



THE INDIAN POLICE JOURNAL

Vol. LXIII • No. 1

ISSN 0537-2429

January-March, 2016

The Indian Police Journal

Vol. LXIII | No. 1 | January-March, 2016

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For the last 70 years of our Independence, the Indian Police and all the stakeholders of Internal Security deserve to be congratulated for steering the nation towards the secured democratic foundation. Despite all the constraints, the Indian Police and stakeholders of Internal Security have provided a semblance of security and prosperity.

In this issue of the Indian Police Journal, many relevant issues relating to Policing have been discussed. In a paper titled 'transforming Police into SMART 'Police', Shri Rajeev Tandon, IPS vouches for metamorphosis of the Indian Police into SMART Police. 'Most of us argue that the performance of Police has not been up to the Public expectations after Independence and continues to be a object of public distrust, fear and condemnations. Increasing population rapid urbanisation, uneven socio-economic distribution, terrorism, enactment of new economic and social laws etc. have added new dimensions to police functioning. Hence there is a need to transform Police into SMART Police which can be accepted by society.'

An effective way for the law enforcement agencies to fight crime is to closely integrate the police resources with the communities they serve and to leverage the local relationship. This is critical in bridging the gap between public expectations and the quality of service delivery by the police. Police need to be Sensitive, Alert and Responsive to the citizens especially youth, women, senior citizens, weaker sections, etc. These interactions would also provide the much needed intelligence to the police to detect and contain crime, maintain law and order, and ensure public peace and safety. To achieve this police should actively reach out to these groups through all possible formats such as print, electronic and social media. This would help foster greater public participation and cooperation in bridging the gap between the police and the public to attain the above objectives.

Innovative policing such as broadcasting Police News, interaction with the school students, senior citizens, NGOs, women activists, trade-union leaders etc. will invite closer rapport of police with the public. The community policing and people friendly policing when applied from the perspective of public policy would certainly factor a paradigm shift the way policing is done. This is what Shri Satyajit Mohanty, IPS, in his paper "AMA Police" – the Community Policing Scheme in Odisha, and Shri K.N. Gupta, in his paper 'the People's Friendly Police and Community Policing' have come to conclusion.

Dr. Harjit S. Sohal, in his paper, 'Human Rights, Police and Ethics: Toward an understanding of Transforming the Police from a 'Force' to social service', urges the all stakeholders of policing to transform the Police from a 'Force' to social service.

And for this visionary goal, ethical policing and respect for human rights are must. Ethics and the Police are not just moral and complementary instruments but in the long term, both are essential behaviour traits strengthening the quality of service and help to win the public confidence and trust. Ethics or values are moral principals which on the time continuum turn into customs, conventions and social practices passing through one generation to another. The public officials, including the police are not immune from their impact and it also encompasses all such changes in their values and duties.

Recently, The Armed Forces (Special Powers) Act, 1958 has generated unprecedented debate and discussion in the country. Shri Caesar Roy, in his paper 'the Armed Forces (Special Powers) Act, 1958 – urgency to Review,' underlines the need to review it. However, scrapping down the whole act is not the most appropriate solution in present day situation where the whole country is combating the menace of terrorism. What can be effectively done is to make the Act more humane and reasonable in the eyes of the law.

Another issue that has presented a challenge before policing is the Free Speech and Freedom of expression. In this respect, Shri Umesh Sharraf, IPS in his paper 'A Requiem for Free Speech' vouches for a pragmatic approach towards the free speech and freedom of expression. He maintains that 'the attack on free speech are less due to the terror threat and more due to a psychological malaise of a pretended victimhood that is spreading and is being eagerly embraced by groups across our society. It reduces our capacity to think and speak straight, whether about art or religious practices or our shortcomings as a nation. This is also because the authorities who are supposed to guarantee our freedoms of speech and expression perfected solicitousness to the growl and bluster of any and every offended group. The general presumption is that the offended are in the right. On the force of this presumption, we have lost our understanding of the basic purpose of free thought and its expression.'

Lately, increasing spate of young people indulging in anti-social acts has presented a veritable challenge for policing. The paper 'Pragmatic Approach Towards Youths in 21st Century' by Amit Gopal Thakre, discusses the growing criminality among young. The awareness of law, police responsibility, complaining to Police and consequences of deviance should be discussed in healthy manner during school time, community meetings and active parental involvements. The process to understanding the integrity of all individuals and respecting law is not one night journey but a steady process towards law-abiding virtues.

The present issue of The Indian Police Journal has tried to dig deeper in understanding the broader framework of people, society and policing. It has also tried to suggest ways and mechanism that the law enforcer would require to meet the challenges of the future in establishing an atmosphere of peace and tranquillity encompassing the tenets of Rule of Law. Jai Hind!



(Gopal K.N. Chowdhary)
Editor

Transforming Police into Smart Police

Rajeev Tandon*, IPS

Keywords

Smart, Police, Change, Transform.

Abstract

Most of us argue that the performance of police has not been up to the public expectations after Independence and continues to be a object of public distrust, fear and condemnations. Increasing population, rapid urbanisation, uneven socio economic distribution, terrorism, enactment of new economic and social laws, etc. have added new dimensions to police functioning. Hence there is a need to transform Police into SMART Police which can be accepted by the society.

Introduction

During the British rule police force was organized to control the people who opposed the foreign rule. Naturally the police force was tyrannous. The role and responsibilities of police were codified in the Indian Police Act, 1861 which continues to govern policing to an extent even till this date. However, after Independence the role of police was transformed to maintain public order, prevent and investigate crime as a service to society. It is interesting to note that roles and responsibilities of Police

Author Intro:

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has not yet been defined clearly. There is no such area where Police is not expected to be first responder. May it be a crime, law and order, unnatural death, any agitation, any procession, traffic control etc. All residuary duties fall on the police.

Most of us argue that the performance of police has not been up to the public expectations after Independence and continues to be a object of public distrust, fear and condemnations. Increasing population, rapid urbanisation, uneven socio economic distribution, terrorism, enactment of new economic and social laws, etc. have added new dimensions to police functioning. Hence there is a need to transform Police into SMART Police which can be accepted by the society.

Change in Legal framework

Hon'ble Supreme Court judgement in Shri Parkash Singh's case has led to major changes in legal framework by which Police is governed. But their recommendations are yet to be implemented in full spirit. Many of the states have framed new Police Act but they are broadly modelled on the 1861 Act only with some modifications. The Judgement envisages the principles of Policing, duties of police, its superintendence, constitution, organisation of the police, supervision, administration of Police, control and discipline, welfare and grievance redressal mechanism and police accountability. This aims Police to be Citizen centric, service oriented responsive to public needs and accountable to the rule of law.

ICT as a game changer

Hon'ble Prime Minister of India has initiated the concept of SMART Policing. As an initiative towards this direction in the DGP/IGP Conference held on 28.11.2014 at Guwahati,

he exhorted the Indian Police to move in this direction by following the following tenets:-

S	-	Strict and sensitive
M	-	Modern and Mobile
A	-	Alert and Accountable
R	-	Reliable and Responsive
T	-	Tech-savvy and well trained

We have seen sea change in the lives of Indians with the use of Information Communication Technology (ICT) and have felt that ICT is the game changer. ICT do not differentiate between a rich and poor or simple and influential people. It treats them equally and with same efficiency. Use of ICT will infuse and rejuvenate the Indian Police with the idea of SMART Policing. Now we have the target to be achieved that is the "Goals set per Hon'ble Supreme Court judgement in Shri Parkash Singh's case" and the ICT as a tool or game changer and SMART as guiding principles. This will make police strict and sensitive as well.

Huge amount of data digital traces and intelligence will be generated by the IT system like ERP solution, Emergency response system, CCTNS etc.. The information and intelligence output of it will leave a rare chance for a criminal to escape. This is how Police will be able to perform **STRICT**. At the same time system will **SENSITIVE** as the response has to be provided within prescribed time as per emergency services initiatives like **Dial 100**. Each and every call will be recorded and responded. The accountability of each and every individual will make police sensitive too. To make Police SMART we need various **MODERN** ICT intervention in areas of Police functions, service delivery, ERP solution. Now a days mobile is in reach of most of the population and the connectivity has increased with

decrease in data usage charges. Hence **MOBILE** solution has to be stressed upon wherever possible. The ICT initiative like Emergency response system Dial 100, C4i (Command, control coordination integration system), CCTNS are in a position to generate auto alert to various stakeholder based on nature of event. This kind of auto alerts will make the respondents **ALERT** and **ACCOUNTABLE** too because every alert needs to be closed essentially by the respondent. The new and better modes of communication system will make Police **RELIABLE** and **RESPONSIVE**. The fruits of ICT like transparency and accountability system are now available to public through services of Railways, banking, ecommerce companies, e governance initiative. Hence to transform Police in to SMART Police we need Police force to be **TECH SAVVY** and **WELL TRAINED**.

Use of ICT to make police SMART in Following Areas:

1. **Police units and functions:-** As we all are aware the primary function of Police is to maintain law and Order and investigation of crime. The computerisation of Police has been undergoing since decades. Major initiative taken by Police can be summarised as below.

- **Crime criminal tracking network and systems (CCTNS):-** CCTNS is a national project which aims to automate criminal investigation and provide certain citizen centric police related services. Madhya Pradesh has taken a lead in the implementation of CCTNS across the state. Various Citizen centric services like missing person information, unidentified dead bodies, success stories, filing complaint, tenant verification, fast transmission of important circular, information and intelligence sharing has been started with CCTNS Portal. The CCTNS has

provided tremendous power of supervision to Senior officer and bringing transparency to best extent.

- **“CCTV based Integrated Security Surveillance System”**:- Madhya Pradesh Police, Government of Madhya Pradesh, is process of setting up a state-of-the-art CCTV based Integrated Security Surveillance System” in the state. The purpose of project is to safeguard public areas, to minimize impact of natural threats and disasters, to prevent man-made threats, and to act as an aid, prevent, control and detect crime. This includes monitoring of sensitive areas (hot spots) as well as busy traffic junctions, to deter law breakers whereby acts of crime and negligence can be effectively curbed and minimized.
- **C4i (Command, Control, Communications, Computers, and Intelligence)** :- C4i kind of application based on prior information database and alert setting provides the intelligent input to act upon. This system helps us in taking preventive decision. Currently it is being implemented in CCTV based Integrated Security Surveillance System of MP.
- **Communication Digital wireless communication system**
 New communication system like Closed User Group (CUG), email, Portal, TETRA, DM2/DMR3 are in vogue in MP Police. New technologies in communication system like whatsapp needs to be brought under the Police visualising security.
- **Traffic management ITMS and Traffic management e-challan**:- ITMS system like Red light violation system, Automatic number Plate system, e-challan needs to be implemented for better traffic management and accounting.

- **Crime investigation GIS in crime mapping :-** GIS based crime mapping will lead us to analyse the crime vs Location pattern. Combined data of crime vs geographical location can provide vivid picture to the policy makers to take corrective measures also.
- **Specialised units computer forensics:-** With the increase in crime rate of IT based crime and increasing backlog in Forensic science labs, it is high time to set up additional Specialised units computer forensics labs.
- **Specialised Social media labs: -**The state should develop tools to monitor happening in Social media sites like Twitter, Facebook.
- **Specialised units/Intelligence collection like NATGRID** States do not have ICT system to monitor Voice and data traffic if needed. Hence there is a need to have a system within the state like that of NATGRID for information sharing.
- **Automated Finger Print Identification System (AFIS) :-** Most of the states are having out of date AFIS system. Every states shall have new AFIS system with international standard and NAFIS at central level for information exchange.
- **Integration with others database for Information sharing:-** Now a days every unit is working in isolation even within the state. Hence steps needs to be taken for Integration with others database for Information sharing. Although NATGRID aims the same but the concept needs to be implemented at ground level.

Service Delivery

- **CCTNS :-**CCTNS envisages to deliver various citizen services like missing person information, complaint registration, lost article information, Unidentified dead

bodies, tenant verification, servant verification. States are also delivering citizen services under Loksewa guarantee schemes. The scope of same needs to be widened to different departments.

- **State wide Integrated emergency helpline Dial 100**

Dial 100 is the lifeline of police functioning which facilitates citizens to get in touch with the department and enables department to follow up on the reported incidents with the field units. Madhya Pradesh Police Department has started a State wide centralized Dial 100 solution.

- "Dial 100 " is a uniform solution across the state using modern technologies like Computer Aided Dispatch (CAD), Geographical Information System, Automated Vehicle Location System and Computer Telephony Integration to provide a uniform and prompt response to citizens in case of an emergency.

Web Based Application

- **Personnel Information Systems (PIS):** Personnel Information System is a HRMS (Human resource management application) which is envisaged to automate the Human resource management of almost one lac employees of MP Police.
- **Mobile apps:** Use of mobile apps besides web portal makes the services easily accessible on mobile platform. Hence Police shall develop more and more mobile apps for the services to rendered to citizen.
- **Website for accessibility:** Websites are the face of the organisation for the Public. Every organisation shall have website preferably in English and Hindi for sharing important information and providing services to the citizen.

- **State CSC:** More and more of services or information shall be available through government Common service center.
- **Use of Digital ID-AADHAAR, SAMAGRA:-** Now a days we are having access to Aadhar database for establishing identity ONLINE. Hence the AADHAAR database may be utilised for electronic signing of documents like FIR, Arrest memo, Seizure memo or else.

Organisation and structure

- **Recruitment:** Modern equipment like RFID tags and barcode should also be used in recruitment process. Online exam will bring transparency in the conduct of examination.

Performance management system (PMS) similar to that of Rajasthan police shall be implemented in all states.

Enterprise Resource Planning (ERP)

- Information technology (IT) has come to play an increasingly significant role in the way Government Organizations conduct business, evolving from a mere tool for automation to a potential enabler of business transformation. Madhya Pradesh Police has ventured on this journey of implementing ERP systems to enable its business transformation goals with a strong belief that it will enable department to integrate operational and management processes across a broad range of internal business activities

Conclusion

If all of the above initiatives are implemented in their real spirit, they will certainly transform the Indian police into SMART Police.



“Ama Police”- The Community Policing Scheme of Odisha

Satyajit Mohanty* , IPS

Keywords

Ama Police, Community Policing, Scheme, Odisha.

Abstract

In 2012, the State police constituted a Committee, of which the author was the Chairman, to study best practices on community policing and to suggest a model that should be system driven, free from individual aberrations and sustainable in the long run. According to the mandate, the Committee studied some of the best practices like Janamaithri Surakshya Project of Kerala police, Trichi Community policing scheme, Friends of Police scheme of Tamilnadu, the overarching National Model on community policing suggested by Micro-Mission-II of National Police Mission etc. and came up with a recommendation which is largely based on the Kerala community policing model.

As in many other states, the police leaders in Odisha have introduced several community policing practices at their own initiatives within the available resources under their command. But the initiatives, brilliant in few cases, suffered from the “predecessor-successor” syndrome, constraints of resources, and lack of patronage from the government. Way back in 1999, the government through a

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Home Department Notification spelt out certain guidelines what could be termed as the first public policy statement on community policing in the state. But the Resolution lacked focus, gave primacy to the local executive magistrates in organising the community meetings and was devoid of any financial commitment. As a result, the scheme did not survive beyond couple of years of its introduction.

In 2012, the State police constituted a Committee, of which the author was the Chairman, to study best practices on community policing and to suggest a model that should be system driven, free from individual aberrations and sustainable in the long run. According to the mandate, the Committee studied some of the best practices like Janamaithri Surakshya Project of Kerala police, Trichi Community policing scheme, Friends of Police scheme of Tamilnadu, the overarching National Model on community policing suggested by Micro-Mission-II of National Police Mission etc. and came up with a recommendation which is largely based on the Kerala community policing model. The Committee argued that the Kerala model is based on sound public policy principles with legal and institutional framework, commitment for budgetary support, reviewing, monitoring and training components to make the scheme sustainable in the long run.

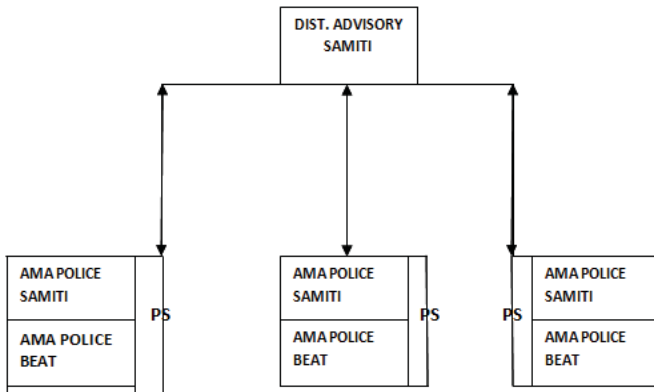
On the basis of the recommendations a presentation was made before the Chief Minister and senior officers in March, 2013. The following decisions were taken in the meeting:

- The proposed scheme will be published in shape of a government resolution as a policy.
- Since the community policing scheme is resource intensive, it should be implemented as pilots in one police station under each police District, and scaled up in course of time.

- A catchy name may be coined for the scheme.
- The beat or community police officers, officers of the police station and supervisory officers implementing the scheme should undergo suitable orientation training.
- Meetings and workshops should be held under the pilot police station involving all stake-holders with a view to make them aware of the objectives of the scheme.
- The mobile phone charges of the Beat Officers or community Police Officers to a certain limit and expenses for holding meetings of the Community Liaison Group will be met from the budgetary allocation.
- The scheme will be launched as pilot on 1 April, 2013, the day of Odisha Day and also Odisha Police Formation Day and be scaled up subsequently.
- A senior police officer will be nominated to act as State Level Nodal Officer for the scheme.

Launching of the Scheme

The scheme was named as “Ama Police”, literary meaning “Our Police”. It is a three tier structure with ‘Ama Police



THREE TIER AMA POLICE FUNCTIONAL LEVEL- AMA POLICE BEAT, AMA POLICE SAMITI, DIST ADVISORY SAMITI

Beat' at the bottom, 'Ama Police Samiti' at the middle and 'District Advisory Committee' at the apex. The objectives, functions, duties, responsibilities, dos, don'ts of the scheme have been dealt in the Home Department Resolution No 12664 of 2013 (**Annexure-I**).

The project aims to achieve the following objectives: Prevention of Crimes, Furthering co-operation and mutual understanding between Police and the Community, Furthering Security-related mutual co-operation among Citizenry.

The scheme was introduced as pilot covering one police station at each police district, including the Police Commissionerate on 1st April 2013. Since the scheme is resource intensive, pilot remained the preferred option.

"Ama Police" Beat

Under the scheme, each Police Station has been divided into several contiguous Beats based on the population, homogeneity or other common characteristics, etc. Each 'Ama Police Beat' will be under the charge of an Assistant Sub-Inspector or a Head Constable / Constable. The Beat officers have been selected strictly on criteria of personality, integrity, voluntary attitude, clean service record, good conduct, non-addictive habits, etc. Each beat may have 500 to 800 houses approximately. Within six months of taking charge, every Beat Officer will personally know at least one member of every household in his beat by **house visits**. He will share his mobile phone number with the residents.

The Beat Officer should know not only the houses but also all other establishments in the beat area. The name, identity and contact number of the Beat Officer will be exhibited at important places in the Beat area. This will help the public to know their Beat Officer. A house visit by a police officer may

not be initially accepted by many of the residents and pose a challenge to the scheme. Therefore, the police leadership should engage the residents in dialogue and convince them that it is meant for their good. This type of challenge was faced by the Kerala police when it launched 'Janamaithri Suraksha Project' but was overcome by regular community engagement. The Beat Officers in course of implementation will act as a 'linking pin' between the community and the police station, which is often missing. The sense of security will go up as residents will feel that police is at a 'call's away'.

Activities to be undertaken by a Beat Officer

- The Beat Officer should get himself acquainted with the local residents under his Beat within the first six months of the appointment and keep detailed notes of the inmates. Beat Officer may share his mobile phone number with the residents under his beat (mobile phone charges to be borne by the department up to a limit).
- From the knowledge gained through experience and contacts, the Beat Officer may find out appropriate project for his beat area and such projects may be presented in the Samiti Meeting by him. Beat Officer may also take the lead in implementing such project.
- Whenever there is some natural calamity, outbreak of contagious diseases, etc. in his beat area, the Beat Officer may immediately inform the same to the concerned authorities and also help leadership in taking remedial actions.
- In case the Beat Officer gets any intelligence regarding communal tensions, social unrest, etc. in the beat, Beat Officer may immediately inform the same to the concerned authorities and also pass such information to the OIC/IIC.

- In case any information is received with regard to development of problems in connection with festival, 'meals' etc. the same may be informed to the OIC/IIC.
- The Beat Officer may inform the IIC/OIC about any type of crime or illegal activities taking place within his beat area.
- The Beat Officer may visit internet cafes, phone booths, parallel educational institutions, cinema theatres, video shops and other places where students and youngsters may gather and Beat Officer may keep a friendly watch to prevent any wrong tendencies in such places.
- When taxi drivers go for trips especially at night along with strangers the drivers may be advised to record the name, address and signature of such persons in the taxi stand to ensure the safety of the drivers.
- The name and address of all the strangers who come and stay in the area for doing construction work may be collected with the help of the contractors who bring them. Such information can be handed over to the OIC/ IIC.
- The name and permanent address of persons who come and stay as household help, etc. from outside the locality may be collected and kept.
- The names and addresses of the senior citizens/ couples staying alone in the beat should be collected during the house visits and recorded in the Beat Diary separately. The frequency of visits to such houses and interaction with such persons may be more than the normal to instill better sense of security among them.

“Ama Police Samiti”

In every Police Station where the 'Ama Police' Project is being implemented, an 'Ama Police Samiti' has

been formed. The Samiti should have proportionate representation from among women and the Schedules Castes and Tribes. Respectable citizens from locality who are active in the educational and cultural field may be included in the committee. High School/ College Headmasters/ Principals, Teachers, Retired Officers, Ex-servicemen, Merchants, NGOs, Workers' representatives, Residents' Association representatives, Puja Committees representatives etc. may be included in the Committee.

The Samiti will have at least ten members, and preferably need not exceed 25. The Samiti may be reconstituted every two years. It will meet at least once in a month, at a pre-announced date and place. The public residing in the Beat of that area can attend and give their suggestions. The input and feed back of the Samiti members on the efficacy and effectiveness of the scheme will be given due weightage and the priorities of community policing would be modified on the basis of their suggestions. This will empower the community and give them a sense of ownership. Targetted specific schemes may be introduced in the area with community participation, for example, for senior citizens without any dependant in the household, slum dwellers, juvenile delinquents, women etc. The police can, in turn, leverage on the community resources for problem solving and crime prevention tasks.

The following matters are to be discussed in the "Ama Samiti" meetings:

- Any matter concerned with security of the area, problems like theft, robbery, bootlegging, traffic offences etc. and the remedial measures.
- Introducing patrolling with a view to preventing crime, traffic warden system, etc.

- Organizing awareness programmes to educate the public about reducing crime and about security measures to be introduced.
- Information regarding organized crime in the area.

Different projects, chosen as per need, may be implemented after discussion and decision in the Samiti meetings. As per local needs, the following type of special projects, inter alia, may be implemented.

- Night patrolling with public co-operation
- Coordinating with private security guards
- Knowing new residents and strangers
- Fitting Burglar Alarm and security systems
- Helping senior citizens and physically challenged citizens
- Protection of women and children
- Awareness programmes
- Traffic warden system
- Monitoring the maintenance of street lights, traffic lights etc.
- Implementation of the projects encouraging blood donation
- Monitoring illegal financial institutions
- School based safety and vigilance programmes.
- Disaster Management and Mitigation
- Trauma, Rescue and First Aid Projects
- Coordination with Fire, Hospital and other emergency services.

District Advisory Committee

At the District level, an Advisory Committee headed by the Superintendent of Police is formed to ensure proper supervision regarding the functioning of 'Ama Police'. Members of Parliament, Members of Legislative Assembly, Municipal Chairman/Mayor as well as other important members of public may be invited to the meetings of the Committee. This committee will convene a meeting once in every quarter and review the working of Janamaithri Suraksha Samiti of the concerned District and give necessary suggestions instructions, etc. for improvement of their performances.

Institutionalisation

The scheme has been introduced as pilot programme covering one Police Station in each of the 34 Police Districts of the State. However, due to shortage of manpower the scheme in its entirety could not be extended to all the police stations of the state. After assessment of the pilot projects, "Ama Police Samiti" has been formed under all the Police Stations of the State. Monthly meetings are being held at the Police Station with the Samiti members.

As part of further institutionalisation of the Scheme, the Govt. have sanctioned funds under heads (i) POL allowance for Beat Officers and Community Relation Officers @ Rs.300/- per month per Officer, (ii) Reimbursement of Mobile Phone charges of Beat Officers and Community Relation Officers @ Rs.200/- per month per Officer, (iii) Refreshment expenses for holding Community Policing Samiti meeting to be convened once in a month in Police Station @ Rs.500/- per month per Police Station and (iv) Printing charges of identity cards, purchase of stationeries @ Rs.3,000/- per Police Station as one time expenditure for implementation of Community

Policing “Ama Police Project” in the annual Budget Estimate. Budgetary provisions have been made for the training of Community Police Officers. Besides, Government have appointed a State Level Nodal Officer for overseeing the implementation of the Scheme.

Conclusion

It is hoped that “Ama Police” will stand the test of time as the scheme has been launched from the perspective of public policy, not merely as organisational philosophy to be adopted by police leaders in a piecemeal manner, but as long term, sustainable and robust organisational strategy of the police department.



Human Rights, Police and Ethics: Towards an Understanding of transforming the Police from a 'Force' to 'Social Service'

Dr. Harjeet S. Sohal*

Keywords

Ethics, Force, Constitution, Service, Facility, Environment, P2, Rule of Law, Colonial Police, Sifarish, Jihad, Goal.

Abstract

Human rights and the police co-exist for a sacred objective of enabling the individual to lead a happy and qualitative living. In fact, the police perform unending list of functions which ultimately revolve around the protection and promotion of rights and liberties of the people. But the manner in which these functions are performed and the conduct of the policeman are more matter of concern that immensely affect the purposeful enjoyment of these rights. The police in India, since its birth, have been known as unfriendly with the human rights and people and this legacy didn't lose its relevance even today. The modern era is driven by liberal democracy and globalisation in which individualism occupies a prominent position. The police, therefore, are required to act as a service in accordance with rule of law adhering to respect, acceptance and application of the ethics and values laid down in the constitution framework and the legal mechanism. This paper is an attempt to explore the entangled relationship between the human rights and police and to put a light on the necessity of application of ethics in policing to ensure the meaningful enjoyment of human rights in India.

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Introduction

The discourse on human rights and the police on a common platform ingeniously attract the attention of everyone whether it is liked or not. This debate has attained a manifest recognition in the present era that is known by the human rights. There are two schools of thought that widely contradict each other such as the supporters of absolute state advocate for the powerful police free from the checks and control of human rights bodies to maintain the supremacy of state authority. Contrary to this, protagonists of human rights persistently voice for the policing having voluminous space for human rights. It would be prudent to give academic input to the debate on pro-human rights policing that all major civilisations of the world, including India have passed through the similar phases of struggle for inherent human rights. The instinct of protection and promotion (P²) of such rights was the stimulating force for this human struggle. There has evolved such a state system that entirely revolves around the P² of rights of a given society. To be fair to say that protective and favourable social environment is inevitable for qualitative living and such environment is possible in a well maintained law and order and crime controlled society that is paramount responsibility of the police. More importantly, the manner by which the police perform this very responsibility is convincing factor to visualise the fate of human rights and this perpetual concern has remained a major issue of the discourse in the present times.

Human Rights

Human rights are those basic facilities inherently possessed by an individual being a member of human family to pursue happy and prosperous life and develop his personality fully.

These are inalienable conditions for the individual which create protective and favourable environment in any society to enable him for leading such a free and progressive living. Harold Laski rightly defined human rights in his own words as "rights are those conditions of social life without which no man can seek, in general, to be himself at his best." Section 2 of the Protection of Human Rights Act, 1993 also defines human rights as "rights to life, liberty, equality and dignity of individual guaranteed by the Constitution or embodied in the international Covenants and enforceable by the Courts in India".

Historical perspective of the development of human rights provides an insight though which modern world is known by human rights, this concept is not a new phenomenon; it is as old as the civilisations. The origin of human rights can be traced in the ancient epics, scriptures and holy books and it may be legitimate to claim that India was a spearhead in giving this concept to whole of the world. The Vedas, the smritis and other religious tenets propounded by the great Indian souls including Lord Buddha, Lord Krishna, Lord Mahavira, Guru Nanak, Saint Kabir and many more talk about human values and rights in making human life meaningful and progressive. The reference in the Vedas about 'the entire world is one family' addresses the importance of humanity, human values and human rights. A.L. Basham, a German historian, compared Indian conditions about human rights with other ancient civilisations in his work entitled 'The Wonder That Was India' (1958), "yet our overall impression is that in no other part of the ancient world were the relations of man and man, and of man and the state, so humane. In no other civilisation were slaves so few in number and in no other ancient law book are their rights so well protected as in Arthashastra. No other ancient law giver proclaimed such noble ideals of fair play in battle as did Manu... to us

the most striking feature of ancient Indian civilisation is its humanity" (Patil 2003:7).

Westerns, on the other hand, pine to get their credit for the introduction of well defined human rights to rest of the world through documents like Magna Carta (1215), Bill of Rights (1689), French Revolution (1789) and Bill of Rights in American Constitution (1791) and political ideas for crafting modern state system having substantial place for the ideals of liberty, equality and fraternity in the administration of the state. But the very issue of human rights has not always been understood in the same perspective, nor accepted and fulfilled at the same level of appreciation in societies across the world. The world had forcibly to wait for an appropriate time or stage set for an era of human rights. It is the last century that has been described as the most adventurous and gateway of globalised world in the annals of the history of mankind. It witnessed two World Wars in its first half, upheavals, end of traditional imperialism and colonialism, downfall of political supremacy of Europeans powers especially of Great Britain, emergence of USA, USSR, China, etc. as dominating nations, transformation from totalitarianism or autocratic to democracy, Cold War, proliferation of weapons and race for nuclear weapons, technological advancement, human entry into space, institutionalisation of world Organisations like the UN. All these factors were interwoven to cause the wave of human rights.

The shocking results of two World Wars, especially of 2nd one in which mankind suffered a number of atrocities, genocide, violent racial prejudices and suppression forced the leading leaders and peace loving personalities to evolve such a safe world for the preservation of humanity by ensuring rights and freedoms friendly climate in which maintenance of

dignity and honour of the individuals would be priority for every state. The formation of United Nations was the biggest step in this regard and the UN immediately after its formation made a universal declaration for human rights on 10th December, 1948 that created a palpable environment for the movement of human rights. Our Constitution was being drafted when this declaration was made which greatly influenced the founding fathers to incorporate a Bill of Rights in the Constitution. They, while giving great importance to human rights, accorded a high place to a list of fundamental rights in Part III (Article 12 to 35) of the Constitution. Dr. S. Radhakrishnan, 2nd President of India, while praising the fundamental rights said that the guarantee of these rights was "*a pledge to our own people and a pact with the civilised world.*" But meaningful enjoyment of these constitutional rights which are civil and political in nature cannot be imagined until every citizen is assured of proper protection through good governance per se good policing laced with ethics. The Constitution has legitimate answer in the form of Directive Principles of State Policy in Part IV (Article 36 to 51) which are fundamental for the governance of the country. These principles are constitutional ethics which guide and govern the state while framing laws, policies, rules and running administration with an objective of making India a socio-democratic and welfare state. Moreover, this is the response to the ideals articulated in the Preamble of the Constitution that pledges its commitment to the maintenance of the dignity of the individual implying the sacred duty of the state to act accordingly through good governance.

Police and Human Rights

The police and human rights are generally perceived as contradictory and in conflict with each other but this is not

true and far away from the reality. Both are closely inter-linked supplementing each other. This relationship lies in the perspective of the both that is to uphold the dignity and honour of the individual and to imbibe good values in society for creating a favourable climate for the individual to pursue a happy and honourable life. The word police having its origin in the Greek term 'Politeia' or its Latin equivalent 'Politia' that means the state or administration always remain a direct and visible authority to exercise the state power. It has been regarded as executive civil force of the state entrusted with the duty of maintaining order and enforcing law and regulations for the prevention and detection of crime (Sen 1986:28).

The positing of the contractual theory of origin of state propounded by John Locke, a British political thinker, brought out that the question of safety to the natural rights such as right to life, liberty and property of the individual which was imperative reason for the origin of the state. There was absence of effective mechanism in the state of nature for P² of these natural rights which forced the individual to leave this state and organise some sort of government. This question continues to be a hard fact even today for the evolution of world into a globalised village. The state expresses its will through the government and it is the police through which the government exercises its authority or power. The police, thus, hold the status of a legitimate coercive power of the state to perform a series of functions with more emphasis on the maintenance of law and order, and crime prevention and crime investigation. In plain words the police perform following major functions:

- Crime prevention;
- Maintaining peace through controlled law and order;

- Booking of law breakers, offenders and anti-socials in accordance with the procedures of law;
- Safeguarding the lives and property of the citizens;
- Protection of innocents, minorities and vulnerable sections; and
- Ensuring rights to liberty, equality and justice to all. However, the discourse of police duty to ensure protection of human rights doesn't end here. More legitimate concern for the police is to examine their own methods adopted in actions, behaviour and conduct while performing their duty. If high standards of human rights are maintained during the performance of these functions they would be more appreciated and produce satisfactory results. Public cooperation can turn to be a boon for obtaining such high standards and the very goals of democracy (Shah 2000:279).

Human Rights Infringement Complaints

As above stated that there is a well defined legal mechanism, apart from the Constitutional framework for the police to assure P² of human rights. But the police perform their functions in such a manner in which rights are rarely respected and are frequently trampled. A wide range of complaints relating to human rights violations by the police can be traced in the print and electronic media reports. The common complaints against the police as violators of human rights include the cases alleging custodial deaths, physical torture and application of third degree methods to prove crime, fake encounters, custodial rapes, and high-handedness with women, SC/ST people and other vulnerable sections of society, apart from rampant corruption. The complaints received by NHRC every year since its inception, comprise a big portion accusing the police for such infringements.

There is a long list of cases of police tortures by which persons lost their lives and disabled physically forever. Not only this, there is no dearth of literature to prove the genuineness of people and human rights unfriendly image of police it earned through its deeds in the past that a common man doesn't have heart to approach the police in a confident manner to lodge his complaint. He has to accompany a number of influential persons for *sifarish* for getting his work done.

This is painful to peruse that the protectors and guarantors of rights and liberties of people are the major violators. What is to say about criminals, goons and other persons of the same nature? Why do the police do this? Implications of these questions are more important to consider in terms of the concern that needs to examine the layers of the past of the Indian police. The micro analysis of the foundation of police, their powers, functions and more importantly their working shows that root cause of the problem lies in the nature of functions the police have to perform and the manner by which such functions the police perform. The police in India was never brought up in a human rights friendly climate. The British raised modern constabularies in London and Ireland but both were different from each other in the nature of functions and in the execution of such functions the London Constabulary was people friendly but the Irish was not. They followed the model of Irish Constabulary in India and formed Indian police mere as a force with a limited objective of maintaining order in society solely to serve their interests. The police in India, thus, saw its development in anti-people climate because it was modelled as muscles and ruthless force to use as a coercive weapon for doing anything for retaining their power in India. The nature of police functions was repressive and oppressive in nature in which human rights and dignity of

individual had no place. It was not developed into service oriented police rather militarised with an attitude of 'yes sir' 'no sir' to the masters (Vadackumchery 2003:165).

The modules of training were planned in a manner that a police man after training would be a '*senseless man in uniform*' and would be loyal only to the master and terror for his own countrymen. Discipline, drill-with and without arms, unarmed combat, musketry, mob-operation, lathyr drill, parade, etc were the curriculum a policeman was learnt to show his skill and efficiency in suppressing and oppressing the people. The main stress was on hard skills rather than the skill of humane dealing with the people. The police men were made fully aware that they were not accountable to the Indian people but only to the Britishers. Whenever they had any interaction with the people, it was an opportunity to show their muscle power and to demonstrate their skill in the use of arms and ammunition. The massacre at Jallianwala Bagh in Amritsar on 13th April, 1919 by the police men under the command of Brigadier-General Reginald Dyer is well known to all. Hard and harsh behaviour, ferocious looks, threatening eyes, frightening moustaches, strong muscles, etc. were the characteristics of a police man which can be seen even today. Until recently some policemen were nicknamed as lion, tiger, vulture, Ghotna, Gabbar, Jalad, Sansi, Ghagrianwala, etc. and they felt proud by calling with such nicknames (Ibid: 168).

The departure of Britishers and setting up India on liberal democratic and welfare principles and on the Gandhian ideal of 'Ram Rajya', it was felt that the police would be servant of the people instead of their master and it would function as people friendly having respect for human dignity and law of the land but this remained only an ideal. Not much has been achieved even after the formation of a number of

commissions and committees to transform the police from colonial to welfare or unethical to ethical. Police-politicians, police-criminals and police-mafia alliances came into light by which police became out of reach for the common man. Presently, the number of votes decides the fate of government both at the centre and the states to remain in power. The police itself came forward or conditions prevailing in the political environment forced it to be a helping hand for the ruling party for retaining and enjoyment of power which fix maximum priority to maintain order in the society.

