persons were decided in the year 1998. And then came the revisions. **All eight revisions, 5 filed by the accused and 3 by the State**, are still pending in the High Court. Not even one has been decided so far.

There is another way of looking at these figures. Data pertains to the year 1980 to 1984. The mean year is 1982. Thus, on an average, cases are already 26 years old. Even if, it is presumed that the age of an accused public servant was only 35 years when FIR was registered against him, he would have retired by now !

In all, two convicted accused persons underwent prison sentence after the trial court verdict. One more did so after the appellate court upheld the sentence, However, the above figures regarding time taken at various stages would show that had these three gentlemen decided to contest the judgement of the trial court or the appellate court, as the case may be, and filed appeals/revisions, the same would not have been decided even till date i.e. year 2008. **This shows that even 26 years are NOT enough for law to complete its course. It appears that people who actually undergo sentences are those who get tired out in the legal battle or lack the resources to fight (or are simply FOOLS !)**

Does Section 389(3) Cr.P.C. Influence sentencing?

Following table shows sentence-wise break up of convictions:-

Table-3: Sentencewise Breakup of Conviction

Year	No. of convicted accused	Sentenced to 3 years or less	Sentenced to more than 3 years.
1980	19	19	Nil
1981	34	29	05
1982	33	22	09
1983	40	36	04
1984	18	16	02
Total:	144	122	20

Only 20 of the 144 convicted accused were sentenced to more than 3 years, which is a meager 13.89% of the total. This suggests that Courts apparently do keep Section 389(3) Cr.P.C in mind while awarding sentences. This fact further highlights the **need for formulating sentencing guidelines.**

Implications of such leniency are very serious. Accused knows that more than 85% (17 out of 20) chances are that he will not have to spend time in jail even if convicted and then will also have the luxury of filing- appeal, followed by revision and followed by another appeal and so on, till he dies or gets too old for the court to impose any meaningful sentence. The more he prolongs the trial, more are the chances of success !

Judiciary often holds poor investigation as the mother of all ills, including low conviction rate. However, in the 144 instances when the accused were convicted by the trial court, nothing stopped the courts from awarding exemplary penalties. Instead, only 20



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convicted accused were awarded more than 3 years. Besides, 100% of the accused persons who were convicted on multiple counts, were sentenced to undergo imprisonment **concurrently**. Not one was sentenced to undergo the sentences consecutively. A plain reading of section 31 Cr.PC reveals that consecutive sentences should be the norm. However, one rarely comes across cases when accused is sentenced consecutively. The present study is no exception. This fact further underlines the **need for strict sentencing guidelines**. The element of huge discretion which courts enjoy presently should be taken away. All developed countries have evolved sentencing guidelines. The effect is that even the accused knows the likely sentence right in the beginning of criminal proceedings. As a result, many of them go for plea bargaining.

Conclusion

- Judicial processes (trial, appeals, revisions) in India are ritualistic and absolutely tardy. The whole process practically outlives the accused.
- There are too many layers of decision making - trial, first appeal, revision, second appeal and so on.
- The accused has nothing to loose by prolonging trial and post-trial process (and rather gains by the delay).
- Quantum of punishment is meagre.
- Certainty of punishment is missing.
- As a consequence, compliance levels in the society are low. There is no fear of law.
- All this unmistakably points to one fact : **The existing judicial system in India is designed to fail !!**

Judicial officers often cite resource constraints (poor judge to population ratio, etc.) as a reason for poor performance of the judicial system. However, this is not tenable. Reason: A system needs to be designed keeping in mind the resources (and not the other way round!).

Issues for Consideration

- ❑ Post-trial proceedings take too long and negate the very object of the criminal justice system. There is a case for limiting number of appeals/revisions allowed to a convicted accused to just two.
- ❑ At present, accused has nothing to loose by filing appeal after appeal. There is nothing in the system to punish frivolous appeals. A provision may be made in law that in case the appeal is dismissed, quantum of punishment would be raised. This will discourage frivolous appeals.
- ❑ Once the appeal of a convicted accused is dismissed, he should logically get an opportunity to file appeal in a higher court. However, the study has shown that 5 convicted accused persons, whose conviction was upheld by the appellate court have filed revision in the High Court. In 3 instances, even the state has filed revisions. Section 397 Cr.PC needs to be amended in a manner that revision does not lie on the issue of sentencing. The word 'sentencing' should be deleted from this provision.
- ❑ The next important issue is the need to evolve sentencing guidelines. Presently, there is a huge discretion in sentencing which needs to be curbed. Efficacy of any criminal justice system is governed by the following three factors:
 - Quantum of punishment
 - Certainty of punishment
 - Speedy decision



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A well defined sentencing policy can ensure the first two, once the accused is convicted.

This also brings us to an important issue. What is the best parameter to define/ascertain the efficacy of a criminal justice system? As stated above, the three most important factors that most closely determine the effectiveness of a criminal justice system are time taken to complete the proceedings, quantum of punishment and certainty of punishment.

A weighted average of the three would, therefore, be the best parameter for determining how effective a system is. These three, in turn, may be measured in terms of time taken to complete trial and dispose of any resultant appeals/revisions, quantum of sentence as a percentage of maximum punishment for all the offences for which a person is prosecuted and number of eligible offenders opting for plea bargaining respectively.

There is a strong case for setting up separate full time appellate courts. Presently, Judges in the High Courts and Supreme Court deal with mix of all matters including appeals. Current matters receive priority and appeals are taken up only if time permits. Separate full time courts will bring down the pendency considerably. After all, no new evidence is adduced at the stage of appeal. Only the case record of the trial court is examined. In the CBI, judgments are scrutinized at multiple levels (PP, SP, DLA, DIG, JD & HO) in a short span of 90 days for deciding whether to file an appeal or not. Scrutiny at each level does not take more than one day and is more of an academic exercise. It should be possible to easily outsource this job in a manner that chances of unfair decisions are also ruled out. Panel of retired Judges can be constituted and assigned appeals to be decided on the same day. This will ensure speedy disposal and fair play.

Special Issues

In all police organisations, old records are weeded out at regular intervals. In the CBI, case files are weeded out 5 years after closure of the file i.e. after the matter is allowed to rest. Considerable difficulty was faced while compiling data in the instant study

because records of several cases have been destroyed. According to author, case files contain a wealth of data. Lot of research can be done on the basis of this data for betterment of the criminal justice system. It is, therefore, strictly recommended that a copy of the FIR, FRs, comments of senior officers, case diaries, charge sheet and judgments of the trial court and appellate courts should be preserved in the form of a folder and kept in the unit library. Although, space is not a very big consideration, yet if it is felt otherwise, we may retain only soft copies. **Archiving needs to be put in place in police organisations.**

There is too much focus on deadlines and crime statistics in police. Please remember: as the above findings clearly show, investigation takes less than 10% of the total time in the criminal proceedings. Therefore, police hierarchy should stop worrying about over 2 years, over 1 year and over 6 month old cases. Instead, focus should shift to the quality of investigation.

Police top brass, especially in the CBI, is too busy in day-to-day operations. They hardly play any role in the improvement of the criminal justice system. As senior police officers, it is our duty to work closely with policy makers (law makers, Law Ministry, Law Commission etc.) and make concrete suggestions to get the laws amended. Nobody is closer to ground realities than us. We just have to lift our head and look around.

Let us stop worrying about crime statistics for a change !

A word of caution here. The objective of the study was to bring out the stark realities/maladies afflicting the criminal justice system as a whole and to draw attention to the urgent need for improving the basics of criminal investigation and prosecution. The fact that the data pertains to a particular branch of the CBI is a mere coincidence. The results are not expected to be much different had it been from any other investigating agency, namely, the state police or even a non-police agency. Further, as the data



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pertained to an Anti Corruption Branch of CBI situated in a particular state, the above mentioned findings/recommendations relate more to anti corruption work in that State. Even though situation in other states is not likely to be very different, it is recommended to carry out similar studies and arrive at conclusions applicable to the whole country.

Acknowledgement

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Annexure

Year-Wise Result Of Analysis

Year 1980

In the year 1980, the branch registered a total of 32 Regular Cases. The result of investigation, trial, appeals and revisions is as under :-

Result of Investigation :

Total number of accused persons investigated: 86 (Public Servants: 69, Private Persons:17)

Number of accused persons charge sheeted: 27 (31%)

Average time taken in investigation: 10.6 months

Result of Trial of 27 charge sheeted accused:

Acquittals: 8

Convictions: 19

Average time taken for trial: 6 years 8 months

Accused wise conviction rate: $19/27 \times 100 = 70.37 \%$

Break up of 19 convicted persons:

Released on probation: 03

Underwent imprisonment: Nil

Appeal filed: 16

Result of appeal:

Accused expired during pendency of appeal: 02

Acquitted by appellant court: 05

Conviction upheld and accused released on probation: 04

Appeals still pending: 03

Conviction upheld but accused filed revision in HC (still pending): 02

Average time taken in deciding appeal: 12 years 9 months

(calculated on the basis of 10 appeals which have been decided)

Year 1981

In the year 1981, the branch registered a total of 50 Regular Cases. The result of investigation, trial, appeals and revisions is as under:-

Result of Investigation:

Total number of accused persons investigated: 135 (Public Servants: 89, Private Persons: 46).

Number of accused persons charge sheeted: 70 (51.85%)

Average time taken in investigation: 14 months

Result of Trial of 70 charge sheeted:

Accused expired during trial: 01

Acquitted: 19

Discharged: 06

Convicted: 34

Pending trial: 10

Average time taken for trial: 7 years 10 months

Accused wise conviction rate: $34/59 \times 100 = 57.62 \%$

Break up of 34 convicted persons:

Released on probation: 01

Underwent imprisonment: 01

Appeal filed: 32



Conviction Rate : A Reality Check

Result of appeal:

Accused expired during pendency of appeal: 02

Acquitted by appellant court: 06

Conviction upheld and accused underwent imprisonment: Nil

Appeals still pending: 24

Average time taken in deciding appeal: 7 years 8 months

(calculated on the basis of 6 appeals which have been decided)

Year 1982

Regular Cases registered: 61

Result of Investigation:

Total number of accused persons investigated: 171 (Public Servants: 108, Private Persons: 63).

Number of accused persons charge sheeted: 69 (40.35%)

Average time taken in investigation: 18½ months

Result of Trial of 69 charge sheeted accused:

Accused expired during trial: 04

Acquitted: 18

Discharged: 10

Convicted: 33

Pending trial: 04

Average time taken for trial: 7 years 11 months

Accused wise conviction rate: $33/61 \times 100 = 54.1\%$

Break up of 33 convicted persons:

Released on probation: 03

Convicted till rising of the court: 01

Underwent imprisonment: Nil

Appeal filed: 29

Result of appeal:

Conviction upheld but accused released (already undergone): 01

Conviction upheld and accused released on probation: 03

Accused sentenced till rising of the Court: 01

Imposed fine: 01 (Rs.10,000/-)

Acquitted by appellant court: Nil(so far)

Appeals still pending: 23

Average time taken in deciding appeal: 12 years 10 months

(calculated on the basis of 6 appeals which have been decided)

Year 1983

Regular Cases registered: 61

Result of Investigation:

Total number of accused persons investigated: 133 (Public Servants: 87, Private Persons: 45).

Number of accused persons charge sheeted: 56 (42.1%)

Average time taken in investigation: 12 months

Result of Trial of 56 charge sheeted accused:

Accused expired during trial: 01

Acquitted: 12

Discharged: 01

Convicted: 40

Pending trial: 02

Average time taken for trial: 5 years 6 months

Accused wise conviction rate: $40/53 \times 100 = 75.47\%$

Break up of 40 convicted persons:

Released on probation: 14

Conviction Rate : A Reality Check



Convicted till rising of the court: 02

Underwent imprisonment: 01

Appeal filed: 23

Result of appeal:

Accused expired during pendency of appeal: 02

Conviction upheld but accused released (already undergone): 03

(accused had spent only 10, 10 and 19 days only!)

Conviction upheld, but accused filed further revision in HC: 03

Acquitted by appellant court: 03

Appeals still pending: 12

Average time taken in deciding appeal: 10 years 5 months

(calculated on the basis of 9 appeals which have been decided)

Year 1984

Regular Cases registered: 60

Result of Investigation:

Total number of accused persons investigated: 173 (Public Servants: 132, Private Persons: 41).

Number of accused persons charge sheeted: 51 (29.48%)

Average time taken in investigation: 13.5 months

Result of Trial of 51 charge sheeted accused:

Acquitted: 21

Discharged: 12

Convicted: 18

Average time taken for trial: 8 years 2 months

Accused wise conviction rate: $18/51 \times 100 = 35.29\%$

Break up of 18 convicted persons:

Released on probation: 04

Convicted till rising of the court: 03

Underwent imprisonment: Nil

Appeal filed: 11

Result of appeal:

Accused expired during pendency of appeal: 01

Conviction upheld but accused released (already undergone): 01
(accused had spent 19 days only!)

Conviction upheld, and accused underwent imprisonment: 01

Acquitted by appellant court: 04

Appeals still pending: 04

CBI filed revision in HC against acquittal: 03

Average time taken in deciding appeal: 3 years 8.5 months

(Calculated on the basis of 6 appeals which have been decided)



Key Words

Cell Tower,
Radiation, Antenna,
Fundamental Rights,
Micro-frequency,
Handset,
Dumbness,
Epilepsy,
Palpitations,
Bye-laws.

Cell Tower Radiation Hazard Need for Legislative Intervention

Kanika Gaur*

What are Radiations¹ ?

Cell Towers, Base Stations, Antennas, Masts and Hubs are erected generally near residential areas in India which emit Electromagnetic Radiations. The Electromagnetic Radiations (EMR) are the radiations with Electric and Magnetic properties. These do not require any material medium for propagation². Cell towers emit EMR of Radio and Micro frequency. These radiations are placed in the lowest ranks in Electromagnetic spectrum, as they have low frequency range (major reason for it being considered harmful) but high levels of these radiations can heat biological tissues and can potentially cause tissue damage. These can also interfere with the electrolytes and ions, thus, weakening the bodies self repair and healing processes. As a general rule "Every kind of frequency combination which is not in order produce diseases³".

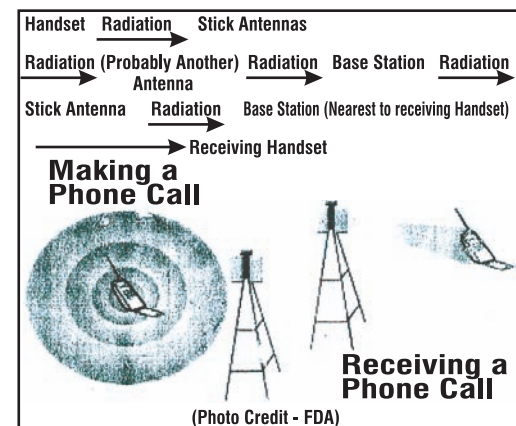
How do Cell Towers Communicate with Handsets⁴ ?

The cell phone technology works on the principle of two-way radiation technology. Both the handset as well as the Cell Towers emit RF radiation. There are primarily two types of Cellular Microwave Antenna : one, is stick/pencil antenna and the other a larger antenna or hub antenna.

The stick or pencil antennas cover a limited range, whereas, a hub or base station antennas receive and send frequency waves to and fro from all the stick/ pencil antennas in a given geographical area, i.e., in a given geographical area one hub/base

station communicate with several stick pencil antennas. The radio frequency signal emitted by a cell phone is picked up by the nearest stick/pencil antenna, which in turn transmits that signal to the nearest hub or another stick antenna and from that hub to another stick antenna closest to the receiving cellular mobile phone handset.

The Mechanism:



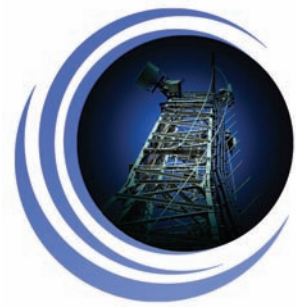
Is it a Certified Danger⁵?

In a cross-sectional study of randomly selected inhabitants living in urban and rural areas for more than one year near to 10 selected base stations, 365 subjects were investigated. Several cognitive tests were performed, and well-being and sleep quality were assessed. Total HF-EMF and exposure related to mobile telecommunication were far below recommended levels (max 4.1 mW/m²). Distance from antenna was 24-600 m in rural area (0.05 mW/m²) than in urban area (0.02 mW/m²). Despite the influence of confounding variables, including fear of adverse effects from exposure to HF-EMF from base station, there was a significant relation of

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1 A textbook of Physics (NCERT) Class XI
2 ARPANSA
3 Wikipedia
4 www.karamjyot.pil.doc

5 www.oem.bmj.com



Cell Tower Radiation Hazard: Need for Legislative Intervention

some symptoms to measured power density, this was the highest for headaches. Perceptual speed increased, with increasing exposure levels. There was no significant effect on sleep quality.

The conclusion was that despite very low exposure to HF-EMF, effect on performance and well-being cannot be ruled out, as shown by recently obtained experimental results.

Prof. Smith of Salford University in England, discovered that "favourable information" is absorbed by the body very quickly. Whereas unfavourable information such as chaotic EMF's, Microwaves and Radio Waves is blocked for some time, i.e., for ten to fifteen seconds and may only cause damage after having sufficient external pathogenic factors over which we primarily do not have any influence. Amongst these contaminants are some heavy metals from which we have radioactivity and microwave pollution. The body does not become ill instantaneously, but persons get ailments subsequently as the body defence mechanism has been weakened by radiation.

