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## Editorial

The Indian Police Journal has created its own readership among Police professional, Forensic Practitioners, H R Manager and in the field of Correctional Administration. It has been continuous endeavour of the Bureau of Police Research & Development to enrich the readers with quality articles on the various issues like Police Administration, Management, Forensic, H R Policies and Practices, Cyber Security and in the area of Policing. Through Indian Police Journal we are striving hard to promote high degree of Professionalism among the Police practitioners in the field.

In this edition through the article **“Human Rights in Terrorist and Insurgency Situations”** the writer has highlighted the issues of Human Rights and the Challenges before the Police Personnel in terrorist and insurgency infested areas. He has poignantly raised the dilemma about the extent and quantum of force they can use while dealing with terrorist / extremist outfits. The plight of the Indian soldiers while performing bona fide duties in upholding the sovereignty and integrity of the nation by constant persecution and prosecution has been adequately highlighted by the Author for a larger debate and discussion. He has also highlighted the need to strike a balance between the security concerns and the human rights consideration.

In the article **“Policing the Police – Need for Judicial Vigilance”** the author elicits the necessity of having monitoring and control instrument on the discretionary powers exercised by the police that typically invite arbitrariness.

In the article **“A review of the Immoral Traffic Prevention Act 1986”** the writer has critically reviewed the provisions of Immoral Traffic Act 1986 and brought out certain anomalies and recommended certain ways and means to remove it. Lack of a correct definition of ‘Trafficking’ being one of the lacunae and certain other acts are not clearly defined. The author has focussed on 7 major lacunae in the Immoral Traffic Prevention Act 1986. Prominently, the rights of victims have not been clearly defined.

In the article **“Are Women Offenders in India a ‘Category’ in Crime?”** the writer has raised the issue related with involvement of women into different kinds of crime.

Though female offend less than men, it has been observed that there has been upward trend of crime by women from 3.1 % in 1990, progressively increasing to 10.2 % in 2014.

In the article **“Psychological Well-Being of Police Functionaries”** the writer has researched that to have a police force which is satisfied with its life, average performance are motivated and given rigorous work training and rigorous work training and rotational workshops need to be organized with high performers to instil morale in low performers.

In the article **“Crypto-Currency and it’s Challenges”** the writer has touched the emerging issues of Crypto-Currency and it’s Policy implication.

In the article **“Developing Paradigms of Drowning Deaths in the State of Haryana, India”** the writer has studied the death by drowning, the second major cause of unnatural deaths in the State of Haryana. He has evaluated the common contributing factor for drowning incidences – males were

more prone to drowning compared to females. Mode or manner of drowning in around 68% has remained unknown and accidental drowsing has been the major cause of death. Most of the drowning has taken place in canals.

The article on **“Small Particle Reagent Technique for Detection of Latent Fingerprints”** delves deep into the fingerprint development techniques especially on wet non-porous items even with weak and faint impressions.

In the article **“Law Reform Research on Female Child Marriages in India”** the writer has flagged the issue related to child marriage and the legal provision available for protection from child marriage.

In the article **“Whether India is ready for Online FIRs”** the writer has examined the availability of registration of online FIRs and juxtaposed it with the present system as envisaged in Sec. 154 Cr.PC. He has emphasized that there should not be any requirement of a preliminary inquiry before registration. Online FIRs would eliminate the discretion with police in delaying or non-registration of FIRs.

In the article **“Analysis of Relationship between Hawala & Terror Finance in Indian Context”** the writer has analysed the relation between Hawala & Terror funding.

In the article **“What is Cyber Crime”** the writer has attempted to define the Cyber Crime, types of Cyber Crimes and ways and means to fight with such type of Crimes.

In the article **“Revisiting Police Social Work in India: An Agenda of Human Right”** the writer has examined the issues of complexity of Crime and discussed the different experiences of Community Policing and suggested different models for handling such Crimes.

Happy reading!

**(V.H. Deshmukh)**  
Editor in Chief

# Human Rights in Terrorist and Insurgency Situations

Prakash Singh \*



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## Abstract

Human rights are integral to the ethos of a civilized society. Its concepts have been incorporated in our Constitution. Government of India has been laying great stress on the security forces observing human rights, even while operating in areas affected by terrorism and insurgency. Nevertheless, there have been controversies in Punjab, where terrorism was crushed, and in Manipur, where the forces allegedly indulged in extra-judicial killings. Experience of other countries like UK and US, shows that, faced with violent onslaughts by terrorists, they were forced to place restraints on individual freedoms and liberties. In India also, we need to strike a balance between the compelling demands of observing human rights and upholding the unity and integrity of the country.

## Keywords:

Human Rights- Terrorism- Security Forces- Counter insurgency- Balance.

Human Rights – the rights relating to life, liberty, equality and dignity of the individual – are integral to the ethos of a civilized society. The Universal Declaration of Human Rights (1948), the International Covenants on Civil and Political Rights (1966), and Economic, Social and Cultural Rights (1966) constitute landmarks in the evolution of the concept of human rights.

Not that the idea was new to us in India. Bhishma Pitamaha talked of it in the *Mahabharata*. The philosophy of *Ram Rajya* incorporated the ideal. It was also inscribed in the edicts of Emperor Ashoka. The founding fathers of the Republic saw to it that the essence and spirit of the Universal Declaration was incorporated in the Indian Constitution. The fundamental rights guarantee virtually the whole gamut of what is contained in the Civil and Political Rights and make them judicially enforceable. The Directive

Principles of State Policy call upon the State to promote the social, economic and cultural rights of the citizens.

Government of India has been laying great stress on the observance of human rights by the security forces even while combating terrorists or dealing with insurgents. There have, nevertheless, been controversies from time to time. We shall discuss briefly one such controversy from the past and one from the present times.

## Punjab Terrorism

In the Punjab, in an unfortunate postscript to the defeat of terrorism in the state, the human rights organizations and activists filed over 2,500 writ petitions in the Supreme Court and the Punjab and Haryana High Court against Punjab police officers. This caused huge demoralization

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## Author Intro:

\* Ex. DGP

among the police officers and men. A former SSP of TaranTaran, Ajit Singh Sandhu, even committed suicide as he could not suffer the humiliation of criminal prosecution. Shekhar Gupta, then Editor, *The Indian Express*, raised some important questions in this context (August 20, 1996):

“It is perfectly valid to question the methods used by the security forces, but isn’t it more important to ask who is ordering them to do so? It is incredibly and shamefully low of us to ask our armed forces to put their lives on the line, do the dirty work and then, when all is back to normal and the debris of war is cremated or buried, to hark back to the ‘law is supreme in a civil society’ mode...

We don’t have to condone extra-judicial killings, counter-kidnappings and least of all a genocide of our own citizens. We simply must ask one question: did the police, as in Punjab, or the Army as in Kashmir and Jaffna, act on their own, taking the law into their own hands in defiance of civil authority or were they specifically asked by the government of the day to do so?...

The Punjab crisis saw five prime ministers and as many internal security ministers. Each one knew precisely what was going on.... Why are they hiding now? Why are they not being charged with genocide? If the way terrorism was fought in Punjab was such a crime against humanity, surely the buck should not stop at a mere Superintendent of Police.”

Arun Shourie’s observations were on similar lines:

“Society of course will have to consider a fundamental point that goes beyond mere law. To ask a person to fight at the risk of his life on certain terms and conditions and then later, when the man has saved the day for that society, to turn around and

say, “Sorry, those conditions we promised you are not constitutional” – what is that but the worst sort of breach of faith? Will any one – in fact, as I mentioned, should anyone risk his life to protect such a society?”

The aforesaid observations remain relevant to this day. Unfortunately, the questions raised have not been answered by the political leadership of the country to this day - with the result that the security forces continue to face dilemma about the extent and the quantum of force they could use while dealing with outfits challenging the security of the State.

### **Manipur - Recent Controversy**

In July 2016, Justices Madan B Lokur and UdayUmeshLalit of the Supreme Court gave a judgment against the armed forces, vide Writ Petition (Criminal) No.129 of 2012, *Extra Judicial Execution Victim Families Association &Anr. Vs Union of India &Anr*, which had participated in counter-insurgency operations in Manipur. Personnel of the Indian Army, Assam Rifles and Manipur Police were accused of fake encounter killings from 2000 to 2012 in the state of Manipur, and the CBI was asked to investigate these cases. Apprehending prosecution, a group of 356 security forces personnel including 75 officers (1 Brigadier, 29 Colonels, 15 Lt. Colonels, 19 Majors and 11 Captains) sought from Supreme Court clarity in the mandate given to them to protect the integrity of the country under trying conditions. They said that they had been constrained to file the petition in view of the prosecution of officers and soldiers for bona fide actions during operations. The petition said:

“Soldiers never hesitate to lay down their lives in the line of duty in order to uphold the dignity of the Indian flag. However, the extraordinary circumstances in which their colleagues are being persecuted and



prosecuted for carrying out their bona fide duties, without making any distinction or determination whether the acts in question were done in good faith, without any criminal intent, has compelled them to approach the Supreme Court.”