It is important to mention here what the National Police Commission (1977) had observed, "The process of the police accountability to the people has suffered considerable distortion in the recent past. Various pressures and elite groups have come to develop in society having infinite expectations from the police and seeking generous to the exclusion of legality and fair play. There are members of the State and Central Legislatures, political parties, particularly ruling ones and personalities of the locality and government servants who have tended to divert the police accountability from the people to themselves. The police functionaries, therefore, have tended to divert the police accountability from the people to these pressure groups. This has had obvious effect on the attitude of the common people who feel that the police service is meant to serve the elitist groups and in case they wish to avail any public service, they have to purchase it through illegal gratification or secure it through exercise of pressures from power wielding sections of the society."

Moreover, record of the police for using investigative techniques to prove crime does not present a satisfactory image of the police. Despite of the Constitutional provisions especially under Articles 20, 21 and 22, guidelines

issued by the Apex Court of India through various cases, especially in *D.K. Basu vs. State of West Bengal* and directions by the NHRC to the police for maintaining high standards of human rights while investigating the crime, there is an ample evidence that the reports of NHRC show frequent human rights violations in the police working. The incidents of unlawful detentions, custodial physical torture and deaths, fake encounters, high-handedness with women and atrocities on SCs/STs people are on the top of the total cases received by the commission every year. The commission on account of the abuse of authority by the police awarded very heavy compensations to the victims and recommended punishment to the abusers of the authority. In July 2014, NHRC has recommended monetary relief amounting to a total of Rs.40 lakh for the victims or their next to kin in 13 cases where it found affirmative role of the police in the infringement of human rights. The commission received 10 compliance reports furnishing the proof of payment totalling Rs.17.50 lakh to the victims or their next to kin it had recommended (Human Rights News Letter, NHRC, August 2014:6-7). Here it is needful to cite the cases of human rights violations by the police such as Karan Pandey was killed in unnecessary police firing on the stunt bikers in New Delhi in July 2013. The NHRC found that it was disproportionate abuse of the authority by the police and recommended to pay Rs.5 lakh as a relief to the next to the kin of the deceased. In another case, the commission asked the UP government to pay Rs.3 lakh as compensation to a 20 years boy, Sanju, who was wrongfully imprisoned knowingly for more than 24 months by the SHO, PS Linepur, Ferozabad of UP. The commission observed that it was sheer misuse of authority by the police for infringing the enjoyment of right to life and liberty.

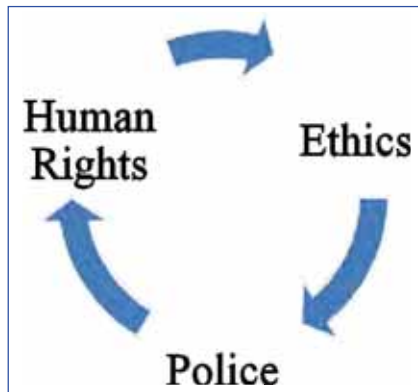
This shows the style of unethical policing in which human rights are rarely recognised. A majority of people before and after 1947 did not react to the police atrocities in a constructive manner as they had accepted the dogma that police was primarily meant to serve the rulers and rule over the people. Even old generations of the police had a deep rooted opinion that hard methods and harsh behaviour are the tested and proven means to prove crime and maintenance of order in society. The policing more or less was based on the orders of the rulers which in practice were the laws for the police. This can be found in the contents of the report of the Simon Commission on Indian Constitutional Reforms, 1927-28 p.277, "It will be natural to ask how such a force as this, recruited from various communities and often operating in times of tension, is affected in its duties by religious divisions. We have been assured that the record of the force in this respect is extremely good. A distinguished officer, who was in charge of an area notorious for the frequency and violence of its communal riots, told us that the Muhammadan constables in his force could be trusted to escort a Hindu procession playing music before mosques, and the Brahmin constables to perform the same service for a Muhammadan procession leading cows to slaughter. We put on record this very remarkable evidence of loyalty and discipline of the rank and file" (Ghosh 1987:91-92). Such style of policing developed into the habits and customs to say only 'Yes Sir' to the rulers first to the British and later to their native masters which became unquestioned rules, practices, values and ethics of policing. This may be called unfortunate legacy of Indian police that continues to be so even now despite of some efforts made by the successive governments and the organisation itself to improve the quality of policing and make it human rights and people friendly.

Police and the Ethics

Now on account of globally evolved and well meaning mechanism of human rights public is conscious enough about their human rights. They have courage to strongly react to the police high-handedness, misbehaviour and atrocities. There was a time in recent past that they did not dare to meet a police officer beyond a Constable or Head Constable. Incidents of public protest against police stations, scuffles, and even tearing uniform and removing turbans of policemen can often be seen in various news papers. This is a clear indication as well as warning call that people, now, are no longer to accept the doctrine of absolute and lawless police. They have learnt the importance of democracy and their role in its working. They are of the concrete view that policemen are their servants who are supposed to perform their functions as per law and requirements of the public. The meaning of the police given in the Random House College Dictionary as "*an organised Civil Force for maintaining order, preventing and detecting crimes and enforcing the laws*" is not fully acceptable in a civilised society of today. The police today is not a civil force rather a '*Service*' and a '*Public Facility*' to uphold rights and liberties of the people and to assure such a favourable environment in society to lead a comfortable life. Such kind of policing is possible when it has sensibility for the acceptance to and application of social, constitutional and legal ethics in the functions and the manner in which these are performed.

What do we mean by Ethics and why these are so important for the police? The Greek term 'Ethiko' means 'arising from habit' stands for ethic that involves making moral judgments to differentiate the right or wrong, good or bad while performing duty. In plain words, it is a set of standards to guide and govern the behaviour, choices and actions of the members of any society. Every society is determined

to make morally correct behaviour of its members. The societies not only regulate the behaviour of their members but also define their societal core values which greatly impact the governance. Government performs through its laws, policies and administration but its performance is measured by the manner by which it performs for achieving the desired goals. In other words, governance is the criteria to access the success or failure of any government especially of a democratic welfare like in India. The Constitution of the country is committed to provide not only good government but also good governance which have significant place for ethics. As earlier said in the paper, there is no other organisation as direct and visible to enforce the will of state as the police. Quality of the governance is immensely judged by the manner in which police perform. Therefore, it is needful for the police to arise from the habit of colonial police to a democratic police guided and governed by the ideals of rule of law. The trio-ethics, police and human rights are inter-linked and the dovetail of the good governance.



In this context, the words of Pt. JawaharLal Nehru, first Prime Minister of India, are relevant to mention, "The duties that the police have to perform are of great importance. Even more important is the measure of fact, which they use in performing them. Normally, a country can well be judged by the quality of its police force. The police come naturally into very intimate contact with the people in their daily work; therefore, the question of the relationship

between the police and the public is very important one. The policeman is as much a citizen as anyone else and he has to function as a citizen with the rights and obligations of citizenship. He has also a particular duty which is difficult. He is among the many connecting links which the administration has with the mass of the people of the country. That link must be a good one; otherwise there is misunderstanding and mistrust. It is essential that this contact should be one of mutual trust and co-operation. No policeman can do his work adequately without the co-operation of the public..." (Biswas 1986:123). It becomes obvious that the police should perform its actions and conduct adhering to professional ethics and values in maintaining the rule of law, honesty, politeness, kindness and respect to rights of life, liberty and equality of the people. York Willbern, an American Scholar, in his work entitled 'Types and Levels of Public Morality' suggested six types of ethics for public officials. Such as:

- Ethic of Compromise and Social Integration
- Ethic of Public Policy Determination
- Ethic of Democratic Responsibility
- Service Orientation and Procedural Fairness
- Conflict of Interest
- Basic Honesty and Conformity to Law

These parameters are essential for every democratic secular society for assuring service oriented governance. Unity and integrity, peace and order, equality, liberty, justice and pursuit of happiness have been the key to governance in India. To obtain these goals, accountability to organisation, law and people is a crucial aspect of the ethical policing. Hence, discipline, loyalty, integrity and accountability have been the core ethics of the police organisation to ensure

good service delivery to the society. There is one important reason, learning a lesson from the past, to adhere to these basic moral codes and laws because a policeman has more power than the average member of the society, and thus, has more opportunity for abuse/misuse of his power. In order to make the police a fully people friendly professional organisation to render quality service, a number of initiatives have been taken in the form of code of conduct, issuing of standing orders. Judicial pronouncement and directions and guidelines issued by the NHRC from time to time, introducing human rights training, apart from enacting legislations and ensuing special concern in the Constitution. These involve a set of standardised mechanism to guide and regulate the police behaviour and conduct to make good and moral judgments while performing their assigned roles. Theirs is the fundamental duty to enforce law and order and control crime but the desired goals cannot be obtained unless they have humane touch while performing their basic duty. At present the police have a challenge to transform public attitude into cooperative and cordial manner which is extremely hostile due to various factors. In a democracy public trust and cooperation is the key to effective control of crime. For achieving this, it requires fundamental transformation in organisational mechanism, processes and programs (Hemachandran 2012:145) and give significant place to the following elements necessary for ethical policing, upholding respect for the human rights and converting from mere a police force to social service:

- Kind and Sympathetic behaviour with the people
- Customer and Patients like approach towards complainants and victims of crime
- Ensure Rule of Law with humane approach
- Respect the Rights and Liberties of People

- Uphold dignity and honour of the individual irrespective of his/her caste, religion, birth place, sex, etc.
- Sensibility towards Women, Children and Weaker Sections
- Develop a orientation of Service to the people instead of being their master
- Be accessible, polite and helpful to the public
- Show Quick Responsiveness in complaints handling in letter and spirit
- Fair and Secular conduct with the Minorities
- Nurture Professionalism to meet the requirements of the Organisation and Society
- Ensure Transparency in actions
- Ensure Accountability to the Organisation, Law, People and Society and above all to himself
- Expand Learning and Continuously develop relevant Concepts and Skills

Concluding Observations

Finally, ethical policing now-a-days, in the times of open democratic society, is the key for achieving the goals enshrined in the Constitution for making India a welfare state and upholding rights of people equally. Ethics and the police are not just moral and compliance instruments but in the long term, both are essential behavioural traits for the institution that will strengthen the quality service and help to win the public confidence and trust. Ethics or values are moral principles which over the times turn into customs, conventions and social practices which become the governing forces for the behaviour and conduct of people from generations to

generations and the public officials, including police are not immune from their impact. No administration in any society can achieve meaningful goals in the absence of ethics or values prevailing in the society. The United States had tried to govern its society in the first half of last century through value free administration but it achieved nothing except turbulences and cripples in the society which endangered the administration, especially the police. Such experiment was denied by calling 'mad craze for scientism' and the administration had to revert back to reaffirming the importance and role of value-laden governance in 1970s. Though the Indian society is very different from the Americans but the commonalities of experience both the countries gained in the past has shown unethical governance/policing turned out to be fatal for not only a generation but successive generations. Thus, in last but not least, the police in India is required to show professional competence in performing their functions in a manner the respect and honour of the people may not be hurt and people may feel proud of their police and call it as 'People and Human Rights Friendly Police'.

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The Armed Forces (Special Powers) Act, 1958 – Urgency of Review

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Keywords

AFSPA, Special Powers, Disturbed areas, IPC, CrPC Act of 1950, Urgency, Review.

Abstract

The Armed Forces (Special Powers) Act of 1958 (AFSPA) is one of the most stringent legislations that gives the armed forces wide powers to shoot, arrest and search, all in the name of "aiding civil power." There has been allegedly great misuse of powers and privileges that are given in the hands of the military and the paramilitary forces for maintaining a state of law and order in the areas. It was first applied to the North Eastern states of Assam and Manipur and was amended in 1972 to extend to all the seven states in the north- eastern region of India. The Act even failed to meet with the International conventions and treaties that India has signed. The definitions under the Act is so vague that, it gives a huge ambit for the Armed Forces to interpret the definition according to their own whims and fancies and get spared even after committing gross violation of human rights, international treaties and conventions. This article analyses the Act's legal and constitutional validity and its compatibility to international human rights standards. Finally, it has been discussed what conclusion can be drawn along with some logical suggestions.

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Introduction

The Armed Forces (Special Powers) Act of 1958 (AFSPA) is one of the most stringent legislations that the Indian Parliament has passed. It is a law with just six sections granting special powers to the armed forces in what the act terms as “disturbed areas”. Even a non-commissioned officer is granted the right to shoot to kill based on mere suspicion that it is necessary to do so in order to “maintain the public order”. The AFSPA gives the armed forces wide powers to shoot, arrest and search, all in the name of “aiding civil power.” It was first applied to the North Eastern states of Assam and Manipur and was amended in 1972 to extend to all the seven states in the north-eastern region of India. They are Assam, Manipur, Tripura, Meghalaya, Arunachal Pradesh, Mizoram and Nagaland, also known as the “seven sisters”. The enforcement of the AFSPA has resulted in innumerable incidents of arbitrary detention, torture, rape, and looting by security personnel. Its continued application has led to numerous protests, notably the longstanding hunger strike by Ms. Irom Chanu Sharmila in Manipur. This legislation is sought to be justified by the Government of India, on the plea that it is required to stop the North East states from seceding from the Union of India.

Historical Background

At the beginning of the century, the inhabitants of the Naga Hills, which extend across the Indo-Burmese border, came together under the single banner of Naga National Council (NNC), aspiring for a common homeland and self-governance. The Naga leaders were adamantly against Indian rule over their people once the British pulled out of the region. Under the Hydari Agreement signed between NNC and British administration, Nagaland was granted protected status for ten years, after which the Nagas would decide

whether they should stay in the Union or not. However, shortly after the British withdrew, independent India proclaimed the Naga Territory as part and parcel of the new Republic. The NNC proclaimed Nagaland's independence. In retaliation, Indian authorities arrested the Naga leaders. An armed struggle ensued and there were large casualties on either side. The Armed Forces Special Powers Act is the product of this tension.

The origins of the Armed Forces (Special Powers) Act, 1958 can be traced to the Armed Forces (Special Powers) Act of 1948. To meet the situation arising in certain parts of India on account of the partition of the country in 1947, the Government of India issued these four Ordinances – the Bengal Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (Act 11 of 1947); the Assam Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (Act 14 of 1947); the East Punjab and Delhi Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (Act 17 of 1947); and the United Provinces Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (Act 22 of 1947). These Ordinances were replaced by the Armed Forces (Special Powers) Act, 1948 being Act 3 of 1948.

The present Act was enacted by the Parliament in 1958 and it was known initially as Armed Forces (Assam and Manipur) Special Powers Act, 1958. The Act was preceded by an Ordinance called Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958 promulgated by the President of India. The Act applied to the entire State of Assam and the Union Territory of Manipur. After the new States of Arunachal Pradesh, Meghalaya, Mizoram, and Nagaland came into being, the Act was appropriately adapted to apply to these States. The Act has not been made applicable to any other State in the country.

Legal and Constitutional aspects of the Act

Initially, the Act was applicable to the states of Assam and Manipur to eradicate militancy amongst the Nagas. Subsequently, the Act was amended in 1972 in order to extend it to all the states lying in the Northeastern region of India. Then, it was extended to Punjab for a brief while. Currently, the Act is in force in the states of the Northeastern region of the country and Jammu and Kashmir. Purportedly aimed at fighting insurgency the Act has proved singularly ineffective. The provisions of the Act are discussed and analyzed below –

- I) Section 2 sets out the definition of the Act, but leaves much un-defined. Under part (a) in the 1972 version, the armed forces were defined as “the military and air force of the Union so operating”. In the 1958 version of the Act the definition was of the “military forces and the air forces operating as land forces”. Section 2(b) defines a “disturbed area” as any area declared as such under section 3. Section 2(c) states that all other words not defined in the AFSPA have the meanings assigned to them in the Army Act of 1950.
- II) Section 3 defines “disturbed area” by stating how an area can be declared disturbed. It grants the power to declare an area disturbed to the Central Government and the Governor of the State, but does not describe the circumstances under which the authority would be justified in making such a declaration. The provision declares the authority of the centre, but does not clearly define a disturbed area nor does it state the conditions, circumstances or prudent grounds for the declaration of the part as disturbed.

The vagueness of this definition was challenged in *Indrajit Barua v. State of Assam*¹ case. The court

¹ AIR 1983 Del 513 at p. 525

decided that the lack of precision to the definition of a disturbed area was not an issue because the government and people of India understand its meaning. However, since the declaration depends on the satisfaction of the Government official, the declaration that an area is disturbed is not subject to judicial review. So in practice, it is only the government's understanding which classifies an area as disturbed.

Looking at a similar legislation i.e. the Disturbed Areas Act, 1976, it has been clearly stated that owing to the disturbance of the public peace and tranquility, by reason of differences or disputes between members of different religions, racial, language, or regional groups or castes or communities, the state government may declare such area to be a disturbed area. The lack of precision in the definition of a disturbed area under the AFSPA demonstrates that the government is not interested in putting safeguards on its application of the AFSPA.²

Another important thing is that the time period for the lasting of the 'disturbed' status of the area is not stated in AFSPA. In the case *Naga People's Movement of Human Rights v. Union of India*³, the Honorable Supreme Court held that the section 3 cannot be construed as conferring power without any time limitation. There should be a periodic review of the declaration before the expiry of six months. But it's a fact that in the state of Manipur the Act has been in enforcement since the year 1958, till date. Also, in 1980, the whole territory was declared as a disturbed area, which continues even after 50 years. All these limitations amount to the vagueness of the provision.

² http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1681499&download=yes, last visited on 01.05.2014

³ AIR 1998 SC 431

The 1972 amendments to the AFSPA extended the power to declare an area disturbed to the Central Government where as in the 1958 version of the AFSPA only the state governments had this power. In the 1972 Lok Sabha debates it was argued that extending this power to the Central Government would take away the State's authority. In the 1958 debates the authority and power of the states in applying the AFSPA was a key issue.⁴ It was argued that the AFSPA broadened states' power because they could call in the military whenever they chose. The 1972 amendment shows that the Central Government is no longer concerned with the state's power. Rather, the Central Government now has the ability to overrule the opinion of a state governor and declare an area disturbed. This happened in Tripura, when the Central Government declared Tripura a disturbed area, over the opposition of the State Government.⁵

- III) Section 4 sets out the powers granted to the military stationed in a disturbed area. These powers are granted to the commissioned officer, warrant officer, or non-commissioned officer, but a jawan (private) does not have these powers. The Section allows the armed forces personnel to use force for a variety of reasons.

Under Section (4) (a) of the Act, a military personnel or even a non-commissioned officer of the force can fire, shoot to the extent of killing a person who has acted against law, to maintain public order. As per this provision, assembly of five or more people is prohibited, prohibiting the carrying of weapons, explosives or any things capable of being used as the same. All these to

⁴ http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1681499&download=yes, last visited on 01.05.2014

⁵ Ibid.

be done just if the military personnel are of the opinion of such.

The provision is clearly violative of the Right to life and personal liberty granted under Article 21 of the constitution that states "*No person shall be deprived of his life or personal liberty except according to procedure established by law.*" If the military personnel shoot to kill just by the reason that they were of such an opinion, then the personal liberty of the people comes under great threat. This feature of the act is by no way a 'due process of law' which can be used as a defense against the deprivation of the right to life. The term 'procedure established by the law' is synonymous to 'a due process', since it was held in by the honorable supreme court in the case *Maneka Gandhi v. Union of India*⁶ that the procedure established by law has to be fair, just and reasonable, not arbitrary and fanciful; otherwise it's not a procedure at all and also not satisfying Article 21. Owing to this very inhumane clause, the army has allegedly acted in a very extrajudicial and unreasonable manner in the areas declared disturbed. Now, the provision also prohibits the assembly of five or more people in the area. But the kind of assembly has not been defined. What if the assembly is a lawful and a peaceful one? Under article 19(1)(b) all citizens of India have a right to hold meetings and take out processions, provided the assembly is unarmed and peaceful.

Under Section 4(c) the army can arrest anyone without a warrant, who has committed, is suspected of having committed or of being about to commit, a cognizable offense and use any amount of force "necessary to affect the arrest". While, the following section 4(d) states that

⁶ AIR 1978 SC 597

the army can enter and search without a warrant to make an arrest or to recover any property, arms, ammunition or explosives which are believed to be unlawfully kept on the premises. This section also allows the use of force necessary for the search. In both the clauses, no limitations are associated with the “amount of force”. There has been a use of excessive force by the army for the execution of their duties, under this provision. It should not be ignored that the honorable Supreme Court, in the case *Joginder Kumar v. State of U.P.*⁷ and in *D.K. Basu v. State of West Bengal*⁸ held that an arrest should not be made on mere suspicion of a person’s complicity in the crime. The police officer must be satisfied about the necessity and justification of such arrest on the basis of investigation. It is to be noted that arrest without warrant, deciding the amount of force to be applied, reasoning the suspicion and all, is capable of being undertaken by anyone in the army from a commissioned officer to even the Hawaldar/Jawan. This manifests nothing, but the arbitrariness of the law.

- IV) Section 5 of the Act states that after the military has arrested someone under the AFSPA, they must hand over that person to the nearest police station with the “least possible delay”. Again, the uncertainty and ambiguity has crippled into the section. Article 22(2) of the constitution demands that every person who is arrested and detained shall be produced before the nearest magistrate within period of 24 hours. The provision of the AFSPA mentions the time period as with ‘least possible delay’. The application of Sec 5 certainly will and has in fact, resulted into arbitrary detention, since the time period is not specified at all.

⁷ AIR 1994 SC1349

⁸ AIR 1997 SC 610

If the AFSPA were defended on the grounds that it is a preventive detention law, it would still violate Article 22 of the Constitution.

Preventive detention laws can allow the detention of the arrested person for up to three months. Under 22(4) any detention longer than three months must be reviewed by an Advisory Board. Moreover, under 22(5) the person must be told the grounds of their arrest. Under section 4(c) of the AFSPA a person can be arrested by the armed forces without a warrant and on the mere suspicion that they are going to commit an offence. The armed forces are not obliged to communicate the grounds for the arrest. There is also no advisory board in place to review arrests made under the AFSPA. Since the arrest is without a warrant it violates the preventive detention sections of article 22.

In the habeas corpus case of *Bacha Bora v. State of Assam*⁹, the petition was denied because a later arrest by the civil police was found to be legal. However, in a discussion of the AFSPA, the court analyzed Section 5 (turn the arrested person over to the nearest magistrate “with least possible delay”). The court did not use Article 22 of the Constitution to find that this should be less than twenty-four hours, but rather said that “least possible delay” is defined by the particular circumstances of each case. In this case, the army had provided no justification for the two week delay, when a police station was nearby, so section 5 was violated. Nevertheless, this leaves open the interpretation that circumstances could justify a delay of 5 days or more.

- V) Section 6 provides impunity to the military officers. It establishes that no legal proceeding can be brought

⁹ (1991) 2 GLR 119

against any member of the armed forces acting under the AFSPA, without the permission of the Central Government. This section leaves the victims of the armed forces abuses without a remedy, while assures safeguards for the military. Moreover, even if any armed forces member is ever tried for any kind of abuse or wrong, then they are tried in the martial courts, whose judgments are usually not published or made public. That is the reason why several cases of human rights abuses have went unheard. In fact, the NHRC even never got a chance review any. Section 19(b) of the Protection of Human Rights Act, 1993 exempts the armed forces from the purview of the National Human Rights Commission (NHRC), and even if human rights cases involving them are dealt with, they are done with after seeking a report from the central government.

The Delhi High Court found the AFSPA to be constitutional in the case of *Indrajit Barua v. State of Assam*¹⁰ and the only judicial way to repeal the Act is for the Supreme Court to declare the AFSPA unconstitutional. It is extremely surprising that the Delhi High Court found the AFSPA constitutional given the wording and application of the AFSPA. The AFSPA is unconstitutional and should be repealed by the judiciary or the legislature to end army rule in the North East.

In a state of emergency, fundamental rights may be suspended under Article 359, since the 1978 amendment to this article, rights under Articles 20 and 21 may not be suspended. As shown above, the AFSPA results in the suspension of Article 21 right to life, therefore AFSPA is more draconian than emergency rule. Emergency rule can only be declared for a specified period of time, and the President's proclamation of emergency must be reviewed by Parliament. The AFSPA is in place for an indefinite period of time and there is no

¹⁰ AIR 1983 Del 513

legislative review. The AFSPA grants state of emergency powers without declaring an emergency as prescribed in the Constitution.

The Armed Forces Special Powers Act contravenes both Indian and International law standards. This was exemplified when India presented its second periodic report to the United Nations Human Rights Committee in 1991. Members of the UNHRC asked numerous questions about the validity of the AFSPA, questioning how the AFSPA could be deemed constitutional under Indian law and how it could be justified in light of Article 4 of the ICCPR. The Attorney General of India relied on the sole argument that the AFSPA is a necessary measure to prevent the secession of the North Eastern states. He said that a response to this agitation for secession in the North East had to be done on a "war footing." He argued that the Indian Constitution, in Article 355, made it the duty of the Central Government to protect the states from internal disturbance and that there is no duty under international law to allow secession.

Criminal Procedure Code, Indian Penal Code and AFSPA Act

The Criminal Procedure Code, 1973 (Cr.P.C.) establishes the procedure the police officers are to follow for arrests, searches and seizures, a procedure which the army and other Para- military are not trained to follow. Therefore, when the armed forces personnel act in aid of civil power, it should be clarified that they may not act with broader power than the police and that these troops must receive specific training in criminal procedure.

Section 45 of the Cr.P.C. protects the members of the Armed Forces in the whole of the Indian territory from arrest for anything done within the line of official duty. Section 6 of the AFSPA provides them with absolute immunity for all

atrocities committed under the AFSPA. A person wishing to file suit against a member of the armed forces for abuses under the AFSPA must first seek the permission of the Central Government.

Chapter V of the Cr.P.C. sets out the arrest procedure the police are to follow. Section 46 of Cr.P.C. establishes the way in which arrests are to be made. It is only if the person attempts to evade arrest that the police officer may use "all means necessary to affect the arrest." However, sub-section (3) of Section 46 of Cr.P.C. limits this use of force by stipulating that this does not give the officer the right to cause the death of the person, unless they are accused of an offence punishable by death or life imprisonment. This power is already too broad. It allows the police to use more force than stipulated in the UN Code of Conduct for Law Enforcement Officials.¹¹ Yet the AFSPA is even more excessive. Section 4(a) of AFSPA lets the armed forces kill a person who is not suspected of an offence punishable by death or life imprisonment.

The Cr.P.C. has a section on the maintenance of public order, Chapter X, which provides more safeguards than the AFSPA. Section 129 in that chapter allows for the dispersal of an assembly by use of civil force. The section empowers an Executive Magistrate, officer-in-charge of a police station or any police officer not below the rank of sub-inspector to disperse such an assembly. It is interesting to compare this section with the powers the army has to disperse assemblies under section 4(a) of the Act. The Cr.P.C. clearly delineates the ranks which can disperse such an assembly, whereas the Act grants the power to use maximum force to even to non commissioned officers. Moreover, the Cr.P.C. does not

¹¹ <http://www.un.org/disarmament/convarms/ATTPrepCom/Background%20documents/CodeofConductforlawEnfOfficials-E.pdf>, last visited on 02.05.2014

state that force to the extent of causing death can be used to disperse an assembly.

Moreover, dispersal of assemblies under Chapter X of the Cr.P.C. is slightly more justifiable than dispersal under Section 4(a) of the AFSPA. Sections 129-131 of Cr.P.C. refer to the unlawful assemblies as ones which “manifestly endanger” public security. Under the AFSPA the assembly is only classified as “unlawful” leaving open the possibility that peaceful assemblies can be dispersed by use of force.

Sections 130 and 131 of Cr.P.C. sets out the conditions under which the armed forces may be called in to disperse an assembly. These two sections have several safeguards which are lacking in the Act. Under section 130 of the Cr.P.C, the armed forces officers are to follow the directives of the Magistrate and use as little force as necessary in doing so. Under Section 131 of Cr.P.C, when no Executive Magistrate can be contacted, the armed forces may disperse the assembly but if it becomes possible to contact an Executive Magistrate at any point, the armed forces must do so. Section 131 only gives the armed forces the power to arrest and confine. Moreover, it is only commissioned or gazetted officers who may give the command to disperse such an assembly, whereas in the AFSPA even noncommissioned officers are given this power. The AFSPA grants wider powers than the Cr.P.C. for dispersal of an assembly.

Under the Indian Penal Code, in Section 302, only murder is punishable with death. Murder is not one of the offenses listed in section 4(a) of the AFSPA. Moreover the 4(a) offences are assembly of five or more persons, the carrying of weapons, ammunition or explosive substances, none of which are punishable with life imprisonment under the Indian Penal Code. Under section 143 of the Indian Penal Code, being a member of an unlawful assembly is

punishable with imprisonment of up to six months and/or a fine. Even if the person has joined such unlawful assembly armed with a deadly weapon, the maximum penalty is imprisonment for two years and a fine. Moreover, persisting or joining in an unlawful assembly of five or more persons is also punishable with six months imprisonment, or a fine, or both. The same offence committed by someone in a disturbed area under the AFSPA is punishable with death. This again violates the Constitutional right to equality before the law. Different standards of punishment are in place for the same act in different parts of the country, violating the equality standards set out in the Constitution.

International Humanitarian Law and AFSP Act

The Armed Forces Special Powers Act, 1958 not only violates the national humanitarian standards of law, but even international. Under the relevant provisions of International Humanitarian Law the AFSPA was challenged several times. The AFSPA, by its form and in its application, violates the Universal Declaration of Human Rights (hereinafter referred as UDHR), the International Covenant on Civil and Political Rights (hereinafter referred as ICCPR), the Convention Against Torture, the UN Code of Conduct for Law Enforcement Officials, the UN Body of Principles for Protection of All Persons Under any form of Detention and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

The Act violates both derogable and non-derogable provisions of international human rights law, including the right to life, the right to remedy and the rights to be free from arbitrary deprivation of liberty and from torture and cruel, inhuman or degrading treatment or punishment (ill-treatment) as enshrined in the International Covenant on Civil and Political Rights (ICCPR), to which India is a state party since 1979, and other treaties and standards.

These include the right to life (Article 6), the prohibition of torture, cruel, inhuman and degrading treatment (Article 7), the right to liberty and security of the person (Article 9), the right not to be subjected to arbitrary or unlawful interference with one's privacy, family, home or correspondence (Article 17), the right to freedom of assembly (Article 21), as well as Article 2 (3), which provides for the right to an effective remedy to anyone whose rights protected by the Covenant have been violated.

AFPSA also violates the following provisions of UDHR, such as; Free and Equal Dignity (Article 1), Non discrimination (Article 2), Life, Liberty, Security of person (Article 3), No torture (Article 5), Equality before the law (Article 7), Effective remedy (Article 8), No Arbitrary arrest (Article 9), Right property (Article 17).

The ASFP Act's provision that provides immunity for military officers from any prosecution, suit or any other legal proceeding in respect of anything done or purported to be done in exercise of the powers conferred by the Act is incompatible with article 2(3) of the ICCPR. It is a well-established principle of international human rights law that violations of human rights, such as unjustified deprivation of life, torture, cruel, inhuman and degrading treatment and arbitrary arrest and detention entail a duty on the part of state authorities to conduct a prompt, impartial and effective investigation. This principle is reflected in article 2(3) which requires that individuals have accessible and effective remedies to vindicate their human rights.

The all-embracing immunity provision of the AFSP Act effectively precludes the possibility of redress for victims of serious human rights violations resulting from its application. The law itself is in breach of article 2(3) in relation to cases where substantive rights guaranteed by the ICCPR, including the right to life, to be free from torture, cruel, inhuman and

degrading treatment, and not to be arbitrarily arrested and detained, have been violated, or there is a credible allegation that they have been violated.

The greatest outrage of the AFSPA under both Indian and international law is the violation of the right to life. This comes under Article 6 of the ICCPR, and it is a non-derogable right. This means no situation, or state of emergency, or internal disturbance, can justify the suspension of this right. The authorization to use lethal force under the Act is incompatible with article 6. First, the authorization is extremely wide. It vests military officers with the power to use lethal weapons, such as firearms, in all circumstances where an officer deems it appropriate. The use of lethal force against anyone within the disturbed area therefore falls within the personal discretion of the military officer(s) concerned. Justification for the use of force – that is, maintenance of public order – is so vague and ill-defined that it effectively does not limit the scope of circumstances where it would be necessary. Individuals against whom force may be used include all those who – again, in the military officer's opinion – are acting in contravention not only of law but also any order, presumably including orders given by the military officer involved himself. The mere fact of five persons gathered together suffices to use lethal force against any of them even where there is no suspicion of a breach of the law or any order. The provision of the AFSPA Act governing the use of lethal force effectively gives carte blanche to military officers within disturbed areas. The Act is silent on whether and how a warning should be given before lethal force is used and which measures should be taken by the military officers involved to satisfy themselves that those warnings are received and understood by all parties concerned.

Second, the Act, or any other applicable legislation, fails to ensure that prompt, independent, and effective

investigations are conducted into all cases of the use of lethal force, especially those which led to death or severe injury. The immunity provision contained in section 6 of the Act makes any such investigation – even if it were conducted – meaningless as the officers concerned cannot be held accountable. This lack of adequate investigative mechanisms means that victims, their relatives and the broader public have no access to the truth about what has happened. This contributes to the climate of impunity that effectively places the military officers in the disturbed areas above the law, leads to the lack of public confidence in their actions, and, most importantly, facilitates arbitrary deprivations of life in violation of article 6.

The Code of Conduct for Law Enforcement Officials only foresees the use of deadly force when the officer is threatened with force.¹² Under Section 4(a) of the AFSPA, the officer can shoot when there is an unlawful assembly, not defined as threatening, or when the person has or is suspected of having a weapon. Since “weapon” is defined as anything “capable of being used as a weapon”, so it can be said that this could even include a stone, further bringing out the lack of proportionality between the offence and the use of force by the army.

The AFSPA also violates Article 7 of the ICCPR, which is relating to the prohibition of torture, cruel, inhuman and degrading treatment. The AFSPA has in practice facilitated the torture and ill-treatment of people while in custody. The AFSPA Act grants military officers broad power to detain individuals without providing any safeguards against arbitrary detention, contrary to the State’s obligation to adopt legislative measures aimed at preventing torture. The Act is silent on any of the recognized safeguards, which are therefore not

¹² <http://www.un.org/disarmament/convarms/ATTPrepCom/Background%20documents/CodeofConductforLawEnfOfficials-E.pdf>, last visited on 08.05.2014

available to arrested or detained persons. A person arrested by the military is not only prohibited from having any contact with the outside world, there is also no procedure in place to have the very fact of his or her detention acknowledged. Prolonged detention of the arrested person under this Act may amount to inhuman treatment (or torture, depending on the circumstances) within the meaning of article 7 of the ICCPR. Besides, this type of detention also violates article 7 in relation to the detainee's close relatives who undergo mental suffering and anguish being deprived of information about the whereabouts and fate of their relative.

There are so many reports of torture and ill-treatment, including sexual attacks, in areas where the AFSPA is in force. Glaring example is Manorama case. In the early hours of 11 July 2004 members of the Assam Rifles arrested Thangjam Manorama at her residence in BamonKampu reportedly under the AFSPA as a suspected member of the People's Liberation Army. An arrest memo was given to her family at the time. Later that day, her dead body was found a few kilometers from her residence. There were multiple gunshot wounds on her back and her body also allegedly showed signs of torture. Reports further suggest that Thangjam Manorama was sexually assaulted.

Several provisions of the AFSPA violate the protection against arbitrary detention contained in the ICCPR and other international instruments. Section 4(c) and Section 5 of the AFSPA do not conform with Article 9 of the ICCPR. The provisions of the AFSPA allow for arbitrary detention as they provide for arrest without warrant, including when soldiers have a "*reasonable suspicion*" that a person is "*about to commit a cognizable offence*". This, in effect, constitutes preventative detention rather than detention of suspects. There is nothing in the text of the Act that would require the military officer concerned to assess the reasonableness and

necessity of the arrest in the circumstances. The reasonable suspicion element is seemingly in line with international standards. However, no adequate legal procedures are in place to review that there were objective grounds to justify arrest or detention on these grounds. In addition, the preventive arrest envisaged under the Act and the lack of provisions to ensure the reasonableness of arrest and detention are incompatible with article 9 (1).

In addition, Article 9 of the ICCPR provides that a person must "... *be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*" Truly speaking, security forces rarely produce an arrest memo which explains the reasons for arrest. The arresting military officer is not obliged under the Act to inform the detainee of the reasons for his or her arrest and any charges brought against him or her at the moment of arrest or at any moment thereafter. The absence of any provision to this effect is in clear violation of article 9(2).

The lack of judicial review of the lawfulness of the detention up until the time the detainee is transferred to police custody, which may in practice take several weeks after the initial arrest, is incompatible with the requirements of article 9 (3)

The AFSPA Act allows arbitrary arrest and detention, with no information provided to the arrestee or detainee, with no possibility of independent review of the lawfulness of such detention and no statutory right to receive compensation if the detention is unlawful, in violation of all paragraphs of article 9 of the ICCPR.