Are Humans Only Target Species⁶?

A study conducted by three departments of Punjab University has found that cell phone towers are the primary source of EMR in the environment in the city and this could lead to disease in plants and animals. It was found that there are 199 mobile towers in 52 sectors and industrial areas in city, out of these, 74% are present in southern sectors and remaining in northern ones. The measurement of radiations was done at 100 mtrs, 200 mtrs and 300 mtrs with the help of RF field strength meter at heights ground, 4 feet and 5-6 feet level. Dr. Kohli says that the EMR generates heat. Due to this, the microbes present in foil near it would be killed. This in turn harms these organisms, which feed on them. It disturbs the ecological cycle. The towers continuously emit radiations even when nobody is using a cell phone. They are continuous and more dangerous at close quarters.

6 www.citiesexpressindia.com

List of Health Hazards⁷

Following are health hazards of Cell Tower Radiation :

- Fatigue
- Irritability
- Headaches
- Nausea
- Loss of appetite
- Sleep disruption
- Psychological
- Memory loss disorders
- Difficulty in breathing
- Skin allergies concentration
- Eczema
- Tumors
- Dumbness
- Muscle & Joint pains
- Leg/Foot pain "Flue like" Symptoms
- Fever
- Depression
- Paralysis
- Psychosis
- Palpitations
- Slow or fast heart rate
- Sinusitis
- Bronchitis
- Pneumonia
- Asthma
- Pain in eyes
- Genetic defects
- Cancer
- Epilepsy
- Alzheimer disease.

What Rights are Infringed?

Art 14 of Constitution of India declares that the state shall not deny to any person equality before the law or the equal protection of laws within the territory of India⁸. It states that everyone is equal before law, that no one can claim special treatment and that all classes are equally subjected to the ordinary law of the land.

So, the legislature should take stern action against the cell phone companies, which repeatedly violate the guidelines of Standing Advisory Committee on Frequency Allocation (apex body for setting out radial distance and height of Towers/Hubs/Masts). The law in US prohibits⁹ the installation of tower in residential areas but there is no such law in India (However, UT of Chandigarh has made slight progress in this aspect in 2007). Under this law of UT of Chandigarh, a town zonal board would not allow a cellular phone tower in residential area.

Article 21 of Constitution of India says that no person shall be deprived of his life or personal liberty except according to a procedure established by law. Safety of life and liberty of people are two most essential

7 www.karamjyot.pil.doc

8 Constitution of India

9 www.feb.se (as posted on 2001)

Abstract

It is generally an enlightening outcome when you write on an issue which is tagged as 'Superfluous Paranoia' and the issue in question was just that kind of genre. What irked the author most was that amidst all the bye-laws manning the safeguards regarding the installation of cell towers on buildings, most of the personal injury suits are given in favour of radiation affected residents, even so that myriad mention of radiation hazard of handsets; a more grave issue of cell tower



Cell Tower Radiation Hazard: Need for Legislative Intervention

radiation hazard has escaped the attention of major blocks. There is no unitary policy or separate department in the central or state Government until now, which could regulate and check the radiation pollution caused by Cell towers, Base stations, Antennas, Masts and Hubs. However, the issue is in direct conflict with the Fundamental Rights envisaged in our Constitution. This paper attempts to examine hazards of Cell Tower Radiation in relation to law and policy.

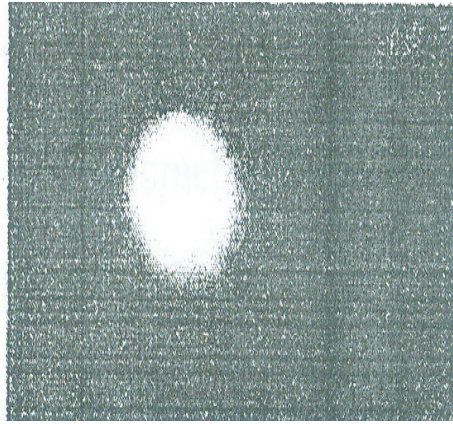


Fig.1 Unexposed control Bundle of DNA (No Tail)

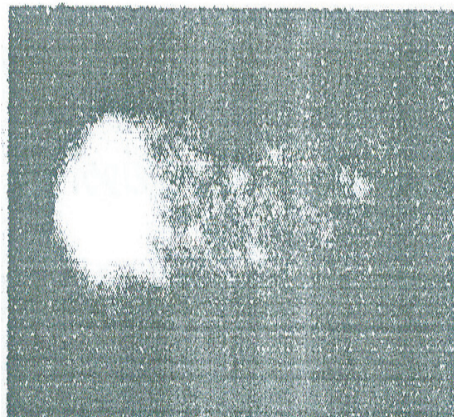


Fig.2 X-ray Calibration 25.6 rads. DNA breaks are very Obvious

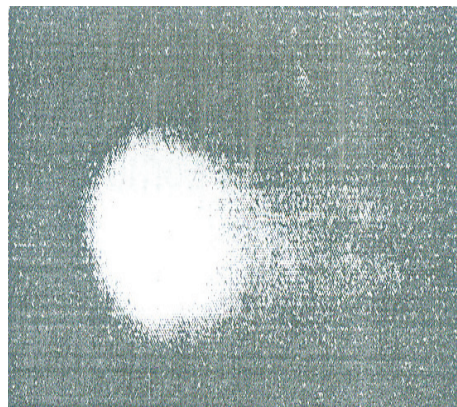


Fig.3 Cell Phone level microwave exposure 2hrs 2.45GHz reaching so called safe SAR levels comet Tail - DNA Damage
(Photo credit - www.rfsafe.com)

things in a civilized society. The radiation hazards clearly infringe the fundamental right of a citizen to live or spend a healthy life. The state has to protect the interest of the citizen. Art 21 clearly lays down that 'Life' is something more than mere existence. Art 21 also includes right to Health, as the Supreme Court has held that a healthy body is foundation of all human activities. So, in a welfare state, it is the obligation of the state to secure the creation and the sustaining of conditions congenial to good health. Our constitutional provisions and Law of Torts also protect a person right to fresh air, clean water and pollution-free environment. The prime obligation of state is to protect the environment and ecology. The legislature is not making a codified effort on the issue, it is clearly infringing the principle of Natural Justice & Fairness.

Judicial Intervention : Too Little, too late ?

Courts world over have given many remedies in favour of aggrieved people due to radiation emission¹⁰.

Indian Judiciary declared its concern in 2001¹¹, when it ordered dismantling of a cell tower on 'Health Grounds'. In September 2001, Bharti Cellular Limited, one of industry's top service provider, approached the governing body of a 20 storied residential building" and converted the building into a hub station for entire south Mumbai. Trouble arose when people residing on the top floor of the buildings realized that they are continuously exposed to RF waves. The resident filed a petition on 'Health Grounds'. The court gave primary attention to health issue in its judgement and categorically stated that likelihood of health implications, based on scientific evidence was reason enough for the matter to be taken up.

In a Public Interest Litigation (PIL)¹² filed by an NGO Karmjyot, the Supreme Court in 2006, sought responses from the centre and the telecom department describing the communication towers as

10 wikipedia

11 www.cseindia.org

12 www.timesofindia.indiatimes.com

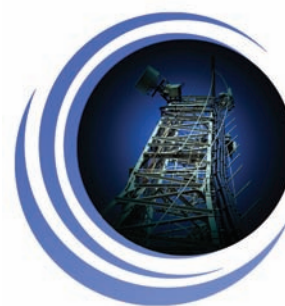
Cell Tower Radiation Hazard: Need for Legislative Intervention

health hazard. A bench comprising Chief Justice YK Sabbarwal and Justice CK Thapper and RV Ravendran issued notices to ministries and stated that there are no lucid Government guidelines on issue.

Conclusion

The legislative intervention on Radiation Emission is desperate solution to the unchecked emission problem. Prior to that massive research, development and survey must be conducted so that the actual deficiencies could be detected and hence a sound policy can be framed. The prospective policy must also fix the maximum limit for Radiation Emission depending on various variables. The reports of Radiation Emission from various towers should be monitored and checked

by a specialized agency and the towers must be shared by telecommunication companies so that the environmental and cosmetic impact could be decreased. The height of the tower, the survey of condition of Building (on which tower has to be installed), the distance of the tower from residential areas, the safety standards, all these must be categorically included in the policy, so that there is a clear unitary approach towards it. The various bye-laws and few case laws are bulky, and complicating the Judicial and Legislative action. The National policy would be a Central Idea to the most modern problem of our times or else it is a danger from which we have literally nowhere to hide.





Key Words

Lorazepam, HPLC,
TLC, GC-MS,
Viscera.

Detection of Lorazepam from Human Viscera by a new HPLC technique

S. K. Chakrabarti*, A. Debnath & A. Bhattacharjee**

Case History

In one case, a college going lady developed a love relation with a boy from a mediocre family. Soon there developed a deep relation between them. Then arrived the third person with a comparatively better economic condition. The lady felt attracted towards the new fellow and gradually started to ignore her first lover. Situation grew worse. One day the first fellow somehow convinced the lady and together they went to a far off place. In the meantime, the parents of the deceased lodged a missing report in the nearby police station. The next day they came to know about the recovery of the dead body of their daughter. The first lover had arranged a plot to kill her to take revenge. He added a high dose of sedative / tranquilizer and fed her in food. Soon the lady died. The first fellow was assisted by two of his friends in the whole operation. Along with the lady the boy also took some sedatives and tried to commit suicide. But he narrowly escaped probably due to low dose compared to his body weight. He was admitted to hospital and after recovery he was taken to police custody along with his allies.

The case was referred to this forensic laboratory along with samples seized from scene of crime and other biological samples, collected from the deceased and accused.

Samples

The local police station took up the case soon after they came to know about the incidence. From the scene of crime they collected the following items :

- Four strips of tablets of TRAPEX-2, each strip of ten tablets, thirty nine tablets were missing and only one strip had one tablet remaining (Photo No-1).



Photo no-1: Strips of tablets seized

- One small plastic container containing traces of some white colored powder in it.
- Two half filled bottles of 'Sprite' (aerated cold drinks) of 500ml capacity.
- One steel glass said to contain of tea, but found no stain in it (Photo No-2).



Photo no-2: Medicine strips, steel glass & aerated drinks

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- Five plastic bottles with red cap said to contain a) uterus, b) spleen, c) stomach with its content, d) part of liver with gallbladder, e) 2cc blood sample, f) part of intestine all collected from the deceased.
- Five small bottles with rubber cap said to contain dry vaginal swab of deceased, wet vaginal swab of the deceased, blood sample of the accused and spit (saliva) of the accused.
- One yellow colored maxi (night wearing apparel of the deceased).

Experimental Section

The exhibits were referred to this laboratory with a view to establish the link up of the items collected from the scene of crime with the crime. Exhibit sl no- 1 i.e. the tablets were referred to know whether this are actually any drug which may cause death if taken in large quantity and to know/confirm whether drug was available in the viscera and stomach content of the deceased. The exhibit sl. no- 2, which was found to contain traces of white powder, was sent to ascertain whether the same item was dangerous to human life. The exhibit sl. no-3 i.e., the aerated cold drinks bottle which were found to contain some quantity of liquid was sent to ascertain whether any drug/poisonous substance present in it or not, if so the name of the drug/poison. Exhibit sl.no. - 4 the steel glass as per the case story was used to feed some liquid food/drinks to kill the victim and it was necessary to know whether such actually happened or not. Exhibit sl. no.-5 the viscera samples were referred to know whether any drug /poison that may cause death and whether the poison /drug present in them had any similarity with that of any of the items detected in the exhibit no.1 to 4.

Exhibit sl. no-6 the vaginal swab, saliva of deceased and accused respectively were referred to know whether any spermatozoa present and whether the later has any match with that of the accused saliva, etc. Exhibit sl. no- 7 was found to know whether any spermatozoa present or not. The vaginal swabs, saliva, etc. were referred to the Bio/Ser division of this laboratory to satisfy

the queries, as such parameters are not examined in the Toxicology division.

The rest exhibits i.e., serial no 1 to 4 and all the vials containing viscera samples were taken up for chemical examination in the Toxicology division.

● **Chemical examination:** The lone tablet of Trapex remaining in the strip was taken, crushed and extracted with methanol. Also the trace quantity of the white powder present in the plastic container was extracted with methanol. Initial screening tests (colour test) were performed to have some preliminary idea about the nature of the active ingredients present in the same. The chemical test revealed the presence of the benzodiazepines in them.

● **Instrumental studies I:** R_f value of the exhibit was found to match with that of standard lorazepam by TLC studies (Photograph no- 3).

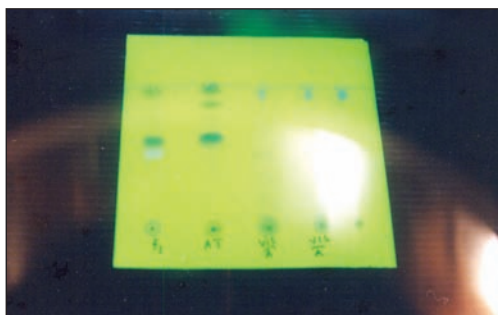


Photo no-3: TLC of exhibit Sl. no. (1), std lorazepam and viscera extract

TLC system: (I) Chloroform: Acetone :: 4:1 and (II) Chloroform: methanol:: 9:1

Visualization under UV 254 nm and **spray reagent** - acidified potassium iodo- platinate.

Due to non-availability of the standard lorazepam in this laboratory proprietary medicine namely 'Ativan 5' were purchased. The said tablets were suitably extracted, purified and standard lorazepam collected. The FTIR (Model Spectrum BX II, make Perkin Elmer) study of the said standard collected confirmed the presence of lorazepam. (FTIR spectra no - 1). The FTIR study of the extract of exhibit no-1 & 2 confirmed the



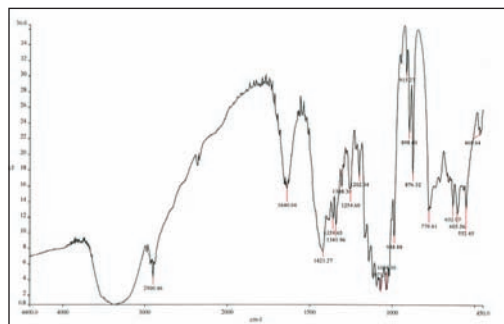
Abstract

The present paper describes the methodology applied to identify lorazepam, a benzodiazepine derivative used in a case to kill a lady to take revenge of betrayal.

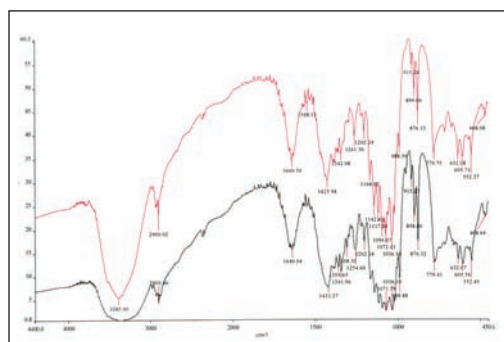


Along with conventional techniques/methods adopted for examination of the case, a non-conventional mobile phase was used in HPLC, which has been successfully applied.

Detection of Lorazepam from Human Viscera by a new HPLC technique



FTIR spectra No-1
(FTIR spectra of standard Lorazepam)



FTIR spectra No-2
[Overlay spectra of standard Lorazepam (black) and extract of trapex tablets (red).]

exhibits to contain lorazepam as the active ingredient (FTIR spectra no- 2). The main objective of the examination was now focused on the examination of the viscera to know whether any drugs/poison was present in them. Some part of the stomach with its contents, small intestine with its contents and liver gall bladder, etc. was extracted with n-Hexane. The TLC was done with the n-hexane extract along with a known standard to detect the presence of common poisons like Organochloro, Organophosphorous and Carbamates group of pesticides, if any.

TLC System: Hexane : Acetone :: 9: 1,

Visualisation under UV 254 nm

Spray reagents

(a) Palladium chloride for Organophosphorous,

(b) 1% DPA in acetone followed by exposure to UV for Organochloro and

(c) Tollens reagent and heat at 110°C for 05 minutes for Carbamates.

Observation of TLC Studies: No spot or streak nor any colour development corresponding to the standard pesticide. Thus, the presence of pesticide that might be the plausible cause of death in this case is ruled out.

The other parts of the viscera samples were subjected to stepwise extraction for the presence of drugs. The samples were added acetic acid and saturated Ammonium Sulphate and heated at 60-70°C in a water for about six hrs and filtered after following other standard procedures. The filtrate extracted with Di-ethyl ether, which is the acidic extract, liquid part, made basic by adding ammonia and extracted with chloroform, which is the basic extract. The concentrated extract was taken and initially done TLC for screening the class of drugs that might be present in them.

TLC system: (I) Chloroform: Acetone :: 4:1

(II) Chloroform: methanol:: 9 :1

Visualisation under UV 254 nm

Spray reagent- Acidified Potassium Iodo-Platinate for acid extract

Draggendorf's reagent for basic extract.

The acidic extract of the viscera revealed the presence of a benzodiazepine the R_f value was almost similar to that of lorazepam.