The petitioners went on to say that:

“A country that doubts its soldiers and their martyrdom is bound to lead to a collapse of its sovereignty and integrity.”

The officers even said that the soldiers under their command were asking if they should continue to fight against militants and insurgents engaged in proxy war against India. It is significant that 380 other serving personnel of the Army have also moved the Supreme Court, questioning the dilution of protection under the Armed Forces Special Powers Act (AFSPA) in counter-insurgency areas. The application said that it was being filed collectively by the soldiers and serving officers of the Indian Army for “protecting the sovereignty, integrity, security and dignity of the nation and restore the confidence and morale of the soldiers of the Indian Army, who are facing insurmountable difficulties and odds in performance of their *bona fide duties*.”

Admiral Arun Prakash, a former Chief of the Indian Navy, expressed following views on the subject (*The Indian Express*, August 22, 2018):

“Let us remember that soldiers are equal citizens and not sacrificial lambs for those with a confused national perspective. The actions of our soldiers, when acting on behalf of the state, must be dealt with the Army Act and not under the CrPC. The state must also react with urgency to insulate its soldiers from over - zealous NGOs and excessive judicial activism.”

Admiral Arun Prakash’s suggestion is three-fold: hand over counter-insurgency operations to the CAPFs; deploy the army and ensure that

each patrol, ambush and covert operation has an embedded magistrate to authorize opening/returning fire; retain AFSPA and trust the army.

The voices of dissent coming from the Armed Forces in such an orchestrated manner have to be taken serious notice of, and the larger question of human rights in insurgency situations must be debated and discussed.

### Security Forces’ Sacrifices

The security forces have been facing the brunt of onslaught by the terrorists and insurgent groups and suffering heavy casualties year after year. The following figures of police officers who died in the performance of their duties during the last eight years are illustrative. Comparative figures of US are also given:

Year	Police Officers Killed	
	India	USA
2010	872	171
2011	867	185
2012	821	141
2013	740	120
2014	731	148
2015	737	160
2016	479	159
2017	383	129

Average figure per year for India works out to 703, while that of USA works out to 151. It shows the hazardous conditions under which our security forces personnel work. UK’s year-wise figures are not available. However, it is recorded that in UK (including Northern Ireland) 256 persons were shot and 21 stabbed since 1945 (till 2012). It works out to hardly four policemen losing their lives per year.

### UK Experience

The Defence Secretary of Britain admitted, in a statement made in October 2016, that “our legal

system has been abused to level false charges against our troops on an industrial scale” and that this had “caused significant distress to people who risked their lives to protect us”. The statement was made in the context of vexatious claims over alleged human rights abuses committed by the British troops in Afghanistan and Iraq. It was estimated that about 326 cases were settled with the payment of around 20 million pounds.

Terrorist attacks within the country, particularly the terror attacks on London Bridge, Manchester and Westminster, rattled the government. Theresa May, Prime Minister, said (June 6, 2017) that she was prepared to rip up human rights laws to impose new restrictions on terror suspects. She said:

“But I can tell a few things: I mean longer prison sentences for people convicted of terrorist offences. I mean making it easier for the authorities to deport foreign terror suspects to their own countries.

And I mean doing more to restrict the freedom and the movements of terrorist suspects when we have enough evidence to know they present a threat, but not enough evidence to prosecute them in full in court.

And if human rights laws stop us from doing it, we will change those laws so we can do it.

We need to look at how the terror threat is evolving, the way that terrorism is breeding terrorism and the increased tempo of attacks. We have had three horrific attacks and we have foiled five others. The tempo is there in a way we haven’t seen before.”

“Enough is enough”, said the Prime Minister of Britain. The government announced its decision to review the counter-terrorism strategy.

According to latest reports, government is planning to bring a *Counter Terrorism and Border Security Bill* containing stringent provisions like putting a person in prison for viewing terrorist material three times or making “reckless” statements about extremist groups.

### **European Convention on Human Rights**

It is significant that according to Article 15 (Derogation in time of an Emergency) of the European Convention on Human Rights:

“In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation, provided that such measure are not inconsistent with other obligations under international law.”

The provision enables a State to unilaterally derogate from some of its obligations to the European Convention on Human Rights in certain exceptional circumstances and has been used by certain member States in the context of terrorism.

The Amnesty International, in its latest report, has deplored that “Europe has continued to slip towards a near-permanent state of securitization” and that “France, for example, ended its state of emergency in November (2017), but only after adopting a new anti-terror law, which embedded in ordinary law many of the provisions of the emergency regime.”

### **US Experience**

The 9/11 attack on US changed the country’s attitude toward terrorism. President Bush declared that the United States was at war, and

signed a new Act on October 26, 2001 - Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism – the **PATRIOT Act**, as it was called. The Act handed an array of new tools to federal investigators, law enforcers, and prosecutors, and placed restraints on individual freedom and personal liberty. Terrorists were tried by a special military panel rather than in a civilian court. The Al-Qaeda and Taliban prisoners were detained in Guantanamo Bay in cages. In 2005 changes were made in several of the Act's sections. On March 26, 2011 President Barack Obama signed the PATRIOT Sunsets Extension Act of 2011, extending three key provisions in the Act regarding wire taps, searches of business records and conducting surveillance of "lone wolves."

The Amnesty International stated, in 2003, that "the war on terror, far from making the world a safer place has made it more dangerous by curtailing human rights, undermining the rule of international law and shielding governments from scrutiny." Again, in its 2004 Report, it said that "the global security agenda promoted by the US administration is bankrupt of vision and bereft of principle."

### **Need to Strike a Balance**

The Supreme Court of India, in *Indira Gandhi vs. Raj Narain*, observed that "the major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes license". It would appear that we need to strike a balance between the security concerns and the human rights considerations. The regulatory and monitoring mechanisms which help deter, identify, and track terrorists have to be there, but these should not jeopardize the liberty and freedom of the citizens. The balance should be such that, on the one hand, it does not fetter the initiative of the security forces, maintains their morale and generally gives adequate latitude to the government to undertake anti-terrorist operations and, at the same time, ensures that the laws of the land are observed and the human rights are by and large upheld. Lord Denning was also of the view that when the state is endangered "our cherished freedoms may have to take second place." The balance may appear difficult, but is certainly achievable once we realize that terrorism per se is a crime against humanity and that the larger interests of the country and its people as a whole are more important. It would be a sad day if, at any stage, we win the battle for human rights but lose the battle to uphold the unity and integrity of the country.

# Policing the Police -Need for Judicial Vigilance

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Dr. Beulah Shekhar<sup>2</sup>



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## Abstract

In the matter of prevention of custodial crimes we have specific laws to this effect. But the problem lies in the implementation of these laws. Though courts give high sounding phrases and quotations in their judgments, it is unfortunate that the courts are least concerned about the implementation of such decisions. Since most of the victims of police atrocities belonged to economically backward classes they are incapable of approaching superior courts against the errant police officer. It is suggested that the lower judiciary should also be given similar power. Supreme Court opined that the courts should change their outlook and attitude in cases involving custodial crime. A major suggestion is that Magistrates should desist from remanding an arrested person in police custody and instead direct the investigating officer to make further examination of the accused in jail custody so also, prolonged detention of arrested persons in police custody should be abolished. Negligence by the authorities concerned will result in Rule of Law being undermined and people's faith in police eroded.

## Keywords :

Judicial Vigilance, Barbarous Third Degree, Mobile Judicial Unit (MJU), Blatant Violation, Scarcity of Fund, Police –Need, Custodial Crimes

## Introduction

Taking into consideration the curative measures, it is found that mere formulation of safeguards are not sufficient. Now it is up to the court to transfer the theories on prevention of custodial crimes by adopting the method of follow up action and thereby to ascertain that the offender is within the purview of law. Though we have certain specific laws to this effect, the problem lies in the implementation of those laws.