Article 26 of the ICCPR, like article 14 of the Indian Constitution guarantees equal protection for all persons before the law. The AFSPA violates this right because the inhabitants of the North East do not have equal protection before the law.

Since 1968 India is also a State Party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 1(1) of the ICERD defines "racial discrimination" widely as including "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms". The ICERD further mandates States Parties "to amend, rescind or nullify all laws and regulations which have the effect of creating or perpetuating racial discrimination".

India signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1997. Although it has not yet ratified it, the very act of signing entails an international obligation not to defeat the treaty's object and purpose. This includes, pursuant to the Convention's preamble, the effective struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the prohibition of racial discrimination, the right to life, the right to liberty and security and the right to an effective remedy have also been recognized as customary international law.

Under section 4(a) of the AFSPA, which grants armed forces personnel the power to shoot to kill, the constitutional right to life is violated. This law is not fair, just or reasonable because it allows the armed forces to use an excessive amount of force. Justice requires that the use of force be justified by a need for self-defense and a minimum level of proportionality. As pointed out by the UN Human Rights Commission, since "assembly" is not defined, it could well be a lawful assembly, such as a family gathering, and since

“weapon” is not defined it could include a stone. These shows how wide the interpretation of the offences may be, illustrating that the use of force is disproportionate and irrational.

The UN Code of Conduct for Law Enforcement Officials was adopted by the UN General Assembly in resolution 34/169 of 17 December 1979.¹³ This code applies to all security forces stationed in the North East since “law enforcement officials” are defined as all those who exercise police powers and it can include military officers. The first article requires that, “Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal act, consistent with the high degree of responsibility required by their profession.” A high degree of responsibility is absent in the troops stationed in the North East. The BSF, CRPF and Assam Rifles are not concerned with the requirements of the law enforcement profession; rather they are operating on a “war footing”.

The second article of the code requires that, “In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.” As mentioned above, multiple provisions of the basic human rights standards in the ICCPR are violated under the AFSPA. The AFSPA encourages the military officers to violate human rights because it allows the armed forces to base arrests, searches and seizures on their subjective suspicion. The armed forces know their actions will not be reviewed and that they will not be held accountable for their actions. They have neither the training nor the incentive to comply with this article of the Code.

¹³ Ibid

Under Article 3 of the Code, "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." Subsections of Article 3 stipulate that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used. This provision aims at establishing proportionality between the use of force by an officer and the use of force by an offender. Under 4(a) of the AFSPA, the military personnel can use force against people who are not presenting any force. Under 4(c) they can use any amount of force necessary to arrest someone who is suspected of having committed, or being about to commit, an offence. Under 4(d), this same excessive use of force can be justified in entering and searching premises without a warrant. Sub-section(c) of the code further clarifies that "in general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender." When armed forces fire upon an unlawful assembly under Section 4(a) of AFSPA, they are violating this basic provision.

The Body of Principles on Detention or Imprisonment was passed by UN General Assembly resolution no. 43/173, on 9 December 1988.¹⁴ This body of principles applies to all persons under any form of detention. It further strengthens several of the points raised under both Indian and international law. Principle 10 states that "Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of the

¹⁴ <http://www.un.org/documents/ga/res/43/a43r173.htm>, last visited on 09.05.2014

charges against him.” The armed forces are not obliged to provide this information under the AFSPA. Moreover, under principle 14, “A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive information promptly in a language which he understands.” Since the armed forces stationed in the North East are foreign to the region they are unable to comply with this principle.

Jeevan Reddy Committee to review AFSPA

In 2004, in the wake of intense agitation that was launched by several civil society groups following the death of Manorama Devi, while in the custody of the Assam Rifles and the indefinite fast undertaken by Irom Chanu Sharmila, the Union Ministry of Home Affairs accordingly set up a five-member committee under the Chairmanship of Justice B P Jeevan Reddy, former judge of the Supreme Court with the remit to review the provisions of the Act and report to the Government on whether amendment or replacement of the Act would be advisable.¹⁵

Having conducted extensive studies and consultations, the 147 page Report of the Committee recommended in 2005 that it had formed “the firm view” that the Act should be repealed as “too sketchy, too bald and quite inadequate in several particulars”.¹⁶

During the course of its work, the committee members met several individuals, organizations, parties, institutions and NGOs, which resulted in the report stating that “the Act, for whatever reason, has become a symbol of oppression, an object of hate and an instrument of discrimination and high handedness.”¹⁷ The report clearly stated that “It is

¹⁵ Report of the Committee to review the Armed Forces (Special Powers) Act, 1958, Government of India, Ministry of Home Affairs (June 2005).<http://notorture.ahrchk.net/profile/india/ArmedForcesAct1958.pdf>, last visited on 10.05.2014

¹⁶ Ibid, p. 74

¹⁷ Ibid, p. 75

highly desirable and advisable to repeal the Act altogether, without of course, losing sight of the overwhelming desire of an overwhelming majority of the North East region that the Army should remain (though the Act should go)."¹⁸ But activists say the Reddy panel despite its recommendation for the 'repeal of the Act' has nothing substantial for the people. The report recommends the incorporation of AFSPA in the Unlawful Activities (Prevention) Act, 1967, which will be operable all over India.¹⁹ The reason for this recommendation was that the Unlawful Activities (Prevention) Act, 1967 is applicable to entire territory of India including the northeastern states, and is more comprehensive in terms of dealing with terrorism.

Besides this, the committee also pointed out that the deployment of armed forces for the said purposes should be undertaken with great care and circumspection. Unless it is absolutely essential for the aforesaid purposes, the armed forces of the Union should not be so deployed, since too frequent a deployment, and that too for long periods of time, carries with it the danger of such forces losing their moorings and becoming, in effect, another police force, a prey to all the temptations and weaknesses such exposures involve. Such exposure for long periods of time may well lead to the brutalization of such forces - which is a danger to be particularly guarded against. Unfortunately, the committee did not discuss the human rights abuse and the ill-treatment meted out with the people, comprehensively.

The panel gave its report in June 2005 but the then Government has neither officially accepted nor rejected its findings with AFSPA still in continuance in the Northeast and now in Jammu & Kashmir too. Reason may be that with

¹⁸ Ibid, p. 75

¹⁹ Ibid, p. 75

rapid rise in terrorism throughout the country in the past couple of months coupled with terrorist violence in many places, especially in the Northeast, the government of India cannot take a hasty decision on the removal of this Act, as it could spell several dangers to the strategic security and territorial integrity of the country.

In addition to the Jeevan Reddy Committee, the Second Administrative Reforms Commission headed by Veerappan Moily in its Fifth Report in June, 2007 has also recommended the repeal of the AFSP Act. The Commission stated that “after considering the views of various stakeholders came to the conclusion that AFSP Act should be repealed”.²⁰

Conclusion and suggestions

The various provisions of the Act, under the light of the Constitution have been analyzed and the legal validity of the Act has been questioned. The Act even failed to meet with the International conventions and treaties that India has signed. Again here, the Part IV of the Constitution comes into picture, where under directive principles of state policy, the State has to foster respect to all the International treaties and conventions that it has signed. Moreover the provisions given under Cr.P.C have never been followed during arrest, search, seizure, and rationale behind applicability of force to disperse an unlawful crowd. The definitions under the Act is so vague that, it gives a huge ambit for the Armed Forces to interpret the definition according to their own whims and fancies and get spared even after committing gross violation of human rights, international treaties and conventions, and well established municipal law just saying that their acts committed are very well in their official course of duty and under procedure established by law, i.e. the AFSPA.

²⁰ Second Administrative Reforms Commission, Government of India. (June 2007). *Public Order*, (Fifth Report, Chapter 7). p. 239. http://arc.gov.in/8threport/ARC_8thReport_Ch4.pdf, last visited on 11.05.2014

A comprehensive outlook and not mere force could solve the problems. But on the other hand, scrapping down the whole Act is not the most appropriate solution in present day situation where the whole country is combating the menace of terrorism. What can be effectively done is to make the Act more humane and reasonable in the eyes of the law. The Act must be made more humane by striking down all its unreasonable and unjust clauses. Some of the suggestions are given below to make the Act more effective –

The section 3 of the Act must be amended in such a way that the declaration of areas as disturbed does not rest with the Center and only the centre. The state governments must have the sole right to declare certain areas or the whole of State as “disturbed” subject to the approval by the State legislative assembly. Therefore, Section 3 of the AFSPA be amended. It makes no distinction between a peaceful gathering of five or more people and a berserk mob. So, even innocents – who have no role in creating a situation that results in that region being called ‘disturbed’, also come under the purview of the law. So the term ‘disturbed’ is to be properly defined and explained and there shall be no room of ambiguity in this regard. The definition of “disturbed area” must be well defined with the declaration that an area is disturbed should not be left to the subjective opinion of the Central or State Government. It should have an objective standard which is judicially reviewable. Moreover, the declaration that an area is disturbed should be for a specified amount of time amounting no longer than six months. Importantly such a declaration should not persist without legislative review.

The section 4 should be made compatible with Article 21 and the Supreme Court’s guidelines of Dos and Don’ts for the army, as held in the *Naga People’s Movement of Human Rights v. Union of India*.²¹ The excess empowerment given to

²¹ AIR 1998 SC 431

the members of the armed forces must be cut down, making their duties reasonable and less discretionary in nature

Section 5 of the Act must be implied in a way that complies with Article 22 of the Constitution. The term 'least possible delay' should be clearly explained. If possible, the persons arrested under the Act are to be handed over to the police within twenty-four hours. The provisions of the Act must be such that they comply with the criminal procedure code so as to assure a fair trial system.

Section 6 should be completely repealed so that individuals who suffer abuses at the hands of the security forces may prosecute their abusers. Basing on mere suspicion alone, Armed forces should not be allowed to arrest or carry out any procedure.

Section 6 of the AFSPA has been overtaken section 197 of the Criminal Procedure Code. Since its amendment in 1991, permission from the concerned State or Central Government for prosecution is mandatory. If the Centre were to give permission under section 197, there is no reason as to why the same will not be accorded under AFSPA.

Amend section 19 of the Protection of Human Rights Act, 1993 which prohibits the NHRC and State Human Rights Commissions from independently investigating allegations of human rights violations by members of the armed or paramilitary forces.



A Requiem for Free Speech

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Keywords

Freedom of Speech, Harm Principal, Offence Principal, Media, Section 66A of IT Act. Terrorism, Pornography, Victimhood.

Abstract

Historically, the emergence of arguments vindicating the right to free speech was based precisely on the recognition that ideas and their expression would unsettle us. Mockery and satire, realism and argument, and even insult, were effective in puncturing the pomp and certitude of accepted orthodoxies and beliefs. To quote Orwell: If liberty means anything at all, it means the right to tell people what they do not want to hear. If the possibility of free speech did not cause social and political ripples, why ever would it need some of the finest intellects to defend it? A populace that is cowering down all the time in the fear of offending this or that person is a populace that will accept other restrictions on its freedoms.

A government afraid of its citizens is a Democracy. Citizens afraid of government is tyranny! " Thomas Jefferson.

Freedom of speech is the political right to communicate one's opinions and ideas to anyone who is willing to receive them. The right to freedom of speech is

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not absolute in any country and is commonly subject to limitations based on the 'harm principle' including libel, slander, obscenity and pornography, sedition, hate speech, classified information, copyright violation, trade secrets and non-disclosure agreements.

The term 'offence principle' is also used to expand the range of free speech limitations to prohibit forms of expression where they are considered offensive to society, special interest groups or individuals. For example, freedom of speech is limited in many jurisdictions to widely differing degrees by religious legal systems¹, religious offense or incitement to ethnic or racial hatred laws.

John Stuart Mill introduced the harm principle, in placing the following limitation on free expression: "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others." Here is an excerpt from the second chapter of his book "On Liberty" (1859): "Let us suppose, therefore, that the government is entirely at one with the people, and never thinks of exerting any power of coercion unless in agreement with what it conceives to be their voice. But I deny the right of the people to exercise such coercion, either by themselves or by their government. The power itself is illegitimate. The best government has no more title to it than the worst. It is as noxious, or more noxious, when exerted in accordance with public opinion, than when in opposition to it. If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. Were an opinion a personal possession of no value except to the owner; if to be obstructed in the enjoyment of it were simply

¹ Van Mill, David. "Freedom of Speech". *Stanford Encyclopaedia of Philosophy*

a private injury, it would make some difference whether the injury was inflicted only on a few persons or on many. But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error."

Unfortunately, in 1985 Joel Feinberg introduced the "offence principle", arguing that Mill's harm principle does not provide sufficient protection against the wrongful behaviours of others. Feinberg argued that the harm principle sets the bar too high and that some forms of expression can be legitimately prohibited by law because they are very offensive.² In my opinion, this has been the slippery slope down which, especially in India, Governments have slipped while dealing with free speech.

Right to take offence

The right to take offence as well as the fact of someone having taken offence should have no role to play in a legal determination of the issue. Your right to be offended flows from your fundamental freedom of thought and conscience just as my right to speak, which may sometimes give offence. At the same time, whether you are offended, should play no part in determining whether I should be allowed to speak.

In Evelyn Beatrice Hall's biography of Voltaire, she coined the following phrase to illustrate Voltaire's beliefs: "I disapprove of what you say, but I will defend to the death your right to say it." Hall's quote is frequently cited to describe the principle of freedom of speech. Noam Chomsky states

² Kenneth Einar Himma. "Philosophy of Law". Internet Encyclopaedia of Philosophy.

that: "If you believe in freedom of speech, you believe in freedom of speech for views you don't like. If you're in favour of freedom of speech, that means you're in favour of freedom of speech precisely for views you despise."³ In India, we see an ever increasing competitive belligerence of different 'communities' with ever increasing sensitivities and propensities to take offence, which range from the farcical to the more serious issue of suppression of political comment. Unlike the American Constitution (after the First Amendment) that imposes strict restrictions on the State from curbing free speech, the Indian Constitution allows curbs on free speech in the name of Security of the state, friendly relations with other countries, public order, decency/morality, contempt of court, defamation or incitement to an offence! Leave alone the State, the above legal position in India has encouraged even corporate groups, religious groups, caste groups and many other interests to cause stifling of free speech.

The buckling under

We had the name of a movie changed from "Billu Barber" to just "Billu" because the barber 'community' was offended. All references to 'Bombay' were changed in the movie "Wake Up Sid" to 'Mumbai' after the MNS threatened to take the law into their own hands. Women's groups demonstrated and Hindu hard-line groups ransacked movie halls showing the film "Girlfriend" for allegedly containing lesbian scenes that were antithetical to 'Indian culture'. A line in a song from the film "Aaja Nachle" was deleted since it used the expression of "samjhe mochi bhi khud ko sonar", references to caste that didn't go down well with the cobbler community. Lyrics in the song "Dhante nan" from the movie 'Kaminey' were modified after release, since oil-

³ Mark Achbar and Peter Wintonick (1992). Manufacturing Consent: Noam Chomsky and the Media.

sellers of India were upset about the use of the words “teli ka tel”. Remember the hullabaloo over Aamir Khan’s ‘PK’ for allegedly hurting Hindu sentiments?

When it comes to books, there is a depressingly long list! Rohinton Mistry’s novel ‘Such a Long Journey’ was cut from Mumbai university reading list after complaints from Shiv Sena on the negative portrayal of Bal Thackeray in the book. Delhi University removed Ramanujan’s essay on the Ramayana from its syllabus and Oxford University Press refused to publish it as neither wanted to hurt Hindu sentiments. The Bhandarkar Institute was burnt in Pune as a protest against James Laine’s book containing references to Shivaji and Shrikant Bahulkar, a historian, thanked in the book, was assaulted and left with a blackened face. Joseph Leyveld’s book on Mahatma Gandhi was banned in Gujarat and Maharashtra as it portrayed Gandhi as a bisexual man especially focussing on his relationship with Herman Kallenbach, a German architect. Arindam Chaudhury could ensure that the chapter on him and IIPM disappeared from the book ‘The Beautiful and the Damned’ by Siddhartha Deb. Hamish McDonald’s ‘The Polyester Prince’ , an unofficial biography of Dhirubhai Ambani, was banned because of references to Rajiv Gandhi.

Over the past decade or so, the freedom of artistic, scholarly and journalistic expression has received steady attacks. Some of India’s most distinguished voices have been the targets. M.F. Husain, Deepa Mehta, Taslima Nasreen, Ketan Mehta, Romila Thapar, Ashis Nandy, Anand Patwardhan, Rakesh Sharma, the young Vadodara art student Chandra Mohan, Nandita Sen, Mallika Sarabhai, S.Z.H. Jafri, Vijay Tendulkar, Habib Tanvir, D.N. Jha, Y.D. Phadke, Salman Rushdie, P.V. Narayanan, Vikram Seth, Jose Periera, Wendy Doniger-the list is long and grows every day.

The Main Stream Media

However, free speech is not the same as free press, although the media would like us to believe so. The truth is that most main stream media – whether print or visual – is deeply compromised by the political-bureaucratic-big business nexus. First the Nira Radia tapes controversy and then the Ruia favours to journalists merely exposed the tip of this iceberg. It is instructive that way back in 1880, this is what John Swinton, a respected journalist, had to say about free press: “There is no such thing, at this date of the world’s history, in America, as an independent press. You know it and I know it. There is not one of you who dares to write your honest opinions, and if you did, you know beforehand that it would never appear in print. I am paid weekly for keeping my honest opinion out of the paper I am connected with. Others of you are paid similar salaries for similar things, and any of you who would be so foolish as to write honest opinions would be out on the streets looking for another job. If I allowed my honest opinions to appear in one issue of my paper, before twenty-four hours my occupation would be gone. The business of the journalists is to destroy the truth, to lie outright, to pervert, to vilify, to fawn at the feet of mammon, and to sell his country and his race for his daily bread. You know it and I know it, and what folly is this toasting an independent press? We are the tools and vassals of rich men behind the scenes. We are the jumping jacks, they pull the strings and we dance. Our talents, our possibilities and our lives are all the property of other men⁴.” In India, the situation today is even worse with owners masquerading as editors and ‘paid news’ replacing advertising. The sight of TV channels

⁴ Labor’s Untold Story, by Richard O. Boyer and Herbert M. Morais, published by United Electrical, Radio & Machine Workers of America, NY, 1955/1979

openly taking up cudgels on behalf of their owners and calling each other names has become all too common. The easily compromised mainstream media can no longer be counted upon to deliver free opinions, free ideas and free unbiased critique of the governing apparatus.

Social Media and the Internet

It is the Internet that broke the back of the pretensions of the main stream media having a monopoly on free speech and the advent of social media has placed free speech right back in the hands of the common citizen. Is it then surprising that in the censorship, monitoring and surveillance of channels of information, it is the Internet- which is the most disruptive and unbound channel of communication, that is the prime target of the Establishment?

On February 6, 2013, Sanjay Chaudhary was arrested under section 66A of the Information Technology (IT) Act for posting 'objectionable comments and caricatures' of Prime Minister Manmohan Singh, Union Minister Kapil Sibal and Samajwadi Party president Mulayam Singh Yadav on his Facebook wall. This arrest follows numerous others in the recent past for political speech through social media: Manoj Oswal for having caused 'inconvenience' to relatives of Nationalist Congress Party chief Sharad Pawar for allegations made on his website; Jadavpur University Professor Ambikesh Mahapatra for a political cartoon about West Bengal Chief Minister Mamata Banerjee⁵; businessman Ravi Srinivasan in Puducherry for an allegedly defamatory tweet against the son of Union Finance Minister P. Chidambaram; two Air India employees, who were jailed for 12 days for allegedly defamatory remarks on Facebook and Orkut against a trade

⁵ However, in this case, see the salutary judgement of the Kolkata High Court of 10th March 2015, upholding the 2012 order of the West Bengal Human Rights Commission imposing penalties on the Jadavpur Purba police for this arrest and awarding compensation to the accused.

union leader and a politician; Aseem Trivedi, accused of sedition for drawing cartoons lampooning the Parliament and the Constitution to depict its ineffectiveness; two young women, Shaheen Dadha and her friend Renu Srinivasan, for a comment posted on Facebook that questioned the shutdown of Mumbai following the demise of Shiv Sena⁶ Supremo Bal Thackeray. The girls were arrested under Section 66A(a) of the IT Act for allegedly sending a 'grossly offensive' and 'menacing' message (one of them had merely 'liked' the Facebook post made by the other!).

The US First Amendment bars Congress from passing any law restricting free speech. It contains a mere 45 words and has stood the test of time and protected free speech against all tyrants since it was made in 1791. Many US Congress members tried to meddle with it or alter it but, fortunately, unsuccessfully. In contrast, the Indian First Amendment made consequent to a very critical article by a communist magazine, that led to its ban which the Apex Court overturned, laid down restrictions that have led to even full censorship at various times, including the Emergency. This intolerance and trampling of free speech took a natural course to draconian laws like section 66A of the IT Act. The IT amendment that included 66A was hurriedly passed in early 2009 without the slightest debate or opposition in our parliament and was, as shown above, repeatedly misused.

Section 66 A of the IT Act

In November 2012 a PIL (Shreya Singhal vs. Union of India) was submitted to the Supreme Court on the grounds

⁶ Again, see the judgement of the Bombay High Court of 17th March 2015 in this case that the provisions of Section 124 A of the IPC cannot be invoked to penalise criticism of the administration or the government. The court said that even strongly worded comments used to show disapproval of the government's actions will not amount to sedition unless they incite the public to violence.

that Section 66A of the IT Act curbed freedom of speech and expression and violated Articles 14, 19 and 21 of the Constitution. The petition further contended that the expressions used in the Section were “vague” and “ambiguous” and that 66A was subject to “wanton abuse” in view of the subjective powers conferred on the police to interpret the law. In reply to the petition, the Union government defended the constitutionality of Section 66A relying first on the “Advisory on Implementation of Section 66A of the Information Technology Act 2000” issued by the Department of Electronics and Information Technology on January 9, 2013 to the Chief Secretaries and the Director General of Police of all States/UTs.

The advisory had asked State governments not to allow the police to make arrests under Section 66A of the IT Act without prior approval from an officer not below the rank of Inspector General of Police in the metropolitan cities or Deputy Commissioner of Police or Superintendent of Police at the district level.

However, this advisory was clearly not sufficient as political interference in law enforcement and the propensity of police to bow to pressures is well known. Soon after the 2014 general elections, a student was arrested after the Hud Hud cyclone for some comments in Guntur. He had made a post stating he loved Hud Hud because it proved there was God and it brought destruction to those who didn't vote for YSR Congress! Should the CID, AP have arrested a student for this stupid comment? It may sound offensive or obnoxious but what exactly is wrong in making stupid comments? Our politicians make stupid comments every day. Sensible people would either laugh or ignore such silly comments. This is how politicians misuse law and police

waste their precious time on frivolous nonsense.

The Centre had further sought to justify the legality of Section 66A, introduced in the 2009 amendments to the IT Act, on the ground that it had been taken from Section 127 of the U.K. Communications Act, 2003. Section 66A(a) referred to the sending of any information through a communication service that is 'grossly offensive' or has 'menacing character'. In the U.K., Section 8 127(1)(a) makes the sending of 'matter that is grossly offensive or of an indecent, obscene or menacing character' an offence. The drafters of the 2009 amendments to the IT Act in India presumably omitted the words 'indecent, obscene' as Section 67 of the IT Act already makes the publishing or transmittal of obscene material in electrical form an offence. The meaning of the term "grossly offensive" in both Section 66A(a) and Section 127(1)(a) is crucial and remains yet undefined in India.

In a 2006 judgment in *Director of Public Prosecutions v. Collins*, arising out of racist references in messages left by a constituent on the answering machine of a British MP, the House of Lords laid down a seminal test for determining whether a message is 'grossly offensive.' It agreed with the formulation by the Queen's Bench Divisional Court that, in determining whether a message is 'grossly offensive' the "Justices must apply the standards of an open and just multi-racial society, and that the words must be judged taking account of their context and all relevant circumstances." The House of Lords added that "there can be no yardstick of gross offensiveness otherwise than by the application of reasonably enlightened, but not perfectionist, contemporary standards to the particular message sent in its particular context."

Most importantly, the House of Lords held that whether a message was grossly offensive did not depend merely on the

degree of offence taken by the complainant but on whether it violates the basic standards of an open and just multi-racial society. This is considered a 'reading down' by the House of Lords of Section 127(1) of the U.K. Communications Act 2003, a hugely controversial legislation in the U.K. for its negative effect on free speech. It is particularly relevant in India where the 'hurt sentiments' of particular groups (or of individuals purporting to represent particular groups) is viewed by the state as sufficient to take criminal action against speech and expression.

Section 66A(b) was even more problematic than Section 66A(a) because it made an offence of sending through a computer resource or communication device "any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device."

Surely it could not have been a legitimate legislative objective to restrict freedom of speech in order to prevent annoyance or inconvenience? Can a democratic society criminalise the causing of annoyance, inconvenience, insult or ill will? Causing insult or ill will or enmity could be a criminal offence if it amounts to defamation. However, insulting someone or causing inconvenience *per se* cannot surely be a crime in itself either in the real or virtual world.

While Section 66A(b) of the Indian IT Act had clubbed causing annoyance and inconvenience in the same Section as criminal intimidation and made it subject to the same punishment, Section 127(1)(b) of the U.K. Communications Act is limited to the sending of a message that is known to be false "for the purpose of causing annoyance, inconvenience

or needless anxiety to another.” Section 127(1)(b) itself has been copied from the Post Office (Amendment) Act 1935 in the U.K. and it is very surprising that in the Internet age, not only have British lawmakers sought fit to copy from what is clearly outdated legislation, even worse, their Indian counterparts had even copied the British mistake of applying 1935 legislation for one-to-one postal communications to social media despite the much greater adverse effect on free speech.

In its landmark judgement on March 24th 2015, the Supreme Court ruled that Section 66A of the Information Technology Act, 2000 was violative of Article 19(1)(a) of the Constitution and not saved under Article 19(2) and struck it down in its entirety. Section 66A was ostensibly introduced to address the challenges of cyber crime such as publishing sexually explicit materials in electronic form, data leakage, e-commerce frauds and identity theft. However, such was the over-breadth of the section on freedom of speech and expression that the Supreme Court rightly held it unconstitutional as “it takes within its sweep protected speech and speech that is innocent in nature and is liable therefore to be used in such a way as to have a chilling effect on free speech.”

Section 69A and the Information Technology (Procedure & Safeguards for Blocking for Access of Information by Public) Rules 2009 were held constitutionally valid. Section 79 was held valid subject to Section 79(3)(b) being read down to mean that an intermediary upon receiving actual knowledge from a court order or on being notified by the appropriate government or its agency that unlawful acts relating to Article 19(2) are going to be committed then fails to expeditiously remove or disable access to such material. Similarly, the Information Technology “Intermediary Guidelines” Rules, 2011 were held valid

subject to Rule 3 sub-rule (4) being read down in the same manner.

But one step forward and two steps backwards!

However, on May 14, 2015, the same Supreme Court said that even though freedom of speech should be given a broad canvas, it is not absolute, and mentioned the concept of “contemporary community sensibility”! The court also hinted that it will decide the limit of freedom in a literary work!

Marathi poet Vasant Dattatraya Gurjar had written a poem ‘Gandhi Mala Bhetala Hota’ (‘Gandhi Met Me’) in 1984. The Bank of Maharashtra Employees Union in 1994 published the poem in its in-house magazine. On December 10, 1994, an organisation called Patit Pawan Sanghatana had filed a complaint with police in Pune, alleging that the said poem was obscene and that its contents were likely to lower the image of the father of the nation. Devidas Ramchandra Tuljapurkar, General Secretary of the Bank Union and the magazine editor, had been facing charges u/s 292 IPC of publishing the ‘vulgar and obscene’ poem since then. The Emblems and Names (Prevention of Improper Use) Act which prohibits the pictorial use of some personalities, including Mahatma Gandhi and Chhatrapati Shivaji, and names of some international organisations also, too was cited in the arguments before the court. The difference between “freedom of idea” and “freedom of words” has to be understood, the court said, and further added that while projecting a view, one cannot put “abusive” words in a person’s mouth to “accentuate the sensationalism”.

The difference between this case and the famous US case of Hustler magazine’s Larry Flynt vs Jerry Falwell is stark. Larry Flynt had an everyday target of offending some public figure or the other. An ad his magazine carried lampooned

a religious leader of his “first time” through incest. Falwell went to court and the defamation case went right up to the US Supreme Court. The final court ruling was that people reading the offensive ad were well aware that it was a parody and no one would believe it to be true and that Flynt exercised his free speech rights to lampoon a public figure. The US Supreme Court ruled that defamation must be “believable” with “malice” and must cause actual damage to a person in terms of reputation or other losses. In India, it is the public figures including media who often spew the most hatred with obnoxious and defamatory statements. Much of the “reasonable restrictions” of free speech as legislated by our governments and supported by our courts stems out of protecting ‘religious beliefs’ and ‘community sentiments’. The legislators enjoy completely free speech in parliament and are protected from prosecution for the most horrible statements. Do they believe other Indians do not deserve the same freedom? Must we exercise special caution and solicitude when we choose to parody or mock “historically respectable personalities”? Do the boundaries of our constitutional right to freedom of speech and expression vary with *whom* it is that we are talking about? Are there things that we are permitted to say about ordinary people, but are barred from saying about Mahatma Gandhi?

To understand the significance of this case, we must locate it within the history of Indian obscenity law. Section 292 of the IPC was used to unsuccessfully prosecute Ismat Chughtai and Sadat Hasan Manto. After the framing the Constitution, Section 292 was challenged on Article 19(1) (a)'s guarantee of the freedom of speech and expression. However, in *Ranjit Udeshi vs State of Maharashtra*, the constitutionality of Section 292 was upheld. Called upon to provide a definition of obscenity the Apex court adopted an 1868 English standard, popularly known as the “Hicklin

test": matter was obscene if it had "a tendency to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort might fall."

Ironically, by the time *Ranjit Udeshi* was decided in 1965, England, which had given the Hicklin test, had abandoned it. In practice, it was seen to create many problems. The words "deprave" and "corrupt" were unconscionably broad. The test meant that trials would be reduced to witnesses pointing out specific words or phrases that they found "obscene". In Manto's trial, for instance, the prosecution tried to argue that the word "bosom" was obscene, and accordingly saw its case thrown out of court. And furthermore, by choosing as its subject "those whose minds are open to such immoral influences", the test judged obscenity from the point of view of the morally "weakest" and most corruptible constituency of society, thus setting the bar for obscenity very low indeed. As the decades progressed, the Indian Supreme Court began to realize as well that the Hicklin Test was unsuitable for a society that was never Victorian, and had long left such sensibilities behind.

In a series of cases, the court shifted the emphasis from the most corruptible constituency, to the "average, strong-minded and reasonable person." In a landmark judgement called *Khushboo vs Kanniamal*, while quashing criminal complaints against Khushboo for her statement supporting pre-marital sex, the Supreme Court observed that the very purpose of free speech was to peacefully challenge dominant societal norms. In 2014, the Supreme Court finally got rid of the archaic Hicklin test, replacing it instead with the substantially more progressive American obscenity standard, developed in *Roth vs United States*. According to *Roth*, obscene matter is that which "to the average person,

applying contemporary community standards... the material, taken as a whole, appeals to the prurient interest." The *Roth* test is substantially more free speech-friendly than *Hicklin*, because it does not cover all cases of moral depravity or corruption caused by "obscene speech". Rather, speech must – from the point of view of the average person – appeal to the "prurient interest".

Unfortunately, in its 14th May, 2015 decision, the Supreme Court has now held that a distinct standard of obscenity would apply to "historically respectable personalities." It did so by adopting the first part of the *Roth* test – "applying contemporary community standards", but entirely ignoring the second – that "the material... appeals to the prurient interest." But to what is it that contemporary community standards are meant to apply? Unfortunately, the judgment is silent on this point. Unfortunately, the court also failed to clarify what it meant when it held that "contemporary community standards" would apply with "greater degree and in an accentuated manner". Does it mean that the court will no longer accept long-established, statutory defences to obscenity charges, such as the social or aesthetic qualities of the work in question? Or does it mean that it will lower the evidentiary standards required to prove what community standards might proscribe in a particular case? Without any guidance upon what the community standards are meant to apply to (since the court dispensed with the requirement of prurient interest), or what it means for community standards to apply in an accentuated manner, and most of all, without any satisfactory definition of "historically respectable personalities", the court has opened another door for cases brought by organisations on behalf of "historically respectable personalities", that will cast a severe chilling effect upon political satire and other areas of political speech. But surely, political and social iconoclasm is one

of the defining features of a democratic community, as is a healthy scepticism and disrespect of its idols?

This brings us to the most troubling aspect of the Supreme Court's decision: the idea that there are certain individuals, who occupy such an exalted place in national consciousness, that they are simply too precious to be sullied with disrespect or mockery. Such reasoning, however, is contrary to the most basic purposes of free speech in a democracy: to question, criticize and undermine the most dearly held beliefs of the majority, to use the medium of expression to challenge the most deeply entrenched moral and social norms; in short, to offend, shock or disturb. Seventy years ago the great American judge, Robert H. Jackson, wrote that "compulsory unification of opinion achieves only the unanimity of the graveyard."

The ongoing arguments in the Apex Court in another case filed by Dr. Subramanian Swamy and others challenging the constitutional validity of sections 499, 500 of IPC pertaining to criminal defamation are of great interest. The petitioners have argued that the sections are violative of free speech and that there was adequate remedy under the civil law. Attorney General Mukul Rohatgi has told the court that civil provisions cannot be an effective deterrent against defamation in India where courts take up to 20 years to decide such cases! The court was also told that with the advent of new technologies acts like online defamation cannot be countered only by civil defamation. One has to watch as to how the constitution bench will decide this case.

Pornography and free speech

How fraught is the relationship between the State's role to maintain order and the rights of the citizens to live their lives with certain freedoms! Could we have imagined that Article 21 of the Constitution would be invoked to protect the

privilege of the citizens to watch porn? When on 30th July 2015, the Government banned 857 pornographic websites under section 79(3)(b) of the IT Act, the resulting public outcry immediately made the Government backtrack with the Attorney General Mukul Rohatgi telling the Supreme Court on 10th August 2015 that the Government had no desire to do moral policing and that only sites containing child pornography would be blocked! It is a different matter that the order to the ISPs had been based on the list of 857 websites provided by the petitioner Kamlesh Vaswani who had filed a PIL in the Supreme Court seeking a blanket ban on pornography. A Supreme Court bench had then told Additional Solicitor General Pinky Anand that a complete ban on pornography would amount to a violation of Article 21! The bench had also remarked that the petitioner had failed to get the websites blocked.

Leave alone the sheer futility of trying to block over 2 crore pornographic sites, the fact is that even the order u/s 79(3)(b) can only block open access and people can freely access the same sites through virtual private networks. It is instructive, however, to see the volume of outrage in this case compared to the muted responses to other such curbs on free speech!

Further curbs on free speech

In a different assault on free speech, but with a similar ideology that underpinned the 14th May 2015 Supreme Court judgment, in the SC/ST (Prevention of Atrocities) Amendment Ordinance 2014 passed by the Government on 4th of March 2014 and which is proposed to be replaced by The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014 that was introduced in the Lok Sabha by the Minister of Social Justice and Empowerment, Mr. Thaawar Chand Gehlot on July 16, 2014, a clause 3(1)

(v) is added to the definition of an 'atrocities' punishable by a sentence of up to 5 years as follows : 'by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes.' Thus, a new offence is sought to be created by which even a deceased person is beyond enquiry or criticism because any such criticism can be taken as disrespect! This legislation takes pandering to communal sensitivities to a new low. Any historical review of policies and performance of a political person 'held in high esteem' by SC/ST communities would now be impossible unless it is a hagiography!

Free speech and terrorism

Edward R. Murrow has famously said: "A nation of sheep will beget a government of wolves." Governments always try to restrict freedoms in lieu of elusive securities. Also, society has to ever balance such restrictions with the real or perceived threats to security. To quote Benjamin Franklin, 'Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.'

However, considering the possible range of expression -- including, hate speech that incites violence -- it becomes apparent that even a tolerant society comes under pressure to put limits on freedom of expression. Therefore, much of the law relating to free speech is concerned with trying to strike the right balance between freedom of expression and the abuse of that freedom in a way that harms society. Article 10 of the European Convention on Human Rights itself recognises the need for some limits on free expression. It provides, however, that limits can only be imposed in order to achieve certain specified aims, and only insofar as is necessary to achieve those aims. The Convention lists several permitted reasons for limiting free speech, including

national security, the protection of health or morals, and protection of peoples' rights and reputations.

The British Government introduced a new counter terrorism bill in 2014. The trigger was apparently the voice of a British ISIS terrorist calling on "brothers" in Western countries to commit domestic atrocities. It convinced the government that 'concerns about civil liberties and freedom of speech could no longer be allowed to interfere with security operations.' If the measures are passed by British Parliament, a raft of institutions will be forced to attempt to prevent radicalization actively for the first time. Universities, prisons, schools and local councils will be legally required to monitor those in their care and try to interdict extremist speakers and would-be terror recruiters.