Instrumental studies II- The samples were scrapped out after a preparative TLC and filtered by Millipore Millex -HV Nylon 0.45µm filter discs to remove the presence of foreign particles, if any. Initially, it was proposed to analyse the samples with GC-MS but literature studies reveal that lorazepam is not thermally stable and a number of investigations have shown that under gas chromatographic conditions



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lorazepam can lose a water molecule and rearrange to form 6-chloro-4-(2'-chlorophenyl quinazoline)-2-carboxaldehyde. Consequently, in a gas chromatographic procedure where lorazepam is injected directly this rearrangement must be considered. Another consideration is that in metabolic studies the major metabolite is excreted as the glucuronide and preliminary enzymatic incubation is employed. However such problems can be removed by conversion of lorazepam to its benzophenone derivative prior to injection.

In this case the problem of metabolite disintegration was not important as the TLC studies gave indications of the presence of the benzodiazepine and the identification of the said particular drug could provide a vital clue to the investigating agencies. The case history and Post Mortem report indicates that the deceased died within a short while after consumption of the drug, probably due to its overdose and the stomach contents found with some white granular sediment were sent for examination. And in spite of all precautions some amount of fat materials mixed with scrapings may give rise to confusing results as well as may cause damage to the capillary column.

The best suitable alternative was to identify the drug by the High Performance Liquid Chromatography (HPLC) technique. As there was no involvement of elevated temperature in this technique, the possibility of the disintegration of the drug can be ruled out. From the studies it was revealed that the mobile phase for a reverse phase technique of the HPLC was Methanol: Water: Phosphate Buffer(0.1M) at two different v/v/v concentrations and pH 7.25/7.67 (DFS Working Manual, 2005). But due to non availability of the buffer and its delay in procurement, during the search for alternative mobile phase it was found that benzodiazepines like lorazepam could be analyzed by HPLC and separated from its degradation products by eluent consisting of acidic aqueous acetonitrile on a reverse phase column. The samples

were analyzed by HPLC with the following analytical parameters :

HPLC methodology

Mobile phase : Acetonitrile: Water (70:30) made slightly acidic,

Column - C 18, 5 μ m, 4.6x150mm, Waters,

Pump mode - Isocratic, **Flow rate** - 1 ml/min,

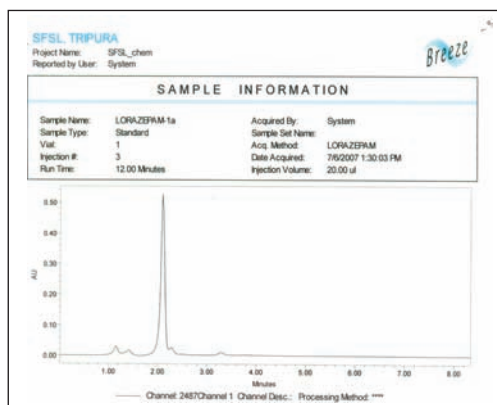
Wave length - 240 nm, **Detector** - Waters 2487 Dual Absorbance Detector

Pump - Waters 1525 Binary HPLC pump

Data mode - Absorbance A (Channel-1)

Run time - 12 minutes

Initially, the standard Lorazepam was injected and injections were made with different conc. to confirm the presence of the compound and check the repeatability of the retention time. The retention time was observed to be 2.353 minutes (HPLC chromatogram no-1). Following was injected the unknown samples, first the extract of the remaining

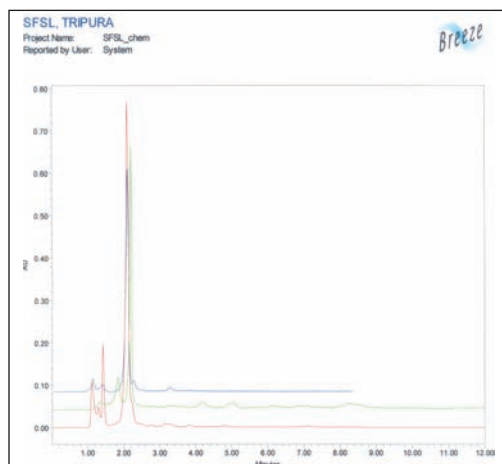


HPLC chromatogram No.-1
(HPLC chromatogram of standard Lorazepam)

tablet, remaining traces of white powder and lastly the viscera extract. Repeated injections were made with varying conc. except for the viscera extract.



Detection of Lorazepam from Human Viscera by a new HPLC technique



HPLC chromatogram No-2
[Overlay of HPLC chromatograms of std. Lorazepam (blue), Trapex tablet(red) and viscera extract(green)].

Results

The TLC findings (Photo no- 3) confirmed the presence of the benzodiazepines in the exhibits. The IR spectra confirmed the presence of lorazepam in the 'trapex' tablets. All the samples under the same analytical results gave a sharp peak at almost same retention time, which matches with the retention time of the standard lorazepam. An overlay of the chromatograms (HPLC chromatogram no. 2) confirms the presence of lorazepam in the stomach contents, extract of trapex tablets and in the vial containing some powdery substances. The exhibits sent to Biology/Serology division tested negative for the presence of any spermatozoa in them and also there was no match of the accused's saliva in any of the exhibits.

Discussion

The conventional techniques of detection of such drug is the use of Gas Chromatograph coupled with Mass spectrophotometer (GC-MS). But lorazepam was likely to lose a water molecule under GC-MS operating conditions. The qualitative identification of the original compound was more important from the forensic and legal point of view. The usual recommended HPLC techniques employs the use

of an isocratic run with buffer based mobile phase. The buffer is used to cope with the size of any injected sample as otherwise tailing peaks can arise due to change in ionic form during chromatography. However, in this case it was decided to run the HPLC with Acetonitrile: Water (in reduced pH). The chromatographs did not show any tailing effect. The chromatographs in reduced pH shows an increase in retention, the pH and the pKa of the drug are important since the non-ionized species shows greater retention. The results were conclusive and it proved that the viscera extract contained drug namely lorazepam, which was the active constituent of Trapex. As there were no other sources available, the deceased died due to the overdose of the said drug, which was from the 'trapex' tablet. The absence of any drug in the aerated cold drinks or in the steel glass, it could not be concluded as to what was the food through which it was administered.

Conclusions

Lorazepam, the active ingredient of trapex tablets is a benzodiazepine group of drug with short to medium duration of action. It has all the five intrinsic benzodiazepine affects namely anxiolytic, sedative, hypnotic, anticonvulsant and muscle reluctant to different extent. Since its introduction in 1971, it has been used as powerful anxiolytic and its principal use has been for treating anxiety and related disorders like irrational behavior. However due to the addictive potential of benzodiazepines, this group of compounds fall under the controlled psychotropic substances act and it is available to patients /users only under medical supervision with recommendation from appropriate authority. The boy who used the compound namely Lorazepam to take revenge simply could not collect the same. According to sources, the accused took a xerox copy of the prescription from one of his kin who was undergoing treatment for mental disorder and collected the same drug from different retail dealers. In this way he accumulated a considerable quantity, enough to kill some one with its overdose.

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Acknowledgement

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Key Words

Violence,
Domestic Violence,
Rapport, Empathy,
Counselling.

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Domestic Violence against Women and Role of Counselling Some Reflections

Hardeep Kaur*

Introduction

Women, who constitute more than half of the population, contribute more than half of the responsibilities towards their families. They are, in fact, a significant part of the society's development and progress but increasing violence against them is a serious impediment to their development. They have to face this systematic discrimination against them from womb to tomb. This global epidemic cutting across all geographical boundaries knows no barriers of age, socio-economic, religion, gender or education¹. Violence is an intentional use of physical power, threatened or actual against a person either which results in or has high likelihood of resulting in injury, death, psychological harm and maldevelopment². Overall it is any coercive mechanism to assert ones own will on others.

Present Concept of Domestic Violence

One of the major forms of violence is, 'Domestic Violence'. It means violence between members of household, usually spouses, an assault or other violent act committed by one member of a household against another³. It also refers to the misuse of power by one adult in a relationship to have control over the other, which is not restricted to one single incident and may escalate in frequency and severity with time⁴. This expression for abuse of power may exist in natal or nuptial family ethics, causing injury or harm to the safety of the women within the privatized domestic sphere. Domestic violence an open

secret is now a part and parcel of Indian culture due to the socially constructed rigid gender based roles, which have always carried fundamental inequalities between women and men. Their crystallization has not only provided legitimacy to patriarchy but also to domestic violence. With the endorsement of patriarchy, religious and social sanctions are the other factors which have retained domestic violence in the four walls of the home year after year,⁵ where women are expected to bear the burnt of different forms of domestic violence.

To add to this, women have further become conditioned to localize their grief within themselves and later become active agents of not only patriarchy but also domestic violence as a gift of patriarchy. Thus making this pestilent method a way of keeping women in a subordinate position generation after generation. This expression of domestic violence can now be seen in the form of physical, emotional, sexual or psychological abuse. Its normal indicators are wife battering, demand of dowry, marital rape, hitting, female foeticide, whereas some systematic forms of violence can be covered under gender inequality, lack of freedom, right to decision making⁶.

International Initiatives to Curb Domestic Violence

This issue of domestic violence has been addressed at various international platforms such as, 1979 convention on elimination of all forms of discrimination against women (CEDAW), where in, all countries signatory were obliged to take

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all appropriate means to eliminate discrimination against women⁷. Further it was recognized as a process which jeopardizes not only the fundamental rights but also individual freedom and physical integrity of women in the world conference on human rights at Vienna in 1993⁸. The world conference on population and development in 1994 and the fourth world conference on women in Beijing in 1995 accepted the same and stressed on elimination of all forms of violence against women. It also put forth violence as one of the twelve strategic objectives⁹.

Indian Responses to Domestic Violence

India being a signatory of the 1979 convention (CEDAW) also brought domestic violence into sharp focus. The government of India already has provisions under constitution, civil law and IPC to cater to violence against women. To protect the rights of women further, the 'Domestic Violence' Act 2005 was brought forth. In addition to the above legislations, "crime against women cells", a platform in the form of a novel idea were already established in 1983 at central level in the Delhi police and later at other places to combat and curb violence against women at grass root level, by giving them personalized and increased attention. These platforms are considered to be more gender sensitive and effective to address this issue of domestic violence. With this, another overriding purpose of these cells is to alleviate personal and interpersonal distress by following counselling, a solution focused approach. This linkage of domestic violence to counselling may be understood through Gerard Egan's model of counselling.

Counselling: A Solution Focused Approach

Concept

Counselling is a process that enables the individuals to get their real 'self'. Through this

process in the safety of the client's relationship with the counsellor, the structure of self is relaxed and the previously denied experiences are perceived and integrated into the altered self¹⁰. It can also be described as a process which is carried out on one-to-one basis. Where through suitable techniques the client's needs are catered to through a personal program which further help them to perceive more realistic goals and thus become contented and productive members of the family¹¹. Yet another view is that counselling has three components that are: it is between the two individuals, in a professional setting and is initiated and maintained to facilitate changes in the behaviour of the client.¹²

Basic Facilitating Skills

The two basic skills which facilitate counselling are rapport and empathy. 'Rapport' is an essential condition for comfortable and unconditional relationship between counsellor and client. The components of rapport building that are interest, responsiveness, sensitivity and emotional involvement enable the counsellor to communicate more effectively with the client. 'Empathy' on the other hand is the ability to feel and describe the thoughts and the feelings of others. It is not only the principal route to explore and latter understand the victim but is also 'feeling into' the experience by putting oneself in another's frame of reference¹³.

Myths

The first and foremost role of counselling is to bring violence against women on surface by giving it visibility and thus legitimizing the violated women's concerns. This is only possible when the counsellor is able to make the women understand the myths attached to domestic violence such as "it is just a domestic tiff". Since perpetuations of these myths about domestic violence can prove to be dangerous. They not only tend to encourage social acceptance and apathy towards violence but also make women believe the myths. Thus making them justify, minimize or at times deny the violence they



Abstract

Domestic violence is a repeated pattern of behavior to gain power and control over another through the use of intimidation, emotional, verbal, physical or sexual abuse. Counselling on the other hand is a planned and systematic application of knowledge and skills.



It helps not only to understand and alleviate a large number of problems causing disharmony but also maladjustments in the relationships. This paper describes how counselling, a solution focused approach can not only be used for preventing and managing domestic violence but also help women to rediscover and reconnect with their resourcefulness

Domestic Violence against Women and Role of Counselling: Some Reflections

experience. This may further prevent them from taking a vital step of acknowledging that they are in a violent situation, which is an essential step towards seeking help. All this makes it even more essential to dispel these myths both at individual and community level¹⁴.

Areas

Then next step is to identify the general areas of attention such as self identify, efficacy, medical care, mental health, emotional health in order to prevent, avoid or cope up with violent situations. On the other hand while working with the abuser it is also important to identify their basic needs because non-fulfillment of basic needs is sometimes the reason for violent behaviour. Once these needs are identified and deficiencies are met with, the individuals may tend to become less inclined to satisfy their deficiencies through violent behaviour and emotional distress¹⁵. Overall counselling provides the basic ingredients that broaden the women's awareness regarding themselves, their spouse, and the existing situation. It also encourages them to realize their potential and empower them by building their self confidence and self esteem. The counsellor has to check out on the boundaries of the relationship of the spouses and see, how much onus of the problem and problem solving they are ready to take upon themselves. This effort in the long run may lead to awareness on violated women's perspectives and also bring in an environment of acceptance of human rights of women in the community¹⁶.

Process

To achieve the above, the counsellor is more of a catalytic agent who provides an atmosphere in which the victims explore their thoughts and experiences and look for solutions to their problems. Patrick, in his paper on 'An Easy Introduction to Egan's Skilled Helper, Solution Focused Counselling Approach' has conveyed how a counsellor is facilitative in establishing not only appropriate and realist goals but also in developing skills of problem solving by building

the inner strengths and utilization of external resources.

The model of counselling given by Gerard Egan can prove to be helpful in managing domestic violence too. It is divided into three stages. Before starting the counselling process, it is the responsibility of the counsellor to make preparation for counselling sessions by catering to factors affecting readiness. Since readiness helps the client to come forth with a redefinition of the problem. Then beginning with the 'Exploring Stage' which consists of skills such as questioning, silence, focusing, reflecting, summarizing, paraphrasing and concreteness. These skills can prove to be helpful in exploring different areas of concern of violence against the women such as details of incidents of violence, triggers of the incidents of violence, partners of the incidents and various dimensions of relationship of the victim and abuser. Through the above skills, the counsellor on one hand corrects not only the perception of the victims towards their problems and themselves but also their own perception towards the victim's problem and experiences. In addition to this, it facilitates the abuser's ownership of his violent behaviour pattern. Though at times the spouses might be reluctant but then it is the role of the counsellor to enable them to explore new perspectives, challenge their negative modes of thinking and re-establish their priorities.

Second Stage

The second stage is that of 'Understanding' i.e. once the counsellor and the spouses have reached the aggrieved's diagnosis of the issue related to domestic violence, time for the counsellor to make use of supporting and challenging skills such as confrontation, immediacy, self sharing and goal setting. On one hand it helps the victims to re-establish their aims and goals, on the other encourages them to look out for new perspectives which can help them to decide what they want for themselves.

Domestic Violence against Women and Role of Counselling: Some Reflections

These skills help them to see whether they are in a position to stay in abusive relationship, confront and resolve the various issues related to violence or want to part ways. As the option becomes clear, awareness of the need for action is bound to increase.

Third Stage

Then is a third stage i.e. of 'Decision Making' and taking action. Action skills involved here are divergent thinking, goal setting and making the program choice. Here the counsellor may support the victims to act on the basis of understanding themselves, their spouses and their situation¹⁷ and take appropriate decisions to resolve various issues related to domestic violence.

Though the thrust of counselling here is to eradicate the incidents of domestic violence and retain the marriage by removing the basic irritants that create this heinous form of violence. It also prevents further abuse to ensure a safety net at individual and family level. This is done by helping the victim to understand and identify the influences and factors that facilitate domestic violence, retain it for longer period and hinder the problem solving process. Once these hindering and facilitating factors are put in place, chances of resolving the issue relating to domestic violence can become higher. On the other hand, if the situation is totally irreversible and the marriage has to end, then it can be ensured that it does not end to the deterrent of women rights and she does not end up deprived or inadequately compensated.

Conclusion

Even at times when counselling does not prove to be a panacea for domestic violence, it will still offer some effective strategies and a platform to break the cycle of violence to a great extent. Though this helping relationship should not go beyond a certain point, otherwise it may retard the women's growth. This paradox can be translated into the assertion that the thrust of counselling should be on helping the victims to

help themselves by creating conditions that release their powerful growth tendencies and resources in a more articulate manner.¹⁸

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in resisting, avoiding, escaping and fighting against domestic violence. Which in future empower them to re-experience their personal power in bringing positive changes in their lives and develop a vision of life which is free of violence.



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A Study of Burnout and Marital Adjustment of Police Personnel

Rekha Rani* and Dr. Pooja Garg**

Introduction

The modern world, which is said to be a world of achievement, is also a world of stress. One finds stress everywhere whether it is within the family, business organization or any other social or economic activity. In recent years, increasing attention has been paid to the phenomenon of *burnout* in human service professions. Burnout appears to be a response to interpersonal stressors on the job in which an overload of contact with people result in changes in attitudes, behaviour and family life. Both, the society as a whole and the individual as a citizen, set very high standards for the job of the police officer and expect that by combating criminal offence, a police officer would be able to ensure security for citizens on the best customer service level, ensuring their legal rights and at the same time ensuring served social life sphere. The nature of police job causes high risk of burnout viz. high expectations by the individual himself, which are unrealistic in nature and the non-fulfillment of these expectations, diminishes work motivation until its total disappearance. Hence, police officers lose interest towards work, communication and successful coping with the job stress and experiences burntout (Liivia Anion 2006).