If criminal prosecution is launched for violation of human rights of persons in police custody it can have a wholesome effect in curbing the abuse of authority exercised by the police and

in creating the necessary awareness among the police personnel that if they resort to unnecessary and excessive power and force against persons in their custody they will have to face disastrous consequences. In due course this process of orientation would lead to develop an inbuilt mechanism which might enable the police to distinguish between the lawful exercise of authority and the unlawful use of force resorted to by them.

The conduct of the police personnel cannot be corrected only with high sounding phrases and quotations which are usually found in certain judgments. It is really unfortunate that though

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courts are rendering apt and just decisions they are least concerned about the implementation of such decisions.<sup>1</sup>

As far as the increasing number of custodial crimes are concerned, the courts instead of issuing reminders to the parliament or directions to the executive, should really try to establish the real content of their decisions.<sup>2</sup>

Since the majority of the victims of police atrocities belong to economically backward classes, they are not in a position to approach the superior courts for initiating contempt proceedings against the errant police officer. So it is suggested that even the lower courts should be empowered to hear the grievances of the aggrieved persons.

At present the power of awarding compensation to the tortured lies in the High Court and Supreme Court. It is suggested that the lower judiciary should also be given similar powers. As the lower judiciary is competent enough to ascertain that a person is wronged at the time of trial, it is the most competent authority to decide the quantum of compensation to be awarded. If the Sessions Courts are empowered to grant anticipatory bail as that of the High Court,<sup>3</sup> why should not they be empowered to award the compensation too? For implementing such provisions at the grass root level, at least the Sessions Judges should be empowered to award compensation to the wronged.

In *State of Madhya Pradesh v. Shyam Sunder Trivedi*<sup>4</sup>, Hon'ble Mr. Justice Anand, speaking for the Court went on to observe:

The trial Court and the High Court, if we may say so with respect, exhibited a total lack of sensitivity and a 'could not care less' attitude in appreciating the evidence on the record and thereby condoning the barbarous third degree methods which are still being used at, some police stations despite being illegal. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by prosecution, ignoring the ground realities, the fact situation, and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, received encouragement by this type of an unrealistic approach of the courts, because, it reinforces the belief in the mind of the police that no harm would come to them if an odd prisoner dies in the lock up because there would hardly be any evidence available on the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilised society.<sup>5</sup>

### **This Court then suggested:**

The courts are also required to have a change in their outlook and attitude particularly in cases involving custodial crime so that as far

<sup>1</sup> Rama Pal, "Tackling custodial crimes - an over view", Human Rights Year Book (2000), p. 106.

<sup>2</sup> This was done to some extent in *D.K. Basu v. State of West Bengal*, 1997 (1) S.C.C. 416 where after listing the requirements for protecting persons in custody the Court warned: "Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.", *id.*, p. 436.

<sup>3</sup> Section 439 (1) gives very wide discretion to the High Court and the court of session in the matter of granting bail.

<sup>4</sup> A.I.R 1995 S.C.W. 2793 at 2800, quoted in *D.K. Basu v. State of West Bengal*, 1997 Cri. L.J. 743.

<sup>5</sup> *Id.*, p. 2801.

as possible within their powers the guilt should not escape so that the victim of the crime has the satisfaction that ultimately the Majesty of law has prevailed.<sup>6</sup>

In order to establish liability of the police in cases of custodial death, the presumption of guilt should be raised against them.<sup>7</sup> It is imperative that those police personnel found guilty of custodial violence should be awarded severe punishment.

### Mobile Judicial Unit

A new suggestion in this context is to introduce a system of 'Mobile Judicial Unit' (MJU). It is to be constituted in all the taluks and cities. At least there should be a Magistrate in each unit who should be provided with facilities for night shifts so that such places will be having a judicial watch for 24 hours. He should be vested with all powers to attend the judicial needs of the arrested persons like granting of bail, recording of confessions recording of dying declarations etc. Some officers should be appointed to assist such Magistrates and at least one of them should always be available with him in the Unit. The officer should receive the untimely calls or information from the police and public and transmit them to the Magistrate.<sup>8</sup> It should be made mandatory that every arrest is to be reported to such officer of the Unit through wireless messages within a prescribed time limit.<sup>9</sup>

Through training programmes for subordinate judicial officers, the High Courts should make an endeavour to bring a change in the minds of such officers to have a new approach and

attitude, particularly in cases involving custodial crimes. They should be made aware of the need of exhibiting more sensitivity and adopting a realistic approach rather than a narrow technical approach while dealing with the cases of custodial crimes, so that as far as possible within their powers, the guilty should not escape and as a result the victim of the crime gets the satisfaction that ultimately the law has prevailed.<sup>10</sup>

The existing practice of remanding an arrested person in police custody and thereby putting him in fear of torture should be avoided. Instead, Magistrate should be empowered to order the investigating officer to make further examination of the accused in jail custody. This would be helpful to make a balance between the purpose of investigation and elimination of police torture. Prolonged detention of arrested persons in police custody should be abolished.<sup>11</sup>

Considering the de-humanizing aspect of police behaviour and the blatant violation of the human rights of persons in police custody, the Government and the legislature should adopt the recommendations of the Law Commission and bring about appropriate changes in the system not only to curb the custodial crime but also to see that the custodial crime does not go unpunished.<sup>12</sup>

It is suggested that the entire legal mechanism should be equipped with more congenial weapons to fight against torture. The Constitution is to be amended so as to incorporate the provisions prohibiting torture and other cruel, inhuman or degrading treatment or punishment.

<sup>6</sup> *Ibid.*

<sup>7</sup> See *State of M.P. v. Shyamsunder Trivedi*, (1995) 4 S.C.C. 262; *D.K. Basu v. State of W.B.*, (1997) 1 S.C.C. 416 pp. 432-433.

<sup>8</sup> This system will enable the Magistrate to avoid direct contact with both the police and public.

<sup>9</sup> This will be an effective step for fulfilling the objective contained in Article 22(3) of the Constitution. It will reduce the tendency of police to keep the arrested persons in custody unnecessarily even in night hours or when the courts are closed.

<sup>10</sup> *Infra* n.12; see also *Chandabai v. State of M.P.*, 1997 Cri. L.J. 3844.

<sup>11</sup> Amnesty International, *The impact of violence against women*, Mimeo (2001), p. 15.

<sup>12</sup> Tandon, M.P., "Custodial Death: Torture in Police Custody", *Legal Education Newsletter*, Jan.1996, p. 67.

## Joint Effort of Central and State Government

The Central Government is trying to put the blame of police atrocities on the shoulders of the State Government and vice-versa. It is high time to change this attitude of both Central and State Governments. Instead of blaming each other they should go hand in hand while dealing with such issues and take steps for framing a policy for the prevention of human rights violations by the police through amending both the Criminal Procedure Code and the Police Act.<sup>13</sup> It is obligatory for the Government of every State government and even the Central government to issue a White Paper setting out the humane policy of the State.<sup>14</sup>

It is suggested that the first Optional Protocol to the International Covenant on Civil and Political Rights should be ratified by the Government of India which enables the individuals to complain to the Human Rights Committee for effective remedies against police atrocities, when all the domestic remedies are exhausted. The Government of India should take steps to take away the reservations it made while acceding to the Covenant, so as to enable the Indian citizens the right to claim compensation in case of wrongful arrest or detention.<sup>15</sup>

The main reason for the failure of the Government to take steps for the protection of the life and property of its citizens is not the scarcity of funds. It may be either because of the

lack of will or because the politicians want the police to be retained in the existing structure for misuse of police for their narrow partisan ends. Rule of law is being undermined and people's faith in police eroded. Implementation of recommendations for police reform such as those proposed by the National Police Commission, would have improved the police image in the eyes of the general public but unfortunately those recommendations have been ignored by successive Central and State Governments. What the Government needs to do vis-à-vis the police if it wants to govern according to the Constitution, is spelt out in great detail in the National Police Commission Reports.

Under the Indian federal system the individual states have a concrete responsibility to promote and protect human rights and to redress grievances. The decentralization of the complaint disposal mechanism thus becomes a necessity so as to provide a redressal mechanism that is readily accessible and inexpensive in terms of time and cost. So the States should establish district-level committees for effective and speedy redressal of complaints of human rights violations.<sup>16</sup> The Protection of Human Rights Act, 1993 provides for the constitution of State Human Rights Commission<sup>17</sup> and also for the establishment of Human Rights Courts.<sup>18</sup> But so far only a few states have set up state-level Human Rights Commissions and Human Rights Courts. Scarcity of fund is often leveled as a justification for the non compliance of these provisions.<sup>19</sup>

<sup>13</sup> Incidentally, it may be stated that as per entries 1 and 2 in the State List in the Seventh Schedule of the Constitution 'police' is a state subject. Hence it is the sole responsibility of the State Government to pass appropriate laws governing the behaviour of police.