As well as restricting freedom of speech, the sweeping new powers would also curtail the free movement of suspected terrorists, who could be stopped from leaving the country, or from returning to the country or even forced to live in a sort of internal exile away from their associates. Police and Border Force officers will be granted new powers to seize passports and tickets from British citizens at ports and airports if they believe they are travelling to engage in terror-related activities. British citizens would also be barred from returning to the country if the authorities suspect they have been involved in terrorism abroad, effectively leaving them stateless. Suspected jihadis who have been allowed to return to Britain are likely to be the subject of toughened monitoring measures, which can force them to move to another part of the country, live at a specified address, and even ban them from using the Internet. Internet service providers also would be forced to create, store and make available databases of IP addresses which could help the security services monitor the past behaviour of new suspects.

In India, though the Supreme Court struck down Section 66A of the IT Act, it is also being argued that the judgment has left a vacuum in the IT Act. The apex court had observed that there was a clear difference between speech on the internet and other media and hinted at a different set of penal provisions to govern the virtual space. However, no further analysis of the penalties currently prescribed was done by the Supreme Court, leaving ambiguity about whether such offences would remain under the purview of the Indian Penal Code or whether it would require drafting a new set of penalties for such offences. Because the web is prone to offences from terrorists also, along with hackers, virus attacks, piracy, spammers, child pornographers and so on and with India ranking third in the number of Internet users (behind China and the US), it would definitely be felt necessary by law enforcement agencies to regulate the 'e-space'. Whether the government counters the judgment with a legislation to negate its effect would be interesting to watch out for.

It can be argued that ideologies that are themselves intolerant of dissent seek freedom of expression and use the said freedoms to suppress the very same freedoms. In this connection, recall Karl Popper's prophecy in 1945: "Unlimited tolerance must lead to the disappearance of tolerance. If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them. — In this formulation, I do not imply, for instance, that we should always suppress the utterance of intolerant philosophies; as long as we can counter them by rational argument and keep them in check by public opinion,

suppression would certainly be unwise. But we should claim the right to suppress them if necessary even by force; for it may easily turn out that they are not prepared to meet us on the level of rational argument, but begin by denouncing all argument; they may forbid their followers to listen to rational argument, because it is deceptive, and teach them to answer arguments by the use of their fists or pistols. We should therefore claim, in the name of tolerance, the right not to tolerate the intolerant. We should claim that any movement preaching intolerance places itself outside the law, and we should consider incitement to intolerance and persecution as criminal, in the same way as we should consider incitement to murder, or to kidnapping, or to the revival of the slave trade, as criminal."⁷ The political discourse in France that culminated in the *Charlie Hebdo* massacre is a case in point. In my personal view, therefore, terrorism should be the sole exception to the limits placed on the State in its ability to curb free speech.

The Malaise of Victimhood in India

However, in our country the attacks on free speech are less due to the terror threat and more due to a psychological malaise of a pretend victimhood that is spreading and is being eagerly embraced by groups across our society. It reduces our capacity to think and speak straight, whether about art or religious practices or our shortcomings as a nation. This is also because the public authorities who are supposed to guarantee our freedoms of speech and expression—elected politicians, the courts and we the police—have perfected over-solicitousness to the growl and bluster of any and every offended group. The general presumption is that the offended are in the right. On the force of this presumption,

⁷ Karl Popper, *The Open Society and Its Enemies* (1945), Vol. 1, Notes to the Chapters: Ch. 7, Note 4

we have lost our understanding of the basic purpose of free thought and its expression.

Do you remember Professor T J Joseph of the Newman College, Thodupuzha, Idukki district of Kerala whose right hand was chopped off by 'aggrieved' members of a 'Popular Front of India' on July 4, 2010 for setting up of an internal question paper for B.Com students that had a question that 'insulted' Prophet Mohammed? On April 30, 2015 thirteen of the accused were convicted, while eighteen were acquitted in an NIA court. It is not the saddest part of the story, as far as policing is concerned, that the professor suffered horribly all these years or that his wife committed suicide during this period or that he was dismissed by the college and could manage to get reinstated by the Court only on the day of his retirement but that after being a victim of this barbaric medieval 'punishment', the police had arrested him, the victim, for an offence u/s 295 IPC (for which he was duly acquitted later!). Those of us who keep congratulating ourselves on our relative liberal values when compared to our immediate neighbours should ask ourselves as to how our behaviour was any different from that of the Bangladesh IGP AKM ShahidulHoque who on 10th August 2015 asked the 'secular bloggers' of Bangladesh not to "cross the limit" while writing on religious issues even as his police made no headway in the brutal murder of the fourth blogger (Niloy Chakrabarty) in 2015 by hacking by Ansar-Al-Islam, the Bangladesh chapter of Al-Qaida.

Historically, the emergence of arguments vindicating the right to free speech was based precisely on the recognition that ideas and their expression would unsettle us. Mockery and satire, realism and argument, and even insult, were effective in puncturing the pomp and certitude of accepted orthodoxies and beliefs. To quote Orwell: If liberty means

anything at all, it means the right to tell people what they do not want to hear. If the possibility of free speech did not cause social and political ripples, why ever would it need some of the finest intellects to defend it? A populace that is cowering down all the time in the fear of offending this or that person is a populace that will accept other restrictions on its freedoms. It is not accidental that most of the attacks on free speech have been orchestrated by groups who want to impose their world view on the rest and are backed by one political formation or the other. These attacks draw on the infinite Indian capacity for political opportunism. The ability to discover offence, to set oneself up to harass such "offenders", and to mobilize popular fury against them, have become skills essential to mustering support for political purposes.

As police officers, there will be many occasions when pressures will be put on us to take deterrent 'action' on such 'offenders'. It is entirely upon us as to how we act to uphold the letter as well as the spirit of law. I wish to recount an anecdote in this regard. I was Commissioner of Police in Vijayawada. The opposition party took police permission to take out a political rally. The permission was granted, with certain restrictions, especially with respect to any obstruction to the flow of traffic. During the rally, in one of the locations, some of the women in the rally enacted a drama of beating a man dressed up as the Chief Minister with brooms. In the evening leaders of the ruling party came to me and demanded that I arrest all the participants of the rally for insulting the Chief Minister. I held to the position that the police was not the arbiter of good taste and political dissent could not be treated as an offence, especially when the rally had violated none of the conditions laid down in the permission granted to them. The DGP felt otherwise and I was asked to proceed on transfer, which I did forthwith.

I often hear officers complain as to how vulnerable they themselves are to unfair criticism and they compare their lot with the protective umbrellas of 'privilege' for legislators, 'contempt' for the judiciary and 'free speech' for the media. To them, I can only say that when we, the constitutionally protected Service, do nothing to stop the myrmidons of repression of free speech, we too contribute to making of a *volksgeist* where attacks on free speech will continue to seriously undermine our most fundamental freedom to think, live and define ourselves as we choose, and to honour the right of others to do the same. I can't resist ending this article with Martin Niemöller's famous quote: "First they came for the Socialists, and I did not speak out-- Because I was not a Socialist. Then they came for the Trade Unionists, and I did not speak out-- Because I was not a Trade Unionist. Then they came for the Jews, and I did not speak out-- Because I was not a Jew. Then they came for me--and there was no one left to speak for me."

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Pragmatic Approach Towards Youths In 21st Century

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Keywords

Policing, Youths, Moral Decay, Transformation, Contemporary Era.

Abstract

Transforming mode of policing with the dynamic nature of society is apt in curbing modernized crimes. In order to curtail deviance, policing needs to be malleable to circumstances. One of the major concerns for law enforcement is substantial youth's contribution in rising crime rates in contemporary era. This paper focuses on new lifestyle adopted by Indian youths under the shades of growing economy which is potentially unfolding the criminality. The intrinsic nature of moral decays in modern lifestyle of youths needs to be scrutinized from fresh perspective. Suave policing for contemporary youths bears lot of promises in exploring areas of intervention in techno age. This paper addresses potential risk factors emerging during the young period and researching youth's existence judiciously with subsequent policing with respect to cultural transformation in 21st century.

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Introduction

The stratification of the globe based on developmental standpoint places India in the developing category. A state of governance in which policies aiming towards development is bringing in adoptable dynamic trends at all quarters of existence. Youth as crux of governance machinery is claiming persistent attention in spheres of growth as well as deviance. As per the NCRB 2012 report, the crime rate of juveniles is 2.3 percent of all reported cognizable crimes which is in line with ever rising delinquency rate over the previous years. All over the world, violence is major cause of deaths, especially in age group of 15-44 years old (WHO report, 2010). The emergence of focus on the youths as perpetrators or victims is relevant for any nation's strategy for achieving peace and modicum of law and order.

Policing is a basically social driven phenomenon; it is preferably proactive and dutifully reactive stance of monitoring social tribulations. Ideal policing at one point of time can never be a fixable solution for different time, place and situation. Hence, policing needs to adjust with changing frame of minds, and the mind frames are driven by incoming waves of modern trends. In contemporary era youths should be policed keeping their extent of compliance with new lifestyle, not to favor their suitable way of life but creating an ambiance of consideration for social harmony and crime control in technologically embryonic epoch.

Looking back at the historical response towards changing trends in society, there appeared to be 'moral panic' amongst the policy makers in addressing youths as target group which is to be dealt with firm grip of law enforcement. Short term political populism and 'media moral panic' instigated policies

routing towards youth crime problem leading to custody at tender age (Goldson, 1997). Handling of youths in stern fashion is not justifiable on grounds of maturity attained to understand the gravity of situation. Researches demonstrate that youths perceive limited rationality in offending by a limited number of risk perceptions and lending more weight of belief on perceived benefits than costs (Dhami and Gracia-Retamero (in press); Johnson and Payne, 1986). This demands a closer look into the causation of anomie and the consequent handling of youths in pragmatic manner by the law enforcement.

The unpreparedness of governance to the consequences of new trends induced transformation has made the youth populace a scapegoat. The unleashing of moral panic in compliance with the dynamism of trends in society demands contemporary policies and law enforcement to buckle up against the deep rooted moral decays of youths in modern era. On contrary to the 21st century youths transformation, there lies a dilemma of traditions that are persistent in keeping violence as tolerating and imposing behavior as a gender stigma. Traditional values in upbringing are building blocks in determining behavior of individual. To break the chain of conforming to certain set of values in spite of its fallacies, the fear of social desertion forces individual in adhering to the violence compliant culture (Durlauf, S.N & Blume, L. E, 2008). Policing as the first responder of Criminal Justice System bears huge responsibility in affirming the apt mechanisms put into practice for youths in 21st century.

Risk factor Vs Case studies approach

During 1990's, the criminological focus has shifted favorably towards risk focused researches (Farrington, 1999). Till so far, one of the foremost exhaustive study in ascertaining the

risk factors for youths is 'The Cambridge study in delinquent development' that came up with following major risk factors-

- Low family income and poor housing
- Low intelligence
- Large family size
- Parental problem behavior

Risk factors are termed to be the state of placing an individual's involvement in crime (Bowey & McGlaughlin, 2006). This research has shifted the focus of policies of crime reduction throughout the world from social risk elements to child's immediate social environments.

The deviant youth identity in midst of criminal justice system shortcomings in modernizing India at social level is more of a tolerating phenomenon than issue of in-depth research. As emphasized by Derrick Armstrong et. al (2008) that youth crimes are perceived by major sect of research scholar in terms of risk factors and quantitatively correlating the variables in depicting degree of delinquency, but there is urgent need to shift focus from risk factor indicators to the qualitative approach. Researches quantitatively exploring significant relation between risk factors and delinquency yields results limited on replicating due to diverse cultural paradigms of territories and this shortcoming can be filled by qualitative methods of evaluating criminogenic propensities by case study methods.

Statistics are the clearest depiction of crime patterns and to set objectives before getting down to drafting policies. Statistics of Risk factors emulates viable measure towards formulating preventive policies for example, statistics on firearms in society found that 75% of all the firearms in world are owned by civilians and out of which only 9%

are licensed under authorities (Small Arms Survey, 2007). Another risk factor with similar hazardous capability is pesticide which was found to account for more than one third of deaths all over the world due to suicide. Researches in understanding youth's criminogenic propensities will yield valuable resource data for policy makers. Evidence suggested that reduced access to firearms and pesticides might lower the incidents of homicides amongst youth in age group of 15 to 29 years. (WHO report, 2010).

On the other hand, government think tanks should consider the limitations hidden under total reliance on statistics and the ultimate objectives of crime governance could not be achieved, if crime recording is not complemented with qualitative methods of exploring youth's criminalities.

The statistically assumed predictive reach of describing deviancy is not ultimate indicator of criminogenic involvement of potential offender (Katz, 1988). The solution to youth's deviance and intervention rests in socio-historical study that will be useful in describing the negotiation made by youths at various levels of life, specifically getting in and out of crime. Simply formulating policies based on statistical outcomes of risk factors have already roused with failed attempts in addressing youth criminality. The laws born out of the dynamic shifts in society too hold a flexible stance where a cognizable act was once existed as part of social dialect. The frame of mind of researcher as a background supplier of finding to the policies and finally implemented by law enforcement carries huge responsibility beyond reliance on statistics only and stride forward carrying evaluation research as tool in hands of criminologists to qualitatively justify youth crimes.

Risk factors are not ultimate indicators of future criminal behavior or criminogenic involvements. Negotiations made

are based on the understanding of children and youths about how they view and reflect upon the immediate setting around them. Consideration of Risk factors are potentially explosive in nature in cases where, if clear reasons for linking criminality and risk factors are not depicted scientifically, may lead to labeling of particular segment of society as deviant lot. Another downfall in considering risk factors as indicators of criminality in immediate future is the preconceived notions or beliefs of researcher that sometimes up to immense degree persuade the policies formulations. Hence, the focus to haul out explanation of youth's deviance by individualistic case study approach and implementing fixable strategies to the wide youth population demands considerable time and resources investment but certainly catalyses existing youth policies outcomes.

Why 21st century Youth lack Moral Fiber?

It's a routine phenomenon for today's young generation to be scolded by their parents for the lifestyle lived and lacking Moral Fiber, but there lies underneath the rationale for saying so. There lie numerous elements in forming contemporary youth's character, which is perceived to be contrasting in nature what preceding generation presumed to be right for youths. Below is some of the impetus which is majority causing a nationwide anxiety for the youth's ethics at risk:

Cybercrime and youths

Easy accessibility and appealing nature of virtual world & Internet made it a catch for 21st century youths. Due to online surfing and zeal to look for one's identity, many youths fall prey to cyber sexual predators and stalkers. Majority of youths are members of some or other kinds of social networking sites which is potential ground for pleasure seekers either in form of morphing photos or posting indecent comments to

harm other's dignity. Risk taking and youths with compulsive behavior are more likely to look for opportunities such as viewing online pornography, harassment, bullying and computer hacking causing loads of distress for the victims who are directly or indirectly involved in act. Cyber world rendered lot of deviancy persisting as casual affair for contemporary youths. In the year 2012, 65.2% under IT act and 45.5% under IPC of youth's arrests were made for commission of cyber crimes. The involvement of youths in cyber crime commission is 60.01% (1243 arrested were youths out of total 2071 arrests made in 2012 for cyber crime) (NCRB, 2012). The comparative trends of youth's involvement in committing cyber crimes are on grave rise.

Employment factor a great cause

Lack of equal opportunities for all is one of the major reasons for creating imbalance in society leading to youth's unrest. The frustration of seeing nepotism in job appointments and corruption in administration add fuel to the fire of youth's resistance in taking social responsibility. The presence of many unemployed youths in tiring searches for jobs creates huge burden on youths psychology to earn capital and support family. The lack of attainment of relevant job leads the youth to commit antisocial acts as detest towards social injustice by not proclaiming his/her right to earn honestly. Countless cases are visible through crime reports of youth's as perpetrators of kidnapping the wealthy family's members for ransom, chain snatching by youth biker gangs and ultimately making a livelihood out of being a gangster or local Don. It is evident from the NCRB statistics that incidents of delinquency from the year 2002 to 2012 posted an increase of more than 150 percent (NCRB, 2012). If Job opportunities are there as equal opportunities for all, would an obedient son who wants to support his family, choose to bring shame to his people and live with a socially degraded image and risky life...?

Easy accessibility of Health Detrainers

Easy availability of cigarettes and beverages caused many youths in indulging to consume it, calling it an act of coolness and a get-together necessity. According to a study conducted by Aniruddh Naik (2012, June 5), 45% of class 12th students in metro cities consume alcohol at least 5-6 times a month. According to a study conducted in top public schools among 1000 students (Bhuvan Narang, 2009, Feb 6), 22% believes having one drink at parties is something everyone does, 16% thought drinking is 'cool' and almost 80% hostels students in metros are alcoholic. Although, youths feel that their career won't going to suffer because of drinking alcohol or smoking cigarettes. Psychologists promulgate that alcohol consumption leads to buildup of either assertive or submissive behavior. This kind of behavior sets in careless attitude by creating own little world and decisions in submission to low self-esteem and rage against life problems that makes the person incapable in coping with real life situation (Richard, J. B, et. al, 1999). The consumption of alcohol as a fun activity ultimately leads to addiction. Most of the grievous accidents have happened involving youths flouting safety rules while under the inebriant state. Apart from recklessness under the alcohols influence, another aspect is violence due to inebriant state which was found to be cause of 30% of deaths all over the world. Reduced outlet retails of alcohol sellers have been found to be resulting in lesser youth violence incidents (Livingston, M., Cherpitel, C. I., & Rossow, L., 2007).

The role of dedicated parenting and peer factor plays crucial role in pushing the youths towards self restrain from short term pleasures and living disciplined life for the good of society (Mark Warr, 1993).

Wild Westernization and distorted mind frame

The easiest and safest way towards better lifestyle in developing country is following the trends set by developed countries. The way they talk, wear cloths, maintain relations and professing open frame of mind is widely followed by Indian youths showing of it as way better than fostering age old cultures. However, these western values are creeping slowly, bringing attitudinal changes leading to moral decays. The modern families where both parents are working are not giving enough time to their children at home, leaving them grow in scarcity of love and affection. The rising numbers of divorce cases are not taken too seriously till now which is an indicator of weak bonding under the shades of westernization. A study conducted in New Delhi showed thousand of divorce cases are registered monthly and most of them fall in bracket of age group 20 to 25 years old couple (Muneeza, N., 2011). This is, however, not meant to blame the western culture but a realization of the fact that wild following is causing damage in relations and the reckless life style creating a mindset of lacking the sense of belonging among youths. A youth with rational frame of mind in developing in life while preserving social integrity strikes a balance of keeping ethics alive.

Devastating effect of Media on Youth

Youth is in a stage of life to find his/her true identity and acceptance in society (Erickson, E. H, 1994). This factor is used as weapon by media to project youth as volatile, revealing, risk taking and abusive. Children as early as age of 5 are found to be abusive and coarse during communication. Violent video games, easily accessible pornography and action movies are playing havoc on psychology of children (Strasburger, V. C, 1993). The

imitation intensity is so deep that the thrilling moments on screen are perceived to be the best way to deal with real life situations. The Commercialized Media lack moral fiber in restricting itself from any level of expression as far as it fetches lump of money from market. Contemporary youth is vulnerable in hands of the media which is portraying life situations in erroneous manner leading them into immoral activities.

Volatile Peer Groups

Peers are indicators for children to evaluate themselves, and at the stage of forming identity; peers become vital part in framing the personality of a child (Farmer Val, 2010). Poor academic achievements and lack of family love and support forms deviant peer group. The group formulation is in tone with finding a companion sympathizing with mutual unsociable conduct. Peers presence in life of youth is vital point to explore the extent of deviance in particular set of cultures, as alcohol consumption, drug addiction and immoral sexual activities are majority born out of negative influence of peer pressure demanding to conform to the norms set by peers (Agnew, R, 1991).

Politics targeting Youths

Youths are potential vote banks to bail out weak parties in local elections. The grass root level politics use youths as tool to create fear as a means to either enter or remain in governance. The youths are motivated by charismatic leaders and awarded meager financial assistance with so called fame as being a part of notorious party (Pitts, J, 2001). On account of owing identity gained by youths, numerous of youths indulge in extortion, kidnapping, illegal gambling, gang wars and so on. The potential talent of country that might be the think tank in social growth is intentionally

diverted towards goalless pursuits of attaining notoriety for the sake of increasing powers of political mafias.

Conclusion

Policing youths pragmatically

In aforementioned segment of this paper the approach to understand youth's existence in 21st century and consequently policing based on socio-historical parameters holds the potential to formulate policies to be executed on broad range. It suggests that the approach will be an individualistic exploration of findings leading to mass diagnosis of deviance. In Scotland, the policing of youth had taken a bit more dedicated and youth focused policing by carrying out aggressive supervision and surveillance and setting up three major objectives that are:

- Safety of youths in society
- Tackling youths recidivism &
- Making police services more reachable to youths (Mulhern, 2005).

Justifying the role of police in handling the youths in critical stages at the juncture of criminal justice system plays a vital role in youths perceiving deviance as wrong in itself (Pratt, 1989).

Police has role in not only monitoring youths cultivating rebellious attitude towards society but also as a guide in directing copious youth energy towards right direction.

Life skills and behavior modification strategies are another important area that covers understanding of real life situations and facing them rationally. Proper management of day-to-day tasks to avoid stress and cultivate discipline in character, mixing into groups in society to share good

thoughts, fostering healthy relationships at personal level and prudent decision making in real life situations. Apart from acquiring life skills, studies have suggested that school, parents and community partnerships improve academic performance and reduce the behavioral problems at school level as primary crime prevention approach (Sheldon S. B, Epstein J. L & Simon B. S, 2001).

Locating Target youths

Contemporary youths have come up with specific interests in particular areas which facilitate police in identifying those areas such as sports activities, cyber world, educational institutions, and youth dominant professions adversely affecting the criminal justice. These are the major areas that create possible consequences as immediate situations in determining the extent of deviancy. Childhood aggression is considered to be one of the major risk factor for youth's violence that can be subdued by early stable and nurturing relationship by parents and caregivers.

Technology and Job Opportunities

The technology factor that is transforming youth towards malignant condition can also be used by police in understanding youth's belief. Providing police with GPS and Crime mapping will render in safeguarding the society up to a great extent. The crime prediction technology by studying a particular geographical location for a particular span of time will render the crime analyst in predicting immediate chances of future crime possibilities in hot-spot areas. A remarkable initiative taken by Jharkhand Police by adopting Predictive Policing in collaboration with IIM Ranchi will go long way in identifying youth's troubles and areas for crime

prevention based on geographical crime impact (Prasad, B. 2012, sep 7).

The major reason for youth unrest in present time is related with acquiring a decent job. As the opportunities are not same for all and hence rising frustrations, leading to shortcuts and moral compromise in pursuit of making dreams come true. There doesn't seem to be a clear link between job opportunity and policing but on wise grounds policing does become a lot more better machinery dealing with youths who are having some work in their hands. Making youth realize its potential by giving social responsibility by police creates a lot better ambiance. A good example is voluntary participation of youths in community policing in Tamil Nadu in 'Friends of Police'. Setting up such models on long term basis will pave way towards more responsible citizens of the state.

Police Penetration in Societies

On being asked, what is criminal justice system, what are your rights as citizen of India, what will be the consequences of committing punishable offences and how much you understand police....? The answer from majority of Public will be negative!

In such kind of condition, policing only becomes a dressed authority that will never be able to act in an acceptable manner and hence making the hiatus between police and public an added cause for the breakdown of social Network. Policing needs to reciprocate its existence to common man. The formal introduction and greater visibility of police render public as eyes and ears of law enforcement. Ignorance is one of the vital reason in keeping revenge and malice above law. The Introduction of policing to society

should start from the childhood. The awareness of laws, police responsibility, complaining to police, consequences of deviance should be discussed in healthy manner during school time, community meetings and active parental involvements. The process to understand integrity of all Individuals and respecting law is not one night journey but a steady process towards the law-abiding virtues.

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Right To Life Vis-À-Vis Death Penalty: Analyzing The Indian Position

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Keywords

Right to Life, Death Penalty, Capital Punishment, Liberal Democracy, Indian Position.

Abstract

Despite being liberal democracies, both India and the United States of America retain something which negates the principle on which their political set-ups are based. Both the states justify the use of the death penalty and thus relativize the sanctity and dignity of human life. Unlike other political forms, a democracy is at least appreciative of and sensitive to the fallibility and the self-reflexivity of the human reason and so it is in principle humble, humane and, cautious. Is it not better to err on the side of caution? This paper will focus mainly on three arguments against the death penalty: One, inadequacy of “an eye for an eye” principle; two, human and systemic failures; and three, life’s sacredness.

Introduction

Capital punishment is the most premeditated of murders, to which no criminal’s deed, however calculated, can be compared. Albert Camus.

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This paper argues for the abolition of the death penalty in all cases in India or elsewhere because, among other reasons, the amount of crime is not commensurate with the amount of punishment. A murder, for example, does not necessarily equal a death penalty. The murder is committed either on impulse or in cold blood. In either case the victim does not necessarily know the nature of attack and the time of death. The penalty of death, however, is always pre-meditated and pre-fixed in method and time.

Can we then equalize a murder with a life imprisonment? Is murder such an act as to confine the convict to her last breath? Here too the gravity of the murder and the severity of the life-term cannot be measured quantitatively. Generally, are the so-called capital crimes like murder, rape, sedition, treason, drug addiction etc correspond to the ultimate punishment or the life imprisonment? This correspondence seems highly improbable because crime and punishment are not mathematical or quantitative entities. We cannot say literally that a murder is a debt to be paid back by a killer to her victim in the form of either a death penalty or a life-term. Following this line of argument even non-capital crimes, one can object, seem to lack correspondence with their respective punishments. This may obviously be the case but the stakes are not as high as in capital crimes especially when the convict is punished by death. Death is the ultimate loss which cannot be compensated. So, a life for a life is not just deserts. Life-term seems a better option in that there is a room for reform and a chance of release of the inmate because even the judiciary can go wrong.

Neither human beings nor institutions are infallible. More often than not, we make mistakes in judging, executing and implementing things. All institutions are run by the cooperation of various individuals who are a curious mixture

of knowledge and ignorance, competence and incompetence, truth and falsehood, neutrality and prejudice. In view of such complexities, attaining certainty or a condition which is beyond reasonable doubt is hardly possible. As all the methods of investigation follows a process of trial and error, the results obtained are not more than plausible. We learn from our mistakes. But when the person has been hanged it is no use realizing that your judgment was mistaken; it cannot be reversed. The Malimath Committee recommends "court's conviction" as the basis of deciding criminal cases rather than "beyond reasonable doubt" in view of the rising crime rate.¹ This distinction seems to us superfluous because whatever is considered "beyond reasonable doubt" is itself based on "court's conviction." They are saying the same thing in different words. If it is true that you cannot cross the threshold of the probable in deciding cases then it is wrong to make it a basis for taking defendant's life away. Life is a serious business and you cannot let probabilities decide someone's fate.

In the Indian context, the DNA evidence and the unanimity of the bench is not required for capital sentencing which is often based on circumstantial evidence which can be easily manufactured. High level of corruption among police officials and flaws in the system make matters worse.² In July 2012, 14 retired Supreme Court and High Court judges asked President Pranab Mukherjee to commute the death sentences of 13 inmates erroneously upheld by the Supreme Court over the past nine years. This followed the court's admission that some of these death sentences were

¹ Report of Committee on Reforms of Criminal Justice System, March 2003, Vol. I, available at: http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf [accessed 11 June 2014].

² Abolish Death Penalty India, "The Death Penalty Scenario in India," available at: <http://abolishdeathpenaltyindia.blogspot.in> [accessed 11 June 2014].

rendered *out of error*.³ *The huge backlog of cases can further increase the chance of error.*

I. International Standards and Worldwide Trend

The United Nations in the *International Covenant on Civil and Political Rights*, the *Convention on the Rights of the Child* and in the *Economic and Social Council Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*, has established strict conditions under which the death penalty may be used by those Member States which have not yet abolished it. The *Second Optional Protocol to the International Covenant on Civil and Political Rights* commits each State Party to take all necessary measures to permanently abolish the death penalty within its own jurisdiction during peace time.⁴ The UN has also many times resolved to establish moratorium on death penalty recalling its relevant instruments.⁵

There are currently 158 countries and territories that, to different extents, have decided to renounce the death penalty. Of these: 100 are totally abolitionist.⁶ Europe is today the only region in the world where the death penalty is no longer applied except Belarus. All the Council of Europe's 47 member states have either abolished capital punishment or instituted a moratorium on executions.⁷

³ Human Rights Watch, "India: Reinstate Moratorium on Death Penalty." 22 November 2012, available at: <http://www.hrw.org/news/2012/11/22/india-reinstate-moratorium-death-penalty> [accessed 11 June 2014].

⁴ See http://eeas.europa.eu/human_rights/guidelines/death_penalty/docs/guidelines_death_penalty_si08416_en.pdf; also see <http://legislationline.org/topics/organisation/2/topic/11> [accessed 11 June 2014]

⁵ See note 7.

⁶ See <http://deathpenaltynews.blogspot.in/2013/07/hands-off-cain-presents-2013-report-on.html> [accessed 12 June 2014].

⁷ Council of Europe (2012). "The Council of Europe, a death penalty free area." available at: <http://hub.coe.int/what-we-do/human-rights/death-penalty> [accessed 12 June 2014]; Amnesty International (2013). *Death Sentences and Executions 2012*. (London), p.28., available at: <http://www.amnesty.org/en/library/asset/ACT50/001/2013/en/bbfea0d6-39b2-4e5f-a1ad-885a8eb5c607/act500012013en.pdf> [accessed 12 June 2014].

The European Union (EU) strongly opposes the death penalty in all times and in all circumstances; it considers that the death penalty constitutes serious violation of human rights and human dignity. In short, the EU considers the death penalty as offensive to the right to life. Abolition is a precondition for entry into the Union.⁸

II. Indian Position

In India both the case law and the bare law have shown strong reluctance to abolishing the death penalty totally. The Law Commission's reports too have shown retentionist tendencies over and over.

The idea of right to life embedded in the Indian Constitution is not absolute. There is a limit to protecting a person's life. In case of serious crimes the state may take a convict's life away in accordance with the method laid down by law.⁹

We argue for a change in Article 21 of the Indian Constitution because of which India continues to practice and defend the death penalty. India voted against all the four UN General Assembly resolutions calling for a moratorium on executions with a view to abolition.¹⁰ We further argue that the other Indian laws on death penalty follow the same philosophy and therefore violate international law and standards.

Article 21 of the Indian Constitution protects life and personal liberty of an individual, including citizens and non-citizens but it does not do so in all circumstances. It does not define the terms, "life" and "personal liberty" leaving it to the court to do that on case to case basis. Apparently, these terms are without content and the job of

⁸ See http://eeas.europa.eu/human_rights/guidelines/death_penalty/docs/guidelines_death_penalty_sl08416_en.pdf [accessed 11 June 2014].

⁹ Bakshi, P.M. (2011). *The Constitution of India*. (New Delhi: Universal Law Publishing Company), p.54.

¹⁰ UN Resolutions 2007, 2008, 2010, 2012, available at: <http://www.handsoffcain.info/> [accessed 11 June 2014].

the court is to make sense out of them. What is clear is that a person will not be deprived of his life or personal liberty, as the case may be, without following the prescribed legal procedure. It is necessary to assume that the makers of the Indian Constitution would have some definitions of the above-mentioned terms on their minds otherwise the provision would not make any sense. Taking a closer look, the terms perhaps were not meant to be absolutely content less in the beginning rather they were taken in a narrow sense by the makers. We would confine our self to fixing the meaning of the first term "life" because it has a direct bearing on the question of death penalty.

By "life" the makers would at least have meant the continuation/protection of biological human existence. Keeping Article 21 in mind it is clear that the makers did not at all intend to provide for protecting a person's life in all conditions. If necessary, the law will take the convict's life away procedurally. After the amendment in the Code of Criminal Procedure and the decision in *Jagmohan Singh*¹¹ in 1973 the capital punishment was made an exception but was not held to be constitutionally invalid. Later, in *Bachan Singh*¹² and *Deena*¹³ also the death penalty was held not to be incompatible with Article 21. In other cases,¹⁴ the court however recognized that unfair procedure, undue delay in executions and delayed trial contradict Article 21. In

¹¹ See *Jagmohan Singh v. State of U.P.*, (1973), available at: <http://indiankanoon.org/doc/1837051/> [accessed 11 June 2014].

¹² See *Bachan Singh v. State of Punjab*, (1980), available at: <http://www.indiankanoon.org/doc/307021/> [accessed 11 June 2014].

¹³ See *Deena Dayal v. Union of India* (1983), available at: <http://www.indiankanoon.org/doc/888451/> [accessed 12 June 2014].

¹⁴ See *Attorney General of India v. Lachma Devi* quoted in National Human Rights Commission (2005). "Disability Manual." New Delhi. P.179, available at: <http://www.nhrc.nic.in/documents/Publications/NHRC-Book-Disability.pdf> [accessed 12 June 2014]; *Triveniben v. State of Gujarat*, available at: <http://www.indiankanoon.org/doc/751831/> [accessed 12 June 2014]; *Madhu Mehta v. Union of India*, available at: <http://www.indiankanoon.org/doc/1666141/> [accessed 12 June 2014].

2009 the Supreme Court in *Santosh Bariyar* placed strict limitations on the circumstances in which a death penalty may be given. The court ruled that the prosecution must show that the rehabilitation of the defendant is impossible. This ruling indicates that most of the death penalty cases after *Bachan Singh* were wrongly decided as arbitrariness did come into the way of justice.¹⁵ It is obvious that the court cannot abolish the death penalty because the Constitution explicitly provides for it. The court can somehow restrict its scope without eliminating it altogether.

As the constitution is an evolving document, we suggest a change in Article 21 which could be divided into two clauses as follows:

1. No person will be deprived of her life under any circumstances or the state will not deprive any one of her life whatever be the conditions.
2. No person will be deprived of her personal liberty except according to procedure established by law.

The Articles 14 and 19 too tangentially touch the issue of death sentence. For example, if two persons are found guilty of murder they may not be given equal punishments and death sentence takes away all the freedoms available in Article 19.

There are also other categories of legislation which provides for death penalty in India. The Indian Penal Code (IPC) punishes ten offences by death:¹⁶

¹⁵ Tarunabh Khaitan, "Landmark Death Penalty case: Santosh Bariyar v State of Maharashtra." 15 May 2009, available at: <http://lawandotherthings.blogspot.in/search?q=death+penalty> [accessed 11 June 2014].

¹⁶ Amnesty International (2008). *The Death Penalty in India: A Lethal Lottery*. (London), pp.3-4, available at: <http://www.amnesty.org/en/library/asset/ASA20/006/2008/en/67dcf08a-15fb-11dd-8586-f5a00c540031/asa200062008eng.pdf> [accessed 12 June 2014].

- Waging war against the Government of India
- Abetment of mutiny actually committed
- False evidence resulting in the conviction and death of an innocent person
- Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person
- Murder and murder committed by a life convict. Though the latter was struck down by the Supreme Court, it still remains in the IPC
- Abetment of a suicide of a minor, insane person or intoxicated person
- Attempted murder by a serving life convict
- Kidnapping for ransom
- Armed robbery with murder
- Rape in certain circumstances¹⁷

There are more than 10 special laws including anti-terror ones which also provide for capital punishment:¹⁸

- Air Force Act 1950, Army Act 1950, Navy Act 1950 and Indo-Tibetan Border Police Force Act 1992
- Defence and Internal Security of India Act 1971
- Defence of India Act 1971
- Commission of Sati (Prevention) Act 1987
- Narcotic Drugs and Psychotropic Substances (Prevention) Act, 1985, as amended in 1988

¹⁷ Considering the case as the rarest of rare, a court recently sentenced four men to death for the gang rape and murder of a student in Delhi; "Delhi gang rape: Four sentenced to death," 13 September 2013, *BBC News*, available at: <http://www.bbc.co.uk/news/world-asia-india-24078339> [accessed 12 June 2014].

¹⁸ *Ibid.* pp. 3-4.

- Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA)
- Prevention of Terrorism Act 2002 (POTA)
- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989
- Explosive Substances Act 1908, as amended in 2001
- Arms Act 1959 (as amended in 1988)
- Unlawful Activities Prevention Act 1967 (as amended in 2004)
- Maharashtra Control of Organised Crime Act 1999, Karnataka Control of Organised Crime Act 2000, The Andhra Pradesh Control of Organised Crime Act 2001, The Arunachal Pradesh Control of Organised Crime Act 2002

In 1979 India acceded to the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social and Cultural Rights*. In 1992 India acceded to the *Convention on the Rights of the Child*. India has not ratified the *First and Second Optional Protocol to the International Covenant on Civil and Political Rights*, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and *Optional Protocol to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.¹⁹

III. Recent and Classical Studies

Recently Austin Sarat and William A. Schabas have produced some outstanding studies on the death penalty. They have forcefully argued against retaining the death penalty and examined all the major arguments of the

¹⁹ See http://nhrc.nic.in/documents/india_ratification_status.pdf [accessed 12 June 2014].

retentionists.²⁰ Philosophers and thinkers like Cesare Beccaria, Sir Ernest Gowers, Albert Camus, Arthur Koestler, Clarence Darrow, Michel Foucault, Jacques Derrida, Hugo Adam Bedau, Amartya Sen, and Upendra Baxi too have argued powerfully against the death penalty. Camus' *Reflections on the Guillotine* and Koestler's *Reflections on Hanging* are regarded as the masterworks of the 20th century. In the 1950s, Koestler campaigned for the abolition of capital punishment, especially through a series of articles in *The Observer* and a book *Reflections on Hanging*. The campaign was successful as hanging was finally abolished in 1965.²¹ The independent organizations like Amnesty International, International Commission against the Death Penalty, Hands Off Cain, Human Rights Watch, American Union for Civil Liberties, People's Union for Civil Liberties have produced fine studies in this area. Amnesty International's much acclaimed study, *Lethal Lottery* (2008) was referred to by the Supreme Court in a recent decision.