Burnout

Burnout can be defined as "a syndrome of reduced personal accomplishment, increased emotional exhaustion, and increased depersonalization experienced by individuals that work closely with people". The most well-studied measurement of burnout in the management literature is the *Maslach Burnout Inventory*. Maslach and Jackson (1986) who identified the construct "burnout" in the 1970s, and developed a measure that weighs the effect of

emotional exhaustion, depersonalization, and reduced sense of personal accomplishment.

Burnout is the gradual process by which a person, in response to prolonged stress and physical, mental and emotional strain, detaches from work and other meaningful relationship. The result is lowered productivity, cynicism, confusion and a feeling of being drained for having nothing more to give. *Maslach and Jackson (1990)* refined the meaning and measurement of burnout construct in the 1980s which included three dimensions of burnout as:

- **Emotional Exhaustion (EE):** Emotional exhaustion is characterized by a lack of energy and a feeling that one's emotional resources are used up. This may coexist with feelings of frustration and tension.
- **Depersonalization (DP):** Depersonalization or dehumanization component typically occurs after emotional exhaustion which represents the interpersonal context dimension of burnout and refers to a negative, callous, or excessively detached response to various aspects of the job (Maslach, Schaufeli, & Leiter 2001).
- **Diminished Personal Accomplishment (PA)** This component can be defined as the diminished personal accomplishment or reduced efficacy which represents the self-evaluation dimension of burnout and refers to feelings of incompetence and lack of achievement and productivity at work.

Marital Adjustment

The concept of marital adjustment differs from person to person, culture and community. Marital adjustment

Key Words

Burnout,
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Gender and Rank.

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Abstract

Police officers play a vital role in maintaining law and order in our society. As previous researches focused that the irregular work shifts, work overload, lack of administrative support, rapid transfers, inadequate work environment, more exposure to

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is scientifically defined by Lock and William (1959) as "an adoption between husband and wife to the point where there is companionship, agreement on basic values of affection, intimacy, accommodation and on certain other unidentified factors."

Marital adjustment calls for maturity that accepts and understands growth and development in the spouse. If this growth is not experienced and realized fully, disruption in marital relationship is inevitable. We can say that marital adjustment construes to cohesion, mutual consideration, agreements, communication patterns and compatibility (Ann Davidson and Simon Moss, 2006).

Burnout and Marital Adjustment of Police Personnel

It is rightly said that police officers play a vital role in maintaining law and order in society, but previous researches have focused that police officers experienced cynicism, authoritarianism, and occupational stress as the major causes of burnout. Hence, it is questionable that with these characteristics it is not feasible for police officers to maintain the law and order in society as well as perform the family responsibilities.

Accordingly, positive work experience (e.g. job satisfaction) are related to positive marital functioning, whereas negative work experiences (e.g. work stress) are associated with marital dysfunction (Barling, 1999). In fact, the mechanism which combines these two areas of life is commonly defined as 'spillover effect' whereby reactions experienced in the work domain are transferred to other domain or vice versa (Lambert, 2003; Zedeck and Mosier, 2000).

Karyl et.al (1999) examined that the perception of stress is negatively associated with marital aggression and violence in family. Robert Stevens (2004) found significant difference in several variables associated with police personnel burnout i.e. gender-service experience, role conflict, role ambiguity and administrative support. Lindquist & Whitehead (2003) found that younger officers

experience more job stress or burnout than the senior police officers because of less job experience and job commitment. Morgan et. al (2002) found senior officers were more likely to report stronger feelings of personal accomplishment than younger officers. It could be that senior officers report less stress than younger officers due to having more decision making power. Houtman et. al (2004) and Liivia Anion (2006) examined that increased workload as well as emotional distress leads to neuroticism and decreased marital satisfaction; job satisfaction and health of employees emotional exhaustion as well as increased psychosomatic disorders.

It has also been observed that police officers who scored high on emotional exhaustion were found to suffer from frequent problems with insomnia and were more likely to consume alcohol, tranquilizers and medications to cope up with stress (Matheny and Gfroere (1998). Harris (2002) summarized that the problems and situations in which the police personnel encounter and have to deal with are- Emergence of organized (mafia) crime, terrorism, drug trafficking and criminalization of politics, offences involving social, environmental, and cultural phenomena, mass violence and destruction arising out of communal, other social, economic and political frictions, human Rights violations and lack of mutual help and coordination, lack of proper training, professional equipment and infrastructure for police personnel. Violanti and Paton (2001) found that police personnel have to work in adverse working conditions, rapid transfer, and lack of administrative support which leads to occupational stress. On the basis of the previous researches it can be concluded that negative experiences at work place like frustration, emotional tension, results withdrawal, cynicism, physical and psychological dangers, and behavioural and relationship problems not only within the officer, but also transfer to the family members especially to the life partner; which affects their family and marital life negatively (Golden, Jonathan, Piedmont and Ralph, 2004).

Objectives of Study

The aim of the present study is to assess the relationship and significant difference between

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burnout and marital adjustment of police personnel on the basis of ranks and gender.

Methodology

Hypotheses: The following hypotheses were formulated in the study:

H1-There is negative relationship between burnout and marital adjustment of police personnel.

H2-There is negative relationship between emotional exhaustion and the dimensions of marital adjustment.

H3-There is negative relationship between depersonalization and the dimensions of marital adjustment.

H4-There is positive relationship between personal accomplishment and the dimensions of marital status.

H5-There is significant difference in burnout of sub-inspectors and constables.

H6-There is significant difference in burnout of males and females.

H7-There is significant difference in the marital adjustment of sub-inspectors and constables.

H8-There is significant difference in the marital adjustment of sub-inspectors and constables.

Sample

The sample consists of 128 police personnel who were posted at different police station. Total sample consists of 128 police personnel.

Measures

Burnout: This variable has been measured by the scale developed by Christina Maslach and Jackson (1981). The scale identifies three dimensions of burnout (emotional exhaustion, depersonalization and personal accomplishment). The overall scale consists 22 items. Cronbach alpha reliability of the scale has been reported as .90, .79, & .71 for emotional exhaustion, depersonalization and personal accomplishment respectively. The dimensions of burnout are described as :

Emotional Exhaustion: Emotion exhaustion is characterized by a lack of energy and a feeling that one's emotional resources are used up.

Depersonalization: It refers to a negative, callous, or excessively detached response to various aspects of the job.

Reduced Personal Accomplishment: It refers to feelings of incompetence and lack of achievement and productivity at work.

Marital Adjustment

This variable has been measured by the scale developed by O.P. Mishra and Annand Ballabh Joshi (2000). This scale consists of eight dimensions related to marital adjustment - (1) similarity in thinking, (2) accommodation, mutual consideration and respect for in-laws, (3) sexual relationships, (4) liking each other and personal habits, (5) communication, (6) mutual trust (7) tension and conflicts and (8) fulfillment of expectations. Reliability co-efficient of the "Marital adjustment scale" was found .74. The dimensions of marital adjustment are described as:

Similarity in thinking: It refers to similarity in thoughts about other relatives and friends, current issues about society, and interest in political issues.

Accommodation, mutual consideration and respect for in-laws: It refers to feeling of living together, respect of thoughts and values of each other, and having the regard for the in-laws.

Sexual relationships: It refers to the fulfillment of sexual needs, desires, expression, and intimacy from each other.

Likings of personal habits: Likings are related to the dress, food manners and habits.

Communication: It refers to the needs of specific words between husband and wife e.g. words of affirmation, love, and encouragement from each other.

Mutual trust: It refers to faithful, trustworthy, and honest behavior for each other.

Tension and conflict: It refers to discord caused by the actual or perceived opposition of needs, values and interests between husband and wife.



public matters, insufficient pay and lack of promotion leads to burnout which affects their family and marital life negatively. The present study is and attempt to examine the relationship between burnout and marital adjustment among police personnel. The sample consists of 128 police personnel, including constable and sub-inspector.



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Maslach Burnout Inventory (MBI) has been used to measure burnout as the independent variable and Mishra's Marital Adjustment Scale (MAS) has been used to measure marital adjustment as dependent variable. Person r was used to test the hypotheses.

Fulfillment of expectations: It shows maximum self-fulfillment for both partners in terms of feeling of safety, needs, admiration and respect, honesty, responsiveness, and cooperation.

Data Collection

The aim of the present study is to assess the relationship and significant difference between burnout and marital adjustment of police personnel on the basis of ranks and gender. The scales were distributed to the subjects separately and were assured that their information would be kept confidential.

Data Analysis

The data was analyzed on the basis of correlation and t-test with the SPSS 16.0 version.

Results

The purpose of the study is to assess the correlation and significant difference between burnout and marital adjustment of police personnel on the basis of ranks and gender.

Table 1 represents the significant negative correlation between burnout and marital adjustment with the calculated r -values as $-.25^{**}$ ($p < .01$) on over all basis. Hence, the formulated H1 has been accepted at .01 levels. The figure 1 representing the negative relationship between burnout and marital adjustment on over all basis.

Table 1 represents that emotional exhaustion has significant negative correlation with accommodation,

mutual consideration and respect for in-laws, liking each other and personal habits, communication, mutual trust with the calculated r values as $-.10$, $-.13$, $-.15$, $-.15$ ($p > .05$) while similarity in thinking, tension and conflicts, fulfillment of expectations and sexual relationships also have negative correlation with the calculated r values as $-.27^{**}$, $-.28^{**}$, $-.33^{**}$, $-.34^{**}$ ($p > .01$). Thus, the H2 has been accepted at .05/.01 levels.

Table 1 also shows that depersonalization has significant negative correlation with accommodation, mutual consideration and respect for in-laws, liking each other and personal habits, communication, mutual trust with the calculated r values as $-.12$, $-.05$, $-.22^*$, $-.12$ ($p > .05$) While similarity in thinking, tension and conflicts, sexual relationships and fulfillment of expectations have also negative correlation with the calculated r values as $-.23^{**}$, $-.29^{**}$, $-.23^{**}$, $-.28^{**}$ ($p < .01$). Thus, the formulated H3 has been accepted at .05/.01 levels.

Table 1 represents that personal accomplishment is positively correlated to similarity in thinking, liking each other and personal habits, communication, mutual trust, sexual relationships and fulfillment of expectations with the calculated r values as $.09$, $.15$, $.14$, $.1$ ($p > .05$), $.21^*$, $.22^*$ ($p < .05$) while accommodation, mutual consideration and respect for in-laws and tension and conflicts have negative correlation with the calculated r value as $-.05$ ($p > .05$), $-.25^{**}$ ($p < .01$), Hence, the H4, has been accepted at .05/.01 levels expect the two dimension. $^{**}p < .01$, $^*p < .05$

Table 1: Correlation among the variables taken up in the study on over all basis (N=128)

Variables	Marital Adjustment	Accommodation mutual consideration and respect for in-laws	Liking each other and personal habits	Similarity in thinking	Communication	Mutual Trust	Tension and conflicts	Sexual Relationships	Fulfillments of Expectations
Burnout	$-.25^{**}$	$-.15$	$-.16$	$-.21^*$	$-.19^*$	$-.12$	$-.17$	$-.19^*$	$-.20^*$
Emotional Exhaustion		$-.10$	$-.13$	$-.27^{**}$	$-.32^{**}$	$-.15$	$-.29^*$	$-.35^{**}$	$-.33^{**}$
Depersonalization		$-.13$	$-.05$	$-.23^{**}$	$-.22^*$	$-.12$	$-.29^{**}$	$-.23^{**}$	$-.29^{**}$
Personal Accomplishment		$.06$	$.15$	$.10$	$.14$	$.17$	$-.24^{**}$	$.21^*$	$.22^*$

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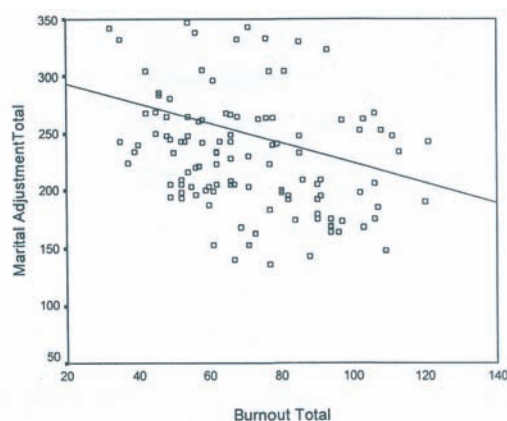


Figure 1: Relationship between burnout and marital adjustment on overall basis.

Table 2: Difference between burnout and marital adjustment of male / female and sub inspectors /constables.

Variables	Groups	N	Mean	S.D.	t-value
Burnout	Male	64	72.09	23.98	.21
	Female	64	73.00	21.82	
	Sub-inspector	64	70.69	24.45	.53
	Constable	64	74.40	22.17	
Marital adjustment	Male	64	220.45	64.91	5.00**
	Female	64	285.09	80.47	
	Sub-inspector	64	269.04	77.64	2.35*
	Constable	64	236.48	79.04	

**t-value is significant at the 0.01 level.

*t-value is significant at the 0.05 level.

Table 2 indicates that there is no significant difference of burnout between male and female with the calculated t-value as 0.21 ($>.05$). Thus, the H5 rejected at .05 level.

Table 2 represents that there is no significant difference of burnout between sub-inspector and constable with the calculated t-value as .53 ($>.05$). Hence, the formulated H6 has been rejected at .05 level.

Table 2 represents that there is significant difference of marital adjustment between male and female with the calculated t-values as 5.00** ($p > .01$). Hence, the H7 accepted at .01 level.

Table 2 indicates that there is significant difference of marital adjustment between sub-inspector and constable with the calculated t-value as 2.35* ($P > .05$). Hence, H8 accepted at .01 level.

Discussion

The aim of the present research is to study the correlation between burnout and marital adjustment of police personnel. Further the study was extended to find out the differences between burnout and marital adjustment of males and females as well as of sub-inspectors and constables. The findings suggested that there is negative correlation between burnout and marital adjustment. Karyl and Barling (2004) examined that negative perception of stress is negatively associated with marital aggression and violence in family along with increase in marital dysfunctions like family conflict, hostility, low marital warmth and supportiveness. Maslach and Jackson (2001) also found that officers who experienced occupational stress are more likely to exhibit anger, spend less time with family and feel dissatisfaction with marriage. It has been observed that police officers who are stressed and emotionally drained have negative effects on family, leading to conflict and verbal aggressive behaviour towards wife and children.

Emotional exhaustion was negatively correlated to marital adjustment which reveals that emotions and feelings are key to a satisfactory married life. Homer C. Hawkins (2001) examined negative correlation between emotional exhaustion and marital adjustment in which people begin to experience detachment from family, the loving persons and others.

Depersonalization has negative relationship with marital adjustment. The symptoms of depersonalisation like alteration of self perception, detachment from self and world, and distortion of thought perception have negative effect on marital adjustment. Morgan et. al (2002) and Savakis et. al (2003) have found the similar results which suggested that lack of social support from officers



The results show that there is negative correlation between burnout and marital adjustment. Emotional exhaustion and depersonalization are negatively correlated to marital adjustment while personal accomplishment is positively correlated to marital adjustment.



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creates tension, anxiety and feeling of depression, disturbed sleep that leads to low feelings of mutual understanding, poor sexual relationships and creates tension and conflicts between the spouse.

Personal accomplishment and marital adjustment are positively related to the feeling of superiority, high decision making attitude, having more social and political powers than others that help to keep high personal accomplishment and high morale among police officers, which is conducive for marital adjustment. Morgan (2002) found that senior officers were more likely to report stronger feelings of personal accomplishment than younger officers and suggested that police officers who had low personal accomplishment were more likely to consume alcohol, tranquilizers, smoke and show aggressive and abusive behaviour.

It has been also observed that there is no significant difference between burnout of sub-inspector and constables and it can be stated that sub-inspector and constables experience equal level of burnout and find job insecurity, work load, emotional exhaustion, low personal accomplishment, and having role conflict to a large extent.

There exists no significant gender difference of burnout between males and females as both the groups experience work pressure, job insecurity, rapid transfer, public interaction, day and night shifts. While Cullen et. al (2000) and Zupan (1999) found that female officers reported greater burnout than male officers because of low social support, job insecurity, job autonomy, time pressures at work, and work-family conflict.

Male police officers were found to have low marital adjustment, while female officers had high marital adjustment because females are more adjustable by nature than male. It has been also found that female police personnel face less job responsibilities at work place and work load, no frequent changes in work shifts and transfers. (Cruse, D. & Rubin, 2003). Constables feel more marital adjustment than sub-inspector because sub-inspectors have more responsibilities, decision making workload, pressure of seniors than constables while constables face less pressure of seniors.

Conclusion and Future Implications

On the basis of the study, it can be concluded that there is negative relationship between burnout and marital adjustment. It has become important to cope up with burnout as it leads to chronic physical and psychological consequences. As person feels emotionally drained, it generates unrealistic thoughts, have distorted self perception, frustration, hopelessness, detachment, isolation, sadness and irritability. These factors lead to reduced interest in family matters, reduced communication and mutual trust which creates tension and conflict in family and between spouses.

Thus, it can be suggested that there is need of appointment of mental health experts, stress reduction and intervention programmes (yoga and meditation), and the peer support program should be started in the police academy and in local police station, to reduce the stress among policemen and their family. Religious participation and beliefs, spending time together, social and family support and marital therapies can help the spouses to reduce the marital disputes and burnout which include loss of affection, communication problems and extra marital affairs.