<sup>14</sup> V.R. Krishna Iyer, "Are not women human even when in custody", *Human Rights Year Book* (2000), p. 97.

<sup>15</sup> That reservation however, has now lost its relevance in view of the law laid down by the Supreme Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. See with advantage *Rudal Shah v. State of Bihar*, (1983) S.C.C. 141; (A.I.R. 1983 S.C 1086); *Rangendra Singh v. Smt. Usha Rani* (1984) 3 S.C.C. 339.

<sup>16</sup> See Singh Sehgal, B.P. (Ed.), *Human Rights in India* (1995) pp. 546-560, quoted by Chandra Mohan Upadhyay, *Human Rights in Pre-Trial Detention* (1999), p. 149.

<sup>17</sup> Section 21 of the Act.

<sup>18</sup> Section 30 of the Act.

<sup>19</sup> The Act has not specifically mentioned setting up of the Commission at the level of Union Territories. The justification may be that the Commission at the national level will function in the Union Territories also. However this is against the concept of decentralised grievance redressal machinery.

The Government should take steps for the prompt and effective investigation, of all reports of torture published by the media including news papers and T V channels and by various voluntary organisations by an independent and impartial body. It should also initiate model prosecution proceedings against the perpetrators of police torture and thereby make the people convinced about the public commitment of the Government that it will not tolerate torture or ill treatment of arrested persons by police. Voluntary organizations and human rights activists who are giving information about human rights abuses by police and working in the field of protection of rights of persons in police custody should be appreciated through awards and incentives.

The Government should comply with its international obligation to prevent torture which it affirmed through the U.N. Declaration against Torture in 1979. Accordingly the Government of India is obliged to implement its provisions through legal and other effective measures. The Government should accede to the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>20</sup>

The practice of subsequent examination of post-mortem reports by experts would be helpful for minimising the tendency of doctors to make false reports. It would be nice to implement the recommendation of National Human Rights Commission that all post-mortem examinations in respect of deaths in police custody should be video-filmed and sent to the Commission.<sup>21</sup>

The post-mortem certificates issued by the doctors in custodial death cases cannot always be depended upon. In the absence of any credible independent evidence, the fate of custodial death cases depends entirely on the observations recorded and the opinions given by the doctor in post mortem reports. There can be a total miscarriage of justice if the reports are manipulated.<sup>22</sup> Proper training and orientation should be given to medical professionals so as to make them conscious of the need of maintaining their ethical standards. Model system of punishment should be applied to the medical practitioners who issue false and manipulated post-mortem reports.

There should be a separate provision for conducting the post-mortem examination within 24 hours in all cases of custodial death. The deceased's relatives should be permitted to post an expert medical practitioner at the time and place of post-mortem. The copies of reports of inquiry, medical examination etc should be served as early as possible to the victim in the case of custodial torture. Similarly post-mortem reports should be made available to the relatives of the deceased.

Legislative steps are to be taken for providing mandatory judicial inquiries in all allegations of custodial death. The government should also take steps to ensure prompt and independent investigations into all allegations of custodial torture, rape and death in police custody. Investigations of allegations of torture or ill-treatment should be in accordance with the

<sup>20</sup> The National Human Rights Commission also suggested, through a letter dated 9 Dec. 1994, addressed to the Prime Minister to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, National Human Rights Commission, *Annual Report* (1994-95), p. 17 for detail see in Annexure I of the Report; The Commission has again urged the Government of India in 1997. *Human Rights News Letter*, Jan. 1997, p. 2.

<sup>21</sup> National Human Rights Commission, *Annual Report* (1995-96), p. 15.

<sup>22</sup> The National Human Rights Commission accordingly recommended the video-filming of post-mortem examinations and the sending of tapes to the Commission for scrutiny, with a view to preventing such unacceptable and unethical acts. Twenty-two States and Union Territories have now accepted this recommendation while four others have stated that they are examining the matter. The Commission has recommended to the States of Arunachal Pradesh, Maharashtra, Manipur, Mizoram, Uttar Pradesh, the National Capital Territory of Delhi and the Union Territories of Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli and Lakshadweep that they accept this recommendation without any further delay; National Human Rights Commission *Annual Report* (1998 - 99), p. 53.



Istanbul Principles<sup>23</sup> as endorsed by the UN Special Rapporteur on Torture.<sup>24</sup>

The existing system of getting prior sanction from the Government for the purpose of conducting investigation against the police personnel who committed death or torture in police custody is to be removed. Similarly during the pendency of investigation of cases of custodial torture, the accused police personnel should be suspended from service till the final verdict from the court.

In the case of custodial death or torture both the officers who gave orders and those who have perpetrated it should be made liable. At the same time the authorities who are expected to react, but remain silent, should also be held liable.

The cases of custodial death and torture should be intimated not only to the National Human Rights Commission but to the State Human Rights Commission also. The recommendations of the NHRC for framing certain guidelines for videotaping of post-mortem should be implemented.<sup>25</sup>

Action against policemen who are complained against for brutality has never been satisfactory.<sup>26</sup> Most of the policeman accused of torturing or killing suspects are invariably reinstated after a few months.<sup>27</sup> Very few are dismissed. There should not be any leniency towards the police officers who are involved in cases of custodial torture. Special prosecutors should be appointed to prosecute cases of custodial violence. If the accused is acquitted, appeal should be preferred as a matter of policy.

It should be made mandatory on the part of the Government to sanction an amount as interim relief in deserving cases of custodial torture. Even if the case is acquitted, for want of evidence, compensation should be awarded if prima-facie case is made out.

The exclusive attention of the investigating officer is essential to the conduct of efficient investigation. Investigating agency should be distinct from the police staff assigned to the enforcement of law and order. The adoption of such a separation of the investigating machinery may involve some additional cost. However, and the additional cost involved in the implementation of our proposal is necessary. The adoption of such a separation will ensure undivided attention to the detection of crime. It will also provide additional strength to the police establishment which needs an increase in most of the States.<sup>28</sup> Such a division will meet the needs of both the Government and the judiciary. No modern Government in a democratic setup can function without a police force at its aid. The law and order wing in implementing the policies and programmes of the government will satisfy this. The investigating police are to be made free from any sort of executive control; it should be put under judicial supervision. This will bring the investigatory procedure under the protection of the judiciary and greatly reduce the possibilities of political and any other type of interference with the police investigation.

Service of voluntary organisations should be made use of in the field of investigation of

<sup>23</sup> These are the principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 1999 a Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (known as the Istanbul Protocol) was presented to the High Commissioner for Human Rights, Mary Robinson, by an international expert group which took three years drafting the document. For the text of the Istanbul Principles see appendix of Amnesty International, *The impact of violence against women* (2001), p. 45.

<sup>24</sup> *Supra* n.11, p. 45.

<sup>25</sup> National Human Rights Commission, *Annual Report (1998 - 99)*, p. 54.

<sup>26</sup> Shailendra Misra, *Police Brutality* (1986), p. 66.

<sup>27</sup> Times of India (Cochin), Nov.28, 1992.

<sup>28</sup> *Law Commission of India*, 14th Reoprt 1950 – “Reform of Judicial Administration”, Vol. II p. 741, Ministry of Law Govt. of India.

cases. Human rights organizations like Amnesty International, Peoples' Union for Democratic Rights, Citizens for Democracy and Peoples' Union for Civil Liberty should play a more constructive than a partisan role. The States should welcome the critical approach of these organisations and take measures to protect and preserve human rights.<sup>29</sup>

### **Precautions to be Taken in Recruitment and Training**

Appointments to the NHRC should be made from among the members of the State Units who are already in the field of human rights work and programmes. Thus their experience in State Commission can be utilized for the appellate body. Special prosecutors should be appointed to prosecute cases of custodial violence. The Government and the higher police officers to find out the real culprit without imposing unnecessary pressure should give the subordinate investigating police officers ample time and opportunity. If the accused is acquitted, appeal should be preferred as a matter of policy. Transporting the arrested persons in public vehicles and through public places with handcuffs should be avoided. They should be taken to the police stations and to the court in the public vehicles itself. This will also reduce the possibility of escape of arrested persons from police custody.

Proper recruitment and training are very essential to inspire proper attitude formation in the police service so as to suit socio-economic transformations going on in the society. Appropriate aptitude tests for recruitment to police service must be devised so as to bring

most suitable hands in the service. Policing being an essential public service of great importance should not be allowed to become the last refuge of the discarded elements. Recruitment procedures should comply with the important pre-requisites like emotional stability, sound character, political neutrality, above-average intelligence etc.