As for measuring the deterrent effects of death penalty, the National Research Council of the National Academies in the US confirmed in its April 2012 report that "research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases or has no effect on homicide rates. Therefore, the committee recommends that these studies not be used to inform deliberations ... about the effect of the death penalty on homicide."²²

²⁰ See bibliography attached with this paper.

²¹ Koestler Trust, "History of the Koestler Trust," available at: <http://www.koestlertrust.org.uk/pages/history.html>.

²² Amnesty International (2013). *Death Sentences and Executions 2012*. (London), p.5., available at: <http://www.amnesty.org/en/library/asset/ACT50/001/2013/en/bbfea0d6-39b2-4e5f-a1ad-885a8eb5c607/act500012013en.pdf> [accessed 12 June 2014].

Conclusion

All life is sacred whether human or non-human. Therefore, all life must be respected and preserved. In the animal kingdom one does not find any deviation from the order of nature so that one can say that the jungles do not witness any violation of natural laws. No animals kill another out of deviation from their natural predisposition. Even those animals which kill their own kind do so as a perfectly natural requirement. But the story of human beings is altogether different. Humans are capable of negating their own essential nature which is called *fitrah* in Islam. They kill one another defying prohibitions made by religious and secular laws. History shows that the human societies have never been free from bloodshed and violence. In order to counteract the murderous tendencies of men the justice systems of all times have usually prescribed severe punishments, including the death penalty. But as we have argued above, the retaliation principle does not work. A major part of the world has lately realized the futility of the ultimate penalty. India must realize this soon.

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The Women Victims of Alcohol Induced Domestic Violence and the Role of Community Police in Kerala: An Empirical Study*

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Keywords

Violence, Alcoholism, Physical Abuse, Community Police.

Abstract

Studies reveal that there is a strong relationship between alcohol use and the occurrence of domestic violence. Police are often the first members of the Criminal Justice System to address the issues of domestic violence. But, the police personnel receive little or no training on how to deal with such victims. This article tries to overview the problem faced by the women victims of alcohol induced domestic violence perpetrated by their husbands in Kerala, one of the 29 states in India. The article tries to study the efforts made by the community police in Kollam district of Kerala to address the issue of alcoholism. Purposive Sampling technique was employed to choose the respondents. 23 women were interviewed, of these 20 were found to be the victims of alcohol induced domestic violence. An Interview Schedule developed for the study was used to collect the primary data. The findings indicate that alcohol plays a major role in inducing domestic violence. The victims have experienced one or more forms of domestic violence from their husbands. 87% of the women said alcoholism was the main cause of domestic violence. All the

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* Revised version of the paper presented in the 37th All India Criminology Conference of The Indian Society of Criminology held at Rajiv Gandhi National University of Law, Punjab, India on 28th February to 2nd March, 2014.

victims faced different forms of victimization such as physical (22%) psychological (4%) and multiple abuse (61%) from the perpetrator.

Introduction

Violence against women is believed to affect approximately 4 million women annually in the United States (Collins, 1997). It is considered to be the leading cause of non-fatal injury for women, and an estimated one million women each year seek emergency treatment for injuries sustained during battering (ibid, 1997). But this is not the exact picture of the violence against women because most of the incidences are getting unregistered and battering goes undiagnosed as a potential cause of women's injuries or health problems. National Victimization Data indicate that only 56 per cent of incidents where women are attacked by an intimate are reported to police (ibid, 1997).

Roizen (1997) summarized the percentages of violent offenders who were drinking at the time of the offence as follows: up to 86 per cent of homicide offenders, 37 per cent of assault offenders, 60 per cent of sexual offenders, up to 57 per cent of men and 27 per cent of women involved in marital violence and 13 per cent of child abusers. In a community-based study, Pernanen, (1991) found that 42 per cent of violent crimes reported to the police involved alcohol, although 51 per cent of the victims interviewed believed that their assailants had been drinking.

According to disinhibition hypothesis, alcohol weakens brain mechanisms that normally restrain impulsive behaviours like inappropriate aggression Gustafson, (1994). Alcohol impairs the judgement, clouds the reason, and enfeebles the will; while at the same time it arouses the appetites, inflames

the passions, release the primitive beast from the artificial restraint of social discipline and all the above conditions are favourable to the generation of crime (Howard, 1918).

According to a study conducted at the University at Buffalo's Research Institute on Addictions (RIA), in its February 2003 issue of the American Psychological Association's Journal of Consulting and Clinical Psychology reported that men who drink alcohol and have a predisposition for physical violence toward their female partners are more likely to be violent on the days they drink alcohol. The study was conducted among 137 men entering a domestic violence treatment programme and 135 domestically violent men entering an alcoholism treatment programme over a 15 month period. The study reveals that, the odds of any male-to-female physical aggression are eight times higher on days when these men drink alcohol than on days with no alcohol consumption, with the chances of severe male-to-female physical aggression on drinking days more than 11 times higher. This study was conducted by William Fals-Stewart, a clinical psychologist who is a principal investigator at RIA and research associate professor in the UB Department of Psychology and according to him the timing of violent episodes was more likely to occur during or shortly after drinking. He noted that alcohol use and intoxication are perhaps best viewed as only one of several factors that facilitates to create the situation in which partner violence results.

The statistics given by the Police of Scotland in 2008-09 shows that there are over 53,000 incidents of domestic violence (Scottish Government, 2009). Studies also suggest that alcohol use can heighten the severity of physical violence (Thompson and Kingree, 2006). According to the WHO Multi-country study on women's *health and domestic violence against women*, the statistics reveal that between

15 per cent (Japan) and 71 per cent (Ethiopia) of women reported experiencing physical and sexual violence by an intimate partner over their lifetime, and between 3.8 per cent (Japan) and 53 per cent (Ethiopia) as experiencing such violence within the past year (Moreno, 2005).

The New Zealand Police, in their official website shows that out of all reported crime, police note alcohol is a factor in:

- a third of all violence
- a third of all family violence
- half of all serious violence
- half of all drugs and anti-social offences
- at least 1 in 5 cases of sexual offending
- 1 in 4 traffic offences
- 1 in 5 traffic crashes
- 1 in 4 property offences.

At least 18 per cent of the total Police budget is sucked up by alcohol-related issues. This doesn't all go on dealing with crime generated by intoxicated people but for other demands such as breath-testing operations and checking licensed premises comply with the Sale of Liquor Act.

Kerala lies along the coastline, to the extreme south west of the Indian peninsula, flanked by the Arabian Sea on the west and the mountains of the Western Ghats on the east (Government of Kerala Official Website). As per the 2011 census, Kerala has a population of 33,387,677 inhabitants and is the twelfth largest state by population. It has 14 districts with Thiruvananthapuram as the state capital. Kerala is the state with the lowest positive population growth rate in India (3.44%) and has a density of 860 people per sq. km. The state has the highest Human Development Index (HDI) (0.790) in the country according to the Human Development

Report 2011. It also has the highest literacy rate 93.19%, the highest life expectancy (Almost 77 years) and the highest sex ratio (as defined by number of women per 1000 men: 1,084 women per 1000 men) among all Indian states. Kerala has the lowest homicide rate among Indian states, for 2011 it was 1.1 per 100,000 (NCRB, 2011). A survey in 2005 by Transparency International ranked it as the least corrupt state in the country (India Corruption Study, 2005). But the state with highest literacy rate and excellent social development still have the higher incidences of alcoholism and domestic violence. According to a recent article in The Times of India (August, 2014) on liquor ban and domestic violence, nearly 50% of victims of domestic violence in the state cited alcoholism of their husbands as the primary cause. The study conducted by ICRW-INCLEM (International Centre for Research on Women - International Clinical Epidemiologist Network, 2000), Thiruvananthapuram, the capital city of Kerala, ranks first among five cities in India in prevalence of domestic violence. Violence in Thiruvananthapuram is about 64% in urban non-slum areas and 71% in rural areas.

Theories on Alcohol & violence Linkage

According to "selective Disinhibition Theory", alcohol's well known negative effects on people's perception, ability to interpret others' actions, intentions and judgment, interact with a complex set of social and psychological circumstances to result in violence in certain situations. Alcohol tends to lower people's inhibitions against using violence to achieve their goals (Parker and Rebhun, 1995). The types and density of alcohol outlets has been found to be associated with violence, particularly for youth. Certain settings define a

physical and social environment in which social norms and external controls are weakened in an atmosphere that lowers the normal constraints against behaviours that have a high potential for violence and illegal or socially marginalized activities (Alaniz and Parker, 1998). Compared to the use of other psycho-active substances, alcohol has been shown to most commonly increase aggression (Pernanen et al., 2002). It has been suggested that the role of alcohol in violence differs with regard to factors such as who has been drinking, the drinking context, the relationship between perpetrator and victim and the situational differences make it difficult to conceive of models that satisfactorily explain the role of alcohol in a wide range of violent incidents (Martin, 1993). Intoxicated people may be more vulnerable to violent crime than non-violent crime because they exhibit more risk taking behaviour (McClelland and Teplin, 2001).

Linkage between Alcoholism & Domestic Violence?

There are certain barriers to the linkage of substance abuse and domestic violence services, including philosophical differences of treatment perspective between programme types and structural impediments that make linkage difficult (Collins, 1997). In the academic arena, some researchers question the cause – and – effect relationship between alcohol/drug abuse and domestic violence. According to the Women's Rural Advocacy Programme (WRAP), no evidence supports a cause-and-effect relationship between the two problems. The relatively high incidence of alcohol abuse among men who batter must be viewed as the overlap of two separate social problems. Battering is a socially learned behaviour and it is not the result of alcoholism or any other substance abuse, according to WRAP.

According to Jacobs (1998), the role of alcohol in domestic violence has been identified in three ways:

- 'Alcohol as an excuse': perpetrators are not held responsible for their actions when under the influence of alcohol.
- 'Drinking and violence as manifestations of similar and underlying problems': there is no causal link between drinking and domestic abuse, but they are caused by similar life stressors.
- 'Alcohol use as a means of gaining power and control': social norms of male violence and need for control and power result in men using alcohol as an additional weapon of domination.

He also pointed out that there is a notable shift and growing recognition that alcohol is not a direct cause of domestic violence (Jacobs, 1998).

Preventive Scheme for Alcoholism and Substance Abuse

The Ministry of Social Justice and Empowerment, Government of India has implemented a scheme called 'Scheme for Prevention of Alcoholism and Substance (Drugs) Abuse' to address the problem of substance abuse in its totality. This scheme includes creating awareness, early identification, treatment and rehabilitation and sustained follow-up care. It has been given special emphasis for involving and mobilising the community because the government is of the view that substance abuse is a psycho social medical problem which can be best addressed through community based interventions.

The aims and objectives of the Scheme for prevention of Alcoholism and Substance (Drugs) Abuse are:

- To support activities of non-governmental organisations, working in the areas of prevention of addiction and rehabilitation of addicts.

- To create awareness and educating the people about the ill effects of alcoholism and substance abuse on the individual, the family and society at large.
- To develop culture-specific models for the prevention of addiction and treatment and rehabilitation of addicts.
- To evolve and provide a whole range of community based services for the identification, motivation, detoxification, counselling, after care and rehabilitation of addicts.
- To promote community participation and public cooperation in the reduction of demand for dependence-producing substances.
- To promote collective initiatives and self-help endeavours among individuals and groups vulnerable to addiction and considered at risk.
- To establish appropriate linkages between voluntary agencies working in the field of addiction and government organisations.

Under this scheme the non-governmental organisations (NGOs) have been entrusted with the responsibility for delivery of services and the Ministry of Social Justice and Empowerment bears substantial financial responsibility (90 per cent of the prescribed grant amount). In Kerala, 21 NGOs are working under this scheme as of August 2014.

Community policing & Alcohol induced Domestic Violence

In United States, the passage of Violent Crime Control and Law Enforcement Act of 1994 (the Crime Bill, Public Law 103-322) helps to merge criminal justice system with those of public health, especially where drug and alcohol related crime control policies are concerned. The Community-Oriented Policing Services of the United States is working with the

community groups to impose restrictions on neighbourhood alcohol outlets (Goetz, 1995). The Western Australia Police has implemented "Alcohol Policing Strategy, 2009-2011" that works closely with stakeholders to integrate police contribution with the other efforts to target alcohol misuse (Western Australia Police, 2009). The objectives of the WA Police Alcohol Policing Strategy are to reduce the incidence of alcohol-related crime, increase compliance with the Liquor Control Act 1988 and associated legislation and to increase the community's sense of safety and security due to a lower incidence of alcohol-related violence and other crime. In England, the prime Minister's Strategy Unit has implemented "Alcohol Harm Reduction Strategy for England" for tackling the harms and costs of alcohol misuse in England. For the Government, the priority is to work with police and local authorities so that existing laws to reduce alcohol-related crime and disorder are properly enforced, including powers to shut down any premises where there is a serious problem of disorder arising from it (Cabinet Office, UK, 2004). In India, the Trichy Community Policing has conducted mass awareness programmes on the evils of drugs/alcoholism and domestic violence, in collaboration with the public and Non-Governmental Organisations (NGOs), as part of its 'Slum Adoption Programme' (Tamilnadu Police). In West Bengal, the community policing initiative in Kolkata organizes drug awareness programmes by the Detective Department in various educational institutes and slums. In partnership with the local people and leading NGOs of the city drug de-addiction camps are also organised for the drug victims. The World Anti-Drug Day is observed every year on the 26th of July. Also the Detective Department of Kolkata Police along with several leading NGOs of the city have opened counselling centres for drug/alcohol addicts manned by trained counsellors and psychiatrists (CHRI).

Objectives of the Study

- To examine the impact of alcoholism on Domestic Violence.
- To study the efficacy of de-addiction treatment.
- To study the role of Janamaithri Suraksha Project (Community Policing initiative) in addressing issues relating to alcoholism.

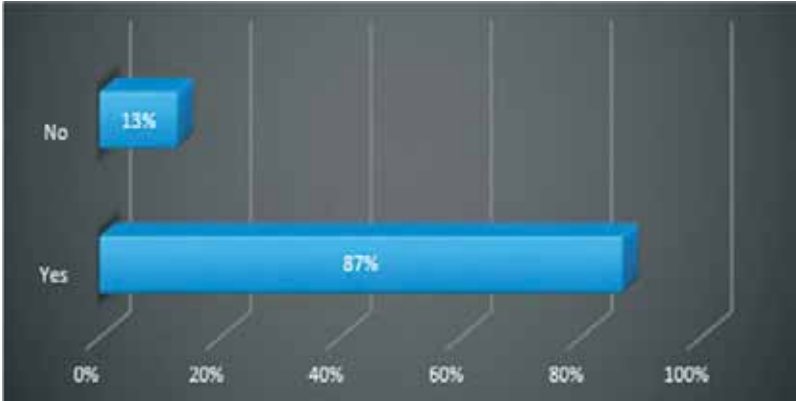
Methodology

The study follows a descriptive research design by pointing out the pros and cons of alcohol induced domestic violence and also giving suggestions for rehabilitation of de-addicts and creating awareness among general public. The sampling technique used was purposive sampling and the sample size is 33, consists of 23 women with alcoholic husbands and 10 Counsellors who are working with alcohol and domestic violence related issues for more than five years. In order to collect primary data, a structured questionnaire was used for counsellors and a structured interview schedule was employed for women victims. A case study of Janamaithri Police Station at Paravur of Kollam district in Kerala was carried out in order to empirically verify the role of community policing in addressing the issue of alcoholism and domestic violence.

Results

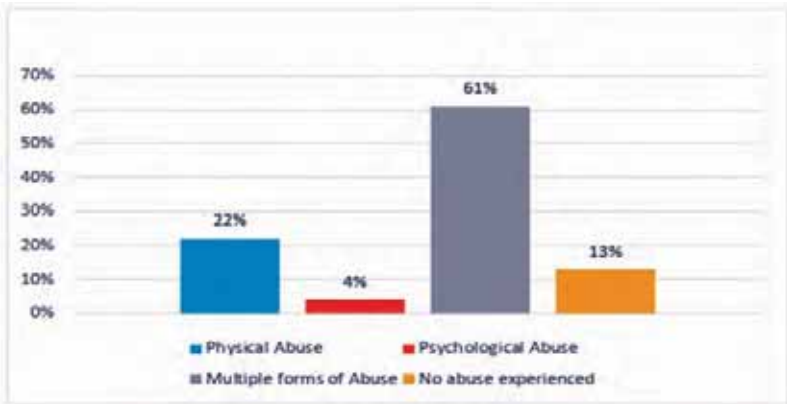
1. Alcoholism - Main Cause for Domestic Violence

87 per cent of the respondents told that alcoholism of their husbands is the main cause for domestic violence. Leonard and Quigley (1999) in their study on drinking and marital aggression shows a strong correlation between alcohol use and domestic violence. Studies by Roizen (1997) and



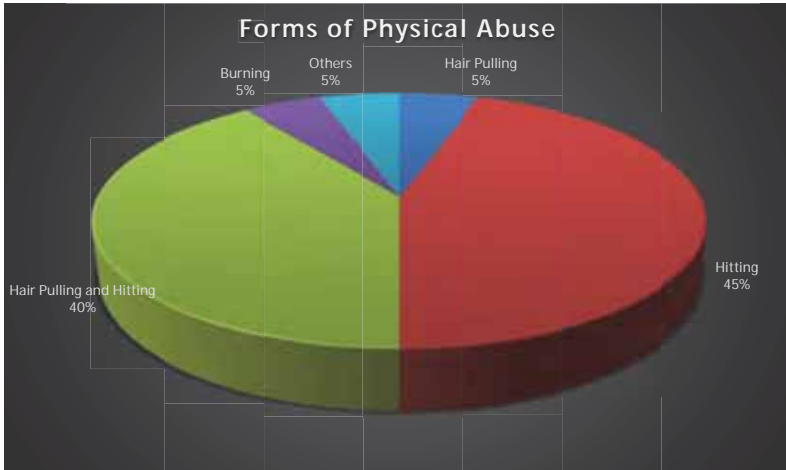
Thompson and Kingree (2006) shows a strong relationship between alcohol and domestic violence.

2. Domestic Violence – Types of Victimization



Among the victims of alcohol induced domestic violence, 61 per cent of the victims faced multiple forms of abuse and 22 per cent went through physical abuses. 4 per cent of the victims experienced psychological abuses. The Australian Bureau of Statistics Survey on Women’s Safety says that 40 per cent of the women victims of alcohol induced domestic violence are physically or sexually assaulted (Ministerial Council on Drug Strategy, 2001).

Forms of Physical Abuse



Among the victims who experienced physical abuses, 45 per cent hitting, 40 per cent of the victims suffered hair pulling and hitting. Hair pulling and burning stands 5 per cent each. Campbell (2003) in his study states that 70-80% of intimate partner homicides, no matter which partner was killed, the man physically abused the woman before the murder. Intimate partner violence results in more than 18.5 million mental health care visits each year (National Center for Injury Prevention and Control, 2003).

3. Alcoholism & Domestic Violence: Counsellor Views

From the study, it is seen that the main cause of domestic violence, in the counsellor's view is alcoholism. 40 per cent is of the view that alcoholism is only one among the various other causes for domestic violence. According to Harwin (2002), alcohol misuse was strongly associated with violence in the home. But some studies by Collins (1997) and Jacobs (1998) argue that alcoholism is just an excuse by the perpetrator for domestic violence.



4. Efficacy of De-addiction Treatment

More than 50 per cent of the alcoholics recover through de-addiction treatment and counselling. However, the relapse period is very less and usually 80 to 90 per cent of de-addicts return back for treatment in a pathetic condition, as most de-addicts have a tendency to consume alcohol again. The treatment gets even more challenging for such people as they had continued from where they left-off. This does not question the efficiency of treatment and counselling provided, but can be attributed to the social structure and the factors influencing the location and behaviour of de-addicts.

Role of Community Policing – A Case Study of Janamaithri Police Station, Paravur

Janamaithri Police Station, Paravur of Kerala has invested Rs. 70000 (US\$1157) from the Annual Plan Fund for the de-addiction programme during the financial year 2012-13 and invested Rs. 10000 during 2013-14. In the year 2013-14, 34 patients were given the de-addiction treatment to help them get back to an addiction free life. The service of Psychologist

and counselling is provided to addicts and their family at free of cost in order to enable them to get back to their normal life. Janamaithri Suraksha Project (JSP) identifies and adopts children of alcoholics provides them with livelihood and education. JSP reaches out to the student community by organising awareness programmes on de-addiction and relevant social issues through Student Police Cadet Project (SPC). It collaborates with Youth Clubs and Senior Citizen's Clubs to provide awareness on various social issues for general public irrespective of age and gender. "Amma Ariyaan" (Information for Mothers) is another initiative of JSP that provides girls and young women information and aid to those who are in need of counselling to handle issues of alcoholic members in the family and also provides free legal aid. Vidyarthi Suraksha Samithi (Student Protection Committee) is yet another programme that intends to create awareness among students and youth through seminars and other awareness programs on alcoholism throughout the State. JSP also conducts various awareness seminars, conferences, symposia for the citizens on the devastating effects of alcoholism.

Awareness Programmes

The Janamaithri Suraksha Project has organised various awareness programmes against drug abuse and alcoholism as part of their social activities. Posters, flex boards, banners, leaflets etc., containing messages of drug abuse and anti-alcoholism, its ill effects on life etc. are displayed and distributed in public domain. Light dramas, street plays, street procession etc. are conducted for the general interest of the public. Various Seminars and public meeting are conducted with the active co-operation of political workers, social workers and other Local Self Government Departments in the selected places / centres to promote

awareness among public on substance abuse. With the active co-operation of the educational institutions, seminars, slide shows, essay competition, drawing competition etc. are being conducted and experts such as psychologists, doctors, social workers, are taking awareness classes for the students of High Schools and Colleges. Magic Programmes under the leadership of Prof. Gopinath Muthukad are being conducted at the selected centres to portray the bad effect of drug abuse and alcoholism. Steps are being taken to telecast a docufiction under the titles 'Zpc ´elcn' through the visual media (Lalitha, 2012). From October 2010, a campaign programme is commenced against alcoholism throughout the state. Project reports are being received from Health Department for commencing de-addiction centres in Kollam, Pathanamthitta, Idukki, Malappuram, Wayanad, Kannur, Kasaragod and Palakkad district Hospitals with the support of Excise Department.

Discussion

This study shows that majority of the women victims are neither alcoholic nor depending on alcohol or drug to cope with the violence by the perpetrator. However, Young (1998) in his study interviewed 150 women in Australia and found that the only way they could cope with the violence was to find comfort in alcohol or drugs. As in women, both alcoholism and domestic violence have a negative impact on the child's development and security. A study by Wales (2009) in Scotland, viewed that children experiencing harmful parental drinking has severe emotional distress, physical abuse and violence, and a general lack of care, support and protection. Children from families with alcohol problems and domestic violence get victimised in two ways. They may directly get hurt by the perpetrators and those who experience childhood abuse may be at greater risk of

indulging in substance abuse and violence later. Children who are exposed to alcohol induced domestic violence are more likely to become abusers in future, as they consider violence as a normal way of life.

The perpetrators are also impacted by the devastating effects of alcohol induced domestic violence as they lose children, harm relationships, and sometimes face legal consequences. Sometimes de-addicts, once they back to the society after de-addiction treatment experience neglect from family and society and they resume consuming alcohol. This is very dangerous as they will start consumption of alcohol where they left. Researches also indicate that women who are abused may be more likely to commit suicide. The Family Violence Prevention Fund, reporting on a 1995 study, stated that 29% of all women in the United States who attempted suicide were battered (Schechter, 1995). UNICEF (2000) reports that a close correlation between domestic violence and suicide has been established based on studies in the United States, Fiji, Papua New Guinea, Peru, India, Bangladesh and Sri Lanka. A study conducted by Minnesota Advocates for Human Rights (2000) in Moldova and Ukraine revealed that domestic violence may increase women's vulnerability to trafficking.

Conclusion

Domestic violence is a social evil and can happen to anyone regardless of race, age, sexual orientation, religion, gender, socio-economic backgrounds etc. There is a significant relationship between alcohol abuse and domestic violence but it must be seen as the overlap of two separate but frequently occurring social problems. Due to alcoholism induced domestic violence, the victims suffered various types of abuses which are physical, sexual, psychological, emotional and economic. These can render the victim

disabled for life in some cases. The efficacy of de-addiction treatment is found to be only 10%. 90% of those undergone de-addiction treatment will relapse. JanamaithriSuraksha Project is playing a very significant role in terms of creating awareness on the ill-effects of alcoholism and providing rehabilitation services to the alcoholics as well as to their family members. Frequent exposure to violence at home influences children and they can misinterpret that violence is a normal way of life. These children will most likely to grow up as violent individuals in future.

Suggestions

- The governments, non- governmental organisations and other civil society organisations can organise more awareness programmes by highlighting the ill effects of alcoholism induced domestic violence at various levels of the society.
- The relapse of the de-addicted person can be averted by rehabilitation through gainful employments. Also, to achieve successful rehabilitation, the State government can provide adequate financial assistance taking into account the scale of alcoholism related issues.
- The recreational clubs can be established by Janamaithri police for de-addicts to motivate each other and for social interaction.
- The de-addiction centres should match the number of liquor shops in the State i.e., there should be a proportionate ratio of de-addiction facilities and liquor outlets.
- The reintegrated de-addicts should be invited to alcohol anonymous meetings to give pep talks. This way they can improve the quality of their life and stay away from substance abuse with the help of caring peer group.

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Personality of Female Prisoners: An Analytical Study

Nouzia Noordeen* and Dr. C. Jayan**

Keywords

Crime, Criminal, Personality, Female Criminality, Violence.

Abstract

Crime continues to be an important problem both economically and socially. Adler (1975) believed that the arrival of the Second Wave of Feminism during the 1970s consequently coincided with a 'dramatic' upsurge in women's criminal activity. She claimed while 'women have demanded equal opportunity in the fields of legitimate endeavors, a similar number of determined women have forced their way into the world of major crime such as white collar crime, murder and robbery'. The concept of female criminality is a recent phenomenon both in developed and developing countries. Female criminality is a product of varied socio-economic-cultural and environmental factors resulting out of rapid industrialization and urbanization. Currently because of its increasing rate, it has drawn the attention of psychologists, sociologists and criminologists both at International and National scene. Recent studies observed that female criminality deserves more research interest than it has received. The present study analyzes the personality of female prisoners using TAT projective technique.

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Introduction

During the first half of the twentieth century, most explanations of female crime were ancillary to explanations of male criminality. Theorists emphasizing the causal role of biological and psychological factors in female crime typically postulated that criminal women exhibited masculine biological or psychological orientations. Lombroso, an Italian criminologist in the 19th Century, attempted to explain female crime. He viewed female criminals as having an excess of male characteristics. He argued that, biologically, criminal females more closely resembled males (both criminal and normal) than females. In nineteenth century, Lombroso and Ferrero wrote a book called, "The Female Offender" in 1895. Their theories were based on atavism; a belief that all individuals displaying anti-social behavior were biological throwbacks. The born female criminal was considered to have the criminal qualities of men and the worst qualities of women.

Classification of criminal populations has been in use since the 1800s. The earliest offender typologies were influenced by Darwin's theory of evolution and proposed by Lombroso, who suggested that offenders could be classified into five types: the 'born criminal', the 'insane criminal', the 'criminal by passion', the 'habitual criminal', and the 'occasional criminal'. Similar to those for their male counterparts, Lombroso's classification schemas for women were based on the assessment of physical features and purported to distinguish 'women of good life' from the fallen classes, 'lunatics' and female 'criminals'. It was also argued that 'criminal' women could be further differentiated by cranial-facial criteria according to their offence type: 'prostitution', 'abortion', 'infanticide' and 'complicity in rape' (Lombroso, 1895).

Recent attention to female criminality has led to increased study about the nature of women and violence. It shed light on the characteristics of the victims of crime, the perpetrators of crime, and the nature of the criminal offences themselves.

In order to determine what makes a criminal, it is important to first understand their personality. Behavior is largely a result of the way a person thinks. A personality is what makes a person. Even though a person might have the look of a criminal, the thought patterns of that person are what make them a criminal. According to Psychoanalysts, criminals' decisions to commit crimes come from abnormal thinking patterns. Researchers Yochelson and Samenow (1976) identified similar thought patterns found in crimes, which include: constant lying, fail to develop empathy, expect their desires to be catered to them, loving someone for doing what they want, black and white thinkers (no middle ground or moderation), blames other, etc. Criminals which have been tested are proven to be less responsible, intolerant, and deficient in self-control, according to the California Psychological Inventory.

Personality refers to a distinctive set of qualities, behavior styles and patterns that determine our individuality. Our personality shapes how we perceive the world, interact with others and understand their feelings (empathy). Our attitudes, thoughts, emotions and feelings are all part of our personality. People with normal healthy personalities are able to cope with many of the stresses of life. They do not generally have trouble forming relationships with family, friends, and colleagues and are capable of operating within the laws, social norms and parameters of society. People with a distorted personality can have difficulty dealing with other people. They tend to be unable to respond to

the changes and demands of life. Although they feel that their behavior patterns are perfectly acceptable, they tend to have a narrow view of the world and find it difficult to participate in normal social activities. Consequently their behavior deviates markedly from the expectations of their culture. It is persistent and inflexible, and can often lead to distress for themselves or others. The lack of scientific attention to the problems presented by female offenders is probably due to the recurring observation that considerably smaller number of women come into contact with the law than men. Yet, over the past century, female violence has been on the rise and increased attention has been directed toward understanding the nature of female criminality.

Statement of the Problem:

Analyzing criminal personality of female prisoners.

Objectives:

- To analyze the criminal personality of female prisoners.
- To explore the inner motives and desires of female offenders.

Method

Participants

For the present study 20 female offenders residing at Female ward of Viiyoor Central Prison was selected. Purposive sampling method was used for the selection of sample.

The selected sample constituted 20 female prisoners' age ranging from 23-60 years, who were in jail for 2 days to 7 years. Among them, 8 were arrested for robbery, 6 for immoral traffic, 4 for murder cases, and 2 for drug traffic. 13 of them were having education varying from 10th (3), plus two (3), pre-degree (3), degree (1), MBA (1) and nursing

(2) whereas 7 have not studied beyond 5th standard. Also, 13 of them were married and 7 were single. Majority of the participants (17) were working. All were belonged to different religion and socioeconomic background.

Measure

The Indian adaptation of Thematic Apperception Test (TAT), developed by Mrs. Uma Chowdary (1960) was used for the research study.

Procedure for Data Collection

Formal permission was sought from the Additional Director General of Police (ADGP) to collect data from the female prisoners of Viyyoor Central Prison. The authorities were met at the Secretariat, Trivandrum for the same and permission was granted to collect data within a stipulated time period of 25 days. Informed consent was taken and the tools were administered to the female prison inmates who were ready to cooperate as per following administration techniques. All the data were collected from the inmates individually.

The subject was seated comfortably and a good rapport was established. The researcher sits slightly behind the subject by the side, to avoid face to face interaction that facilitated spontaneous responses. The subject was instructed as follows: - "This is a test of imagination. I'm going to show you some cards with some pictures in each of them. Your task is to create a story as best as you can for each picture. Primarily the story should have a theme. Tell what has happened before, what is happening now and what will be in the future. Say what the people in pictures are feeling and thinking. You can make up any kind of story. The subject was shown pictures one at a time, serially on the basis the number given on the back of the cards." After completing 11 cards containing pictures, a single blank card was shown

and the examiner may say "You may make anything you please". After administering all the cards the subject is asked to be free. This same procedure was administered to all the 20 female prisoners.

In scoring, hero of the story was determined first, the centre character of pictures in whom the subject was most interested, whose point of view, feelings and motives have been most intimately portrayed. The content of the story was analyzed in reference to Murray's list of needs and press. Needs were classified according to the direction or immediate person, goal of the anxiety. A need may represent itself subjectively as an impulse, a wish or an intention of overt behavior. Some of the needs were achievement, aggression, nurturance and sex. Press was the force of heroes' environment which helps or hinders the attainment of needs such as affiliation, aggression, dominance and rejection. Conflict, emotional change and anxiety were noted down. The strength of each variety of needs and press were rated on a three-point scale. The criteria for the strength were intensity, duration, frequency and the importance. In the study, slightest suggestion of a variable was given a mark of one where as more intense or the repeated occurrence of the mildest form was scored as two. Mark three was given for very intense form of experience. The next important step was to analyze the outcome of the story. The outcome of the story was categorized into happy, unhappy, optimistic and pessimistic.

Data Analysis

The analysis of TAT was done by Thematic Analysis. Analysis based on the identification of themes in qualitative material, often identified by means of a coding scheme. A widely used approach to qualitative analysis, generally treating accounts as a resource for finding out about the reality or

experiences to which they refer, this is similar to interpretive content analysis. Here the main focus was on the emerging themes, needs and presses which were developed from the data collected through story narration. Also with the help of valuable information from the trained forensic psychologists the investigator was able to analyze the criminal personality of female prisoners.

Analysis and Discussion

The aim of the study was to analyze the criminal personality of female prisoners and to explore the inner motives and desires. The Thematic Apperception Test (TAT) was administered to the female prisoners and the results are given in Tables 1, 2 and 3.

Table 1
Predominant need patterns of the female prisoners.

SI No:	Need Patterns
1.	Succorance
2.	Nurturance
3.	Sex
4.	Achievement

The analysis of 12 stories in the TAT produced a list of needs among which 4 of them are found to be predominantly present in all the 20 female prisoners. They are the need for Succorance, Nurturance, Sex and Achievement. The female prisoners' scored high for succorance need. Their strong need for succorance show that they seek aid or consolation, depend on someone else for encouragement, forgiveness, support, protection and care. They enjoy receiving sympathy, nourishment or useful gifts and feel lonely in solitude, homesick in a strange place and helpless in a crisis. The need for nurturance indicates that they express sympathy

in action, kind and considerate of the feelings of others. The need for sex implies that they seek the company of the opposite sex, to have sexual relations, to fall in love or to get married. The achievement need shows their motive to work at something important with energy and persistence, to strive to accomplish something creditable and the ambition manifested in action. The need patterns of female prisoners reveal that they are deprived of the basic needs which are the trend of overt behavior. This lack may be contributing to their criminal personality.

Table 2
Predominant press patterns of the female prisoners.

SI No:	Press patterns
1.	Lack
2.	Loss
3.	Rejection
4.	Aggression

The TAT analyses show 4 important press patterns in female prisoners'. They are lack, loss, rejection and aggression. This shows that the female prisoners experience a deprivation in what they need to live, to succeed, or to be happy and there are no opportunities for pleasure or advancement. The 'loss' indicates that they loses something or someone in the course of their life. The third major press 'rejection' directs towards a person rejects, scorns, repudiates, refuses to help, or is indifferent. The 'aggression' can be of three types: emotional and verbal; physical and social; physical and asocial; and destruction of property. Most of the female prisoners' stories depicted emotional and verbal aggression which means the person is criticized, reprimanded, belittled, ridiculed, cursed, threatened, or engaged in verbal quarrel.

Table 3
Predominant emotional states of the female prisoners.

SI No:	Emotional States
1.	Emotional Change
2.	Dejection

The major emotional states of the female prisoners are emotional change and dejection. The emotional change of the female prisoners is that they experience a marked change of feeling toward someone, exhibit fluctuations of mood or temper. Dejection state shows the experiencing of feeling of disappointment, disillusionment, depression, sorrow, grief, unhappiness, melancholy and despair. These emotional states lead the female prisoners to engage in acts that over acts their emotional deprivations and inefficiencies.

The outcome of all the 12 stories of 20 female prisoners show an unhappy or sad ending. This finding reveals that they are not happy with their current life and the events that took place in their course of life. Thus the analysis shows that female prisoners' personality comprised of such unsatisfied components and in every way they tasted the bitterness of life.

The stories of the female prisoners show characteristics such as anger, depression, guilt, disturbance, worry, hatred, that marks an important contribution to criminal behavior. In all the stories the hero was identified by the female prisoners. Most of the themes on which the stories were constructed mainly consisted of family relationship particularly conflict between parent-child, love affairs, illicit relationship, loneliness, rape, assault, maltreatment, homicide, poverty on one hand and on the other hand stories where all happy endings such as love marriages, achievement,

social recognition, fame and monetary gain were clearly narrated. These all show the personality components of female prisoners. They have disturbed family ties and their interpersonal relationship is poor. They commit crime or engage in violence in order to satisfy their needs and motives that they are otherwise unable to achieve. The stories where all good things and happiness were highlighted show their innate wishes and desires to have all that in their lives but unfortunately they do not possess any which lead them to derive maladaptive roles to fulfill it. Thus the female criminal personality includes dysfunctional interpersonal relationship, poorly developed norms and societal rules, deprivation of needs and distorted mental set-up.