Proper psychological tests must be developed for the assessment of personnel's stress levels and appropriate therapies should be used where the officers can combat various stressful situations. Bio feedback must be followed up to inform the personnel constantly about the physical and psychological changes during stress, for example the intensity of tension in muscles, the body temperature, heart rate, etc.

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Key Words

Terrorist Attacks,
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Budgetary Allocation for Prevention of Crime A Flawed Model for Development

Dolly Sunny *

Terrorist attacks are not new to India. However, the recent attack in Mumbai stands out on account of high level of coordination, sophistication and modernization in technology. The terrorist attacks in the heart of Mumbai, at the Taj Mahal, Oberoi and Nariman Bhavan led to damage of prime property and loss of about two hundred precious lives. It was a war launched on peace loving citizens of this country. Though the bombs are defused, the sense of insecurity instilled in the mind's of Mumbaikar is waiting to explode. Fear of terror lives in the minds of traumatized people of the city. After 11/26 episode, terror stalks every echelon of society— the rich and poor.

Mumbai's Martyrs

It is the first time that the city has lost its high profile officers while fighting the terrorists. The Sixteen dutiful policemen, including upright officers such as ATS Chief Hemant Karkare, ACP Ashok Kamte, encounter specialist Vijay Salaskar and NSG's Major Unnikrishnan as well as Gajendra Singh sacrificed their lives while countering the AK 47 wielding amphibian terrorists that came to the city via its porous sea routes.

The bullet penetrated Kamte's head through the helmet. The so called bulletproof vest could not protect Karkare from the gunshots and he succumbed to fatal injuries on his chest on the spot. He died due to deficient and obsolete equipment provided by the State which has not earmarked sufficient budget for the purchase of these life saving measures. The outdated protective wear used by the men battling the most bizarre and brutal

attack on unarmed civilians that has confronted the country since Independence might have been good enough to save them from stone-pelting irate crowds, but not the assault of sophisticated guns. The Mumbai police had ordered bullet proof jackets in bulk in 1992. The department purchased another batch of jackets in 2002, but surprisingly there has been no upgradation in the quality. The sources from police quoted that police budget is very low and so the appropriate equipment cannot be bought. These officers are irreplaceable, and those who survived the carnage can only shed tears and pay homage. As Reberio rightly said, the dead officers are not the victim of bullets, but that of the system (Mumbai Mirror, 2008).

Police force can fight back against terror only if they are well equipped and can protect themselves.

Terrorism and its Roots

While tackling terrorism, our main problem has been in dealing with infiltration from Pakistan-based terrorists. Sixty years after the attainment of Independence, India and Pakistan are on different trajectories. While India positions itself as rising economic power, Pakistan, on the other hand, is on a downward slope into a self-created *jehadi* abyss with the Taliban threatening to establish a radical Islamist regime. As denials have followed in interviews with President Zardari, it is certain that Pakistan is a State with multiple centres of power. While the world applauds India for its democratic stability and economic prowess, it increasingly looks at Pakistan with suspicion and as an irresponsible state. It is a known fact that global



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anger has emanated against Pakistan after the recent attacks. In Pakistan some of the present day purveyors of religion quote from Quran when they exhort their followers to launch *jihad* against the non-believers. Asghar Ali Engineer (2004, "Making a Mockery of Jihad") has stated that the Muslim needs to hear the voice of the moderate and not just that of the extremist-fundamentalist.

Owing to availability of sophisticated weaponry in the international market, terrorism has become entrenched and accessible. In the foreseeable future, international terrorism and induced domestic terrorism will pose a greater danger to our national security than a conventional war. The training of these militants for the cause of Islam enables them to target civilians brutally.

Serious Lapses

Inability of the intelligence agencies to heed to the early warnings of these impending terrorist activity via the sea and the lack of co-ordinated follow up action across the border to beef up the security has resulted in this carnage. The 11/26 episode also reaffirms the lack of synchronized interaction between Indian's security agencies such as RAW, IB and the Army, Navy and other agencies. In fact they work at "cross purposes" (Hindustan Times, 3/12/2008 p3). As Paul Wilkinson of the University of St. Andrews rightly opines, there was a serious intelligence failure in Mumbai and home department could have nipped this in the bud. It is astonishing to read about the casual attitude of ex-Home Minister towards safety of people. 'RR Patil who was supervising the rescue operation of terrorist attack from his official residence was requested by Cabinet Minister of Public Works Department to visit the 'DGP office' (Mumbai Mirror, 28/11/08, page 3). To add salt to the wound of Mumbaikars, Patil's comment that "bade bade sharon mein aise chote chote hadse hote hi rehte hain" (Mumbai Mirror, 30/11/08, page 11) needs to be reprimanded in the strongest manner possible. Would he have had the same say if his own life was involved ?

As far as terrorists are concerned, powerful security regime is the need of the hour. At the national level,

there is a need of a high-level anti-terrorist squad, which should have its branch in every state. Specialised training, sophisticated equipments and enhanced manpower and fire power will have to be provided to the ATS in particular and the police force in general. With the increasing sophistication of international terrorism it is likely that they will resort to nuclear, biological and chemical weapons. When the police are accountable for the security of the common man and to implement the law of the land, the State has no option but to respect the police force who work for people's safety.

Though the law and order situation in the country has deteriorated in general, the state of Maharashtra has been fairly peaceful as compared to other states. What is significant is that the peace and security has been conducive to the growth of trade and industry in the city and positioned it as the financial capital of the country. The recent attacks have shattered this safe cocoon and the State has definitely failed to safeguard the life and property of its citizens and these will have a detrimental economic impact.

Economic development is contingent on political stability, and terrorism is certainly destabilising. The process of economic liberalisation and globalisation set in motion cannot be carried forward, if the state cannot guarantee the maintenance of law and order. Money seeks safe havens and given the current scenario it will begin to flow out of Maharashtra into new ventures elsewhere unless the state can restore confidence in its investors.

Skewed Police-Population Ratio

Maharashtra produces country's 19 percent of industrial output, 15 percent of service sector output and about 13 percent of GDP. Her per capita income of Rs. 22,179 in 2000-01 makes it the third richest state in India after Punjab and Haryana. The growth of services sector which largely comprises the new economy, contributed 8 percent to the economic growth of the state during 1997-98 and 2000-2001 (GOM, 2003).

In spite of having the distinction as an economically forward state, the Police-Population ratio is skewed.

Abstract

Terrorist attacks of 26/11 in Mumbai took away the precious lives of dedicated police officers. They died due to deficient and obsolete equipment provided by the State. It is the need of the hour to provide specialised training, sophisticated equipments and enhanced manpower and fire power to police.



The estimated loss in Mumbai alone from terror toll of the 60 hour ordeal is pegged at Rs. 4,000 cr. Additionally the closed stock exchange, national stock exchange and commodity exchanges markets halted trading worth Rs. 32710 cr !. While US earmarks about 20 percent of the federal budget, the budgetary expenditure in India on police as percentage of GDP is hardly 0.55 percent.

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Maharashtra has 143 policemen per lakh of population as compared to 200-250 in advanced countries and the UN norm of 222. As per the estimates of National Crime Records Bureau (2007) vacant posts in the armed police constitute 13.8 percent and that of civil police corresponds to 9.8 percent.

Estimated Loss of 26/11 Attacks

The economic impact of terrorism can be calculated from a variety of perspectives. There are direct costs to property and immediate effects on productivity, as well as longer term indirect costs of countering terrorism. The human cost in terms of lives lost is, of course, incalculable. According to Krugman (2004) the direct cost of the September 11 attacks on USA has been estimated at over \$20 billion.

The estimated loss in Mumbai alone from terror toll due to the 60 hour ordeal the country's financial capital is pegged at Rs. 4000 cr. Additionally the closed stock exchange, national stock exchange and commodity exchanges markets halted trading worth Rs. 32,710 cr. ! It also resettled into shrinkage on the number of daily commercial operations as many corporate officers suspended normal transaction. The attacks on Mumbai disturbed the television and film industry, with an estimated loss about Rs. 10 cr. during the four days of terror. Yet another group come under city markets, entertainment and shopping malls where hardly any business is transacted, though the attack mainly focused on two luxury hotels and other places frequented by Westerners (Business Line, 2008).

Currently tourism contributes an estimated Rs. 905 billion or 5.6 percent to the GDP of India compared to the world average of 10 percent. The travel and tourism sector created 9.3 million jobs directly and 17.4 million indirectly in 1999. This was expected to increase to 12.9 million jobs directly and 25 million indirectly by 2010 (GOM, 2003). Mumbai is the capital of Maharashtra and the commercial and entertainment hub of India and it tops as a major tourist destination also. The killing of foreign tourists deterred to infer tourism in the near future. Mumbai terror strikes take a toll on Goa tourism sector as

indicative of the cancellations which hotels and tour operators received. India's air travel industry, already hit by slowdown due to the global financial crisis, is faced with another set back after a series of terror attacks in the country's financial hub killed so many in the midst of the peak tourist season. The economic slowdown had caused 30 percent drop in tourist arrivals this winter and industry experts fear the drop in traffic could go up to 40 percent the largest ever witnessed in the last 6-7 years (Business Line, 2008).

Industries hardest hit by lost job include restaurants, retail trade, hotel, building services and apparel manufacturing. Business activity has fallen in a number of industries where as the impact is primarily by working few hours and being paid commensurately less. The economic devastation when national and local economies are in recession is likely to affect many related industrial activities.

Rectification of Flawed Model

Radical measures are needed and they should be modified so that police reforms are accelerated as they are crucial for the establishment of the rule of law, that has been given low priority by successive governments at the centre and the states, irrespective of the party affiliations. Mere addition to numbers has to give way to making the police more efficient, productive and effective by provision of modern aid, equipment for enhanced mobility and sophisticated communications.

Insinuations from politicians- such as the unjust criticisms from BJP of Hemant Karkare of his role in the investigations of the Malegaon blasts, punitive appointments and political transfers as mentioned by Reberio have demoralized the police force. Independence and freedom in their sphere of work are quintessential for the police to keep the city safe. Infighting and red tape in the procurement of life-saving quality items such as bullet proof jackets and armoured vehicles have also stressed our 'protectors'. In this regards the civil society has to come ahead and protest, and be supportive to their brethren in police force. A myopic view or short public memory to terrorist incidents also needs to



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be overcome and citizens forums and civil society should be incorporated and encouraged to provide clues, warnings and assistance in the investigation process.

The US earmarks about US \$500 billion annually for defense, home security and preventing terrorism, which accounts for 20 percent of the US federal budget. The defense budget increased by one-third, or over \$100 billion, from 2001 to 2003 in response to the heightened threat of terrorism - an increase equivalent to 0.7 per cent of US GDP. Expenditures on defense and security are essential for any nation, but, of course, they also come with an opportunity cost; those resources are not available for other sectors. (Krugman, 2004). The expenditure on police as percentage of GDP are Rs. 5899 Cr. Rs. 6831 Cr. and Rs. 7381 Cr. which comes around, 0.51, 0.57 and 0.58 as per 1999-00, 00-01 and 01-02 respectively (GOM, 2003).

Police and laws order are subjects within the purview of the State List. It is, therefore, the responsibility of the states to provide funds for these requirements. A centrally sponsored scheme for modernisation of police forces has been implemented in the state with a 50 percent grant and 50 percent loan. The amount has to be spent on prescribed items such as mobility, communications, scientific aids to investigation, and crowd control equipment. Statewise allocation is based on "population, sanctioned strength of police, number of police stations and crime per lakh population. The scheme is funded equally by the Centre and the State concerned. It has been observed that the central funds are not being used by a number of states due to a lack of matching funds from the state budget. The budget of the police department is under severe strain and there are shocking news reports that police do not have funds even to purchase petrol for their vehicles (Godbole, 1999). When we can spend on other developmental activities such as flyovers,

dams, SEZ's in 'national interest', surely the police force does need to be given a higher priority because without law and order, there can be no economic development.

Emerging Issues

People want good policing and security. When we look for safety, we look for men in uniform. If police have to fear for their life, how will they protect the people and the system? Is it necessary to have economic budget allocation for police and quality armoured vehicle to provide protection during emergency operations? National security budgeting has to be given priority. There needs to be a paradigm shift in allocation of money in this regard. The realization that the government was incapable of providing security devices to police officials in spite of protecting this commercial capital with their better police leadership has literally shaken up Mumbai.

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The budget of the police needs to be given a higher priority. The process of economic liberalisation and globalisation set in motion cannot be carried forward, if law and order is not maintained.



Key Words

Rape
Marital Rape
Kinds
Effect- physical,
psychological, etc.
International view
Indian response

Marital Rape : The Assassination of a Woman's Dignity

Debdatta Das*

Introduction

Rape is the most heinous offence committed on a woman. It is worse than a murder. The victim dies thousand deaths, even when she is alive. Although it is not her fault, in every case of rape we have seen, without exception, the violated woman is discriminated against and made to feel as if it is she who were the criminal. Society looks upon the offenders with a kinder and more lenient eye. Every woman dies within when she is raped.

Marital rape is a taboo subject rarely discussed. Yet it affects millions of women. Ten to fifteen percent of women in the US report being raped by their husbands. In recent decades, a few noble women have struggled to highlight this issue and bring it to the attention of lawmakers, judges, senators and ordinary citizens. Marital rape occurs irrespective of age, social standing, education, race or ethnic origin. Research shows that rape by husbands is as terrifying and degrading as rape by strangers.

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 his wife. After all, how can a man be accused of rape if he is only availing of his conjugal rights?

Despite the unwillingness to recognize marital rape as a crime, the fact remains that marital rape is prevalent throughout society. Women's bodies are outraged, regardless of their educational qualifications, class or status. Women themselves donot make a noise about it or talk about their experiences. This is because cultures

worldwide discourage their women from openly discussing sexual matters, let alone within marriage. Most women donot even think of rape by their husbands as marital rape.

The quiet truth behind cultural curtains covering this topic is that marital rape affects millions of women every year. According to a study done by Diana Russell in San Francisco, a minimum of ten to fourteen percent of women are being raped by their husbands. Twenty-five percent of all rapes (including rapes by strangers) are inside the marriage, by the husbands. It happens in fifty percent of abusive marriages. It is already a well-known statistic that 50 percent of married women suffer from abuse at some point in their marriages. This means that in 25 percent of all marriages, rape and other forms of sexual abuse are taking place. According to Diana Russell, one in every seven married women are raped by their husbands. Of all rape cases reported, ten percent are attributed to husbands. However, this number is likely way below the reality, since in this author's opinion thousands never report the rape inside the marriage. It is too shameful to do so.

Marital Rape

The term 'marital rape' refers to unwanted intercourse by a man on his wife obtained by force, threat of force or physical violence or when she is unable to give consent. The words 'unwanted intercourse' refers to all sorts of penetration (whether anal, vaginal or oral) perpetrated against her will or without her consent.

The concept of marital rape was unknown in history; most societies, considered it acceptable for men to force their wives to sex. Even the

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concept of 'rape' as an invasion of the physical and psychological integrity of woman was non prevalent. Not surprisingly, therefore, married women ravished at the hands of their partners never formed the subject of rape laws. In fact, the laws bestowed an absolute immunity on the husband in respect of his wife, solely on the basis of marital relations. It asserted the husband's unquestioned right to intercourse with his wife and her duty to submit. The latter's right to freedom of choice in marital relations and the husband's duty to respect that right was completely overshadowed by the patriarchal laws. Sir Mathew Hale⁵ emphasized that the husband cannot be guilty of rape committed by himself upon his lawful wife for by their mutual matrimonial consent and contract, the wife hath given up herself unto her husband which she cannot retract. Ultimately, it was in the 1970s in America that women activists raised their voices for elimination of the marital rape exemption clause and extension of the guarantee of equal protection to women.

Marital rape is different from physical and sexual violence. It is betrayal of trust. Here is a person whom you thought you knew intimately, with whom you share a history, a home and quite often children. Here is a person whom you have made love to on a frequent basis often over many years, with whom you have shared your most intimate secrets and fears, and whom you believe to love you, want the best for you, who would never intentionally hurt you. Marital rape is so destructive because it betrays the fundamental basis of the marital relationship, because it questions every understanding you have not only of your partner and the marriage, but of yourself. You end up feeling betrayed, humiliated and, above all, very confused.

Review of Literature

The article written by Barb Kiffe, on marital rape states that marital rape is seldom given the legitimacy or validity of other forms of sexual violence, but it can be just as devastating. What

sets marital rape apart is that the victim has to live with her rapist. Barb Kiffe in her article refers to Diana Russell's study of over 900 married women in 1978 revealed that 14 percent had been sexually assaulted in some way by their husbands. The article deals with marital rape in U.S. legal system. It highlights the issues like societal beliefs and misconceptions contributing to the tolerance of marital rape, effects of marital rape, the relationship between marital rape and battering.

Marital Rape: New Research and Directions is a very interesting article on the issue. It states approximately 10-14% of married women are raped by their husbands in the United States. Approximately one third of women report having "unwanted sex" with their partner. It highlights under what circumstances are women particularly at high risk of being raped by their partners.

It also throws light on the psychological impact of the marital rape victim. This research indicates a need for those who come into contact with marital rape survivors— police officers, health care providers, religious leaders, advocates and counselors—to comprehensively address this problem and provide resources, information and support. Those who work in batterers' intervention programs should also work to eliminate marital rape and to comprehensively address sexual violence.