There must be precautions in the selection. There should not be any political interference and 'buying' of appointments and transfers. Considerable care has to be taken in enquiring into antecedent of the recruits. Only high quality officers properly trained should be involved in selection procedures.<sup>30</sup>

Human rights would prove illusory unless we have police officers of right caliber, to administer the police stations. The problems of human rights in police work may be removed to a considerable extent if we take care to ensure that the persons of right caliber are selected as police officers who must be a monitor, an investigator, an advisor and above all, a functional friend, philosopher and guide with free access and independence of action.<sup>31</sup> In selecting and training of law enforcement personnel, the qualification of respect and sensitivity to human rights protection should be a prerequisite, kept under review and counted toward assessment of their performance and future prospects.

Training of personal is the foundation on which the police force is built. The main objective of police training is to make lasting improvement in his role enactment capacities as a policeman and to develop his capacity for assuming higher levels of responsibility. Thus, police training is an effort to fit man for police life and to make him think, act and live like a police officer.

<sup>29</sup> In fact, vigilance of the people's voluntary organizations like Amnesty International, Association for Human Rights etc. is needed to make the Govt. and the police act with responsibility., *infra* n. 65., p. 82.

<sup>30</sup> See also Kamal Saini, *Police Investigation* (2000), p. 55.

<sup>31</sup> Aparna Srivastava, *Role of Police in a Changing Society* (1999), p. 84.

Skilful investigation is an art, which can be learnt only by training and experience. The training imparted to police personnel is not homogenous in character. The extensive training in investigation with recent scientific innovation could be imparted to create specialised wings for investigations.

Police training should be an earnest endeavour to impart and improve knowledge and skills and to bring a change of attitude<sup>32</sup> in the police behaviour so as to inculcate in them a human rights culture on the basis of the international and national standards for the protection of human rights of persons in police custody. It is a process of developing a person's effectiveness through carefully selected methods by competent trainers in a suitable learning climate.<sup>33</sup> The training imparted to police personnel is not homogeneous in character. It is ranging from performing the law and order functions in regulating the traffic, etc. The extensive training in investigations with recent scientific innovations could be imparted to create specialised wings for investigations.

To achieve the desired goal, police personnel should be provided with better initial institutional training and periodical in-service training in the field of human rights. The target of training should be the comprehensive development of the human rights oriented personality of the trainees.

Transparency of action and accountability perhaps are the possible safeguards which must insist upon. Attention is also required to be paid to properly develop a work culture. Training and orientation of the police should be consistent with basic human values.<sup>34</sup>

### **Human Rights Oriented Initial Police Training**

The legal instruments like the Indian Police Act should be restructured giving more importance to human rights of the persons in police custody. Training methodology of police needs restructuring. The training programme of the police personnel should focus on the abolition of torture and barbarous treatment of the victims in the police custody and thereby promote and protect their human rights.

The present syllabi of the police training colleges and academies need a drastic change so as to include human rights oriented subjects which can impart an apt training which will make the police personnel competent enough to protect the human rights of persons in their custody. In this context, it would be worth to suggest that the libraries of such training institutions should be well equipped with sufficient books and reading materials on subjects like human rights, modern scientific methods of investigation, behavioural science, criminal psychology etc.

<sup>32</sup> While enthusiasm and initiative in investigation are cardinal virtues, no investigator should start an investigation with the thought that he must obtain only a certain type of solution. If he does so, he is too often inclined to bend and twist facts or adopt unlawful means to obtain the desired solution, Jacob Fisher, *The Art of Detection* (1948), p. 25.

<sup>33</sup> The Ausbeton Committee (U.K., 1944) while dealing with the objectives and general principles of training gave following objectives:-

- (i) To equip the civil servant with precision and clarity in the transaction of business.
- (ii) To attune the civil servant to the new tasks which he will be called upon to perform in a changing world.
- (iii) To develop resistance to the danger of becoming mechanised by visualising what he is doing in a wider setting and by preserving with his own educational development?
- (iv) To develop his capacity for higher work and greater responsibilities.
- (v) To develop and maintain staff morale particularly because large number of people have to deal with tasks of a routine nature.
- (vi) To inculcate the right attitude towards the public never forgetting that the civil servant is a servant and not the master of the community.
- (vii) To sustain the human touch not only in direct personal contacts with the public but also in handling correspondence which demands a proper sense of urgency and due consideration for the man at the other end., 'Training-Concepts and Objectives', Report of The Committee on Police Training (Ministry of Home Affairs, Government of India), p.11; supra n. 30, p. 56.

<sup>34</sup> (1997) 1 S.C.C 433; see also Dilip K. Basu v. State of West Bengal, A.I.R. 1997 S.C. 3017.

It is suggested that the State Government should introduce a new training curriculum for the police personnel involved in the arrest, detention and interrogation of suspects.<sup>35</sup> Police should be made aware of the basic human values and made sensitive to the constitutional ethos. For the object of upholding the rights enshrined in various international human rights instruments like the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Code of Conduct for Law Enforcement Officials, police officers making arrests should undergo adequate training on human rights. Efforts must also be made to change the attitude and approach of the police personnel handling investigations so that they do not sacrifice basic human values during interrogation and do not resort to questionable forms of interrogation.

Without being harsh to the policemen, the best way and the need of the moment, is to sensitize them and inculcate in their minds that the victims of police torture too are human beings and deserve to be treated humanely and their rights too are respected and preserved. Instead of dismissing the torturer as a sadist, or a maniac, he must be humanised by giving training in human rights and also punished promptly. Atrocities committed against individuals can be tackled in this way.

### **Inservice Training on Human Rights for Police Personnel**

Linking in-service training courses with the channels of promotion to various levels of higher responsibility would ensure better

motivation and greater effectiveness in the field of protection of human rights by police. The questions of promotion procedures and channels of advancement have to be considered and then linked with in-service training and competence tests. The in-service training has to be so fashioned as to keep professionally trained men abreast of new development in various fields of activity.<sup>36</sup>

Psychological orientation is absolutely necessary for police personnel. This would not only improve their behaviour but also help in dealing with traumatized victims. Though an ultimate change cannot be achieved within one day, the new systematic training can definitely bring an immense change in the existing human rights awareness of police, and there will be a day that everyone will say that police is our friend, philosopher and guide.

### **Remedial Measures against the Arbitrary Use of Police Powers**

The vast discretionary powers enjoyed by the police invite arbitrariness, favouritism, corruption and injustice. So the areas of vast police discretion should be identified and necessary checks should be provided. This can be initiated by reviewing the past instances of corruption.

The police should be allowed to interrogate the accused only when an impartial third person is present. During interview, many respondents stressed the need for appointing more staff for supervising the activities of police personnel from constable to sub inspector.

<sup>35</sup> The existing training is to be reformed by giving more importance to human rights, criminology, victimology, penology, science of investigation, law, psychology etc. The concept and philosophy of police is to be restructured so as to make it the first and best instrument to save and protect the community. The training methodology and curriculum is to be re-shaped in the light of this new concept. Every effort is to be made to re-structure the training pattern to change the existing inhuman face of the police and to convert it into a protector of human dignity in their ends and means.

<sup>36</sup> Promotional in-service training courses should be seminar type rather than traditional class room types., 'Training-Concepts and Objectives', Report of The Committee on Police Training (Ministry of Home Affairs, Government of India), pp. 12-13.

With the enactment of a plethora of social, fiscal and other laws, the powers of the police to arrest have widened beyond imagination. This gives scope for misbehaviour and unnecessary detention. A review of these powers of arrest is called for and suitable corrective steps are to be taken.

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# A Review of the Immoral Traffic Prevention Act, 1986

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## Abstract

With the rise of trafficking as a global phenomenon India's involvement in it has also grown. More worrying still is the rising share of children<sup>2</sup> in the total trafficked population in India. In fact, India is seen as a source, transit and destination country for trafficked children, with an estimated 1.2 million children trafficked in India every year (US Department of State, 2010). While the bulk of trafficking in India takes place internally and is believed to be targeted mostly at forced labour, lack of consistent and credible data makes it hard to establish the precise numbers especially as far as children and their destination are concerned. According to the National Crime Records Bureau Report (NCRB, 2015)<sup>3</sup> – the only credible government data source on trafficking - a total of 6877 cases were recorded in that year, up from 5466 in 2014. Of these, the cases pertaining to child trafficking were 3490 in 2015, which is about 50% of all trafficking cases. Unfortunately, similar data is not available for previous years to enable comparisons, but we do know from the same report that the conviction rates for child trafficking in 2015 were an abysmal 14.3%.