According to Miller (1976) a woman's primary motivation is to build a sense of connection with others. Women develop a sense of self and self-worth when their actions arise out of, and lead back into, connections with others. Connection, not separation, is the guiding principle of growth for women. Mutual, empathic, and empowering relationships produce five psychological outcomes. Participants in these relationships gain: (1) increased zest and vitality, (2) empowerment to act, (3) knowledge of self and others, (4) self-worth, and (5) a desire for more connection (Miller 1986). These outcomes constitute psychological growth for women. Mutuality, empathy, and power with others are essential qualities of an environment that will foster growth in women. By contrast, Miller (1990) has described the outcomes of disconnections -- that is, non-mutual or abusive relationships-- which she terms a "depressive spiral." These are: (1) diminished zest or vitality, (2) disempowerment, (3) unclarity or confusion, (4) diminished self-worth, and (5) a turning away from relationships.

The importance of understanding relational theory is reflected in the recurring themes of relationship and family

seen in the lives of female offenders. Disconnection and violation, rather than growth-fostering relationships, characterize the childhood experiences of most women in the correctional system. In addition, these women have often been marginalized because of race, class, and culture, as well as by political decisions that criminalize their behavior (e.g., the war on drugs). "Females are far more likely than males to be motivated by relational concerns ... Situational pressures such as threatened loss of valued relationships play a greater role in female offending" (Steffensmeier & Allen 1998).

According to Belknap (2001), the belief that is the primary, causal factor that leads girls towards a criminal trajectory. Girls and women may be 'criminalized' for their survival strategies (Chesney-Lind, 1998). Zaplin (1998) suggests that such cycles of events lead to emotional distress, low self-esteem (or even self-hatred), anxiety, depression and aggressive/ impulsive behaviors. The psychological-behavioral sequelae disable the development of 'healthy' empathetic or caring attitudes towards the self or others, leading to crime and potential violence.

According to the reviewed studies there are five major factors appear to influence female crime: (a) different role expectations for men and women, (b) sex differences in socialization patterns and application of social control, (c) structurally determined differences in opportunities to commit certain offenses, (d) different degrees of access to or pressures toward criminally-oriented subcultures or careers, and (e) sex differences built into the crime categories themselves. Women tend not to be arrested for crimes that require stereotyped male behavior, except in secondary roles. They seem to commit crimes in keeping with their sex roles and for lesser returns. High female arrest rates

are likely to occur for acts for which women have received adequate training during the normal growing-up process. Crime requiring masculine skills is also a reason for lower rate of female participation.

Family offenses most often committed by women, encompasses murder, spouse abuse, child abuse, and incest. Homicides by females generally occur in homes and often are spontaneous rather than planned. Ogle et al. (1995) focused on structural, social and cultural conditions, which generate strain for all women, which in turn produce negative effect. Women tend to internalize negative affect as guilt and hurt, unlike men who externalize it as anger directed at targets.

Hans Eysenck (1964) put forward a personality theory of criminal offending. Eysenck's theory may point in some useful directions where it comes to preventing crime. His theory suggests that the underlying tendencies that eventually manifest themselves as criminal behaviour are detectable in childhood and that it may be possible to modify the socialization experiences of high-risk individuals so that they do not develop into offenders. This could lead to interventions based on parenting or early treatment for delinquency and hence may be of great practical benefit in reducing criminal behaviour.

Conclusions

The female criminal personality constituted mainly the needs for succorance, nurturance, sex and achievement. The female prisoners' personality also indicated lack, loss, rejection and aggression. The major emotional states of the female prisoners are emotional change and dejection. The present study pointed out that most of the female prisoners are found to have a very negative attitude towards their

life. The overall impact of criminal personality of female prisoners throw light on the fact that existence of certain needs for achievement, craving for care that are never fulfilled combined with the feeling of helplessness and hopeless with changing emotions as well as emotional denial can become the risk factors which can pose threat to social, psychological, emotional, economical, well-being of women that can eventually results in behaviors that leads to criminality.

Suggestions

Effective measures to monitor the healthy development of children and various intervention programmes to provide needful help to suffering children could be developed. Enhance skill development among children and women to deal effectively with the life threats and develop coping and alternative measures to prevent them from becoming criminals. Productive rehabilitation for female prisoners after completion of their stipulated period of prison life to avoid engaging in further criminality is an important suggestion for future studies.

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A Correlational Study of PsyCap, EQ, Hardiness and Job Stress in Rajasthan Police Officers

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Keywords

PsyCap, Emotional Intelligence, Hardiness.

Abstract

The present research has examined the relationship between PsyCap, Emotional Intelligence, Hardiness and 8SQ in a sample of 300 police officers in the Rajasthan state. The sample was subjected to 4 measures PsyCap, 3 dimensions of Emotional intelligence and 8 emotional state of 8SQ with others. The analysis of these measures reveal that the constructs of stress resistant factors are significantly correlated suggesting that PsyCap, EQ and Hardiness can serve as effective predictor of Job Stress in Rajasthan police. Implications of the findings have been discussed to motivate them in turning the adversity in to opportunities and pursue growth and development in the life of custodian of law.

Job stress is a phenomenon which is unmistakably part of man's work environment. The policeman's work environment also doesn't escape this reality. Its role involves many challenges such as encounter with dreaded elements of crimes. It should be pointed out that the police

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work is well known high stress occupation (Band & Manule, 1987 Mathur, 1994:).The stress associated with police work is quite unique and relatively violent in comparison to the stress encountered in the general population. The negative consequences of job stress assume greater significance. Stress among policemen would manifest in the form of fatigue, depression, inability to concentrate, irritability, anxiety, regression, arousal and impulsive behaviour. Thus to deal with issue of stress and prevent the police officers from being the victim which can affect the society at large, there is a need to understand the importance of stress resistant factors like emotional intelligence, hardiness and pscap. These factors along with their measures can take into account the strengths and virtues of the personnel that will allow them to prosper, that give them a feeling of accomplishment, appraise the stressful events and that help them manage stress.

Emotional Intelligence is the ability to understand own emotions and other. It influences the overall ability of an individual to cope with the environmental uncertainties and demands. When one understands the circuit of feelings, thoughts and reactions they can blossom into mature individuals. Goleman (1998),argues that EI has five major components: self awareness, self-regulation, motivation, empathy and social skills. Self-awareness refers to the ability of individuals to recognize their strengths, emotions, worth and capabilities. Self-regulation is the ability of individuals to regulate their emotions and behavior so that they act appropriately in various situations. It involves resisting or delaying an impulse, drive, and temptation to act, responding versus reacting. Motivation is the internal driving force that enables individuals to focus on their objectives and continue to reach the desired goals. Empathy,

the root of emotional intelligence, is frequently viewed as the ability of individuals to understand the feelings of others and this may help them to act on those feelings and meet others' needs. Social skills are the skills which are needed to develop and nurture good working relationships with other human beings. This helps in handling irrational fears, stressful situations, understanding strengths and overcoming weaknesses to cope up with challenges.

Hardiness is a concept given by Kobassa (1973) as a way of conceptualizing interrelated self perceptions of commitment, control and challenge that help in managing stressful circumstances. Hardiness reflects the individual's response to life events both personally and professionally. The three basic elements comprising hardiness include the ability to perceive change as a challenge, to maintain a sense of purpose and deep commitment to the people and activities in which they are involved, and to perceive a sense of personal control in handling life's events and activities.

The construct of Positive Psychological Capital or PsyCap was given by Luthans and his colleagues (2004). PsyCap can be defined as "The study and application of positively oriented human resource strengths and psychological capacities" (Luthans, 2002). It fuels growth and performance in the individual. It consists of four components which are measurable, unique and have an impact on stress. These concepts are defined as follows;

Resilience refers to "bouncing back" from adversity, uncertainty and failures (Luthans). People high on this would be adaptable and flexible in turbulent times and would change according to the need of the environment.

Optimism is considered as purpose oriented state that

attributes positive events to internal permanent and pervasive causes and negative as external, temporary and situation specific. Individual high on optimism is more likely to anticipate that future events will be positive in nature (Seligman, 2002).

Hope is a motivational state; it is conceived as the perceived capability to derive pathways to desired goals. This positive state involves identifying personally valuable goals, generating multiple pathways to this goal and considering the resources required to pursue each pathway.

Self efficacy is a belief or trust on one's own capabilities for accomplishing the specific tasks (Bandura, 1997; Stajkovic Luthans, 1998). Self efficacy presents positive emotions and builds the person's confidence to formulate and implement plans to attain goals (Bandura, 1997). Persons who have high self efficacy select compelling tasks in doing their job and pursue their belief even in the face of challenges.

Some preliminary observations have also been made but the constructs have not been studied collectively as stress resistant factors. Several studies investigated the impact of EI competencies on stress, which report the existence of positive relationship (Gardner, 2005, Spector & Goh, 2001, Ciarrochi, Chan, & Bajgar, 2001, Oginska-Bulik, 2005, Nikolaou & Tsaousis, 2002, Choubey et al, 2009). Individuals who can regulate their emotional states have been found to be healthier because they are able to correctly appraise their emotional states, express their feelings, and regulate their moods. Individuals with high levels of EI should be able to cope better with challenges and control their emotions more effectively than individuals with low levels of EI, which should in turn improve the physical and psychological health outcomes associated with stress. Studies exploring the relationship between hardiness and Stress offer

inconsistent findings, some researchers (Bartone, 1984) did not find significant relationship between Hardiness and Stress, Similarly Banks & Gannon, 1988; Barling, 1986; Funk & Hutson 1987, Kobasa, 1979, Maddi & Kahn 1982 had found negative relationship between Hardiness and stress. Similarly research on the effect of PsyCap on stress is very few. (Avey, Luthans & Jensen, 2009, Tugade & Fredrickson, 2004, Steed 2002,) found that those low in PsyCap are more prone to perception of stress symptoms, thereby leading to intentions to quit and job search behaviour. In a study by Roberts, Scherer, and Bowyer (2011), it was found that PsyCap lessened the effect of job stress.

The major objective of the study was to establish the relationship with stress resistant (which includes a) PsyCap and its components Hope, Optimism, Resilience and Self efficacy b) Emotional intelligence and its dimensions sensitivity, competency and maturity c) Hardiness) in relations to stress related factors (Arousal, Anxiety, Depression, Extraversion, Fatigue, Guilt, Regression and Stress) in context with Rajasthan police personnel.

The present study was aimed at finding correlation if any among the stress resistant factors and stress related factors in male police officers. More specifically, it is hypothesized that there would be no significant correlation between the stress related and stress resistant factors.

Method

Basically it is the survey study on the measures of pscap, emotional intelligence, hardiness and stress related factors (arousal, anxiety, depression, regression, fatigue, guilt extraversion and stress).

Participants: The researcher has attempted to find out the reasonable number which is considered as a true

representative of Rajasthan. Hence, keeping in mind the difficulty level, the total number of sample size taken for this study was 300 respondents from the police personnel of the selected cities in the State of Rajasthan. The cities included Sikar, Udaipur, Jaipur, Ganganagar, Jhunjhunu, Chomu and Dholpur.

Measures: Following is the set of measures which were administered to the 300 participants.

- Emotional Quotient Scale (Singh & Chaddha, 2003). The test has 22 real- life situations experienced by individuals in their day-to-day life based on 5- point scale rating. These situations reflect some areas of emotional intelligence such as self awareness, self regulation, handling relationships, motivation, conflict resolution and stress management
- Short Hardiness Scale (modified): the modified scale consists of two parts with part A consisting of 14 statement and part B consisting of 6 items in alternate items of a and b. The part A assesses commitment and challenge and part B measures challenge.
- PsyCap Scale (Luthans, F., Avolio, B., Avey, J., & Norman, S,2007):The scale consists of 24 items. Each of the four components is measured by six items. The resulting score represents an individual's level of positive psychap.
- Eight State Questionnaire(Cattell,1976): form A is used an individual's score on each of the eight scales is based on twelve items. Four alternative responses are used which measures the 8 emotional states of an individual.

Results and Discussion

The data was analysed employing correlational analysis. Table 1.1 presents the correlation between the measures

of stress resistant and stress related factors in the sample. A close inspection of the correlation matrix of measures of the psychcap, emotional intelligence, hardiness and 8 SQ state demonstrate high correlation between the measures of all constructs in the sample. Thus it can be inferred that stress resistant and stress related factors have significant linear relationship on most of the variables. The significant negative correlation between the factors is understandable as lower the scores the measures suggest high stress resistance. If one tries to see the entire correlation matrix of these measures it emerges that all the constructs have more or less significant correlation between and within these measures.

Table 1.1 Correlation between stress and stress resistant factors in sample (N-300)

	Anxiety	Stress	Depression	Regression	Fatigue	Guilt	Extraversion	Arousal
EQ	** -.389	** -.476	** -.350	** -.347	** -.455	** -.232	** -.283	** -.188
Sensitivity	** -.729	** -.654	** -.610	** -.403	** -.513	** -.569	** -.609	** -.531
Maturity	** -.463	** -.493	** -.453	** -.442	** -.518	** -.246	** -.403	** -.303
Competency	** -.367	** -.408	** -.328	** -.280	** -.299	** -.212	** -.230	** -.199
Hardiness	-.760	** -.708	** -.790	** -.627	** -.702	** -.731	** -.665	** -.719
PsyCap	** -.312	** -.407	** -.374	** -.365	** -.456	** -.259	** -.355	*-.142
Self efficacy	** -.428	** -.467	** -.433	** -.469	** -.510	** -.309	** -.433	** -.308
Hope	-.075	** -.185	** -.199	*-.136	** -.187	* -.096	-.048	-.054
Optimism	*-.100	*-.136	-.074	** -.238	** -.178	-.081	** -.175	-.073
Resilience	** -.323	** -.239	** -.281	** -.206	** -.266	** -.421	** -.492	** -.201

** Correlation is significant at the level 0.01

* Correlation is significant at the level at 0.05

Emotional Intelligence and its measures has significant and linear relationship with all the factors of stress. The empirical research is aligned along with the review of literature. (Studies Farmer, 2008, Ciarrochi et. al. 2002, Slaski & Cartwright, Giardini & Frese, 2006) had suggested that if emotional intelligence has a negative relationship with stress, it is essential for individuals to develop or enhance their emotional intelligence, as high emotional intelligence would be regarded as a resistance to stress. Similarly Hardiness also has significant inverse linear relationship with the stress related factors. The results suggest that those with high hardiness score would be able to appraise the stressful situation and and turn the adversity into opportunities with their personal resources. (Maddi & Kobasa, 1984: Maddi, Harvey & Khoshaba, 2006, Nowack, 1989; 1991; Berwick, 1992; Bartone *et al.*, 1989). Personnel who tend to possess high hardy attitudes can show the action pattern of coping with stressful circumstances by facing them rather than being denied and converting threats into opportunities. They can minimize the stress by turning changes into advantage and resolving the conflicts. The findings of the study also highlighted that pscap have significant linear relationship with stress factors however, its components hope and optimism are not related significantly with the extraversion, arousal and guilt in the study.

Conclusion

The major trend emerged form this study is that different measures of stress resistant factors (PsyCap, Hardiness & Emotional intelligence) and stress related factors (Arousal, Anxiety, Depression, Fatigue, Extraversion, Guilt, Regression and Stress) were found to be significantly correlated. It can be safely inferred that police personnel who have attributes of stress resistant factors can handle stress effectively and

efficiently. They can transcend self imposed limitations and actualize their potentials. They become adaptable, constructive, creative, productive and effective in their tasks and can serve the society at large. The study needs to be replicated before it is generalized for Indian Police personnel.

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Police Job's Stressors: Does It Affect the Job Performance, Quality of Life and Work of Police Personnel?

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Keywords

Stressors, Quality of Life, Job Performance, Quality of Work Life, Effect on Personal Life, Policing.

Abstract

The present research was undertaken to address the following questions: (a) what are the different aspects of job stressors perceived by the police personnel at their work? (b) how the police job's stressors affect the different aspects of police personnel i.e. level of job performance, quality of life, personal life, and quality of work life? and (c) what are the different predictors of job performance, quality of life, personal life, and quality of work life of police personnel?

This cross-sectional study was conducted in two stage. In first stage, in-depth interviews were conducted to explore the different aspects of job stressors perceived by the police personnel. A questionnaire on police job's stressors was developed on the basis of these interviews and previous literatures. In second stage, 428 police personnel by using incidental sampling of Uttar Pradesh Police Organization, consisting of 287 males and 141 females police personnel from 12 districts of Uttar Pradesh with

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different ranks and varied age groups, were taken as sample for survey. In this stage, respondents were given measures related to police job's stressors, job performance, quality of life, personal life, and quality of work life.

Results showed that:(1) There are seven factors emerging in thematic content analysis of the in-depth interviews for exploring the construct of Police job's stressors i.e. Nature of Duty, Lack of Support, External Pressure, Feeling Biasness, Lack of Freedom, Lack of Infrastructure, and Working Conditions. (2) Police job's stressors were negatively related to quality of life, job performance, quality of work life, and personal life. (3) Out of the seven dimensions of Police job's stressors, it was the nature of duty which was found to be predicting (a) the quality of life, (b) job performance, and (c) quality of work life most, and lack of resources which was found to be predicting personal life. Results were discussed in the light of the previous literatures.

Introduction

Police officers and members of their families consider their job to be one of the most stressful because they are exposed on daily basis to stressful and traumatic events (Sijaric-Voloder & Capin, 2008), reports high rates of divorce, alcoholism, suicide, and other emotional and health problems among them (Burke, R.J.,1989; Delprino, R.P., K. O'Quin, and C. Kennedy (1997). No job is immune from stress, but for the law enforcement officer, the strains and tensions experienced at work are unique, often extreme, and sometimes unavoidable. Policemen are often viewed as rude and highhanded. However, outsiders may not appreciate the extreme conditions under which they lead their lives. Stress also has a negative effect on the health of the policemen. Although the importance of stress among

police officers is generally recognized, little empirical support exists for the supposed high level of stress.

Review of Literature

Over the past few decades, stress is emerging as an increasing problem in organizations. Stress is vigorous state in which a person is confronted with an opportunity, demand, or resource related to what the individual wishes and for which the outcome is perceived to be both vague and vital. (Selye, 1936) first introduced the idea of stress in to the life science. He defined stress as the force, pressure, or tension subjected upon an individual who resists these forces and attempt to uphold its true state. While job stress was first conceptualized by Kahn et.al. (1964), whereby job stress is viewed as dysfunctional for organizations and their members even though stress has been variously viewed as an ecological stimulus to an individual. In this sense, work stress exists when people perceive that they have difficulty in coping with the demands relating to work and that their sense of well-being is being threatened.

A huge and multi fields literature points a lot of key factors such as work environment, management support, work load etc. in determining the stressful the work can be and its effect on employee physical and mental health (Ganster & Schaubroeck. (1991).

Stressors in Organizational Life

Stress exists in every organization either big or small. The workplaces and organizations have become so much complex due to which it exists; work place stress has significant effects over the employee's human psyche, which reduces employees urge for performing better. The conditions that precede stress envelope the workforce are coupled with conditions that are characteristic of life inside the organization. Negative physiological and psychological

consequences often accompany such stressors for a significant portion of the people exposed to them. Kahn and Byosiere (1992) categorized stressors in organizational life into two groups, termed *task content* and *role properties*.

Task-content Stressors (Physical Aspects): Task content stressors are the physical aspects of organizational life that characterize the task at hand including its complexity, simplicity, or monotony and the physical conditions under which it must be carried out, such as extreme temperatures, equipment inadequacies or excessive noise. Police officers must work under adverse physical conditions is virtually a given. Excessive heat in summer months, brutal cold in winter months, rainy or windy weather when officers are assigned to foot patrol, a traffic-control post, or must ride a motorcycle creates adverse work experiences that may lead to stress. This may be compounded by substandard equipment and facilities, which may create potentially harmful situations and a general sense of inconvenience and uncaring from the administration, which reduces a police officer's performance.

Role Properties (Psychosocial Aspects): Psychosocial aspects of police work refer to the interaction between a police officer's psychological state and their social environment. Psychosocial properties are used to describe the unique internal cognitive processes that occur inside the individual that may be shaped by their environment. Role properties are aspects of the work environment that involve relations with coworkers, supervisors and top administrators and interpretation of the police role, which is acquired through individual and social processes. These interactions and associated interpretations may result in role conflict, role ambiguity and role overload for the officers, stressors that seem to hold across occupational settings and are not unique to police work (Weiss, 1983).

Differentiating Stressors in Policing

What is actually causing stress for police officers? [Brown and Campbell (1990, 1994); Alexander et al., (1993), and Biggam et al., (1997)] conducted empirical studies on work stressors in policing. All concluded that there are two important categories of potential stressors in police work. *First* is the nature of police work (job content), such as physical threat, force, exposure to danger, facing the unknown, and shift work. *Second* are the organizational aspects (job context) of police work, such as a lack of confidence in management, lack of internal communication, and continuous organizational changes. The most salient stressors identified by these researchers were organizational factors rather than specific police tasks. This conclusion was confirmed in related police studies (Coman & Evans, 1991). Comparable results are found in other occupations (Biggam et al., 1997; Hart et al., 1995), for example, teaching, nursing, and management (Kahn & Byosiere, 1992).

Amaranto and colleagues (2003) investigated the need for stress interventions due to job related stressors and identified several “job-context” stressors as a direct source of stress:

- Being “second-guessed” in field work (Possibly due to unsupportive supervisors and managers);
- Punishment for “minor” infractions;
- Lack of reward for a job well done (Unsupportive management);
- Fear of being “scold”
- Lack of support from higher authorities; and
- Low morale—a result of the aforementioned conditions (Possibly due to unsupportive management and favoritism).

Job-context stressors that are likely to create stress and tension in the police milieu include organizational structure

(i.e., bureaucracy, capacity, and work schedules (O'Neill and Cushing, 1991; Pierce and Dunham, 1992; Pilcher and Huffcutt, 1996); and various aspects of organizational life i.e., facilities and equipment, role ambiguity, role conflict (Alexander et al., 1993; Brown et al., 1999; Vila and Kenney, 2002), lack of supervisory and management support (Gulle, Tredoux, and Foster 1998; Koortzen, 1996), indifference of command staff officers, limited opportunities for promotion, working conditions and poor support systems (Roosendaal, 2002). Physical working conditions are also considered as stressful conditions include poor illumination, pollution, high temperatures, noise, and shift work (Schultz & Schultz, 2006).

According to the Report of Gershon, R. (2000) published by National Institute of Justice, following are the sources of stress among law enforcement officer:

- Exposure to violence, suffering, and death is inherent to the profession of law enforcement officer. There are other sources of stress as well. Officers who deal with offenders on a daily basis may view some sentences as too lenient; they may perceive the public's opinion of police performance to be unfavorable; they often are required to work mandatory, rotating shifts; and they may not have enough time to spend with their families. Police officers also face unusual, often highly disturbing, situations, such as dealing with a child homicide victim or the survivors of vehicle crashes.
- The nature of the organizations in which officers work may also be a source of stress. Police departments historically have been structured along military lines and as a result often have been rigidly hierarchical and highly bureaucratic, with management styles that can be inflexible.

- Although in many instances police culture is changing, in many others the leadership remains predominately white and male, opportunities for advancement are limited, and despite the ubiquity of the personal computer, a large amount of paperwork still is required.

According to Smith and Charles (2010) found that repeatedly dealing with death, serious injury, horrific crime scenes, the need to be constantly alert whether on or off duty, and being ostracized by communities, friends, and family, are mainly causes stress among police personnel.

According to Bushara Bano (2011), the main causes of stress as perceived by the respondents are Political pressure (71.2%), lack of time for family (68.2%), non-cooperation from public and negative public image (62.1%) and low salary (57.6%). In addition, a large number of them also referred other causes like lack of govt. support (48.5%), work overload (48.1%), frequent transfer (48.5%), excessive job (36.5%), lack of organizational/departmental support (36.4%), tortuous senior officers (30.3%) and so on.

Along with this, certain aspects of the work, such as high demand and/or low control, shift work and frequent contact with citizens, is the reason why this occupation is defined as "high stress" (Gershon, Lin & Li, 2002). The population's expectations of having an efficient, integral police force also contribute to professional stress (Collins & Gibbs, 2003; Newman & Rucker-Reed, 2004).

In this study, researcher has taken police job stressors in terms of two broad categories: job content and job context which is further operationalized as a collective perception of stressors such as nature of duty, lack of support, external pressure, feeling biasness, lack of freedom, lack of resources,

and working conditions. (In order to explore the different police job stressors, In-depth interviews were done on 35 police personnel, refer to Table No: 1 of this study).

Organizational Stressors and Job Performance

Performance of an employee at his/her workplace is a point of concern for all the organizations irrespective of all the factors and conditions. Consequently, the employees are considered to be very important asset for their organizations (Qureshi & Ramay, 2006). A good performance of the employees of an organization leads towards a good organizational performance which ultimately making an organization more successful and effective and the vice versa (Armstrong & Baron, 2000).

To measure the police performance is complex and can take different forms partly because there is no consensus about what constitutes performance or how to measure it (Alpert and Dunham, 2001). Therefore, researcher has taken job performance measures that reflect the multiple dimensions (individual, department, and organizational level assessment of job performance) of policing, are what Kaplan and Norton (1996) define as the "*balanced scorecard*".

The literature review suggests that police organizations may be a significant source of police stress, which consequently reduces performance. Jon M. Shane (2008) found in his study that after controlling for several demographic variables, organizational stressors made a statistically significant contribution to predicting police performance ($F = 22.316$; $p < .001$). This finding suggests, as the perceived level of stress increases performance decreases.

In other opinion by L. A. Muse, S. G. Harris, & H. S. Field (2003), in a recent meta-analysis, 24 (46%) of the 52 empirical studies examine, supported a negative linear

relationship between job stress and job performance. In contrast, the U-shaped/curvilinear relationship between job stress and performance can be originally traced back to the work of Yerkes and Dodson (M. Jamal (2011)). This issue has been widely discussed for many years by many researchers. According to R. Kazmi, S. Amjad, and D. Khan (2008), there is an inverse relationship between job stress and job performance indicating that there is high job stress in the house officers, resulting in low job performance. They identified six dimensions of job stress which are job pressure, job description conflict, lack of communication and comfort with supervisor, job related health concern, work overload, and lack of resources.

In 2001, J. Davey, P. Obst, & M. Sheehan, developed another theory of job stress which consists of job-related stress of organizational aspects, such as long work hours, lack of organizational support and organizational change. Generally, job stress is vital for front-liners because in their everyday work they deal with people with various emotion related to the services offered by them.

Researches show mainly a negative linear relationship between work stressors and employee job performance (Jamal, 1984; Muse, Harris, & Feild, 2003; Westman & Eden, 1996). However, some results suggest only a weak relationship or no relationship between stress and job performance (Sullivan & Bhagat, 1992).

Organizational Stressors and Quality of Life and Work

Quality of life has been widely studied in context of various domain of life, however, Quality of life of police personnel and its correlation with organizational stress has remained relatively unexplored especially in India. Therefore, this

study is an attempt to explore the possible relationship with stressors associated with police jobs.

In general, quality of life is the degree to which a person enjoys the important possibilities of his/her life. *"Quality of Life is defined as individual's perception of their position in life in the context of the culture value systems in which they live and in relation to their goals, expectations, standards, and concerns"*. It is a broad ranging concept, incorporating in a complex way individual's physical health, psychological state, level of independence, social relationships, personal beliefs, and their relationships to salient features of the environment. This definition highlights the view that quality of life is subjective, includes both positive and negative facets of life and is multi-dimensional. Thus, it includes the conditions of life resulting from the combination of the effect of complete range of the factors such as those determining health, happiness and a satisfying occupation, education, social and intellectual attainments, freedom of actions and freedom of expression (WHO, 1995).

Police activity can be expected to be performed by psychologically stable individuals who behave according to positive attitudes toward society and their own work, allowing them in this way to cope with stressful, emotional or high-risk situations using the best possible decision making processes (Yagüe, 1994). Therefore, it is relevant and necessary to take police officers' mental health and quality of life into consideration in relation to their work and not only in the selection process to enter the police force.

Researches show that work stress produces physical and mental problems that are highly related to work incapacity; incapacity is related to lower quality of life (QOL); and people with lower QOL are less likely to return to work (Pattani, Constantinovici & Williams, 2004).

Ravindran et. al. (2002) show that high stress situations contribute to the apparition of depressive disorder and that this is accompanied by a notable reduction in QOL. For this reason, evaluating QOL may be advantageous and QOL answers may be used to evaluate mental health (Cass, Volk & Nease, 1999).

An association exists between high levels of emotional stress and poor QOL (Lipp, M. 2009). Among the stressors related to police work, the study by Hart et. al. (1995) that utilized The Police Daily Hassles and Uplifts Scales (Hart, Wearing, & Headey, 1994) shows that work experiences at the organizational level exert a greater influence in determining Perceived Quality of life (PQOL) when compared to those at the operational level. These results are consistent with increasing scientific evidence which postulates that police organizations are the main source of psychological distress among police officers (Greller, Parsons, & Mitchell, 1992; Violanti & Aron, 1992).

Kutlu et. al. (2009) show that subjective quality of life (SQOL) is significantly lower among depressed police officers in comparison with non-depressed officers. In addition, Chen et. al. (2006) show that non-depressed police officers have greater scores on all subjective quality of life (SQOL) subscales.

Claudia et. al. (2012) found that among the different variables which are associated with lower QOL: work-related organizational and operational stressors with the organization variables exerting a greater effect, the exposure to disasters, the perception of how traumatic the disaster is, personality traits with the neurotic trait exerting a negative effect, depression, and suffering from a physical illness.

Ahmad, S. (1991) conducted the study on perceived quality of work life in relation to organizational role stress among 156 middle level managers of public and private undertakings. Findings revealed that all the four dimensions of perceived quality of work life viz., perceived influence at work, perceived amenities at work, perceived nature of job and perceived nature of supervisory behaviour were significantly but negatively related to most of the dimensions of organizational role stress. It was also found that age and tenure were significantly correlated with perceived influence at work and perceived amenities at work.

In light of the above literature review, there are very few studies that explore and measure the impact of those stressors may have on police performance, especially in Indian context. This has led researcher to move away from generic stress scales to domain-specific scales that measure the unique characteristics of policing. This study is undertaken to explore the different job stressors related to police profession first, and then try to measure its impact on police personnel's job performance, as well as predict the extent of the impact those stressors have on their quality of life and work life and the overall objective of this study was to make a contribution in improving their quality of life as well as the organizational effectiveness.

The present research has been undertaken to address the following research questions: (a) what are the different aspects of job stressors perceived by the police personnel at their work? (b) how the police job's stressors affect the different aspects of police personnel i.e. level of job performance, quality of life, personal life, and quality of work life? and (c) what are the different predictors of job performance, quality of life, personal life, and quality of work life of police personnel out of the different forms of police job stressors?

To answer the above mentioned questions, researcher has used mixed research design. First, the construct (Police job's stressors) was explored through in-depth interviews, and then a questionnaire was developed to measure it and find out the relationships with other variables of this study such as job performance, quality of life, effect on personal life, and quality of work life in form of survey.

The following hypothesis was made to explore the relationships between the variables:

- Police job's stressors will negatively affect the job performance of police personnel,
- Different forms of police job's stressors will negatively affect the different dimensions of job performance.
- Police job's stressors will negatively affect the quality of life of police personnel.
- Different dimensions of quality of life will be negatively affected by the different forms of police job's stressors.
- Quality of work life will be negatively affected by the different forms of police job's stressors.
- Police job's stressors will negatively affect the personal life of police personnel.

Method

Study Sample and Sample Selection

This cross-sectional study was conducted in two stage. In first stage, in-depth interviews were conducted on 35 police personnel of different hierarchies (SP=3, Dy. SP=5, Inspector=5, S.I.=6, Head Constable (Dewaan) = 6, and Constable =10 rank) to explore the different aspects of job stressors perceived by the police personnel. Later on, a questionnaire on police job's stressors was developed

(thematic content analysis is given in analysis and result section) on the basis of these interviews and previous literatures. In second stage, 428 police personnel by using incidental sampling of Uttar Pradesh Police Organization, consisting of 287 males and 141 females police personnel from 12 districts of Uttar Pradesh with different ranks and varied age groups, were taken as sample for survey. They belong to different departments such as Civil, GRPF, Traffic Police, Reserve Police Force, PAC, Intelligence and employees working at Police Headquarters. In this stage, respondents were given measures related to police job's stressors, job performance, quality of life, personal life, and quality of work life. This study is conducted during my PhD. and when the data was collected for the study, institutional ethical committee did not exist in the Allahabad University. Therefore, formal clearance could not be taken. However, the oral consent was obtained from the respondents before collecting the data.

Description of Research Tools/Measures

Scale of Police Job's Stressors

This scale was developed by the researcher in order to explore the different forms of job related stressors perceived by police personnel, and this was one of the objective of this research was too. To developed a more relevant measure of police job stressors, in depth interviews was taken from 35 police personnel of different hierarchies. Content analysis was done to find the meaning of the content of in-depth interviews. As the part of content analysis, initial responses were converted into different codes, categories and further in form of themes. Here is the thematic representation of the obtained data:

Table: 1. Showing the major themes, categories and codes of in-depth interviews emerged from Content Analysis.

Summary of Major police job's stressors (N=35)						
Major Themes		Categories	Codes (Responses)	f	%	Total No. of Responses
A	Nature of Duty	Nature of job	<ul style="list-style-type: none"> • Fatigue due to overtime or shift work • Raid 	23 7	65.71 20.00	75
		Hectic job schedule	<ul style="list-style-type: none"> • No fixed time for duty • 24x7 duty 	25 20	71.43 57.14	
B	Lack of Support	Seniors	<ul style="list-style-type: none"> • Working with Seniors • Inconsistent leadership style 	13 8	37.14 22.86	39
		Co-worker	<ul style="list-style-type: none"> • Working with co-worker • Letdown at bad time or on sick leave 	10 8	28.57 22.86	
C	External Pressure	Unable to fulfil responsibilities	<ul style="list-style-type: none"> • Unable to fulfil social responsibilities beyond the duty • Not able to give proper time for family and friends 	8 14	22.86 40.00	55
		Maintaining Public image	<ul style="list-style-type: none"> • Maintaining the 'Good image' in public • Negative comments of public 	9 12	25.71 34.29	
		Interferences	<ul style="list-style-type: none"> • Political interferences • Media's negative attitude towards our work. 	7 5	20.00 14.29	
D	Feeling Biasness	Variation	<ul style="list-style-type: none"> • Rules and regulations varies from person to person • Unequal distribution of work 	14 9	40.00 25.71	23

E	Lack of Freedom	Feeling like puppet	<ul style="list-style-type: none"> Involved in unconscionced work Pressure of proving themselves 	8 5	22.86 14.29	35
		Context dependency	<ul style="list-style-type: none"> No freedom to work independently Unable to raise their voice 	15 7	42.86 20.00	
F	Lack of Resources	Lack of Resources	<ul style="list-style-type: none"> Lack of staff Lack of resources Inappropriate tools/weapons 	12 10 18	34.29 28.57 51.43	50
		Lack of proper training	<ul style="list-style-type: none"> Lack of proper training of new tools 	10	28.57	
G	Working Conditions	Working conditions	<ul style="list-style-type: none"> Shift work Night duty Demand of overtime 	4 6 9	11.43 17.14 25.71	65
		Risk of become the victim	<ul style="list-style-type: none"> Risk of injuries during work Regular encounters with painful incidents 	7 9	20.00 25.71	
		Working culture	<ul style="list-style-type: none"> Excessive paper work Bureaucracy Departmental enquiry Accountability for duty 	12 8 5 5	34.29 22.86 14.29 14.29	

On the basis of content analysis, seven major themes were generated such as nature of duty, lack of support, external pressure, feeling biasness, lack of freedom, lack of resources, and working conditions. While developing the measure of police job stressors, different codes were taken as the items and Major themes were considered as the different forms

of stressors related to police job. The constructed scale has 34 items representing the collective form of police job stressors: *Nature of Duty, Lack of Support, External Pressure, Feeling Biasness, Lack of Freedom, Lack of Resources, and Working Conditions*. A five-point Likert rating scale was used to assess the police stressors in each sub-scale, where 1 = Completely and 5 = Not at all, and the higher scores on this scale indicates high level of police stressors and lower scores indicates low level of police stressors. The overall Cronbach's Alpha coefficient of this adapted scale is .852 on 34 items.

Job Performance

It is a 24 items scale for assessing level of job performance of police personnel at Individual, Departmental, and Organizational level, constructed by researcher. A five-point Likert rating scale was used where 1 = Very low level of performance and 5 = Very high level of performance, and the higher scores on this scale indicates higher level of job performance while lower scores indicates lower level of job performance of police personnel. The overall Cronbach's Alpha coefficient of this constructed scale is .698 on 24 items.

Quality of Life Scale

The scale was the Hindi adaptation of a Quality of Life Scales (B.L. Dubey, Dwivedi, P & Verma, S.K., 1988). The quality of life measures the overall assessment present status of life, meaningfulness of present live, level of satisfaction on present needs, the quality of relationship with loved one and others as well as physical functioning, health status and achievements. The overall Cronbach's Alpha coefficient of this adapted scale is .803 on 22 items.