In Marital Rape: A scar on the face of civilized society, Gaargi Bhatt writes "In India marital rape exists de facto but not de jure. While in other countries either the legislature has criminalized marital rape or the judiciary has played an active role in recognizing it as an offence, in India however, the judiciary seems to be operating at cross-purposes. In *Bodhisattwa Gautam v. Subhra Chakraborty*, the Supreme Court said that rape is a crime against basic human rights and a violation of the victim's most cherished of fundamental rights, namely, the right to life enshrined in Article 21 of the Constitution. Yet it negates this very pronouncement by not recognizing marital rape. Though there have been some advances in Indian



Abstract

Marriage is the most sacred institution of social living. The basic edifice on which the sanctity of this institution rests is trust, respect and love. But often an insight into the reality of this institution makes us realize that virtues mentioned above often get evaporated and factors like adjustment, sacrifice, surrender play a predominant role. Marriage is not always all beautiful, but it is a



bed of roses which has thorns too.

Rape per se, is one of the world's most heinous crimes. Marital rape is one of the world's most draconian practices to which our society is a witness. Traditionally, culture, conservatism, social myths and taboos, male superiority are some of the factors which never let the fact of marital rape to surface in the society. Women either consider it to be a part of her

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legislation in relation to domestic violence, this has mainly been confined to physical rather than sexual abuse. Women who experience and wish to challenge sexual violence from their husbands are currently denied State protection as the Indian law in Section 375 of the Indian Penal Code, 1860 has a general marital rape exemption." Further she highlights In India, the Protection of Women from Domestic Violence Act, 2005 (passed in August 2005; entered into force October, 2006) criminalizes marital rape as a form of domestic violence, and therefore, attracts a lesser jail term than non-marital rape.

Kinds of Marital Rape

Marital rape is generally sub-divided into three categories: those rapes which involve a degree of violence, those that use enough force to control the victim, known as 'force-only' rapes, and sadistic rapes.

- **Violent rape** occurs, as the name suggests, when the abuser uses enough physical violence to cause injury to the victim, apart from any injuries due to the rape itself, i.e. injuries to the genital area or breasts. Examples would include the husband punching his wife or injuring her with a knife - the rape being part of a violent assault, or the violence being a part of the rape. Many abusers will also force their wives to submit to sexual acts after a physical assault, either to prove her forgiveness or to further intimidate and humiliate her - and if the wife should refuse such an act, even the threat of further violence (or a previous experience!) will soon ensure her compliance. Battering rapes in which the husband rapes and simultaneously batters his wife also comes within this ambit.
- **'Force-only'** rape is usually understood to include only enough force used on the part of the abuser to control or hold his wife in position, e.g. holding down the victim by her arms or wrists to prevent her defending herself or escaping. This form of rape is common

where there is a larger contrast between the physical size and strength of abuser and victim, or in abusive relationships where physical violence is infrequent or non-existent (in so far as one does not categories sexual assault itself as a violent act). In most cases of 'force-only' rape, coercion plays a large part. The victim may also be so confused and numbed by constant emotional abuse, that she simply does not know how to act or react when sex is forced on her.

- **Sadistic rape** is sometimes also present. This tends to indicate that in addition to the rape itself, the victim is either forced to comply with or undergo deeds designed to further humiliate her. Examples of this would be the abuser/rapist urinating on the victim, acting out a fantasy of torturer, or using other object during a rape. Sadistic rape may or may not involve further violence. Some people consider buggery as a sadistic form of rape, since its effect on victim is often particularly humiliating. Pornography is frequently involved in this kind of rape. It is also known as Obsessive rape.

Finkelhor and Yllo Talk in their book 'Men Who Rape' have added apart from the aforesaid kinds of rape, two more types of the same. These are :

Anger rapes, which are committed primarily to express hostility to women, to retaliate against them and to hurt them. In this type of rape, the husband will degrade the victim/wife as much as possible. He may force her to commit other sexual acts which are particularly degrading, such as sodomy or fellatio, meaning bestiality.

Power rapes are committed to assert dominance and control over women. It is not really the intention of the husband to harm; he just wants to assert his control over her. The rape reflects a kind of sexual conquest, which in a normal healthy relationship is not necessary. But in this case, the husband needs it due to his own feelings of inadequacy. That is why, when a wife with passage of time becomes

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more assertive, indignant or rebellious, this kind of rape is more likely to happen.

It is difficult defining clear-cut lines between the different types of rape, since rape can involve any of the above or a combination of them. For instance, the rapist may use coercion tactics and enough force to control the victim initially, but then use increased violence if the victim struggles. Many victims of marital rape feel guilty for not having struggled more, or have been told that if they did not try to physically fight their abuser and thereby sustained injuries, that it is not 'real rape'. This can be extremely distressing and add to the trauma already experienced. What has to be remembered is that when you are living with your abuser, you are often very finely tuned to him, employing numerous coping mechanisms to limit the damage to yourself: you may realize either consciously or subconsciously that if you struggle, he is likely to get violent or take his anger out on you in other ways.

Other reasons a woman may not fight back are so as not to disturb children sleeping nearby, thereby risking them witnessing the rape; shock or confusion at what is happening which paralyzes her; and real concern for her abuser, which results in her not wanting to do anything which may harm or injure her rapist even to the detriment of herself.

Research seems to indicate that in the context of an abusive relationship, the woman is most likely to be subjected to rape towards the end of the relationship, or after she has left, though several women have reported that their boyfriends raped them at the very beginning of their relationship - which is reminiscent of the ancient custom of capturing and raping women to be able to claim them as wives. It would appear that where rape starts in an established relationship, that rape is often used by an abuser when other control tactics, such as isolation or emotional abuse are no longer sufficient to maintain his power and hold over her, or to punish her for either leaving or trying to leave. Only too often, this works.

Effects of Marital Rape

Due to popular stereotypes of "real" rape, it is often assumed that because spouses have been sexually intimate, forced sexual intercourse in marriage is not as traumatic as rape by a stranger.

Rape by a stranger can be highly traumatic but is usually a one-time event and is clearly understood as rape. In the case of rape by a spouse or long term sexual partner the history of the relationship affects the victim's reactions. Marital rape is likely to be part of an abusive relationship. Trauma from the rape adds to the effect of other abusive acts or abusive and demeaning talk. Furthermore marital rape is likely to happen repeatedly. The effect of marital rape is homicidal for the woman both psychologically or emotionally and physically.

Women are at particularly high risk for being raped by their partners under the following circumstances :

- Women married to domineering men who view them as "property"
- Women who are in physically violent relationships
- Women who are pregnant
- Women who are ill or recovering from surgery
- Women who are separated or divorced

Many factors contribute to the difficulty that many women have in recovering from marital rape. The issues are complicated. First is the fact that the rapist is a close acquaintance, and as in other forms of acquaintance rape, healing can be a very long and difficult process. The survivor may not recognize that she was sexually violated, and so may think that her feelings of fear, revulsion, depression or anger mean that she is crazy or somehow flawed. Because the perpetrator was at one time trusted and loved, the survivor is likely to deal with bitter feelings of betrayal and



fate or it is thought to be a part of the conjugal right of the man which licenses him to exert force or disregard the will of his conjugal partner.

It was only in the last few decades that the approach of the society towards this vice has started to undergo a change. The cry of international organizations and women emancipation groups towards this Issue are responsible for this positive



movement. Different countries are incorporating respective changes in their legislations to criminalize this practice. But this consciousness is yet to be realized in the Indian legal system.

No country, no society, no neighborhood, no family is oblivious of this social malice of marital rape. But inspite of this fact, we still live in a society where it is thought better not to discuss it and

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broken trust, and may feel she cannot trust herself to decide which people are safe and which are not. Feelings of grief and loss are common for victim/survivors of marital rape because the rape is a break in an important relationship. The survivor may still love her assailant, and may feel terribly torn and confused because of this. She may experience a great loss of self-esteem, and feel worthless because someone who "loved" her did something so horrible to her.

The loss of control over her own life is always an issue for a sexual assault survivor, but when that assault takes place within marriage the loss is extreme. When the sexual violence is a part of a pattern of physical and emotional abuse, the victim/survivor is likely to feel even more powerless because of the controlling behavior of her spouse. The survivor cannot go home to find safety and support because the cause of the trauma is in the home; there may seem to be no place of safety anywhere.

Lack of support from family and friends is also often a problem. Some other difficulties may arise for a woman if the assailant/husband is also the economic provider for the family, or the father of her children. For women in this situation, a decision to confront the perpetrator, report the crime or even try to escape would mean risking loss of income, loss of home and loss of children, not to mention the loss of a spouse. For some women, the ability to "keep a man" is important to feelings of self worth, and they may feel it necessary to put up with the violence. All these entanglements and more, along with the religious and social beliefs mentioned above, may function to keep women in marriages where they are raped. This sense of entanglement may cause a survivor to feel that she is, therefore, responsible for the abuse. In addition, survivors who see no way of escape may deny or minimize the violence they live with in order to survive it.

In Marital Rape: In New Research and Directions it has been said that despite the myth that has historically existed that rape by one's partner is

a relatively insignificant event causing little trauma, research indicates that marital rape often has severe and long-lasting consequences for women. The physical effects of marital rape may include injuries to the vaginal and anal areas, lacerations, soreness, bruising, torn muscles, fatigue, and vomiting. Women who have been battered and raped by their husbands may suffer other physical consequences including broken bones, black eyes, bloody noses, and knife wounds that occur during the sexual violence. Specific gynecological consequences of marital rape include vaginal stretching, anal tearing, pelvic pain, urinary tract infections, miscarriages, stillbirths, bladder infections, infertility, and the potential contraction of sexually transmitted diseases including HIV/AIDS. A study conducted by Maman, Campbell, Sweat, and Gielen (2000) found that there is a relationship between increased HIV risk and forced sexual intercourse. Most notably this is the result of women's inability to use barrier contraceptives because of their partners' threats or refusal to use condoms (Bennice & Resick, 2003; Eby et al., 1995). The inability to use contraception may also lead to unwanted pregnancy.

Some researchers have compared the psychological effects of being raped by one's partner to other forms of violence. Given that women who are raped by their partners are likely to experience multiple assaults, completed sexual attacks, and that they are raped by someone whom they once presumably loved and trusted, it is not surprising that marital rape survivors seem to suffer severe and long-term psychological consequences. Similar to other survivors of sexual violence, some of the short-term effects of marital rape include anxiety, shock, intense fear, depression, suicidal ideation, disordered sleeping, and post-traumatic stress disorder. Women raped by their intimate partners are more likely to be diagnosed with depression or anxiety than those who are victims of physical violence and those who were sexually assaulted by someone other than one's partner. Long-term effects often include disordered eating, sleep problems, depression, and

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sexual distress, problems establishing trusting relationships, distorted body image, and increased negative feelings about themselves.

Research has also indicated that the psychological effects are likely to be long lasting—some marital rape survivors report flashbacks, sexual dysfunction, and emotional pain for years after the violence. An issue that has not received significant attention is how marital rape affects children. In one of the few studies to examine this question, Campbell and Alford (1989) found that 5% of the women in their study indicated that their children had been forced by their partners to participate in the sexual violence and 18% of the women indicated that their children had witnessed an incident of marital rape at least once (in Mahoney & Williams, 1998). More research is needed to fully understand the implications of marital rape for children and other members of the family.

Marital Rape : An International View

In 1995 at the UN Convention on Women's Rights, a group of noble women made sure that the forthcoming official UN document declared marital rape to be a crime against women and a convictable offense. Marital rape was declared a fundamental violation of human rights. The delegates at the 1995 UN Convention on Women's Rights in Beijing agreed on "strong planks that call for punishment of domestic violence, including marital rape..." According to the Center for Constitutional Rights, "Every woman has the right to control her own body and to make decisions about having sex, using birth control, becoming pregnant and having children. She does not lose these rights if she marries." The Center for Constitutional Rights gives a somewhat more lengthy definition of marital rape as being sexual acts done against a wife's wishes either by physical force, by threats of force or by making her fear that she will come to harm if she resists. The husband may use simply psychological or emotional abuse (glaring looks and verbal rages) to make her comply. He may use coercion, verbal

threats, physical violence or weapons to force his wife to have sex with him. It is a complete abuse of power. It is the husband's attempt to assert control and to dominate his wife. The point is, if she submits to sex out of fear or terror, it is rape. Taking sex by force when the wife is asleep or sick is also termed as rape.

Marital rape is rampant in countries around the world. In the Philippines congressmen declared that there was no such thing as marital rape, but in spite of these dense derelicts an antirape law has been passed in the Philippines. Canada and Australia now have passed laws only in the past decade against marital rape. Namibia, Mexico, Ecuador and Honduras have also passed anti-marital rape laws. Sweden had passed such a law way back in the 70s but it has been rarely implemented. Some countries have finally passed anti-rape laws but it continues to be a tremendous struggle to get marital rape included in that law. Nepal has long back outlawed marital rape. The Supreme Court of Nepal has declared that husbands who force their wives to have sex can now be charged with rape. It takes great courage for a woman to file a case against her husband claiming marital rape. Turkey passed anti-marital rape laws in 2005 and Thailand and Mauritius only in 2007. In Sri Lanka Marital rape is considered an offense only in cases of spouses living under judicial separation. Apart from these countries like Argentina, Austria, Barbados, Belize, Bulgaria, Croatia, Cyprus, Denmark, the Fiji Islands, Finland, France, Georgia, Germany, Hong Kong, Ireland, Israel, Macedonia. The Netherlands, New Zealand, Norway, Poland. South Africa, Spain, Taiwan, Trinidad/Tobago, Uzbekistan, and Zimbabwe also criminalize marital rape.

Marital Rape: Judicial response in USA

It should be noted, that cultural norms and the perceived social stigma attached to rape often discourage the reporting of marital rape, and prosecution is very rare in many countries.

Until 1976, marital rape was legal in every state in the United States. Although marital rape is now



indirectly, unknowingly and unwillingly we encourage it. This conservative outlook is getting reflected in our legal system too, which is a matter of concern. In U.K. it was the year 1991 and in U.S. it was the year 1993, which recognized marital rape as a criminal offence throughout the country. It is high time that the required amendments need to be brought into our legislations so that a



right response can be
made to such social
evils.

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a crime in all 50 states in the U.S., some states still do not consider it as serious as other forms of rape. The only states that have laws that make no distinction between marital rape and stranger rape are Colorado, Delaware, Florida, Georgia, Indiana, Massachusetts, Montana Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Texas, Utah, Vermont, Wisconsin and the District of Columbia. These states have no marital rape exemptions.

The first marital rape case to reach the U.S. legal system took place in 1978 in New Jersey, where Daniel Morrison was found guilty of raping his estranged wife. Six months later in Oregon, John Rideout became the first husband charged with rape while living with his wife. Rideout was acquitted, but the case was widely publicized and brought attention to the concept that rape can exist within the context of marriage. Many states (including Minnesota) at that time defined rape as forced sexual intercourse committed by a man "against a woman [not his wife]." In 1979, the state of Massachusetts charged and convicted a marital rape case. In 1981, Minnesota statutes were changed to acknowledge the existence of rape in marriage; Ramsey County was the first to charge a case under this statute, but later dismissed it. There have since been subsequent successful prosecutions of marital rape, but in general the cases are hard to win, primarily because the question of consent is clouded by societal beliefs about marriage.

On July 5, 1993, marital rape became a crime in all 50 states, under at least one section of the sexual offense codes. In 20 states, the District of Columbia, and on federal lands there are no exemptions from rape prosecution granted to husbands. However, in 30 states, there are still some exemptions given to husbands from rape prosecution. In most of these 30 states, a husband is exempt when he does not have to use force because his wife is most vulnerable (e.g., she is mentally or physically impaired, unconscious, asleep, etc.) and is unable to consent. Women

who are raped by their husbands are likely to be raped many times-often 20 or more times. They experience not only vaginal rape, but also oral and anal rape.

Marital Rape: Judicial response in United Kingdom

The marital rape exemption was abolished in England and Wales in 1991 by the House of Lords, in its judicial capacity, in the case of *R v R* [1992] 1 AC 599. The exemption had never been a rule of statute, having first been promulgated in 1736 in Hale's History of the Pleas of the Crown, where he stated:

"But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband which she cannot retract."

The statement was not supported by any judicial authority but was believed to be a logical consequence of the laws of marriage and rape as historically understood. Marriage gave conjugal rights to a spouse, and marriage could not be revoked except by private Act of Parliament - it therefore seemed to follow that a spouse could not legally revoke consent to sexual intercourse, and if there was consent there was no rape.

The principle was repeated in East's Treatise of the Pleas of the Crown in 1803 and in Archbold's Pleading and Evidence in Criminal Cases in 1822, but it was not until *R v Clarence* (1888) 22 QBD 23 that the question of the exemption first arose in an English courtroom. Clarence was determined on a different point, and there was no clear agreement between the nine judges regarding the status of the rule.

The first attempted prosecution of a husband for the rape of his wife was *R v Clarke* [1949]² All ER 448. Rather than try to argue directly against Hale's logic, the court held that, although the proposition may be sound, consent

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in this instance had been revoked by an order of the court for non-cohabitation. It was the first of a number of cases in which the court qualified the rule by delineated exemptions where the rule did not apply, notably R v O'Brien [1974] 3 All ER 663 (the obtaining of decree nisi), R v Steele (1976) 65 Cr.App.R. 22 (an undertaking by the husband to the court not to molest the wife) and R v Roberts [1986] Crim LR 188 (the existence of a formal separation agreement).