## Keywords:

global phenomenon, children trafficked, involvement, sexual exploitation, Transnational Organized Crime

## Introduction

Human trafficking, a form of organized crime that extends across borders, covers various forms of human rights violations, ranging from commercial sexual exploitation to forced labour and organ donation.<sup>1</sup> Over the years it has taken on more complex and diverse forms making it necessary to reform laws and strategies geared towards its eradication and control. Tragically, the involvement of children, especially girls, has also grown. According to the United Nations Office on Drugs and Crime (UNODC) in its 2012 Report, the share of minor girls trafficked increased from 13% in 2006 to 17% in 2009. The Report also shows that trafficking for commercial

sexual exploitation accounts for 57-62% of all victims of trafficking. In order to deal with this growing menace the United Nations Convention against Transnational Organized Crime developed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), to provide the international legal framework through which trafficking could be combatted world-wide. Countries, like India, who have ratified the protocol, are obligated to amend their domestic laws accordingly to deal with the problem at the national level.

In the most recent Global Report on Trafficking in Persons 2016 released by the UNODC, it has been observed that the profile of detected

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trafficking victims has changed. Although most detected victims are still women, children and men now make up larger shares of the total number of victims than they did a decade ago. In 2014, children comprised 28 per cent of detected victims. These shifts indicate that the common understanding of the trafficking crime has evolved. A decade ago, trafficking was thought to mainly involve women trafficked from afar into an affluent country for sexual exploitation. Today, criminal justice practitioners are more aware of the diversity among offenders, victims, forms of exploitation and flows of trafficking in persons, and the statistics may reflect this increased awareness.

With the rise of trafficking as a global phenomenon India's involvement in it has also grown. More worrying still is the rising share of children<sup>2</sup> in the total trafficked population in India. In fact, India is seen as a source, transit and destination country for trafficked children, with an estimated 1.2 million children trafficked in India every year (US Department of State, 2010). While the bulk of trafficking in India takes place internally and is believed to be targeted mostly at forced labour, lack of consistent and credible data makes it hard to establish the precise numbers especially as far as children and their destination are concerned. According to the National Crime Records Bureau Report (NCRB, 2015)<sup>3</sup> – the only credible government data source on trafficking – a total of 6877 cases were recorded in that year, up from 5466 in 2014. Of these, the cases pertaining to child trafficking were 3490 in 2015, which is about 50% of all trafficking cases. Unfortunately, similar data is not available for previous years to enable comparisons, but we do know from the same report that the conviction rates for child trafficking in 2015 were an abysmal 14.3%.

While India signed the Palermo Protocol in 2002 and ratified it in 2011, it has yet to frame a comprehensive anti-trafficking law.<sup>4</sup> The current

legislation specifically dealing with trafficking is the Immoral Traffic (Prevention) Act, 1986 (ITPA 1986) that covers just one aspect of it, namely prostitution or commercial sexual exploitation. Given that forced labour constitutes the largest trafficking problem in India, this seems surprising. However, it is believed that the presence of separate laws dealing with the other aspects of trafficking allows for all aspects to be covered. For instance, a host of Labour laws that deal with child labour and bonded labour;<sup>5</sup> State Anti-Beggary laws;<sup>6</sup> the Prohibition of Child Marriage Law; Sections of the IPC<sup>7</sup> and several Constitutional provisions<sup>8</sup> to name a few. However, despite the multiplicity of these laws, the problem remains intractable. One reason for the difficulty lies in the fact that laws fall under different departmental and state or central government control, resulting in lack of clarity over territorial jurisdictions.<sup>9</sup> However, anomalies in the law itself such as a lack of consensus on definitions (what constitutes trafficking or exploitation), lack of clarity on the rights of victims,<sup>10</sup> weak punitive measures against perpetrators, and poor enforcement mechanisms impede their justiciability resulting in low conviction rates.

While the gaps as mentioned above in the structure of the legal system have contributed to the ineffective enforcement of law, the weak linkages between law and policy have compounded the problem, especially at the rehabilitation end. For instance, the quality of protective homes provided or the quality of training given to law enforcement officers or the calculation and allocation of compensation for victims, are all determined by policy decisions. Unfortunately, extremely low resources allocated towards these ends have contributed to inadequate capacities within the system to deal with the range and scale of issues involved. Hence, relief or compensation is not properly applied on behalf of the victims or even determined or

paid in time or paid in full; homes are run dissatisfactorily and in some instances in violation of the specifications mentioned in the Juvenile Justice Act and other laws, counseling of victims is inadequate and opportunities for sustainable livelihoods that would enable the victim to transit into mainstream society are largely absent. All these shortfalls greatly increase the risk of victims relapsing into their older lives and frustrate the rescue and prosecution process.

**In sum**, gaps in the law and law enforcement machinery coupled with poor convergence across departments have meant that the situation of trafficking in India remains far from reigned in. In addition, allegations of corruption and a nexus between law enforcement agents and perpetrators have also grown, without necessary steps taken to curb this trend. This policy brief is an attempt to evaluate the ITPA, 1986 with special reference to the recent changes in law such as the amended Section 370 and 370A of the Indian Penal Code (IPC), in 2013. In particular it makes a case for a comprehensive new law that takes into account the changing scenario and its imperatives.<sup>11</sup>

Recommendations of the Parliamentary Standing Committee in its 182<sup>nd</sup> Report released in 2006 and some positive features of new draft Bill [Trafficking of Persons (Prevention, Protection and Rehabilitation) Draft Act, 2017] being contemplated by the Ministry of Woman and Child Development (MWCD) are included in the section of recommendations.

### **The International Context and India's Response to it**

By way of providing the broader legal framework, it would be useful to say a few words on the international context and covenants that India is signatory to. The most important and pertinent international instrument in the context of trafficking is the Protocol to Prevent, Suppress

and Punish Trafficking in Persons, Especially Women and Children, commonly known as the Palermo Protocol.<sup>12</sup> It marks a significant milestone in international efforts to control the trafficking of persons and is the base document for efforts across countries to combat trafficking.

India signed on to the Palermo Protocol in 2002, and ratified in 2011, but it was codified in national law in 2013, through the enactment of the Criminal Law (Amendment) Act, which resulted in changes in several sections of the IPC, especially 370<sup>13</sup> and 370A. While it is not necessary for domestic legislation to use the precise language of the Protocol its adoption into domestic legal systems is expected to give effect to the concepts contained in the Protocol. The amended sections have brought a fairly comprehensive definition of trafficking into the Indian legal system, but despite these changes the framework for trafficking falls short of meeting the Protocol requirements on at least three counts.

**One**, it does not “explicitly recognize and penalize all forms of labour trafficking ...as it excludes forced labour from its definition”. This is a rather large gap, as labour constitutes the bulk of the trafficking problem in India.<sup>14</sup> **Two**, it does not provide for sufficient safeguards aimed at preventing trafficking. The ones that do exist are for the purposes of commercial sexual exploitation and not trafficking for other purposes. **Three**, it does not provide for an effective system for the safety, recovery and compensation of trafficked victims.<sup>15</sup>

Each of these omissions, while being in contravention of the requirements of the Palermo Protocol, has also contributed to the inability of the system to deal effectively with the problem. At the same time the ITPA, has remained unchanged with no reference to the amendments in the IPC. As a result the two main legal instruments for trafficking remain somewhat at variance with each other. This dissonance in the



law and the impact that it has had on the failure to curb trafficking led to the Ministry of Woman and Child Development (MWCD) proposing the Immoral Traffic (Prevention) Amendment Bill, 2006, as amendments to the ITPA 1986. This Bill was then placed before a Parliamentary Standing Committee in 2006 for review. The Committee submitted its Report the same year with suggested amendments to the ITPA.

The Committee held wide ranging consultations with various actors and agencies working on trafficking, including voluntary groups and activists, academics, government officials and police personnel. These deliberations led the Committee to note that the Act had “failed to meet its objectives on several counts” (p.5). It therefore proposed several amendments to the ITPA. However, even as it recognized that by focusing solely on commercial sexual exploitation, the Act was limited, the Standing Committee refrained from expanding its scope. Instead, it took the decision to confine its recommendations to prostitution alone stating that there was a strong case for bringing separate legislation(s) to cover other forms of trafficking. The Committee did however make several recommendations, some of which are included in the last section of this report.