Quality of Work-Life

It is a single item scale for assessing the quality of work life of police personnel, constructed by researcher. A five-point Likert rating scale was used where 1=Very poor and 5= Excellent, and the higher scores on this scale indicates better quality of work life while lower scores indicates worsen quality of work life of police personnel.

Effect on Personal Life

It is also a single item scale for assessing the overall effect of work on personal life of police personnel, constructed by researcher. A five-point Likert rating scale was used where 1=Very Negatively and 5= Very Positively, and the higher scores on this scale indicates very positive effect on personal life while lower scores indicates very positive effect on personal life of police personnel.

Data Collection

Permission for data collection was sought in person or through telephonic talks with officer-in-charge at various units of the police force. The researcher had also a meeting with the Director General of Police, Lucknow and Additional Director General of Police, Allahabad Police Headquarter regarding to this. The sample would be called a purposive sample in the sense that data could be collected only from those police personnel who gave their consent to participate for this purpose. They were informed about the required time investment on their part and owing to their busy schedules. Some of them were unable to spare the required time due their busy schedules or duties during the visits of different districts for the data collection. Moreover, most of the officers from the upper hierarchical level and lower level were very happy to participate in this study and they had spent more than the required time.

After, the initial talks to the participants regarding the purpose of the research, researcher ask the items of questionnaire one by one to the participants of this research work or ask to fill the questionnaire in front of researcher, so that no chance of missing data. They didn't allow to take the questionnaire home or returned it next day.

Analysis of Data

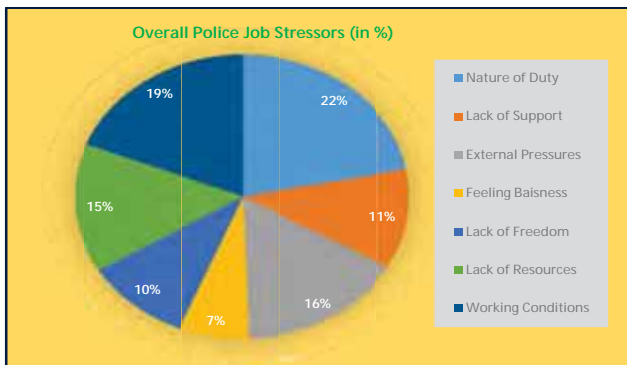
The obtained data were analysis with the help of SPSS 22 (A Statistical Packages for Social Science Research).

Results & Discussion

The present study was undertaken to test the relationship between police job stressors, job performance, quality of life, quality of work-life and effect on personal life. The following results and discussion are presented according to the research questions and hypothesis formulated by researcher. Results are discussed in the light of the previous literatures.

The **pie chart** shows a diagrammatic representation of the different forms of police job stressors emerged from

Exploring the different aspects of police job stressors: (Qualitative Study)



Source: Refer to Table No: 1(In-depth interviews were done on 35 police personnel in order to explore the different police job stressors)

the content analysis of the responses obtained from the qualitative enquiry of factors responsible for generating stress among police personnel. (Refer to Table No: 1)

The above chart shows that nature of job (24x7 working scheduled and hectic job scheduled) and working conditions (working conditions, risk of become the victim, and working culture) have maximum contributions (22% and 19%) in generating stress among police personnel while feeling of external pressures in form of unable to fulfil responsibilities towards family and society, maintaining public image, and interferences from political and media persons in their work) and lack of resources i.e. lack of staff, lack of resources, inappropriate tools/weapons, lack of proper training of new tools have 16% and 15% contributions in causing stress among them. On the other hand, lack of support from seniors and co-workers & lack of freedom i.e. feeling like puppet and context dependency have 11% and 10% contributions in triggering stress among them & feeling of biasness (variation in rules and regulations from person to person and unequal distribution of work) has minimum contribution in generating stress among them.

The obtained result is consistent with previous work on this area i.e. defining what causes stress among employees. In terms of job content and job contextual factors of stress, the most salient stressors identified by this study were organizational factors (contextual) rather than specific police tasks (job content). This conclusion was confirmed in related police studies (Coman & Evans, 1991). The nature of the organizations in which officers work may also be a source of stress. Police departments historically have been structured along military lines and as a result often have been rigidly hierarchical and highly bureaucratic, with management styles that can be inflexible (National Institute of Justice, 2000).

2. Relationship between Police Job's Stressors, Job Performance, Quality of Life, Personal Life, and Quality of Work-Life

Table No:2: Showing the bivariate correlation between Police Job Stressors with Job Performance, Quality of Life, Personal Life, and Quality of Work-Life. (N=428)

Antecedents Consequences	Overall Police Job Stres- sors	Different Forms of Police Job Stressors						
		Nature of Duty	Lack of Sup- port	Exter- nal Pres- sure	Feel- ing Bias- ness	Lack of Free- dom	Lack of Re- sourc- es	Work- ing Condi- tions
A. Overall Job Performance	.476**	.478**	.390**	.239**	.349**	.287**	.401**	.365**
At Individual Level	.346**	.238**	.499**	.137**	.262**	.346**	.420**	.079
At Department Level	.143**	.085	.118*	.122*	.049	.097*	.149**	.109*
At Organization Level	.429**	.591**	.147**	.200**	.362**	.119*	.212**	.504**
B. Overall Quality of Life	-.332**	-.537**	-.467**	.146**	-.237**	-.057	-.291**	-.254**
Social Status	-.048	-.397**	-.015	.285**	.005	.283**	.046	-.236**
Completeness in Present Life	-.312**	-.435**	-.661**	.178**	-.192**	-.235**	-.410**	-.014
Satisfaction with Present Needs	-.637**	-.527**	-.803**	-.252**	-.499**	-.491**	-.595**	-.306**
Rel. with loved one & Others	.236**	.080	.316**	.247**	.276**	.479**	.269**	-.105*
Achievements in Present Life	-.526**	-.640**	-.520**	-.073	-.431**	-.167**	-.473**	-.436**
Utilization of Leisure Time	-.426**	-.371**	-.743**	-.077	-.393**	-.504**	-.411**	.000
Health Status	.116*	-.096*	.233**	.209**	.086	.295**	.191**	-.126**
C. Effect on Personal Life	.526**	.469**	.560**	.257**	.313**	.527**	.598**	.221**
D. Quality of Work Life	.303**	.480**	.327**	-.094	.177**	-.010	.352**	.294**

Note: Low scores denote low level of Job Performance.

Low scores denote high level of Police Job Stressors.

Low scores denote high level of Quality of Work-Life.

Low scores denote negative effect on Personal Life.

Results of the table shows following results: (A) Overall job performance is negatively (Low scores denote low level of Job Performance) affected by overall police job stressors along with their different forms. At individual level performance assessment, their performance is negatively affected by the amount of stressors they have and it is due to the nature of duty, lack of support, external pressure, feeling biasness, lack of freedom, and lack of resources, but an interesting finding that working conditions do not affect their performance at individual level. At departmental level performance assessment, nature of duty and feeling biasness, are the two factors, which are not playing any role in determining job performance at departmental level, while others forms of stressors are playing negative role in performance assessment.

(B) Overall quality of life is also negatively affected by overall police job stressors and factors such as nature of duty, lack of support, feeling biasness, lack of resources and working conditions. An important finding in this context is that external pressure putting a positive effect in determining overall quality of life, social status, completeness or meaningfulness in life and health status of police personnel. Component wise, social status is negatively affected by nature of duty and working conditions, but positively by external pressure. Completeness or meaningfulness in life is negatively affected by overall police stressors, nature of duty, lack of support, feeling biasness, lack of freedom, and lack of resources. Level of satisfaction on present needs is negatively affected by all the stressors. Relationship with love one & others are only negatively affected by working conditions, while positively related to overall and other forms of stressors. Achievements in present life is negatively affected by all the stressors except external factors has

no significant role in achievements of police personnel. Utilizations of leisure time is negatively affected by all the stressors except external factors and working conditions have no significant role in utilizations of their leisure time. Health status is positively affected by overall police job stressors, lack of support, external factors, lack of freedom, and lack of resources while negatively affected by nature of duty and working conditions. (C) Their personal life is negatively affected by all the stressors. (D) Their quality of work life is negatively affected by all the stressors except external pressures and lack of freedom at work.

Relationship between Police Job's Stressors and Job Performance

The purpose of this study is to find out the relationship between the job stressors and job performance of employees of police organization. As per the hypothesis, police job stressors has a negative relation with job performance that when stress occurs it effects the performance of employees negatively, (Ivancevich & Donnelly, 1975) that lower the stress it increases the performance. So both these are inversely proportional each other as to the results the correlation in table 2 shows both job stress and job performance is negatively correlated. The obtained result is consistent with previous researches which shows mainly a negative linear relationship between work stress and employee job performance (Jamal, 1984; Muse, Harris, & Feild, 2003; Westman & Eden, 1996), which consequently reduces performance. In a recent meta-analysis by L. A. Muse, S. G. Harris, & H. S. Field (2003), (46%) of the 52 empirical studies examine, supported a negative linear relationship between job stress and job performance. According to R. Kazmi, S. Amjad, and D. Khan (2008), there is an inverse relationship between job stress and job performance

indicating that there is high job stress in the house officers, resulting in low job performance.

Relationship between Police Job's Stressors and Quality of Life

Quality of life of police personnel and its correlation with police job stressors have been found a linear relationship. The researches show that there is a negative relationship between the amount of stressors and the quality of life of employees such as Claudia et. al. (2012) found that among the variables which are associated with lower QOL: work-related organizational and operational stressors with the organization variables exerting a greater effect on quality of life of employees. An association exists between high levels of emotional stress and poor QOL (M. E. Lipp, 2009). Among the stressors related to police work, the study by Hart et. al. (1995) that utilized The Police Daily Hassles and Uplifts Scales (Hart, Wearing, & Headey, 1994) shows that work experiences at the organizational level exert a greater influence in determining Perceived Quality of life (PQOL) when compared to those at the operational level. These results are consistent with increasing scientific evidence which postulates that police organizations are the main source of psychological distress among police officers (Greller, Parsons, & Mitchell, 1992; Violanti & Aron, 1992).

Relationship between Police Job's Stressors and Effect on Personal Life

Researches show that there is a negative relationship between police job related stressors and effect on personal life, and reports in terms of high rates of divorce, alcoholism, suicide, and other emotional and health problems among them (Burke, R.J., 1989; Delprino & Kennedy (1997). Job stress

is a reality for law enforcement officers. Law enforcement job stress affects officers' marriages by hindering spousal interaction, presenting opportunities for infidelity, and creating conditions for divorce. (Gillan, 2008; Miller, 2007).

Relationship between Police Job's Stressors and Quality of Work Life

The obtained negative relationship between police job's stressors and quality of work life is consistent with the previous study such as Ahmad (1991) conducted a study on perceived quality of work life in relation to organizational role stress among 156 middle level managers and found that all the four dimensions of perceived quality of work life viz., perceived influence at work, perceived amenities at work, perceived nature of job and perceived nature of supervisory behaviour were significantly but negatively related to most of the dimensions of organizational role stress.

3. Predictors of Quality of Life, Job Performance, Personal Life, and Quality of Work-Life on different forms of Police Job Stressors

Table: 3(a): Showing the Stepwise regression analysis to find out best predictor of overall quality of life and its different components on different forms of police job stressors. (Total N=428)

Predictor Variables	Dependent Variables	R Square	Adjusted R Square	R Square Change	F Change	β	t-value	Sig.
Police Job's Stressors								
Nature of Duty	Quality of Life	.288	.286	.288	172.247	-.419	-8.116	.000
Nature of Duty	Social Status	.157	.155	.157	79.560	-.502	-9.257	.000
Lack of Support	Completeness in Present Life	.437	.435	.437	330.391	-.538	-13.647	.000
Lack of Support	Satisfaction with Present Needs	.645	.644	.645	773.226	-.717	-22.348	.000

Lack of Freedom	Rel. with loved one & Others	.229	.227	.229	126.665	.289	4.756	.000
Nature of Duty	Achievements in Present Life	.409	.408	.409	294.840	-.414	-8.386	.000
Lack of Support	Utilization of Leisure Time	.552	.551	.552	524.041	-.641	-16.485	.000
Working Conditions	Health Status	.087	.085	.087	40.609	-.382	-5.463	.000

Note: Low scores denote high level of Police Job Stressors.

Low scores denote high level of High level of Quality of Life.

The results show that nature of duty is found as the best predictor of overall quality of life, social status, and achievements in present life among the different police job stressors, while lack of support has emerged as the best predictor of completeness/meaningfulness in present life, level of satisfaction on present needs, and utilization of leisure time. On other hand, lack of freedom (coworker, seniors) is found as the best predictor of relationship with loved one and others. Working conditions is found as the best predictor of health status among police personnel.

Table: 3(b): Showing the Stepwise regression analysis to find out best predictor of Job Performance and effect on Personal Life and Quality of Work-Life on different forms of police job stressors. (Total N = 428)

Predictor Variables	Dependent Variables	R Square	Ad-justed R Square	R Square Change	F Change	β	t-value	Sig.
Police Job's Stressors								
Nature of Duty	Job Performance	.229	.227	.229	126.327	.378	7.894	.000
Lack of Support	At Individual Level	.249	.247	.249	140.886	.357	6.693	.000
Lack of Resources	At Department Level	.022	.020	.022	9.612	.149	3.100	.002
Nature of Duty	At Organization Level	.349	.348	.349	228.808	.580	11.085	.000

Lack of Resources	Effect on Personal Life	.357	.356	.357	236.928	.467	9.404	.000
Nature of Duty	Quality of Work Life	.231	.229	.231	127.723	.331	5.630	.000

Note: Low scores denote low level of Job Performance.

Low scores denote high level of Police Job Stressors.

Low scores denote high level of Quality of Work-Life.

Low scores denote negative effect on Personal Life.

The results show that: (a) Nature of duty is found as the best predictor of overall assessment job performance and at organization level while lack of support is emerged as the best predictor of individual level assessment of job performance, and lack of resources is found as the best predictor of department level assessment of job performance. (b) In case of effect on personal life, lack of resources is found the best predictor of it, and (c) In case of quality of work-life, nature of duty is emerged as the best predictor of it.

The possible explanations for the above results are: since police personnel spends most of their life (due to 24x7 working culture) at their work before retirement. This create lots of stress and physical and mental exhaustion. They have very few hours to spend with their family member's in a week or even a month (especially those who are single or living without his/her family). These all are due to their nature of job; they are serving their life for us. Therefore, nature of duty has emerged as the best predictor of quality of life, job performance, social status, achievement in present life and quality of work life of police personnel.

Lack of support from seniors and co-workers, on the other hand, finds best predictor of low level of completeness/ meaningfulness in present life, dissatisfaction with present needs, unable to utilization of leisure time, and poor job performance at individual level. This is due to the human nature that whenever he/she finds that their surroundings are supportive either at their workplace or in life, gives positive

energy to accomplish their goal, which further provide a sense of completeness/meaningfulness in his/her life and get satisfied with their present needs.

Researches show a contradictory views regarding to the positive effects of co-worker support on employees, where, co-workers behaviours may be viewed as political or self-enhancing and therefore it may not always be associated with constructive work attitudes. Accepting support from co-workers may also suggest incompetence on behalf of the person accepting the support (Bateman, 2009). According to Ng and Sorenson (2008) the negative views regarding co-worker support stems from the perception that, because peers are usually regarded as equal, support from co-workers may suggest a lack of ability or independence. Despite this, there is overwhelming evidence that co-worker support has many positive effects in the work place (Babins & Boles, 1996).

Working conditions are found the best predictor of health status due to the working condition of the police organization that is because of shift work, night duty, excessive paper work, bureaucracy, demand of overtime, risk of injuries during work, regular encounters with painful incidents, departmental enquiry, and accountability for duty. It puts counter effect on the health status of police personnel.

Implications of the Study and Further Directions

In short, it can be said that police personnel can neither escape from nor control the daily job-context stressors. The more officers perceive the organization (i.e., police management) has failed them by creating unnecessary stress, the more the officers will unite one day around an anti-managerial theme that arises from a "...fundamental distrust of superior officers and bureaucratic administration" (Pollock-Byrne, 1989; Brown, 1981). The notion that the

organization for which an individual is employed, is the cause of their stress is counterintuitive, yet studies show officers frequently cite organizational stressors as more onerous than operational stressors, primarily because they cannot control them (Alexander, et al., 1991; Crank and Caldero, 1991). The working environment for many police officers is not often regarded as a source of “job enrichment” or enjoyment. Instead, it is seen as an objectionable, stifling atmosphere that must be endured and often leaves casualties of burnout, cynicism and low performance in its wake (Zhao, Thurman and He, 1999). The implication of this study is that police organization should be sensitive towards their employee’s problems i.e. in form of job stressors, which is affecting their quality of life and especially the job performance. This is one of the most important factor that is directly related to the image of police in public, the negative comments from media and the public. So, this study is an attempt towards identifying the nexus between organizational stressors and performance, represents an opportunity to think for police management to shape their organizational philosophy, operational policy and the style of policing that is practicing now-a-days in a way that embraces employees to reduce stress and improve performance.

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The People's Friendly Police & Community Policing

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Keywords

Internal Security, People Friendly Police, Democratic Policing, Community Policy, Colonial Police.

Abstract

People-friendly police is in vogue in several developed countries and its need is now increasingly realized in some of the developing countries like India. The new Millennium has posed several challenges thereby making it obligatory to change the existing police set up and culture in India. There is a need to restructure the people on the pattern of developed countries where police behaves with the public in a friendly manner, it is not a symbol of terror. Transparency and positive behaviour on the part of policemen should be the sine qua non of police functioning.

Introduction

Acharya 'Kautilaya' has written that an able and transparent King should make efforts for security of its citizens in an unbiased manner. If the citizens are safe, so would be the King. As such, security and welfare of citizens is supreme in administration. His judicial system

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should also be unbiased, so that common man has faith on it. The Judicial system & Security System should be changed from time to time so that they remain people oriented.

In India, it is all the more necessary because from a British colony, it has emerged into a democratic state. Internal security is entrusted to Police in each country. It depends upon public cooperation to function properly. When British took over control of administration in 1859-60, in order to have their supremacy, the British Parliament passed India Police Act, 1861. It aimed at strengthening the British rule and not to establish the democracy.

To show other colonial powers that they were ruling even-handedly, they incorporated disbelief in the Police in the Evidence Act, and the control of Police was entrusted by them in the hands of English Collectors. But it is pity that when India attained Independence in 1947 and new Constitution of India was made effective w.e.f. 26th Jan. 1950, the same Colonial Police system was allowed to be continued. Only ICS was changed to IAS and IP to IPS. Police became State subject and its control remained in the hands of elected politicians.

When interference in Police functioning became public during Emergency, then started the work of formation of various Commissions to bring reforms in Police. Dharma-veer Commission found supremacy of Political parties and in order to re-establish Police unbiased functioning, they recommended enactment of new Police Act and gave important recommendations in 21 Reports.

While in India, recommendations of various Police Commissions were gathering dust, England has expressed its Political Will. In the series of Police Reforms, the British

Parliament passed an Act in 2012-Police Reforms and Social Responsibility Act, which made a provision of selecting Crime Commissioner in each Country directly. In spite of political opposition, on 15th Nov. 2012, in 41 Cities of England and Wales Police & Crime Commissioners were elected. It signalled a message world over that due to direct election by public in each Country, the Crime Police Commissioner would be more accountable to public.

Due to direct election by the public, the Police Commissioner would be more alert about problems of the public, remedies and unbiased/fair solution. He will not be a toy in the hands of Politicians and the ruling party but would concentrate in works of Public Welfare. The step taken by the British Parliament towards decentralization of Police, would set an example for any Nation in the world in the series of Police Reforms and welfare of the public.

It is a fact that many Police personnel tarnish the image of institution of Police, indulge in many types of misbehaviour, rebuke, beating, illegal detention/ arrest, dacoity, murder, threatening, robbery, sexual harassment, crime against women, false implication, failure in taking action, atrocities on SC/ST, indignity to women, extracting money, weekly extortion etc. and violation of human rights. But all these acts are intolerable and against rules, which are quite punishable. Public in general come up with such complaints and corrupt practices. Senior Officers get it enquired into and punish the guilty. Often Criminal cases are registered against them, they are arrested and even prosecuted. Suspension and departmental enquiries are quite common. National Crime Record Bureau (NCRB), MHA, Govt. of India collects all India figure which are published every year in Crime In India.

People Friendly Policing

The Police is so far inefficient, it is defective in training and organization, it is inadequately supervised, it is generally regarded as corrupt and oppressive and it has utterly failed to secure the confidence and cordial cooperation of the people (A.H.L Fraser, Chairman of the second police Commission of, 1902). The words uttered by Fraser little more than a century ago holds good even today as not much has changed on the front of police working and its image. The age old Police Act of 1861 is still applicable in our Police system. The term police has assumed threatening feel instead of friendly and soothing. The challenges thrown to the police, both by the society and those who are managing it, are not only large in number but also in size as well, The life is on fast track and looks for immediate answers to the problems faced, and for no reason anyone can take law in his own hand to find quick solutions to the problem. Therefore, onus on police for playing its role efficiently has increased over the years which necessities the need of reforms in the domain of police.

People- friendly police is in vogue in several developed countries and its need is now increasingly realized in some of the developing countries like India. The new Millennium has posed several challenges thereby making it obligatory to change the existing police set up and culture in India. There is a need to restructure the people on the pattern of developed countries where police behaves with the public in a friendly manner, it is not a symbol of terror. Transparency and positive behaviour on the part of policemen should be the sine qua non of police functioning.

“Reporting about the police – polity nexus during Emergency (1975-77) Shah Commission observed “the police was used

and allowed themselves to be used for purposes some of which were to say the least questionable some police officers behaved as though they were not accountable at all to any public authority. The decision to arrest and rellage certain persons were entirely on political considerations which were intended to be favourable to the ruling party. Employing the people to the advantage of any political party is a sure source of subverting the rule of law. The Government must seriously consider the feasibility and the desirability of insulating the police from the politics of the country and employing it scrupulously on duties for which alone it is by law intended. Though the political leadership expressed the need and desire to reform /restructure the police set up, it did very little in thus direction.

“The political masters do realize that the Police machinery in India is outdated as well as ruthless. But any effort to improve it will make it less amenable to their dictates. The top civil bureaucracy, which enjoys its supremacy over the senior- most police personnel, shares its vested interests with the political masters and advises them to keep the police where it is. Senior police leadership is quite restive about the stagnant state of affairs, but conventions and professional ethics make them suffer in silence. Though some efforts have been made in this direction, successive governments have exhibited little interest in their implementation. Thus, even today we are treading along the old police machinery created to suit the purpose of the imperial government. Some of the States appointed commissions / committees to recommend police reforms .Mention may be made of Kerala Police Reorganization committee 1959, West Bengal Police Commission 1960-61, Punjab Police commission,1961-62, Delhi Police Commission, 1968, Tamil Nadu Police Commission,1971 etc. The Janata party government after being voted to power in 1977 at union level also appointed

National Police Commission yet the reports of most of them still await implementation because the political leadership has preferred to cling to the status quo. Consequently, even after the passage of six decades of independence, people often give such statements as "I am afraid of going to police station "I have come to the people station for the first time" I do not want to involve myself in any police problem" This depicts that the people have a sense of fear about the police and requires a deep introspection, This calls for functional transformation of police and to make it people friendly. It is because the sincere attempts to live up to the expectation of the general public become the true test of the modern police.

People friendly police has not been succinctly defined; not much Literature has been produced on this subject either. From whatever has been written, it can be deduced that people friendly police behaves with the public in a friendly manner. In approaching people friendly police a law abider has no fear whatsoever and a law violator has all fears. It is participative in approach and keeps the people at centre stage. It is democratic in nature and has corroborative approach. It works in a fair and non-discriminatory manner. It promotes transparency in its working. It shows alacrity to the people in need by extending prompt help. In a nutshell, people friendly police is participative, impartial, prompt, humanistic, trustworthy, and creative and innovative.

Here it needs to be mentioned that in a democratic country, the Police ought not to be merely a symbol of fear. Of course, they should be a symbol of fear for the law-breakers: but they must also act as friends of the law-abiding citizens of the country so that the latter may seek their help without any fear. In view of the concept of "people friendly – police " The latter aspect is more important than the former.

Sr. No	Major Reform Committees (year)	Recommendations	Objectives of the Committees
1	Core Committee (1971-73)	186	To examine the police training system from constabulary level to IPS level
2	National Police Commission (NPC(1977-82)	291	To examine the pay structure, housing facilities, career planning, welfare of police personnel, corruption, modernisation, village police, women police, organisation and structure of state and civil police, their accountability and performance.
3	Ribeiro Committee (1998)	05	To Examine the process of state security, selection of Director General of police and complaints against the police.
4	Padmanabhaiah Committee (2000)	99	To examine the recruitment process, training, duties and responsibilities of police.
5	Group of Ministers on National Security (2000-01)	62	To examine the major issues like the intelligences system, the internal security, the border management and the defence management
6	Malimath Committee on Criminal Justice System (2001-03)	158	To examine the principle of the criminal justice system, investigation, prosecution, judiciary, crime and punishment.

7	Review Committee (204)	49	To review the recommendations given by the previous committees set up for police reforms.
8	Police Act Drafting Committee (PADC) (2005-06)	38	To draft a new model police bill to replace the colonial Police Act, 1861.

The police system in India is based on the Police Act of 1861. Ever since the Police Act was enacted, there have been few reforms in the police system in India. Various inefficiencies were also identified in the police system of India like inadequate hiring of police personnel, training facilities, availability of technical facilities, availability of equipment and other vital resources. To identify and remove the inefficiencies and bring out the necessary reforms in police system in India, several committees were set up by the India government at different times.

The data has been collected from various sources, namely, various issues of Economic Survey of India, various publications of government of India, various reports issued by the Bureau of Police Research and Development and the National Crime Records Bureau and the Ministry of Home Affairs.

National Police Commission (1977-1982)

The National Police Commission (NPC) was set up in 1977 to examine the entire system and working of the police organisation in India. The Commission submitted eight reports with 291 recommendations on police reforms and also recommended a Model Police Act. These reports focussed on the issues relating to working and living conditions of the constabulary, role duties, power and responsibilities of the Police, their pay structure housing facilities, and their

career planning, welfare of Police families, corruption in the police, modernisation in the police, village police, women police, organisation and structure of State and civil police, their accountability and performance. The reports also focussed on the issues relating to criminal investigation, social legislation, police leadership, IPS training, handling of communal riots, performance appraisal, discipline and control of police. The major recommendations of the commission were regarding the selection of the head of the state Police Force and providing him with a fixed tenure, the replacement of the Police Act of 1861 by a new Police Act and to enlarge the role of the police in the country. None of these major recommendations of this commission were adopted by any government and the reports became the victims of politicisation.

But, When the recommendations of the NPC were not implemented, then in-1966, a petition by Shri Prakash Singh (a retired IPS officer) was filed (Prakash Singh v. Union of India) before the Supreme Court requesting to frame a new Police Act. On September 2005, the Supreme Court gave few directives to provide practical mechanisms to initiate the police reforms in all the state of India. Some of these important directives are as follows:

To constitute a State Security Commission (SSC) to ensure that the state government does not exercise unwarranted pressure on the state police and to evaluate the performance of the state police.

- To ensure that Director General of police will be appointed through merit based transparent process and secure a minimum tenure of two years.
- To ensure that police officers on operational duties are also provided a minimum tenure of 2 years.

- To ensure that police officers on operational duties are also provided a minimum tenure of 2 years.
- To set up a board called as Police Establishment Board (PEB) to decide about transfers, postings, promotions and other services related matters of police personnel.
- To set up a Police Complaints Authority (PCA) at state level to enquire onto public complaints against police officers.
- To set up a National Security Commission (NSC) at the central level to prepare a panel for selection and placement of chiefs of the Central Police Organisation (CPO) with a minimum tenure of 2 years.

While appearing in the programme "SatyamevJayate" Sh Prakash Singh expressed pain to the effect that their major recommendations and directions of Hon'ble S.C of India are yet to be implemented by the govt.

Police is a profession which involves death, trauma, violence, grief, danger, time pressure, long hour duties, work-shifts, courtroom appearances, working with civilians, lack of consultation and lengthy internal and external investigation on public complaints, political interference, insufficient staff, absence of technical aids, frequent transfers, lack of co-operation and constant criticism by the media, public and the others. To rectify these problems and deficiencies from the system, various reforms and recommendation have been made by different committees and commissions set by government of India from time to time. However, most of these reforms were proved to be inadequate. The government should work on strict implementation of recommendations, reforms and policies given by different committees and working groups so that the policing can be referred as less stressful and less complicated social service in India. The recommendations

suggested by different committees, if implemented holistically can improve the performance and accountability of police and reduce the crime in the country.

Despite significant changes introduced for restructuring and revitalising the police force during the preceding five decades, the problem of police accountability, by and large, has remained unresolved. There have been a number of commissions and expert committees to deal with this complex issue and evolve definite criteria (guidelines) as to when and for what the police should be held accountable to the democratic society.

Police plays significant role to maintain rule of law, the foundation of healthy and functional Democracy and to sustain growth and development of Nation but it is today the most beleaguered institution owing to political interference, poor work culture, unsupportive leadership and a poor image as corrupt and unhelpful institution. Magnitude and complexity of problem demands a holistic approach on political, capacity building people and management front to address the issues and challenges before the police. In the absence of impartial law enforcement there can be no justice and equality the essential ingredients of Democracy.

Reforming the grass root Police-administrative, effective system of redressal of grievances of police personnel implementation of National Police Commission recommendations in true spirit, good governance and modernizing the police forces by equipping them with necessary skills is essential to make the police reliable and effective institution for peace, democracy and development of Nation.

Rohtak (Haryana) Study

Dr. Sewa Singh Dahiya and Dr Ravinder Singh have candidly mentioned that now, the question is whether Indian police

is people friendly police or not. To this end an empirical study of Rohtak police Range in Haryana was undertaken. A representative sample of 125 commercial vehicle drivers (selecting 25 from each district) of Rohtak range was randomly drawn and data were collected from them with the help of a schedule containing 12 questions. The office bearers of the union of the different commercial vehicles were also interviewed. All possible observations were drawn in the process of data collection incorporated in the study where required.

Analysis of Data

Responses, views and perception of the sampled commercial vehicle drivers and the office bearers of their respective unions were tabulated and analyzed below.

Table 1.2: Perceptions of Drivers:

Sr. No	Perceptions	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
1	Drivers become fearful when police indicate them to stop	0(0.0%)	89(71.20%)	25(20.00%)	11(8.80%)	0(0.00%)
2	Police persons use indecent language	21(16.80%)	66(52.80%)	17(13.60%)	11(8.80%)	0(0.00%)
3	Police persons harass the drivers	23(18.40%)	76(60.80%)	19(5.2%)	7(5.60%)	0(0.00%)
4	Drivers violate traffic rules	17 (13.60%)	78 (62.40%)	9(5.7.2%)	21(16.80%)	0(0.00%)
5	Drivers try to bribe the police	9(7.2%)	84(67.20%)	0(0.00%)	24(19.20%)	6(4.80%)
6	Drivers prefer to maintain distance from the police	27 (21.60%)	69(55.20%)	13 (10.40%)	7(5.60%)	9(7.20%)
7	Drivers extend supports to the police in time of need	6(4.8%)	41(32.8%)	11(8.80%)	63 50.40%	4(3.20%)

1.3 Trustworthiness of Police

Degree/Level	Whom do the drivers prefer to contact first in case of any mishap on roadside
Police	44(35.20%)
Family Member	06(4.80%)
Owner, if employee	56(44.80%)
Fellow Driver/s	19(15.2%)
Others	0(0.00%)

Responsiveness of the Police

Degree/Level	How much time do the police take to reach after being informed	
Within 15 minutes	0	(0.00%)
15-30 minutes	21	(4.80)16.80%)
30 minutes to 1 Hours	19	(15.20%)
1 hour-2 hours	27	(21.60%)
More than 2 hours	58	(46.40%)

Degree/Level	How do the police behave with the drivers on roadside	How do the police behave with the drivers at police stations/ posts
Very Courteously	0(0.00%)	0(0.00%)
Courteously	9(7.20%)	4 (3.20%)
Indifferently	6(4.80%)	5(5.00%)
Discourteously	78(62.40%)	81(64.80%)
Rudely	32(25.60%)	35(28.00%)

The aforesaid observations clearly present the actual picture of Rohtak Range Police in particular and the Haryana Police in general. In view of these observations, it can be safely concluded that police in Haryana is quite distant from the concept of people-friendly police. More serious and sincere efforts are required on the part of the government to bring it closer to the different sections of the society.

Community Policing In Kerala

Shri Kannan B & S. Ramdass of Dept. of Criminology, University of Madras have given an overview of Janamaithri policing in Kerala in their article in 'The Emergence of Community Policing Initiative'. This project was undertaken by the Kerala Police. The Janamaithri suraksha project has been initiated to transform the policing to abide by the democratic ethos of the country. Out of three major components of the Janamaithri policing implemented by govt. of Kerala, there have been positive impacts, proving thereby that it was a successful initiative by the police in curbing the incidences of crime. The functional collaboration of Janamaithri policing and Grama Sabha is of great importance. It has been identified as a good practice of community policing in the state of Kerala for collaboration between public and police.

Dr. B. Sandhya (2012), a senior officer of the Indian Police Service (IPS) and the nodal officer for the community policing programme in Kerala State, in her article 'Janamaithri Suraksha Project: Community policing project of the Government of Kerala' gives a thorough description of the Janamaithri suraksha project, the community policing programme implemented in Kerala and it presents new insights into this policing model and gives a critical appraisal of success and challenges faced by the same in various jurisdictions.

Components of Janamaithri Policing

Janamaithri policing in Kerala comprises the following three components viz.:

- Janamaithri beat- which centres around beat officers who are Police constable /Head constables/assistant sub-inspectors specially selected and trained.
- Janamaithri Suraksha Samithi
- Janamaithri Kendrams

Impact of Janamaithri Policing

Janamaithri policing initiative has started yielding positive results in terms of improving the image of police among the public, reducing crime, easy flow of information from the public and enhancing the quality of life of local residents. Moreover, under this initiative the police have been organizing palliative care units, blood awareness campaigns, traffic warden system etc.

In India, community policing has been successfully implemented in Kerala, Tamil Nadu, Madhya Pradesh etc. However, the main objective of it is limited in aspects of crime prevention and enabling co-operation and mutual understanding between the police and the community, for assimilating intelligence. Hence, efforts should be taken so as to bring police ever-closer to the community so that both can work hand-in-hand for the effective crime prevention. Even after sixty five years of being a democracy, we still adhere to the out dated colonial methods of criminal justice system. In many criminal cases, the police face hurdles in the investigation procedures because of the non-co-operation of the families and friends of the victim. Due to the lack of trust between the police and public, there is a delay in getting the justice. The slow pace of justice system makes hundreds as under-trials. In this context, community policing initiative assumes an immense significance. As part of community policing initiative, cases of first time offenders committing non-congnizable offences may be settled through community policing initiative like Janamaithri policing and Grama Sabha. This is a kind of mediation where speedy justice is ensured and the problem of over-population in jails, pendency of cases in courts etc. are reduced to a great extent. Hence, there is a need for a paradigm shift in the basic concepts of our criminal justice system. So by effectively implementing

the community policing, the police can deal with humane social solutions and services and instead of ending them to the jails they can be restored to our community as the contributing members for the progress and development of the society.

Community Policing *in* Bangalore City

In this background, Shri M.A. Saleem, Dy. Comm. of Police, Traffic East Bangalore City has rightly described community policing in Bangalore City and dealt with to involve members of the public in policing the city.

These initiatives developed and sustained over a period of time have resulted in increased transparency in police work and enhanced the image of police in the Bangalore City.

The state should deviate from its earlier notion of "Police State" to "Welfare State" in real sense of term. In this background, the responsibility, duties and total concept of the Police ought to be changed. There is a fear that, if the emotions are let lose, if restrictions are not imposed, the society will be in a chaotic state and disorder will rule the day. The problems are myriad and inexplicable. The modern scenario puts police in a critical situation, demanding from it impartial and genuine humane response. Instead of conflict, coordination and cooperation are to be the basics of its task. Hence the First Prime Minister of country commented. "the Police comes naturally into very intimate contact with the people in their daily work. Therefore, the question of the relationship between the police and the public is a very important one".

People come in contact with the police only in adverse circumstances. No organ of the Government will have to face such ill feelings as the police has to. The police action involves the regulations and restriction on individual acts thus apparently restricting their freedom. This naturally causes

resentment. The adverse conditions and circumstances demand the show of power, firmness and authority by the same are misconstrued as arrogance and high-handedness.

The entire outlook, the method of working, techniques, ways and means are to be changed and turned to the challenges of the modern world. Transparency should be there in administration. People at large, should involve themselves with the police and the police should shun politics. Along with the onerous job of maintaining law and order, the police should also involve and identify themselves with social issues and the assistance of social workers, experts and social thinkers is to be elicited. On these lines, Bangalore City Police successfully carried out various social programmes. Some of them are:-

Hoysala Patrolling Teams

In an effort to ensure speedier response to the citizens' need, we concluded that not only should their number be increased but their effectiveness be also enhanced. One hundred such patrolling teams were considered the basic minimum number. An average citizen avoids approaching the police unless compelled by circumstances. It is more so if it concerns other. In an urban setup, the criminal takes the cover of the vast floating population, acts fast, hits the target before the victim realizes what has happened and decamps.