There are at least four recorded instances of a husband successfully relying on the exemption as a defense to the charge of rape in England and Wales. The first was R v Miller [1954] 2 QB 282, where it was held that the wife had not revoked her consent despite having presented a divorce petition. R v Kowalski (1988) 86 Cr. App. R. 339 was followed by R v Sharples [1990] Crim LR 198, and the fourth occurred in 1991 in the case of R v J, a judgment made after the first instance decision of the Crown Court in R v R but before the decision of the House of Lords that was to overrule the exemption. In Miller, Kowalski and R v J the husbands were instead convicted of assault or indecent assault.

R v R in 1991 was the first occasion where the marital rights exemption had been appealed as far as the House of Lords, and it followed the trio of cases since 1988 where the marital rights exemption was upheld. The leading judgment, unanimously approved, was given by Lord Keith of Kinkel. He stated that the contortions being performed in the lower courts in order to evade the marital rights exemption were indicative of the absurdity of the rule, and held, agreeing with earlier judgments in Scotland and in the Court of Appeal in R v R, that "the fiction of implied consent has no useful purpose to serve today in the law of rape" and that the marital rights exemption was a "common law fiction" which had never been a true rule of English law. R's appeal was accordingly dismissed, and he was convicted of the rape of his wife.

Marital Rape : Legislative and Judicial response in India

In Thomas Babington Macaulay's draft of the Indian Penal Code, there was clear preference of the rights of the husband over his wife against the wife's right to herself. The wife was not entitled to accuse her husband of rape, whatever are the circumstances. But this provision based on common law was not suitable to Indian conditions, especially at a time when child marriages were rampant. The low age of marriage should have facilitated the Law Commissioners to afford protection to child brides from sexual assaults. But Macaulay was much engrossed with the English Criminal Law System and Victorian notions of morality emphasizing the low status of women in society and thereby, failed to realize the injury which such provisions could do to the female populace.

However, today the exception provided to Section 375 of the Indian Penal Code reads that "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape". Thus it can be said that the Indian Penal Code fails to criminalize the grievous offence of marital rape. The provision only acts as a remedy to the bitter consequences of a child marriage to which a young female often falls prey to. Further Section 376 makes a distinction between, when the wife is below 12 and above 12 and below 15. When she is below 12, the penalty is severe, i.e. imprisonment of either description for a term, which shall not be less than seven years but which may be for life or for a term which may extend to 10 years and fine. If, however, the wife is not under 12, i.e. she is above 12 but below 15, the punishment is milder i.e. imprisonment of either description for a term which may extend to two years or fine or both.

Under the Indian Penal Code, under Section 376A sexual intercourse with one's own wife without her consent under a decree of separation, or while she is living separately under any usage or custom is also punishable with imprisonment of





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either description for a term which may extend to two years and shall also be liable to fine.

In fact, the Law Commission of India in its 42nd report had put forward the necessity of excluding marital rape from the ambit of Section 375. Then the 84th report of the Law Commission in April 1980 disagreed with the restructuring suggested by the former report. They felt that such arrangement would "produce uncertainty and distortion" and hence Section 375 should "retain its present logical and coherent structure." With regard to age, however, they were of the opinion that it should be increased to 18 years. Even the 172nd report of the Law Commission on Review of Rape Laws (March 2000) has preferred to adhere to its earlier opinion of non-recognition of "rape within the bonds of marriage" as such a provision "may amount to excessive interference with the marital relationship". The only suggestion made is (again) with regard to age that may be enhanced from 15 to 16 years. However, the 205th Report of the Law Commission of India dated February 2008, has recommended that the exception to the rape section 375 of the Indian Penal Code, be deleted. This would ensure that the age of consent for sexual intercourse for all girls, whether married or not, is 16. The 172nd report of the Law Commission had recommended increasing the age of all girls for consent to 16.

The Protection of Women from Domestic Violence Act, 2005 states that it is an Act to provide for more effective protection of the rights of women under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. Though the said Act nowhere mentions the term marital rape but the essence of the heinous act can be covered within the definition of Domestic Violence given under Section 3 of the Act. It states that for the purpose of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it, among other criteria, harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or

tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. Even if the act has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned before, such act too shall come within the ambit of domestic violence. The explanation attached to the section states that sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman. It is important to note that this Act too has failed to criminalize marital rape and has provided only civil remedies. The provisions of Section 31, which states that imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both, apply only in case of a breach a protection order, of an interim protection order, by the respondent.

The National Commission for Women has also suggested that sexual intercourse by a husband with his own wife against her consent should be should also be considered sexual assault. The Commission had released a report 'Rape: A Legal Study, which stated that marital rape should be recognized as a criminal offence. Certain NGO's, Women's Groups, including The All India Women's Association and Sakshi, an NGO working for women's rights, have also recommended that marital rape be recognized as rape.

Suggestions

Based on realizations and experiences while working on this issue, author would like to make the following suggestions:

- Make the young generation conscious of such gruesome act so that they themselves develop hatred towards it.
- Women need to come out of the social taboos and develop a very pragmatic temper.
- It is high time that India should realize the need of criminalization of marital rape. The

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present laws should be done away with, amended and required laws should be adopted.

- The machinery functioning to counter such acts should make it easy for a women to address her grievance and make available suitable relief.
- The judiciary should be trained and sensitized to treat women specially on such delicate issues with empathy rather than sympathy.
- The Women's Commissions and NGO's should be engaged in more acidic activities in making the Legislature realize the need of passing specific laws to combat marital rape.
- Recommendations already made on this issue need to be implemented and the opinion of the international forum on this should be respected.
- The society should provide a supportive shoulder to the victim of marital rape and act as a encouraging organ for the victim to build confidence and strength to face the world and fight for her right and dignity.
- Lastly, though this might apparently sound to be vague, but in my opinion this too requires a mention. The term marital rape often conveys the idea that it is only the woman who is at the suffering end. In today's changing world which breathes of equality of sexes concepts should not be given a restricted meaning but should be assigned the widest possible explanation. Keeping this in view marital rape should also be so defined that the victim of rape involved in marital relationship can be of either sex. It may sound utopic in rural set up but is not irrelevant in the changing urban scenario. However, it is beyond any doubt that in more than majority of the cases it is the woman who suffers, just as she is the "weaker sex" in the relationship.

Conclusion

The Universal Declaration of Human Rights, Article 1 states. "All human beings are born free and equal in dignity and rights". But in spite of such flamboyant declarations of human rights in the international spectrum and guarantees like Art. 21 of the Indian Constitution, assassination of a woman's dignity in the form of marital rape is a very rampant occurrence. Marital rape does not only involve the physical rape but also involves the rape of trust, confidence, respect and love involved in the most sacred institution of marriage. The myths related to the act of marital rape must be shirked off. It is no less an offence than murder, culpable homicide or rape per se. It denigrates the honor and dignity of a human being, and reduces the victim to a chattel to be utilized for one's self-convenience and comfort. It reduces the victim (woman) to a corpse, living under the constant fear of hurt or injury.

Law always plays a very important role in the society. It lays down the framework which helps achieve a disciplined and harmonious society where rights of every individuals are respected. In order to counter and combat any social evil, assistance of law is indispensable. The transformation that is desired to be brought about in a society for a better and healthy future and living can be engineered by banking on the relevant laws and the entire legal and judicial system. History speaks of various such examples where laws have been framed to eradicate from the society various such practices which causes disgrace for the society rather than help it to progress, for example the laws on widow remarriage. Marital rape also suffers from various myths and taboos attached to it. It is not easy to change the psyche or the mindset of the masses but an attempt to influence the same in the positive direction can definitely be made. Framing of relevant, pragmatic and ambitious laws on the issue of marital rape is indeed very important, so that the society can be disinfected from such a curse called marital rape.





Marital Rape : The Assasination of a Woman's Dignity

The time is ripe for the Indian Legislature to wake up from its years of slumber and make amendments to the Indian Penal Code. Several jurisdictions of the world have either recognized marital rape as an offence or else set in motion the task of breaking the shackles of traditionalism. Marital rape is prevalent in every city, every town, very village of India, it might even be happening in our own neighbourhoods; the only difference is that we have turned a blind eye to the issue. The lawmakers must realize that if the sanctity of the Constitution is to be maintained, the dignity and honour of the womenfolk must be respected. The fundamental duty of every citizen of India to denounce practices derogatory to the dignity of women as well as to value and preserve the rich heritage of our composite culture is pointer to that very fact. The culture and tradition of India puts emphasis on strength not abuse, equality not power and control. If such heritage is to be reinstated in Indian life, women must find a place of respect. And for this as said by Garda Ghost, "We need to join hands with all those good persons who fight this heinous injustice to women."

Manu had said:

"Where females are honoured, there the deities are pleased; but where they are dishonoured, there all religious rites become useless. Women must be honored".

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Silence of the Law on Marital Rape

Gunjan Chowksey & Shantanu Srivastava*

Introduction

The first and the foremost question we want to put up before the society is that what name should be given to a 'forcible sexual intercourse' of a man with his own defenseless wife. The only possible answer to this is 'Marital Rape' i.e. rape within marriage. However, in this era of rapidly developing Criminal Justice System the criminalisation of this offence in totality under the Indian Penal Code is still in remission. Although credit can be given for its recognition as a civil offence under the Protection of Women from Domestic Violence Act, 2005. Therefore, the researchers through this paper would like to lay emphasis on the modification of statutes for the criminalisation of the offence of marital rape and thus making it punishable on the lines of 'rape' as given under the Indian Penal Code. Thus, in light of the above objective the paper seeks to study the history of the marital rape exemption and sought to answer the question as to whether marital rape fits well within the traditional definitions of crime. Apart from these academic issues, we also envisage a study of the marital rape exemption in India and in England (where it was made a criminal offence in 1991). Finally the researchers have also sought to put forth arguments against the criminalisation of marital rape and their rebuttals.

"Not enough people understand what rape is, and, until they do, not enough will be done to stop it"

—Rape victim, quoted in Groth 1979(p.87)

Now the question that arises here is, "are women aware that rape can happen within marriage?" The result of surveys clearly reveals that women themselves do not acknowledge that they are being victimised. Thus, wives are not only 'culturally legitimate victims' but also 'ideal victims.' In such a situation, what are we to do with an act, where half the population (male) is dead against criminalising

it for obvious reasons and the other half seems to be ignorant of its own plight. There is only a very minuscule minority of women who have been campaigning for making marital rape an offence.

In addition to all these problems, criminalisation of marital rape is a political agenda too, whereby arguments such as the "domestic privacy taboo" and "non-interventionist state" are being used to maintain status quo in the marital relationships with undue conjugal duties upon the wife. Myths surrounding marriage like "acquaintance rape is not real rape" and "blanket consent in marriage" further complicate matters. Also such victimization is hidden "behind closed doors" and goes unreported. However, can we still choose to ignore such acts when we know that marital rape has long term physical and psychological implications on the health of the woman and also makes the home an "impenetrable sanctuary" for husbands to perpetuate crimes under the garb of conjugal rights?

Thus, it is high time that we revamp the laws to strengthen the Criminal Justice System on the lines of the English Law where it has already been criminalised. In pursuance of this aim, the researchers have sought to present a study on "marital rape" in this research paper which in the Western world is looked upon "*as any sexual activity by a married or cohabiting partner that is performed without the consent of the other partner. This includes fondling, oral sex, anal sex, intercourse, or any unwanted or forced sexual activity*"¹. At this juncture it is pertinent to mention that under the Indian Law this definition of Marital Rape comes under the purview of the Protection of Women from Domestic Violence Act, 2005 which recognizes it as one of the forms of domestic violence² and imposes civil liabilities.

¹ Vernon R. Wiehe, "*Understanding Family Violence*" (Sage Publications: 1998), at p 76

² Under Section 3 'Domestic Violence' is defined as

Key Words

Wife
Rape
Exemption
History
Crime
IPC
Penalisation
Arguments
Prevention
Justice

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Abstract

This paper endeavours to strengthen the Criminal Justice System of our country by way of giving statutory recognition to the offence of marital rape on the lines of 'rape' as given under Section 376 of the Indian Penal Code. Although credit can be given for its recognition as a civil offence under the Protection of Women from Domestic Violence Act, 2005 but such piecemeal

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Causes and Effects

One of the basic causes of marital rape is that in a male dominant relationship many husbands use sexual violence as a way to maintain power.³ Another important factor for raping an unwilling pair-bonded mate may be a 'male tactic of sperm competition' which is a result of sexual jealousy of a man as a woman's sexual unreceptivity may suggest to him that she is having consensual intercourse with another man.⁴ Also abusive men with the history of alcohol or drug problems are apt to abuse their spouses sexually when drunk or sober. Further, Russel argues that economic factors are extremely important in understanding why women keep living with men who rape them. Most of the women are unemployed and dependent upon their husbands for their living and thus are unable to resist such a dreadful act.

It is imperative to mention at this point that the long term effects of marital rape includes negative feelings toward men; low self-esteem; feeling of fear, anxiety, guilt, embarrassment and outrage; changes in behaviors, including an increase in drinking and a refusal to consider remarriage; and depression.⁵

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute **domestic violence** in case it -

(a) *harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or*

(b) *harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or*

(c) *has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.*

³ Robert L. Hampton, "Family Violence-Prevention and Treatment" (2nd edn.Vol. 1, Sage Publication)

⁴ Randy Thornhill and Craig T. Palmer, "Rape-A Natural History of Biological Bases of Sexual Coercion" (London, MIT Press: 2000)

⁵ *Supra* Note 1, at 78.

History of Marital Rape Exemption

Before we proceed to understand the current legal position of marital rape, it would be imperative to first comprehend the original rationale of the marital rape exemption which was supported by 18th century legal scholars. For instance, Blackstone in his commentaries has discussed the "**marital contract**" under the heading of "private economical relations" and the very fact that the "husband" has been categorised as a "superior" clearly brings out the relationship of inequality that existed between a husband and wife.⁶ According to Schouler, "living in the same house, but willfully declining matrimonial intimacy and companionship, is *per se* a breach of duty, tending to subvert the true ends of marriage," because the man has a 'conjugal right' and the woman has a 'duty of cohabitation'.⁷

Another very important doctrine envisioned by Blackstone was the "**unities doctrine**". According to this doctrine, when a man and woman married, their legal identities merged and they became one person in the eyes of law. Therefore, "a man could no more be charged with raping his wife than be charged with raping himself,"⁸ just as a person cannot be charged with stealing his own property. Another very important argument that justifies the marital rape exemption is the "**property argument**".⁹ Russell argues that the origin of the marital rape exemption was the social understanding that women were the property of men, first of their fathers and then of their husbands. This is reflected in the first law of marriage,¹⁰ a law that "obliged married women, as having no other refuge, and the husbands to rule their wives as necessary and inseparable possession", which reduces women to objects that may be trespassed. Moreover, rape was considered merely as an "**ethical crime**" rather than a crime

⁶ Rebecca M. Ryan, "A Legal History of the Marital Rape Exemption" 20(04) *Law and Social Inquiry* 941 (1995) at 4.

⁷ *Id.*

⁸ Lisa R. Eskow, "The Ultimate Weapon? Demythologizing spousal rape and Reconceptualizing its prosecution" 48 *Stanford Law Review* 677 (1996) at 680.

⁹ *Id.*

¹⁰ Decreed by Romulus of Rome in the 8th century B.C.



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against the individual, which clearly indicates that the rights of women were considered to be secondary to moral and ethical concerns of social behaviour.¹¹

Legitimacy to this exemption was further derived from the institutionalisation of these ideas in the works of famous philosophers' thinkers and religion.¹² In addition to all these arguments, there is also the **historical and archaic idea of marriage**. The concept of marriage was evolved to "direct man to continue and multiply his species"¹³ Thus, if marital rape is criminalised, it would defeat the very reason for which matrimony was ordained. Legal theorisation of the marital rape exemption came from Lord Mathew Hale,¹⁴ the Chief Justice of England in the seventeenth century who made crucial contribution to the rights of marital rapists by proclaiming that, "the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind upon the husband, *which she cannot retract*." Like a gospel's truth this "irrevocable consent" theory still endures as a defining principle in the marital laws of states.¹⁵

However, in today's era such traditional legal theories and archaic definitions of marriage fail to explain the marital rape exemption and sound more like a bare and brutal **"license to rape"**.¹⁶

Is Marital Rape a Crime?

"Crime is the definition of human conduct that is created by authorised agents in a politically organised society."¹⁷ If we accept this definition,

¹¹ This was remarked by anthropologists Indrus and Bennet.

¹² The story of a woman not being able to enter religion once she had been forced into sex, which was narrated by Sanchez in the *Disputationes De Matrimonio* is a good illustration of how the marital rape exemption was backed by thinkers and philosophers. Cited from J.L. Barton, "The Story of Marital Rape" 108 *The Law Quarterly Review* 261 (1992) at 261.

¹³ *Supra* Note 6, at 6

¹⁴ Mentioned in the '*History of the Pleas of the Crown*', published in 1736. Sourced from Raquel Kennedy Bergen, *Wife Rape-Understanding the Response of Survivors and Service Provider*

(Sage series on Violence against Women) at p. 3

¹⁵ *Supra* note 6, at 947.

¹⁶ *Supra* note 6, at 953-954.

¹⁷ Ezzat A. Fattah, *Criminology: Past, Present and Future* (London: Macmillan Publication, 1997) at 34.

crime cannot be created unless the state thinks so. Thus, in the Indian context the state's reluctance to recognise marital rape as an offence has been the governing factor and has played a major role in continuing the marital rape exemption.