### **The Immoral Traffic (Prevention) Act, 1986**

The Immoral Traffic (Prevention) Act, 1986, originally the Suppression of Immoral Traffic in Women and Girls (SITA), 1956, is the Central legislation dealing with trafficking in India.<sup>16</sup> However, even though the name refers to immoral trafficking of persons, the ITPA’s scope is limited to commercial sexual exploitation or prostitution and penalizes those who facilitate and abet commercial sexual exploitation, including clients and those who live off the earnings of prostitutes. It also provides for welfare measures

towards rehabilitation of victims in the form of protective homes to be set up and managed by state governments. Unfortunately, even as a law dealing with sexual exploitation it leaves a lot to be desired. Discussed below are some of the gaps.

#### **a) Definitional inconsistencies and Conceptual loopholes**

- i) A basic deficiency in the ITPA is the lack of a definition of trafficking, even though the title of the Act specifically refers to trafficking.<sup>17</sup> In fact, even commercial sexual exploitation is not adequately defined in the Act.<sup>18</sup> Instead the focus is on defining brothels as the site of commercial sexual exploitation and thus penalizing the facilitators of commercial sexual exploitation in brothels. What remains unclear therefore is the actual offence, particularly in the context of trafficking. Is engaging in prostitution the offence or is trafficking for prostitution the actual offence? This ambiguity serves to leave out a plethora of offenders involved in the transport and harboring of potential victims of commercial sexual exploitation.
- ii) The assumption that prostitution takes place in brothels alone is also a limitation in the Act. In other words, sexual exploitation in private premises, other than a brothel, is not covered by the Act. In fact with the emergence of newer technologies and the changing global scenario, commercial sexual activity has emerged in diverse forms and can take place in residences, hotels, clubs, or involve mobile locations. Soliciting or use of public spaces

- within a certain proximity to public places is however included in the Act. These distinctions, in addition to making it harder to provide evidence, also have implications for a range of punitive actions involving persons who rent, lease, own premises used for prostitution/trafficking, but which are not “brothels”, as well as for those who facilitate, propagate or encourage, the process of trafficking or sexual exploitation, in the said premises.
- iii) The treatment of victims as offenders, as reflected by their detention in “corrective” homes, implies a contradiction in terms, as a victim cannot at the same time be an offender. This contradiction reflects the confused position on prostitution inherent in the law. While prostitution per se is not outlawed in India (only when using public spaces), all women in prostitution are routinely treated as offenders under the ITPA. Further, the term corrective institution has been considered offensive for victims when in fact they have been forced into commercial sexual exploitation against their will.
  - iv) The existing practice of recruiting girls for prostitution under the garb of religion, as in the case of devdasis is not covered in the Act. Explicit mention of socio-religious practices, which are not exempt from prosecution under the law, would go a long way towards ending this form of sexual exploitation.
  - v) The definition of prostitution as ‘commercial sexual exploitation’ or ‘abuse of persons for commercial purposes’ is too wide and does not allow for commercial sexual activity as part of legitimate sex work. However, in the case of children, it cannot be considered a legitimate activity under any circumstances. Hence, a distinction is required in the definition of prostitution that excludes children altogether.
  - vi) Rights of the victims have not been defined clearly in the law. This too is a basic lacuna in the ITPA, wherein welfare measures have been prescribed without first clarifying how they adhere to specific rights inherent in victims. For instance, while victims may be sent to protective homes, this is not a statutory requirement. The rights under rehabilitation, which should include legal, psychological, health and educational support and thus enable them to join the mainstream of society, are woefully absent from the law. This gap has contributed to the poor implementation of the rehabilitation process.
  - vii) Lack of a witness protection programme or the option of in-camera proceedings prevents many victims, especially children from testifying.
  - viii) Composition and powers of the Central or State Authorities for preventing and combatting trafficking have not been defined in the ITPA and neither has a time frame been set for when the authorities should be formed. As a result, the authorities remain far from adequately prepared for the roles envisaged for them.

**b) Punishment and its Enforcement****i) Punitive measures**

The punitive measures currently in the ITPA do not accurately or adequately reflect the import of the offences they cover. For instance, the punishment of 7 years for offences of trafficking in the ITPA is low, especially in the context of children, even though a provision for extending to life does exist in certain cases. At the same time punishment for anyone “frequenting” (Section 5) a brothel seems extreme, as not all visits to a brothel need involve trafficked persons. And not all visits to the brothel may even involve sexual exploitation. For instance, health workers or other service providers who visit may be implicated in the process, as under the current dispensation simply visiting a brothel invites punishment. Similarly, there is also routine misuse of the punishment for solicitation by the police (Section 8). “This has resulted in harassment and punishment of women in prostitution instead of conviction of perpetrators of trafficking and pimps” (Standing Committee Report, p6). The problem however seems to be that the punishment is restricted to women. If it were extended to pimps, agents, procurers etc., the section would target the offenders more accurately. Ideally, the women in prostitution should be dropped from the clause and it be retained only for the other perpetrators of the crime.

**ii) Convictions**

The Indian record on arrests, convictions and punishment is disheartening, as noted earlier. It has also been suggested that complicity between law enforcement officials and traffickers could be contributing to the low numbers on this account.<sup>19</sup> However, without rigorous investigation, it is hard to corroborate the veracity of such claims. There are nevertheless other structural constraints in the law enforcement machinery that can more easily be cited for the low conviction rates. For instance, the absence of a witness protection programme makes it harder to proceed with an investigation, as victims are fearful of deposing. Similarly, the lack of a single specified and special agency to deal with investigations implies that evidence gathering is dependent on local police, greatly slowing down the process at the initial stages itself.

Further, since different laws are implemented through different authorities, with lack of clarity on roles of each actor/agency, there is an overlap of responsibility for action often falling between two stools. For instance, the local police, specialized police of the Anti Human Trafficking Units, Special Juvenile Police Units, Special Police Officers (SPOs), Missing Persons Bureau (MPB), District Missing Persons Unit (DMPU) and the Missing Persons Squad (MPS) all have overlapping jurisdictions.

This leads to confusion about who is to be held responsible, eventually impacting action.

**Other anomalies in the ITPA, include:**

- i) Detaining a trafficked woman in a corrective institution as an alternative to punishment. This amounts to her detention (and then release) in an arbitrary manner without her consent and thereafter without being provided any counseling or opportunities for rehabilitation.
  - ii) Presence of a trusted person during depositions involving children. This requirement, missing from the Act, makes it hard for children to feel safe and free to depose especially in the presence of the police and the accused.
  - iii) Punishment for living off the earnings of prostitutes (Section 4), without a caveat for children, legal heirs and other dependents of the women in prostitution, penalizes the dependents. In many instances, these women may be the only bread earner in the family. For the children involved it implies a real travesty of justice. A distinction between living “on” the wages and “off” the wages was therefore needed.
  - iv) Cross-border dimensions of trafficking (including interstate trafficking) remain severely neglected in the Act.
- c) Rehabilitation, Compensation and Protection**
- Perhaps the most glaring anomaly in the law related to rehabilitation and compensation is the absence of a specified set of right for the victims. This includes

their detention in protective or corrective homes without their consent as mentioned above, but extends to the entire gamut of rehabilitation, including relief and compensation. Instead of specifying rights the ITPA gives state governments the option of making provisions for corrective and protective institutions. What this implies is that state governments comply with these provisions only to the extent that their budgets or capacities allow. Invariably budgets for such matters tend to be deficient. As a result, these areas have been grossly underserved, with state governments taking arbitrary and cursory measures to bring relief to the victims. This is evidenced from the fact that protective and corrective homes are poorly equipped. Counseling, including legal counseling is completely absent as are provisions for health and education. Providing livelihood opportunities, that would go a long way toward sustaining rehabilitation are also absent. It is no surprise then that after a period of what has aptly been described as ‘detention’ victims are released, and more often than not fall back into their older lives. Similarly, the lack of a coherent policy to guide finalization of the minimum and maximum amount of compensation or the procedures to be followed means that victims have to wait long periods before they receive anything, if at all.

**Conclusion**

An examination of the ITPA 1986 and the recent efforts to bring amendments to it clearly point to a felt need for largescale changes in the law dealing with trafficking. The fact that trafficking is a complex crime involving both process and outcomes and spanning several areas of

human rights violation does make it difficult to adjudicate and may require an incremental process, as evident from the changes in the international regulations surrounding trafficking. Unfortunately India, thus far, has not been able to keep pace with these changes. Apart from the amendments to Section 370 and 370A of the IPC, little other concrete action has been taken to bring law in line with the reality. Even the amendments to ITPA proposed by MWCD and reviewed by the Parliamentary Standing Committee remain untouched. The growing and evolving nature of the problem, calls for a single comprehensive law that takes into account the particularities of the Indian context and the concepts of the Palermo Protocol.