No doctor can cure a patient who is reluctant to meet him or complain about his ailment. Any scheme of making community-policing effective, should take note of this basic hurdle of the citizens' reluctance to call the police. In such scenario they considered that the police should be the agents of change. They should be equipped and motivated in an improved way and even assume a name which strikes less fear and more confidence.

Neighborhood Watch Scheme

Launched in 1993 these Neighborhood Watch Committees of citizens, create awareness among the citizens and work with the Police to deal with the problems of the neighbourhood. Their members, in their spare time, whether at night or during day, keep vigil and inform the Police about the happenings in the area or accompanying the Policemen on their beat. Citizens accompanying the Policemen on the beat not only supplement the manpower but also provide the much needed information and co-operation. This information may be regarding places, persons and happenings in the area.

The NWC of K.R. Puram headed by Mr. Narasimhaiah occupies the pride of place in the community policing programmes. A retired employee of an industrial unit, he has enrolled, over 125 members over a period of 2 decades. These members are organized into 5 teams under banners like 'Village Defence Party', 'Suraksha' and 'NWC'. These teams have helped crime prevention, in both Ramamurty Nagar and Krishnaraja Puram Police Station. Narasimhaiah himself set the record of 221 honorary night patrolling in 1991 and prevented at least 2 major dacoities. The members of his teams carry lathis, whistles, torches and identity badges. They also have walkie-talkie sets, capable of operating within a radius of 1 km. Narasimhaiah and a few associates carry licensed firearms. No instance of misuse of weapon has been reported. There has also been no misuses of their association with the police. On the other hand, their services add interest in social defence and are appreciated by one and all.

Janasevak

A group of well-to-do social service minded respectable citizens have organized themselves into Janasevak. They believe in 'Buddhi Daan' –donation of intelligence

or experience of talent for the common man's cause. Founded by Mr. M. Sherif, a retired Army Educationist, it operates virtually without any financial base of its own. Its mission 'Service to Humanity' envisages the concept of decentralization and self help. They render help to the public to solve the local problems including those touching on the maintenance of Law and Order and prevention of Crime. They provide information to the police.

Police Sanchike

They thought of making use of the electronic media to project incidents, instances of exemplary police action and guidelines to the public, regarding prevention of crime and legal and practical hints to citizens, affecting their relation with the police, through top police stories of the week, covering real life incidents featuring the police and the citizens as they happen.

Makkala Sahayavani-1098-Children's Helpline

The Police come across a large number of children in crisis situations. They may be street children collecting rags; victims of labour or lost/missing children. Hundreds of children from rural areas arrive by trains and buses at Bangalore city every day. Touts exploit them by promising jobs and place them in undesirable environs. Such children become victims of crime and in course of time, participants in various crimes alongside adult criminals.

Traffic Warden Organisation

Traffic warden Organization of Bangalore City is perhaps one of the most well organized peoples movement to discipline traffic in a city with well over 18 lakh

vehicles, to which, each year, more than 1.25 lakh vehicles are added with a more than proportionate increase in the number of drivers. Established in 1985, with the motto of "Road Safety for

all"with just 14 members rendering voluntary service for at least two hours in a week, it has increased its strength to well over 600 persons. Traffic Wardens have contributed a lot in the matter of education, traffic engineering and to some extent enforcement aspects also.

Students Association for Road Safety

The Traffic Police of Bangalore in their efforts to transmit to the schools, the message of Road Safety have come to liaison with, well over 400 Schools, in the form of enlisting members to the Students Association for Road Safety. The children inducted into this programme go through training in traffic signals, first aid, road safety and care for others. On their School uniform they wear attractive caps and sash, which gives them a colourful look and practice marching to the tune of musical band.

Vanitha Sahaya Vani

During the year 1998, Bangalore City Police conceived the idea of opening a help line for women in distress and to prevent atrocities against women and on 22nd January 1999 was established a helpline called Vanitha Sahayavani, to deal exclusively with the problems of women. This helpline is provided with a toll free line-1091. Several NGOs of Bangalore came forward to assist the City Police in this venture. The objectives of Vanitha Sahayavani are-

- To help women on the dedicated telephone line by Telephone counselling
- Immediate rescue of women in crisis through trained volunteers and the police
- Short-stay home
- Family counselling
- Rehabilitation
- The Vanitha Sahayavani comprises:

- Volunteers provided by NGOs
- Women police personnel of right aptitude and good educational background
- Senior police officers including Commissioner of police, Joint Commissioner of police, Addl Commissioner of Police (Crime) and Deputy Commissioner of Police (Administration), Bangalore City and Deputy Commissioners of Bangalore City.

Elders Helpline

In association with the Nightingale Medical Trust, Bangalore City police has established a helpline for the aged persons. On this helpline, the problems faced by the Senior Citizens are discussed and counselling is done to sort out them. Sine senior citizens are informing people about their needs, security is provided to them wherever necessary.

Janapara Single Window

“Janapara”, the single window grievances cell established at Police Commissioner’s office, is a computer based single point interface with the aim to provide an efficient public complaints redressal point, where complaints can be submitted and the status of pending complaints can be ascertained. Separate counters are established in the cell for passport verification, foreigners assistance, public grievances, licences etc., The cell also keeps track of complanits received from public including those against police officials.

Conclusion

Through these initiatives, an effort was made, to remove the ill feelings about the police and the people whole-heartedly cooperated with the department. Their co-operation further bolstered the efforts of the police to remove the social evils. It is thus experienced that, when the police eschew sinister influences, acts impartially though at times with inevitable

force, people are capable and willing to understand and cooperate. To conclude, the new millennium will hopefully usher new ethos and cordial relationship between the police and public and community policing will lead the way.

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Police Response to Violence Against Women in Punjab: Law, Policy & Practice

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Keywords

Policing, Community Policing, Community Policing Resource Centres, Violence Against Women.

Abstract

Police is the first point of contact for victims of violence against women. As per the constitutional mandate under the Seventh Schedule 'Police' and 'Public Order' is a State subject. Hence, the primary responsibility of prevention, detection, registration and prosecution of crimes including Crimes Against Women lies with State Governments and Union Territory Administrations. This paper analyses how Punjab Police has responded to combat violence against women through law and policy initiatives. It also highlights gaps in initiatives taken by the Punjab Police which have been critically assessed. In conclusion, suggestions have been put forth for a proactive approach in dealing with offences relating to women.

Introduction

Police plays a crucial role in any coordinated response to violence against women. The police are the only twenty-four hour, seven days a week emergency

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service available to battered or otherwise abused women and children, other than emergency medical care. The role of police has been highlighted as crucial in dealing with victims of crime generally and violence against women specifically in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), The Model Strategies and Practical Measures on the Elimination of Violence against Women in the field of Crime Prevention and Criminal Justice adopted by the United Nations General Assembly in December, 1997 (UNGA res. 52/86, 12), ECOSOC Resolution on Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002/12), United Nations Model Framework for Legislation on Violence Against Women (2010) and United Nations General Assembly Resolution on Strengthening Crime Prevention and Criminal Justice Responses to Violence Against Women and Girls (2011).

From time to time the Ministry of Home Affairs has issued advisories to State Governments for combatting crimes and violence against women. In policing the violence against women, the state governments across India are guided by these policy prescriptions. These advisories and schemes have been comprehensively listed out in Table 1. These advisories deal with wide spectrum of issues such as blueprint for state governments to comprehensively deal with the issue of crimes against women, misuse of Section-498A IPC; combating human trafficking; preparation of victim compensation scheme, measures to prevent acid attacks on people and rehabilitation of survivors; compulsory registration of FIR u/s 154 CrPc in case of cognizable offences; registration of FIR irrespective of territorial jurisdiction and Zero FIR; increasing number of women in Police Forces in the State etc.

Table - 1: Ministry of Home Affairs : Advisories, Schemes & Meetings on Crimes Against Women

Advisories	
<p>2014</p> <p>*Advisory on Compulsory Registration of FIR u/s 154 Cr.P.C in case of Cognizable Offences</p> <p>2013</p> <p>*Advisory on Measures to be taken to prevent acid attacks on people and for treatment and rehabilitation of survivors.</p> <p>*Advisory on increasing the number of women in the Police Forces in the States.</p> <p>*Registration of FIRs irrespective of territorial Jurisdiction and Zero FIR.</p>	<p>2015</p> <p>*Advisory on Comprehensive Approach to Crimes Against Women</p> <p>*Advisory on Expediting cases of Acid Attack on Women</p> <p>*Investigative Units For Crimes Against Women (IUCAW)</p>
<p>2012</p> <p>*Advisory on Preventing and Combating Human Trafficking in India – Dealing with Foreign Nationals.</p> <p>*Advisory on Human Trafficking as Organized Crime.</p> <p>*Advisory on Measures to be taken by States/UTS to prevent Misuse of Section 498A of IPC</p>	<p>2010</p> <p>*Advisory on Crime Against SC/STs.</p> <p>*Advisory on Media Policy of Police.</p> <p>*Advisory on Crime Against Children.</p> <p>*Advisory on Prevention, Registration, Investigation and Prosecution of Crime.</p> <p>*Advisory on Preventing and Combating Human Trafficking during Commonwealth Games.</p>
<p>2009</p> <p>*Advisory on Crime on Against Women.</p> <p>*Misuse of Section 498 A IPC</p>	<p>2004</p> <p>*Advisory on Crime Against Women.</p>
Schemes	MOM
<p>*Preparation of a Victim Compensation Scheme for the victims of crime in view of insertion of a new Section 357-A in the CrPc through the Code of Civil Procedure (Amendment) Act, 2008. (2010)</p> <p>*Comprehensive Scheme for the Establishment of integrated AHTUs and TOT for strengthening the Law Enforcement Response to Human Trafficking in India Plan.</p>	<p>*Human Trafficking</p> <p>i) MOM of the State/UT Nodal Officers for Human Trafficking held by Joint Secretary (CS).</p> <p>ii) MOM of the State/UT Nodal Officers for Human Trafficking held by Additional Secretary (CS) on 18.01.2012.</p> <p>*Crime Against Women</p> <p>MHA convened a conference of Chief Secretaries & DGPs on CAW and atrocities against SCs & STs on 4.01.2013.</p>

Source: Ministry of Home Affairs, New Delhi. http://mha.nic.in/csdivision_new

Police Response to Violence Against Women

To deal with crimes against women, Punjab Police is guided by various central and state enactments, government circulars; standing orders and advisories issued by Director General of Police, Punjab Police Headquarters from time to time on various issues pertaining to violence against women.

The timeline of various initiatives taken up by Punjab Police to combat crimes against women is listed out chronologically in Table 2.

Aftermath of Nirbhaya case in 2012, saw coming up of several initiatives for tackling the issue of crimes against women by Punjab Police such as setting up of 181 Punjab Police Helpline -24x7 toll free helpline, constitution of Women Armed Special Protection Squads (WASPS) to serve as check and deterrent on criminal activities targeted against women, setting up of Sexual Assault Response Teams (SART), issuance of advisories on Improving Police Response to Sexual Assaults, Sexual Violence and Abductions of Women; Fair, Transparent, and Expedient Investigations into Allegations of Sexual Assault on Women and Children; Proper and Regular Monitoring of and Prompt and Effective Investigation of Offences Against Women and Children and Compliance of Section 154 CrPc and Section 164 (5-A) (CrPc).

With the intervention of Punjab and Haryana High Court in compliance with the order given by the Punjab and Haryana High Court in Civil Writ Petition No. 26229 of 2012, -'Court on its own motion vs. State of Punjab and Others, the Punjab Police Headquarters in 2014 laid out comprehensive guidelines for Prevention and Investigation of case(s) of 'Crime Against Women'. The court had directed that *'The*

concerned Home Department /appropriate authority of the State/Union Territory to frame and circulate detailed guidelines and directions to the police officials as to how cases involving crime against women are to be investigated. Such guidelines/directions to be comprehensive in nature covering each aspect i.e. from the stage of registration of FIR till the completion of the investigation within the shortest possible time and the presentation of challen before the competent court.' Prior to these directions of Hon'ble High Court there were no comprehensive guidelines or standing operating procedures (SOPs) on prevention of 'Crime Against Women' issued by Punjab Police Headquarters.

Table -2: Punjab Police Guidelines/Measures On Prevention & Investigation Of Crimes Against Women

Government Circulars /Advisories/ Standing Orders/Enactment	Year
1.First Crimes Against Women Cell established in Patiala	1989
2.Circular issued regarding need to have women police station/women cell in each district. It should not only record crimes against women but also contribute to resolution of conflicts in families and marital discord.	18.04.1997
3.Use of Community Policing Approach in Day-to-day Policing to Improve Police Public Relationship, Police Image and to Enhance Transparency in Police which states formation of Matrimonial Dispute Redressal Cells and Matrimonial Disputes Counseling Helpline	Standing Order No.1 /2000
4.Formation of Community Policing Resource Centres	Memo No.16/163/2002-415 dated 28.01.2003
5.Procedure for Dealing with Matrimonial Disputes, Property Disputes and Monetary/Economic Disputes	Standing Order No. 3 of 2003
6.Arrest of Women	Standing Order No.45.
7.Serving Warrants to women	Standing Order No.46

8. Punjab Police Act, 2007 – Section 2 (1)aa & 11 deal with Special Cell for Women and Children; Section 2(1) e & 14 deal with establishment of Community Police Resource Centre (CPRCs) to check domestic violence through Saanjh programme	2008
9. Punjab Police Strategic Plan – Goal 3,5,6,7 & 8 deal with Gender Sensitive Policing	2008
10. Re-Constitution of Complaints Committee for time-bound treatment of complaints of sexual harassment at workplace from the women employees of Punjab Police	20.06.2008
11. Setting up of Complaints Committee to look into complaints of sexual harassment at workplace at Police Headquarter and at level of district police as per the Guidelines laid down by Supreme Court in the Vishaka case	7.02.2009
12. Establishment of Women Police Stations in Amritsar, Jalandhar, Ludhiana, Patiala and Bathinda	23.07.2010
13. NRI & Women Wing established at Punjab Police Headquarters to handle problems of victims of NRI Marriages	Estd. In 2004 and Reconstituted in 2011
14. Improving Police Response to Sexual Assaults, Sexual Violence and Abductions of Women	28.12.2012
15. Fair, Transparent, and Expedient Investigations into Allegations of Sexual Assault on Women and Children	31.12.2012
16. Proper and Regular Monitoring of and Prompt and Effective Investigation of Offences Against Women and Children	31.12.2012
17. 181 – Punjab Police Helpline (24x7 Toll Free Helpline)	22.08.2013
18. Compliance of Section 154 CrPc and Section 164 (5-A) (CrPc)	14.01.2014
19. Guidelines for Prevention and Investigation of cases of Crimes Against Women	20.05.2014

Source: PIO, O/o Director General of Police, Punjab Police Headquarters, Chandigarh & <http://www.punjabpolice.gov.in/>

As 'Police' and 'Public Order' is a State subject, the setting up and functioning of the Crime Against Women Cells/ Women Police Stations/ Women's Help Desk's at Police Station level come under the purview of State Governments as mandated by the Constitution of India. The Central Government only augments the efforts of the States through various advisories, schemes etc.

Joshi et.al. (1993) in their report titled "Functioning of the Crime Against Women Cells' in the Police Forces in States/UTs" stated that in Punjab, initially, Crime Against Women Cell was located only at the State Headquarter and there was no such Cells at the District level to deal with crimes against women particularly matrimonial disputes. But gradually these Cells were established at the District Level too. The earliest Women Cell at District Level became operational at Patiala in 1989.

In the State of Punjab several community policing initiatives were witnessed after the end of terrorism from 1994 to 2002 in the districts of Batala, Patiala, Hoshiarpur, Ludhiana, Amritsar, Sangrur, Faridkot and Barnala to name the few. Under these among other initiatives women's cells at district level were formed by the police chiefs to varying degree of intensity and commitment. This initiative by the individual officers drew a very good response from the general public and showed the way to laying the foundation for an institutionalized effort by the policy elites in the state of Punjab. (Chaudhary, 2009)

Under the tenure of Sh. P.C Dogra, Director General of Police, Punjab, Chandigarh in 1997 a circular dated 18.04.97 was issued to All District Senior Superintendent of Police (SSPs) of Punjab regarding the need to have a women police station/ women cell in each District. It was stated

in the circular that it should be well publicized. It should not only record the crime against women but should also contribute to the resolution of conflicts in the families and matrimonial discords.

But there has been unevenness and lack of uniformity in the origin of these Cells at the District Level.

Table 3 depicts that there has been no uniformity in the establishment of women cells in Punjab; this has been mainly due to the fact that initially their formation was based upon executive instructions and proactive actions taken by officers in a particular police district since there was no mandatory statutory provision for their existence nor a central or state scheme, and also due to the formation of new Police Districts and Commissionaires as part of police reforms.

Table -3:Year-wise establishment of Women cells in Police Districts and Commissionaires of Punjab

Police District/ Commissionaires	Year
1.AMRITSAR RURAL	2007
2.BARNALA	1991
3.BATALA	1997
4.BHATINDA	2007
5.CP AMRITSAR	2010
6.CP JALANDHAR	2010
7.CP LUDHIANA	2001
8.FARIDKOT	1997
9.FATEHGARH SAHIB	2013
10.FAZILKA	2011
11.FEROZPUR	1995
12.GURDASPUR	1994
13.HOSHIARPUR	1999
14.JALANDHAR RURAL	2010
15.KAPURTHALA	2003

Police District/ Commissionaires	Year
16.KHANNA	2000
17.LUDHIANA RURAL	2003
18.MANSA	2010
19.MOGA	1997
20.MUKTSAR	2002
21.PATHANKOT	2008/11
22.PATIALA	1989
23.ROPAR	2002
24.SANGRUR	1995
25.SAS NGR	2004
26.SBS NAGAR	1997
27.TARN TARAN	1994

Source: PIO, O/o Commissioners of Police & Senior Superintendent of Police, Punjab Police.

Saanjh Programme of Punjab Police – Institutionalizing Community Policing Model

In dealing with issue of domestic violence community policing has made a great inroad in Punjab. According to Bayley (1998), the world's most developed model of policing is community policing, which is based on the concept that the police and citizens can work together in creative ways to solve community problems related to crime, fear of crime, social and physical disorder, and general neighbourhood conditions. As the police reforms were under consideration in the early 1980s, the National Police Commission (1977) and Padmanabhaiah Committee on Police Reforms (2000) had made recommendation favouring community policing as integral part of policing activities. The recommendations of XXXIV All India Police Congress conceded that 'community policing' is a global standard for eliciting public cooperation and satisfaction and enhanced quality and efficiency. The Congress recommended that police organizations all over the

country should strive to increase the involvement of the community of the country in the local-area policing.

In India, of late, efforts are underway to bring about attitudinal change in the police and to institutionalize community policing. It is being appreciated, though incrementally, that in order to give better service police cannot work in isolation from the community. Even the Justice Verma Committee Report (2013: 338) recommended *"to augment the police force there is need to develop community policing by involving local population. Willing volunteers should be trained before being able to police the community. Respectable persons in each locality be appointed as Special Executive Magistrates under Section 21, Cr.P.C. and invested with power to deal with minor offences including eve-teasing as their presence would inspire greater confidence of safety in their locality"*.

Community Policing is being implemented in diverse manners. Different units like women cell, child support unit, drug de-addiction programme, victim support unit, police advisory groups, neighbourhood schemes and so on, are part of community policing efforts.

In India, there have been initiatives in different states like Delhi, Punjab, Himachal Pradesh, Tamil Nadu, Maharashtra, Rajasthan, Haryana and Madhya Pradesh, while individually, many officers have put to practice various innovations for community policing. This has helped in better handling of issues relating to domestic violence, marriages, child abuse and conflicts by the policemen.

However, there has been no central support or scheme for community policing but the State of Punjab has made significant strides in institutionalization of community policing. Community Policing efforts in Punjab have been

largely the result of initiatives taken by individual officers and research support given by Institute of Development Communications, Chandigarh to Punjab Police. These pioneering efforts were not uniform and could not be sustained for long. This was because of the lack of an institutionalized structure. Changing public expectations presents tremendous challenges to the way in which public services are traditionally delivered.

A comprehensive plan for institutionalizing community policing in Punjab by setting up Community Police Resource Centres (CPRC) in all districts was implemented in 2003 through a Standing Order. The objective of the standing order was to set up Community Police Resource Centres (CPRC) for providing continuity and sustainability to ad-hoc initiatives; to ensure greater participation of community in police work; encourage partnership with NGOs; to have women cell where counseling would be done by police in partnership with representatives from community. But, CPRC could not achieve the desired objectives due to lack of cooperation from the police leadership.

Thereafter, major police reforms occurred in India through the Supreme Court Judgment in *Prakash Singh & Ors vs. Union of India & Ors (2006) 8 SCC 1*, which required the States to enact a new Police Act based on courts directions. Following the directions of the Supreme Court, the State of Punjab enacted Punjab Police Act in 2007.

Relevant to Policing Crimes against Women in this enactment are Section 2 (1)(aa), Section 11 & Section -14 of Punjab Police Act, 2007. Prior to this Policing Crimes Against Women did not have a legislative recognition and was at the mercy of passage of executive instructions. But now with inclusion of the following mandatory statutory provisions in the Punjab Police Act, 2007 ; Policing Crimes

Against Women and Community Policing have been institutionalized and immunized from adhocism.

Section 2(1) (aa) of the Punjab Police Act, 2007 envisages formation of Special Cells for Women and Children and read as under:

“Special Cell” means a Police investigation unit, especially dealing with crime of particular type, like cyber crime, crime against women and Children, crime related to Non-Resident Indians, economic offences and crime against Scheduled Castes”

In addition, Section 11 of the Punjab Police Act also provides for the establishment of Special Cells which is to the following effect:

“Section 11- District Level Special Cells: *For the purpose of dealing with a particular category of crime or providing better services to the community at large including victims of crime, the State Government may, by notification in the Official Gazette, create one or more Special Cells in each police district, to be headed by an officer, not below the rank of Inspector.”*

There are at present 27 Crimes Against Women Cells existing in various Police districts and Commissionaires of Punjab.

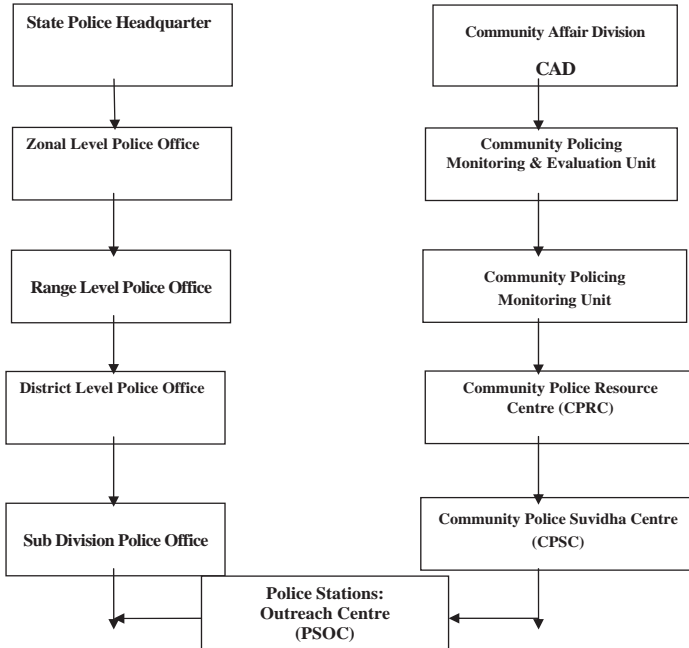
“Section 14 – Establishment of Community Police Resource Centre: *The Senior Superintendent of Police of a district, shall get registered and established Community Police Resource Centre in the district, which may include among other things, streamlining of police delivery mechanism and initiatives, aimed at dissemination of information, redressal of grievances, checking domestic violence, assistance to elders, traffic education and management , child protection, victim relief and checking of drugs.”*

These provisions of Section 14 of the Punjab Police Act, 2007 are in process of being implemented through Community Policing Programme (Saanjh) of Punjab Police. The Community Policing Programme (Saanjh) is based on the Community Policing Model conceptualized by Dr. Pramod Kumar, Director, Institute of Development Communications, Chandigarh and Chairperson, Punjab Governance Reforms Commission.

The Saanjh Programme in Punjab is a six-tier body as shown in Figure -1, at the head of which is the Community Affairs Division (CAD) at the State Police Headquarter followed by Community Policing Monitoring and Evaluation Units at Zonal Offices; Community Policing Monitoring Units at Range Offices; Community Police Resource Centres (CPRC) District Police Headquarters; Community Police Suvidha Centres (CPSC) at Sub-Division Police Office; and Police Station Outreach Centres (PSOC) at Police Station Level. Within CAD there will be a Separate Unit dealing with Women and Children Protection and Welfare. The Women and Children Protection and Welfare Branch in the Police Headquarters will examine the functioning of various units in Police field units that deal with domestic violence, matrimonial disputes and connected issues, formulate and ensure implementation of guidelines for providing gender sensitive assistance to needy women and children. The Branch will also be the Nodal co-coordinating authority for ensuring suitable training and capacity building of the resource person and personnel employed in the Women and Children Protection and Welfare Units in the Community Police Resource Centres. All Units of the police department particularly handling Women and Children issues will stand transferred to the Resource Centres at corresponding levels. The Nodal Community Policing Officer at District, Sub-Divisional and Police Station level will

take steps to operationalise the women & children Protection and Welfare Unit in such Community Policing Centres.

**Figure -1 : Institutional Structure of Saanjh Programme
Police Organisation Structure and Community Centres**



Source : Community Affairs Division, Punjab Police Headquarters (2013). *Saanjh: Handbook on Community Policing Programme in Punjab*. Chandigarh: Community Affairs Division, Punjab Police Headquarters.

Community Policing in Punjab – Road Ahead

Since the Saanjh Programme is at its nascent stage as it is being launched in phased manner but its innovative community policing mandate through the Women and Children Protection and Welfare Branch at the Community Affairs Division (CAD) at the State Police Headquarter as well as Gender Dispute Resolution Units at District, Sub-Divisional and Police Station Level would change the

outlook of Police in dealing with gender issues.

The unique feature of this programme is that policing crimes and violence against women in Punjab has been given a statutory recognition and has been institutionalized in Punjab Police Act, 2007. Nowhere in India, we have seen such a tremendous policy change as Special Cells or Crimes Against Women Cells or All Women Police Stations are either a creation of some standing order or Department of Women and Child Development (WCD) scheme which means tomorrow scheme might be shelved or standing orders cease to be implemented once a new officer takes charge; thereby creating another scheme or issuing new directions which might not be sustainable. The Community Policing Model tends to give sustainability to the cause of policing crimes and violence against women.

Concerns about the Gender Dispute Resolution Cell

The Saanjh Programme envisages gender dispute resolution cells at the CPRC district level, CPSC sub-division level, and PSOC police station level for dealing with domestic violence cases and provides for a full time incharge women who would be a protection officer under Protection of Women from Domestic Violence Act (PWDVA), 2005 also within a community policing framework. The functioning of these Cells will be overseen by District level, Sub-Division level and Police Station level Committees consisting of senior police officials, other government departments and non-official members. The main role of these cells would be providing conciliation and arbitration for domestic violence cases. This component needs to be reviewed and revisited.

Since Community Police Resource Centres are Registered Societies under the Societies Registration Act, 1860 they should ideally get themselves registered as Service Providers (SPs) under the Protection of Women from Domestic Violence Act, 2005.

The PWDVA, 2005 envisages the role of the SPs as a key implementing agency; with power to facilitate access to Shelter Homes and Medical facilities and receive the complaints from the aggrieved person in the form of Domestic Incident Report which can be forwarded to the Magistrate and the Protection Officer.

The predominant role of the service providers is counseling, medical support, providing shelter and providing legal assistance.

Under the PWDVA, both the roles and duties of service providers and protection officers are different they cannot be merged into one. The Gender Dispute Resolution Cells intend to function both as service provider and placing the protection officers within the Community Policing Centres, which is against the letter and spirit of PWDVA.

Even if we see the role of police under the PWDVA it is limited to informing the woman the availability of a civil remedy, option of filing a criminal complaint under Section 498 A IPC and assisting the PO in the implementation of Court Orders.

It in no way permits police or community police officer of the rank of inspector or ASI to indulge in arbitration or counseling the victim.

The PWDVA was intended to bypass the police and free the woman from cycle of counseling and attempted reconciliation, the entire Saanjh Programme though a registered society is in no way independent of police and has direct liaison with the Punjab Police Headquarters through Community Affairs Division. The administration and functions of the Gender Dispute Resolution Cells as shown in aforementioned tables need to be seriously reviewed by the Government to make it in tandem with PWDVA.

Though this programme has its limitations and concerns as discussed above but it is a way forward for an uniform institutionalized effort to combat crimes and violence against women in an holistic way.

Conclusion

Dealing with violence against women requires a comprehensive and coordinated approach by the Central and the State governments. Compliance of advisories issued by Ministry of Home Affairs and Punjab Police Headquarters should be monitored regularly by Police Commissionerates and Police Districts in various Police zones of Punjab comprising Border Range, Patiala Range, Rupnagar Range, Jalandhar Range, Ludhiana Range, Bathinda Range and Ferozepur Range. For long term sustainability of institutional mechanisms as envisaged by Punjab Police Act, 2007 for combating crimes against women including domestic violence, detailed rules should be comprehensively laid down and implemented. A strict enforcement of law and adherence to newly enacted laws and Supreme Court and High Court Guidelines, sensitizing the functionaries of criminal justice system and changing the attitudes of people in our patriarchal society are a few minimum steps that need to be taken.

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Vagal Inhibition – Homicide Cases - Guideline For Investigators

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Keywords

Vagal Inhibition, Homicide Cases, Collection, of evidences, Prosecuting the offenders, I.Os (investigating officers), S.O.C (scene of crime), No injury on the dead body, Eye witnesses for the occurrence, Questionnaires put to the medical officers, Successful prosecution.

Abstract

Investigation and successful prosecution always depend on how an investigating officer collects the evidences available at the S.O.C by adopting the correct procedures of law and how the I.O credibly places the collected evidences before the court of law. In certain Homicide cases, death would have been caused due to unexpected blow to the larynx, chest, abdomen and genital organs, sudden immersion of a person in cold water, the insertion of an instrument into the bronchus, uterus, bladder or rectum, sudden distention of hollow muscular organs and pressure on the neck. In such cases, the death of the deceased would have been caused due to Vagal Inhibition. In such cases, there wouldn't be any injury in the body of the deceased to prove the crime which would be the major obstruction for the I.O to find out the cause of

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death. The medical officers who conducted autopsy may say "Opinion could not be given". In such Homicide cases, the main concern of police would be to prove the circumstances leading to death.

To elicit the exact cause of death, the I.Os shall put questionnaires to the Medical Officer concerned with Autopsy. Investigation of these types of Homicide cases wholly depend on the medical evidence alone, which compels the I.Os to gain more knowledge in legal and medical field. Guidelines were proposed to enlighten the I.Os to investigate the murders caused by Vagal Inhibition in a better way and to place the facts of the case plausibly before the court of law. These guidelines will edify the I.Os to investigate the Homicide cases in a legally acceptable way and will help the I.Os to launch successful prosecution.

Introduction

Vagus nerve is the 10th cranial nerve. The vagus nerve is located in the neck with the carotid artery and jugular vein. It penetrates to the thorax, from which, together with the esophagus, it passes through the diaphragm into the abdominal cavity, forming plexuses on the walls of the esophagus & stomach. The vagus nerve participates in many reflex acts like swallowing, coughing, vomiting, filling and emptying of the stomach and in regulation of the heart beat and breathing. It also part of the solar plexus. Injury to the motor nuclei of the vagus nerve impairs swallowing, phonation, articulation and respiration.

Vagal Inhibition

Vagal inhibition is a condition that causes sudden death to occur within seconds or a minute or two due to minor

trauma or relatively simple and harmless peripheral stimulation. Pressure on the baro-receptors situated in the carotid sinuses, carotid sheaths and the carotid body causes an increase in the blood pressure in these sinuses with resultant slowing of the heart rate, dilation of blood vessels and fall in blood pressure. The vagal inhibition leaves the person to die instantly.

Causes of Vagal Inhibition.

- The common cause of such vagal inhibition is pressure on the neck particularly on the carotid sinuses as in hanging or strangulation.
- Unexpected blows to the Larynx, Chest, Abdomen and Genital Organs.
- Sudden immersion of body in cold water.
- Extensive injuries to the spine or other parts of the body.
- Impaction of food in larynx or unexpected inhalation of fluid in to the upper respiratory tract.
- The insertion of an instrument into the bronchus, uterus, bladders or rectum.
- Puncture of pleural cavity usually for producing a pneumothorax.
- Sudden evacuation of pathological fluids.
- Sudden distension of hollow muscular organs like during attempts at criminal abortion, when instruments are passed through the cervix or fluids are injected into the uterus.

Post Mortem Findings

When death results from vagal inhibition, there will be no characteristic post mortem appearances. The causes of death

can be inferred only by exclusion of other pathological conditions and from the accurate observations by reliable eye witnesses concerning the circumstances of death. There would be neither external nor internal injuries in the dead body and autopsy would show no signs of asphyxia.

Questionnaires to be put to the Medical Officers

In certain cases of murder due to a physical struggle between the accused and the victim coupled with throttling, unexpected blow to the larynx, chest, abdomen and genital organs, sudden immersion of a person in cold water, sudden insertion of an instrument into the bronchus, uterus, bladder or rectum, pressure on the neck and sudden distention of hollow muscular organs, the death would have been caused. In such cases, there will be no injury in the dead body of the deceased. The Medical Officer who conducted autopsy may tend to record his / her opinion as "No opinion could be given". In such cases, the I.O would be in a deadlock state to proceed further in the investigation. However, when there were eye witnesses for the occurrence to prove the above said violent assault and there were no characteristic post-mortem appearances, the cause of death could be inferred by exclusion of other pathological conditions and from the accurate observations by reliable eye witnesses concerning the circumstances of the death. In such instances, the I.O shall take steps to establish that the death would have been due to vagal inhibition. To establish this, the I.O shall put questionnaires to the Medical Officers. The reply of the medical officer shall be recorded as a further statement under section 161 Cr.P.C. The following model format of questionnaires will help the I.O to elicit that the death would have been caused due to vagal inhibition.

- Did you find any external injury on the dead body of the deceased?.

- Did you observe any internal injury during autopsy?.
- Did you notice any thing in the viscera analysis report to suggest that the deceased died of any poisonous substance?.
- Did you notice fracture of hyoid bone?.
- Did you find fracture of any other bone during autopsy which in your opinion would be the cause of death?.
- Did you record any other pathological conditions during autopsy which would indicate the cause of death?.

If the answer for the above questions is “No”

- Will it be correct to infer that the death was due to Vagal Inhibition since the history of the case indicates physical violence such as struggle between the accused and the victim coupled with throttling, unexpected blow to the larynx, chest, abdomen and genital organs, sudden immersion of a person in cold water, sudden insertion of an instrument into the bronchus, uterus, bladder or rectum or sudden distention of hollow muscular organs?. (Quote any one of the above depending on the facts of the case).
- Considering the facts and circumstances of this case, will it be medically correct to say that the death would have been caused due to Vagal Inhibition?.
- Kindly offer your final opinion as to the cause of death?.

Conclusion

The heedful search for the truth is the hall mark of our Criminal Justice System. Science and law are the two dissimilar professions increasingly becoming intermingled

with each other for ensuring a fair judicial process and to see that justice is done¹. In most of the instances, the scientific evidence tests the abilities of the investigating officers, most of whom may lack the scientific expertise to incorporate such evidences in the prosecution records during their investigation and to plausibly place the same before the court to ensure justice.

Success of prosecution always depends on how the legally acceptable evidences are collected by the I.O during investigation. This article will definitely enlighten the investigating officers to construct the prosecution case convincingly where the death of the deceased was due to vagal inhibition. The questionnaires proposed above will plausibly connect the vagal inhibition with the facts of the case which would facilitate the I.Os to get final opinion from the medical officer as to the definite cause of death. Despite these principles, dedication, involvement, updating legal knowledge, consistent hard work, training, experience, applying common sense and exploring the scene of crime with innovative ideas are the prime values, an I.O has to register in his / her mind for a successful investigation. The role of police officers assumes importance in the administration of justice and those charged with this responsibility have to seek continuous improvements in the existing system. Police officers have to update their legal and scientific knowledge to ensure that the guilty are punished and the innocents are protected².

Acknowledgment

The inspiration assimilated from Smt. Seema Aggarwal IPS, Inspector General of Police, E.B Vigilance, Tamil Nadu, Thiru. Shailesh Kumar Yadav IPS, Inspector General of Police/Commissioner of Police, Trichy City and Thiru A.

Amalraj, IPS, Deputy Inspector General of Police, Trichy Range is respectfully acknowledged.

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The Indian Police Journal

Vol. LXIII | No. 1 | January-March, 2016

Notes for Contributors

Editorial Objectives

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

Areas covered include

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

The Review Process

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

1. It is reviewed by the editor for general suitability for publication.
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3. Based on the recommendations of the reviewers, the Editorial Board decides whether to accept the particular article as it is, or seek revision, or reject.

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