However, it has also been pointed out by Durkhiem that "an act is criminal when it offends the vigorous and well defined status of **collective conscience**".¹⁸ In the case of marital rape, however, it is only a bunch of women (at least in India) who believe that marital rape can happen. Others are still under the influence of patriarchal notions of marriage due to their social conditioning and grooming. Furthermore, the society and legislators have blinded themselves to any harm that may be caused to the wife by hiding behind the argument of "acquaintance rape is not real rape."

Since legislation continues to be the primary source of change in a democratic society, the most viable solution is to campaign for the recognition of the offence. But under the Indian legal system it is not an offence for a man to rape his own wife, evidence of which is seen in exception to Section 375 and sub-section (1) of Section 376¹⁹ of the Indian Penal Code, 1860. Exception to S. 375 disqualifies sexual intercourse by a man with his wife not being under fifteen years of age as rape. Thereafter, sub-section (1) of S. 376 of IPC further reinforces the exception to S. 375 by not providing for punishment to a husband for having raped his own wife, who is not under fifteen years of age. This means that in effect the husband is granted the 'license to rape' his wife which is, however considered to be suspended when the spouses are judicially separated.

Marital Rape Exemption in India

The redraft of Sections 375 and 376E as recommended in the 42nd report provided for *Explanation II* which explicitly stated that, "a woman living separately from her husband under a decree of judicial separation or by

¹⁸ *Ibid* at 36.

¹⁹ This section was introduced on the basis of the recommendations of the report of the Joint Committee on the Indian Penal Code (Amendment) Bill, 1982 and the 42nd report of the Law Commission 1977.

measures are inadequate. Thus, the criminalization of this offence in India has to be done on the model of certain other Nations where it has been criminalized (like England). In light of the above objective, the paper seeks to study the history of the marital rape exemption and sought to answer



the question as to whether marital rape fits well within the traditional definitions of crime. Finally, the researchers have also sought to put forth arguments against the criminalization of marital rape and their rebuttals.

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mutual agreement shall be deemed not to be his wife for the purpose of this section." This becomes relevant because the redraft of the section provided by the commission stated that, "a man is said to commit rape who has sexual intercourse with a woman other than his wife..." Another very important recommendation made in this report was that sexual intercourse with a child wife should be made punishable.²⁰

However, before we proceed to the other reports of the Law Commission, it is imperative to highlight some serious flaws in the reasoning of the 42nd Law Commission. The reasoning of the commission in making forced sex with judicially separated wife punishable seems to be based on the presumption that she is no longer the "wife" (*de facto*) and hence the husband has no right to forcibly enforce his conjugal rights. Such an approach shuts all doors for making rape within marriage punishable.

Coming to the **84th Law Commission's Report on Rape (April 1980)**,²¹ they claim to be adopting a different and wider scheme as compared to the 42nd report. However, the researchers would beg to differ from this since there does not seem to be any wider scheme that has been proposed in this report. As regards marital rape they too suggest the same changes i.e. rape of child wife and rape of a judicially separated wife.²² The only substantially different thing they had proposed was to make punishable any rape committed by a man on his wife, if she is below 18 years of age, although sadly this age condition of 18 years has not been incorporated in the IPC. It needs to be appreciated that the changes proposed in these reports were incorporated in the form of exception to S. 375 and S. 376A of the IPC.

Finally coming to the **172nd Law Commission's Report on Rape (March 2000)**,²³ this report was

²⁰ With rigorous imprisonment for a term which may extend up to seven years and fine if she is under 12 years of age and imprisonment of either description for a period of two years or with fine or with both in any other case. As cited in *The Law Commission of India: 42nd Report on the Review of Rape Laws* (New Delhi: the Union of India Press, 1977).

²¹ *The Law Commission of India: 84th Report on Rape* (New Delhi: the Union of India Press, 1980) at 10.

²² However the structuring of the rape laws that was provided by this commission is different from the 42nd report.

²³ The Law Commission of India: 172nd Report on the Review of Rape Laws (New Delhi: the Union of India Press, 2000) at 9.

prepared in response to the directions of the Supreme Court in 1998, whereby they were required to address issues that were raised in the case of *Sakshi v. Union of India*.²⁴ In this case reference was also made to the famous English case of *R v. R*²⁵ with respect to marital rape, to substantiate the argument that "criminals go unscathed due to mere technicalities of law."²⁶

Coming to the report, the Law Commission has recommended that the Exception to S. 375 should be retained in its form.²⁷ As regards modification of S. 376A, the punishment, it was proposed, should be enhanced to being not less than two years and may also extend to seven years with fine. This was done in accordance with the reasoning put forth in the case of *Sakshi* that, "When a man who causes hurt or any other physical injury to his own wife is liable to be punished for such offence like any other person causing such hurt or physical injury, why should a husband who sexually assaults his wife... be not punished like any other person." The Commission, while appreciating the force of these arguments, refused to delete S. 376-A on the pretext of "not ignoring" the fact that even in such a case the bond of marriage was unsevered. Therefore, they chose to enhance the punishment while retaining the section. Thus, this report just upholds the recommendations of the previous Commissions and fails to keep pace with the changing laws on rape.²⁸ Furthermore, if we look at the Indian cases though there has been no reporting of cases of marital rape,²⁹ it has been

²⁴ AIR 2004 SC 3566

²⁵ [1991] 1 All ER 747

²⁶ Para 13, AIR 2004 SC 3566

²⁷ Rape of wife under 16 years of age has been made punishable, which is again retrogressive because the previous report had at least suggested raising the age of consent to 18.

²⁸ Marital rape exemptions had already been incorporated in UK, USA and many other jurisdictions by this time.

²⁹ No case on this issue has reached the level of a High Court or Supreme Court. However at a trial for rape the accused asked the judge to give his ruling on the point whether a husband can be convicted for raping his wife where the parties were living apart at that time. The court upheld the common law rule of marital exemption for husbands. Sourced from *Ratanlal and Dhirajlal: The Indian Penal Code* (Y.V. Chandrachud ed., 30th edn., Nagpur: Wadhwa and Company, 2004) at 717.



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observed by a few courts that under various treaties and conventions, they are expected to criminalize marital rape.³⁰ However, mentions of such declarations are mere "rhetoric" of the judiciary and are nothing but surplusage in a judgment which has no real value.

Having considered the inadequacies of the IPC and the half-hearted efforts of Law Commissions, the conclusion is inescapable that 'male' legislators are still not willing to shed their notion of marriage being the legitimization of all sexual intercourse with women, for reasons of upholding patriarchy and denying sexual agency to women. Such backwardness of rape laws in India gets further enhanced, when seen in stark contrast to the rape laws in most other jurisdictions where marital rape has already been criminalised.

Marital Rape exemption in UK

For the purposes of the Sexual Offences Act of 1956, the phrase "unlawful sexual intercourse" had been held to mean 'illicit intercourse' i.e. intercourse outside the bonds of marriage. With a history of the famous statement by Lord Mathew Hale, the Common Law rule was that a husband could not be convicted of raping his wife.³¹

This view of the law was so generally accepted that there was no prosecution of a husband for marital rape until 1949, when law took its first turn with the case of **R v. Clarke**.³² In this case, the husband was convicted for raping his wife as a result of forced intercourse with her while they were staying apart under a decree of judicial separation. This separation order was given on the grounds of persistent cruelty towards the wife and cohabitation had not been resumed when the alleged act took place. Justice

Byrne reasoned that in such circumstances, the wife's consent to have sexual intercourse can be understood to be revoked. This case is extremely important by virtue of the fact that it changed the course of law and gave some agency to the wife. This case also left it open for interpretation as to whether consent can be said to have been revoked only when there is a decree of separation or also when the husband and wife are separated de facto. A similar situation, in fact, also surfaced in the later case of **R v. Miller**.³³

In addition to these cases, the Criminal Law Revision committee in its 15th report³⁴ in 1984 proposed that the husband should be held liable for raping his wife in a limited set of circumstances, but also expressed apprehension about too much intervention in the bedroom.

This historic change came with the Scottish case of **S. v. H.M. Advocate**,³⁵ where the judge doubted the proposition that marriage meant express or implied consent on the part of the wife, even if it was against her will and obtained by force. Shortly afterwards, the House of Lords followed the suit and the marital exemption was abolished in the case of **R v. R**³⁶ in which Lord Keith cited the Scottish case with approval and pointed out that Hale's statement had been 150 years earlier and that Common Law had evolved in that period. He also relied upon the fact that the concept of marriage had changed in modern times and it was considered to be a partnership of equals. The wife, therefore, was no longer the "subservient chattel of the husband." Hale's immunity principle was made redundant in light of such observations. It was further ruled that the phrase 'unlawful' in the Sexual offences act of 1976 was "mere surplusage."

However, this judgment was subsequently criticized on the ground that Lord Keith had used legal reasons

³⁰ In the case of *The Chairman, Railway Board v. Chandrima Das*, AIR 2000 SC 988, mention was made of the Elimination of violence against Women, adopted by the General Assembly of UNO in 1993, which specified that "violence against women should be understood as encompassing marital rape among other things." Similarly the Vienna Declaration was referred to in the case of *Pragati Verghese v. Cyril George Verghese*, AIR 1997 Bom 349.

³¹ Official Report (5th series), 1976, as cited in Smith and Hogan, *Criminal Law: Cases and Materials* (6th edn., London: Butterworths, 1999) at 430.

³² [1949] 2 All ER 448.

³³ [1954] All ER 529.

³⁴ Nicola Lacey and Celie Wellis, *Reconstructing Criminal Law* (2nd edn., London: Butterworths, 1998) at 361-362.

³⁵ (1989) S.L.T. 469.

³⁶ [1991] 1 All ER 747.



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for following his social instincts. Although, the criticism may be valid, by doing so Justice Keith nevertheless swept away one of the major injustices of modern criminal law. On being accused of having created a crime retrospectively, he took the defence that it was "not the creation of a new offence but only the removal of a common law fiction which had become anachronistic and offensive."

Finally, R.'s appeal to the European Court of Human Rights was rejected on the ground that criminal law had an immanent capacity to adapt itself to prevailing social standards and, therefore, marital rape was a manifestly wrongful act. Thus, there was no retrospectivity involved in punishing R. Finally in 1994, the legislature took the opportunity of the Criminal Justice and Public Order Act to endorse this decision and removed the word 'unlawfully' from the statutory definition of rape.³⁷

Though it has been noted that the symbolic importance of these developments is immense, there are still doubts about its practical significance due to the general factors weighing against the reporting and successful prosecution of rape cases. Besides, it is feared that courts would take a more lenient view of marital rapes. Changes in societal morality and behaviour cannot be achieved overnight but legal recognition of the offence of marital rape has definitely paved the way for this change.

For and Against Criminalisation of Marital Rape

"If you can't rape your own wife, whom can you rape?"

- California State Senator Bob Wilson, 1979.³⁸

When such are the notions of men in the society it really is no wonder that people get startled by the idea of criminalising marital rape. Thus, the general arguments against the criminalisation of marital rape in different societies are as follows:

- Criminalisation would destroy the sacrosanct institution of marriage and disturb the balance

³⁷ A.P. Semester and G.R. Sullivan, *Criminal Law: Theory and Doctrine* (Oxford: Hart Publishing, 2000) at 26. See also Vanessa Laird, "Reflections on R v. R" 55(03) *The Modern Law Review* 386 (1992).

³⁸ Irene Hanson Frieze and Angela Brown, "Violence in Marriage" 11 *Crime and Justice* 163 (1989) at 14.

of conjugal rights and obligations in a marriage.

- Penalisation of rape within marriage would make the state "interventionist" and would be violative of the "right to privacy" understood to be granted under the Constitution.
- It would deny the husband the right to have sex with his wife and would lead to encouragement of the offence of adultery as the husband would need to satisfy his sexual needs outside the marriage.
- It would give an opportunity to the women to avenge their husbands by threatening to file a complaint of marital rape against them. The law would also have to rely upon the word of the wife, which complicates matters further since the wife could misuse the laws i.e. similar to the misuse of dowry laws and other rape laws.
- Since the husband is no stranger to the wife, it will not have any devastating effect on her.

Now, the researchers would like to differ from this perception of the society as most of the above arguments for not criminalising marital rape seem ridiculous, and suffer from serious drawbacks. An analysis of the flaws is as follows:

- Firstly, a marriage in which the wife has no say and the husband inflicts injuries on her is not worth being preserved and as a matter of fact recognising marital rape would only correct the imbalance that has been created by "men" in conjugal relations and thus, improve the wife's otherwise powerless situation.
- The second argument is very obviously an excuse for the simple reason that the state does not shy away from intervening in the bedrooms of homosexuals and in any case arguments like these should not be used to let the criminals go scot-free. Therefore, there is no reason why an exception should be made with respect to marital rape.
- The next argument relating to the misuse of laws is definitely a genuine concern as there needs to



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be a mechanism to make the justice delivery system effective. But again the state should not be allowed to hide behind the excuse that marital laws will be misused. As a matter of fact any law can be misused and by the above logic we should have no laws at all.

- Finally, we would like to submit that the last argument is also frivolous because it has been revealed in researches and studies that acquaintance rape is as devastating as stranger rape,³⁹ if not more.

Therefore, it is evident that all arguments against criminalisation are mere excuses and the underlying objective is basically to protect the hegemony of men. Furthermore, such an attitude also reflects on how our understanding of marriage is still rooted in archaic and patriarchal notions of subjugation of women.

Prevention of Marital Rape

Prevention of partner's abuse must occur at each of these levels: **Personal, Community and Society.**

At the **Personal level**, eradication of sexual violence requires that men involve women as equal partners in relationship. Changes in the behavior of men can be brought only when Courts, State and other National Legislative bodies hold men responsible for their behavior and work towards empowerment of all individuals regardless of gender.

Preventive measures at the **Community level** could be achieved through education, which would highlight equality between the sexes and problem solving skills in resolving interpersonal disagreements which further requires financial support through private and public funds at the National, State and Community levels.

At the **Societal level**, prevention calls for a improvement of societal institutions and the mechanisms for carrying out basic societal functions that fail to provide equal treatment to all members of society regardless of gender. Further, it requires the

development and implementation of strategies for creating socio-political change, which is a responsibility and task of all societal members.⁴⁰

Concluding Observation

The basic aim of having any statute on Marital Rape is to strengthen the Criminal Justice System of our country and for this strengthening, there is an implicit requirement that 'Marital Rape' should be treated as 'Rape', notwithstanding the relationship between the parties. Finally, we would like to go back to the question raised at the very outset of this project: "Are women aware that rape can happen within marriage also?" Our answer to this question is 'no', for the simple reason that social morality has conditioned women to regard sex as their marital obligation. In our submission, even if legislative changes are achieved, no substantial change can be ushered into (that also explains as to why doubts have been expressed in UK about the success of this abolition) unless women awaken to their cause and realise their victimisation within the home. However, since that would require a change in social morality, there is still a long way to go before this problem is redressed.

Thus, having reached at the end of this research paper, the researchers would like to submit that no matter how much we wish and idealise that the conception of marriage has become companionate in the modern era, reality is that the society and legal system are still not cleansed of the archaic and dilapidated notions of marriage which, treat women like property. However, due to political pressures and antiquated social morality, criminalisation has not been possible in many countries. It further seems that all the efforts of feminists to explode marital rape myths and achieve its criminalisation have been in vain especially in countries like India, which is a classic example of the political will of the majority being imposed on others.

We would also like to submit here that all arguments against criminalisation of marital rape seem more

³⁹ Patricia A. Frazier et al., "Acquaintance Rape is Real Rape" *Researching Sexual Violence Against Women* (Martin D. Schwartz ed., New Delhi: Sage Publications, 1997) at 58.

⁴⁰ *Supra* note 1, at 124



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like excuses to maintain the *status quo* of marital relationships with skewed distribution of power. However, it also needs to be admitted that problems relating to the proving of the offence are genuine concerns, nevertheless they should not be an obstacle in criminalising such deviant behaviour. It is commendable that Common Law has evolved from the proposition of Hale to the abolition of the marital rape exemption in UK. The same should be taken as a motivating factor in taking Indian law on marital rape, a step further. We are already standing at a juncture where marital rape of a judicially separated wife has been made punishable under the IPC. Further, the recently enacted Protection of Women from Domestic Violence Act, 2005 also provides civil remedies that a woman can resort to

when she is subjected to sexual abuse by her husband. The Act clearly mandates that the woman can, either by herself or through Protection Officers, seek protective and restraint orders, monetary assistance and compensation from her husband, on a complaint to a Magistrate.⁴¹ But the stage has now come when such piecemeal civil measures are inadequate and a more proactive approach towards the abolition of this exemption is required by our Criminal Justice System. Thus, it is strongly recommended that the punishment of this heinous offence of 'Marital Rape' should be same as one prescribed for 'Rape' under Section 376 of the IPC.

⁴¹ On an application made under Section 12 of the Domestic Violence Act.



Corrigendum

In Jan-March, 2010 issue of Indian Police Journal, the article 'Police as An Agent of Social Change' has been authored by Prof. S. K. Jha, who is Professor of Political Science (Retd.) Vinoba Bhave University, Hazaribagh & Guest Lecturer, Police Training College Hazaribagh. His designation has been printed as IPS (Rtd.) due to Printer's Mistake or Editor's Mistake. The Mistake is regretted.

Editor



Corrigendum

The References of the paper 'Latest Explosive Detection Technique for Baggage and Personnel Screening' by Brig. M. S. Khara & Prof. J. K. Garg could not be printed in the Jan-Mar, 2010 issue of journal due to technical reason. Inconvenience is regretted. We are publishing it in this issue.

Editor

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