In addition, the lack of coordination and convergence between the departments and agencies involved impedes further the efficacy of the law. Severe capacity constraints in the law and policy apparatus, reflected particularly in shortages of trained and dedicated staff for prevention, protection and rehabilitation purposes, need to be tackled urgently, as they have the potential to unravel the best-intentioned and drafted legislation.

Given below are some specific recommendations with regard to the law as well as policy.

## Recommendations

1. Specific changes in the ITPA<sup>20</sup> :
  - i) The ITPA to be substituted with an overarching Bill covering all aspects of trafficking.
  - ii) Definition of trafficking to follow Section 370, but with the addition of forced labour, and brought within the purview of the new Bill. The Parliamentary Standing Committee's recommendation of adding the words "inducement of religious and social nature" may also be added to the definition, to cover the Devdasi issue.
  - iii) Distinction to be made between sex work per se and commercial sexual exploitation following trafficking. It is therefore recommended by that the term "commercial sexual exploitation" and "trafficked victim" be clearly defined. Further, since sex work is not out-lawed in India, dependents of women in prostitution (for instance children and parents) should not be penalized along with those that facilitate commercial sexual exploitation through trafficking. Thus, a distinction must be made between living "off" the wages and living "on" the wages of a prostitute, as also recommended by the Standing Committee.
  - iv) The minimum punishment to be increased to 7 years for adult trafficking and 10 years for trafficking in children.
  - v) Deletion of Clause 8, which deals with soliciting is believed to lead to further harassment of the victim and should be replaced instead by one that specifically deals with all other agents of trafficking only.
  - vi) Concept of "corrective" homes to be replaced with rehabilitation homes, which are fully equipped to provide support and the means of sustained livelihood to the victims once they leave.
  - vii) Creating a special fund for the welfare, rehabilitation, health care and education of women in prostitution and their children to overcome the severe resource constraint in this regard.

Other recommendations, some of which have been mentioned in the new Trafficking of Persons (Prevention, Protection and Rehabilitation) Draft Act, 2017] as well, are:

- viii) Punishment for Dereliction of Duty. The punishment would extend to all personnel involved in the omission to provide care, protection and rehabilitation to a victim as well as causing physical or mental injury or hardship or trauma to the victim while performing such duty.
- ix) Applicability of Punishment. If more than one law is involved, the law with the harsher punishment should prevail.
- x) Provisions for hiding the identity of victims and a Witness Protection Programme
- xi) All offences made cognizable and non-bailable.
- xii) Repatriation of cross-border victims provided for in the law.
- xiii) Establishment of a National Anti-Trafficking Bureau to coordinate and monitor all aspects of trafficking. A National unit would also be able to tackle the issue from the perspective of organized crime with international ramifications.

### **Policy Recommendations:**

#### **i) Building a comprehensive data base**

Data on trafficking are inadequate, irregularly collected by different agencies using diverse methodologies, leading to diverse and unverifiable sources of data on trafficking. This makes response mechanisms difficult and ineffective. Most of all it impedes the identification

and prevention aspect of the problem. It is recommended therefore that a comprehensive, collated single database be created that is updated regularly by the district authorities. In developing such a database, the involvement of the Panchayati Raj institutions could be elicited. This would require developing a single methodology across local units and training of personnel to manage the system. Such training of panchayat members (as well as at the block or district levels) would assist in building the capacity of these local units of governance with spillover benefits to other areas of child trafficking as well. A local database while useful for tracking the scale of the problem, but would also go a long way towards identifying the source and destination of the victims as well. This would make it easier to identify offenders as well as repatriate children back to their homes or communities.

#### **ii) Convergence across departments**

Different statutes and departments deal with different aspects of trafficking, with virtually no convergence mechanisms. Joint review meetings held at periodic intervals and joint action committees set up with concerned departments to follow up on the judicial process would allow for such convergence to take place. The reports of these meetings or action taken by the committees could form the basis of a review at the National level. Another aspect of convergence, especially related to children involves coordinating with programmes and schemes meant for children such as the ICDS, ICPS and basic education programmes. The officials involved with these programmes must also be included in the fight against trafficking in preventing the problem by

ensuring all children remain in school and by assisting in rehabilitating victims.

### iii) **Building State Capacity**

In addition to increasing resources devoted to fighting trafficking, government must also develop standards for the training of responsible personnel, especially those dealing with children. Further, strengthening the processes of rigorous and regular review and monitoring at all levels with mandated response mechanisms included in the review process would greatly aid in maintaining control over the situation as well as in planning for shortfalls as they appeared.

### Notes

1. Other forms of trafficking include cheap or unpaid labour, illegal adoption, forced marriage, child soldiers and use of children in sports and entertainment.
2. See for instance, the following documents: i) Trafficking In Persons (TIP) Reports, brought out annually by the Department of the US Government; ii) HAQ Child Rights Centre and Campaign Against Child Trafficking (CACT) Report, "Child Trafficking in India" (2016); and iii) Population Council Report, "Trafficking of Minor Girls for Commercial Sexual Exploitation in India: A Synthesis of Available Evidence" (2014).
3. Crime in India, Statistics (2015), National Crime Records Bureau, Ministry of Home Affairs, Government of India.
4. Even though the Constitution specifies prohibition of trafficking in Article 23, which states: "Traffic in human beings and 'beggars' and other similar forms of forced labour is prohibited and any contravention of this prohibition shall be an offence punishable in accordance with law".
5. The Child and Adolescent Labour (Prohibition and Regulation) Act of 1986, The Factory's Act , 1948, The Bonded Labour System (Abolition) Act, 1976, and the Juvenile Justice (Care and Protection) Act 2015
6. Various state anti-beggary laws.
7. See, Sections 362, 363, 370, 370A, 372 and 373
8. Article 21 (Right to life with dignity); Article 21 A (Right to education); Article 24 (Prohibition of employment in Factories) Article 39 (f) related to children's health, Article 45 and 51A both related to right to education.
9. Some laws are Central laws, some state and each law is under different Ministerial control. For instance child labour laws fall under the Labour Ministry, while kidnapping and abduction, being criminal activities fall under the Home Ministry. Cross border issues on the other hand fall within the purview of the Ministry of External Affairs. Similarly beggary laws and Devdasi laws -Devdasi Prohibition of Dedication Acts, of 1982 and 1988-passed by Karnataka and Andhra Pradesh governments respectively are state laws, while the child marriage law is a Central Act. This results in confusion over roles and responsibilities impeding action.
10. While rehabilitation is part of the ITPA, details of specific rights under it, such as the form, nature, processes, time frames by which a victim may expect to be rehabilitated are not clarified. For instance, is livelihood training part of the rehabilitation process, or the provision of legal counsel or even the issue of taking consent before the victim is sent to a protective home? What can a victim expect as a right when rescued is not clear.

11. A caveat is in order: While the problem of trafficking is complex and multi-layered, for reasons of brevity and expediency, not all issues will be dealt with here. The selection in no way implies that the omitted issues are not of importance and worthy of consideration.
12. In this dispensation, Exploitation includes prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. And, Child refers to any person under the age of 18 years.
13. Section 370: Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by (i) using threats, or (ii) using force, or any other form of coercion, or (iii) by abduction, or (iv) by practising fraud, or deception, or (v) by abuse of power, or (vi) by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking. Further, it states that :1. The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs. 2. The consent of the victim is immaterial in determination of the offence of trafficking.
14. It is believed that physical exploitation and slavery would cover the issue of forced labour. However groups working on bonded labour are not convinced.
15. See Avon Global Center for Women and Justice at Cornell Law School, Centre for Health Law, Ethics and Technology at Jindal Global Law School, Cornell Law School International Human Rights Clinic, and International Human Rights Clinic at the University of Chicago Law School Report (2016), “India’s Human Trafficking Laws and Policies and the UN Trafficking Protocol: Achieving Clarity”. It has a clause-by-clause evaluation of the Indian laws in relation to the UN Protocol.
16. SITA was amended in 1986 and renamed ITPA.
17. While many attempts have been made at defining trafficking by various organizations, the most commonly used and accepted definition is the one coined by the UNCTOC. According to this, definition, “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.
18. “Prostitution” means the sexual exploitation or abuse of persons for commercial purposes..”
19. See USDOS Trafficking in Persons Report, 2017, especially its narrative on India.
20. These have been recommended by the Standing Committee as well.



# Are women offenders in India a 'Category' in Crime?

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## Abstract

Women's involvement in the world of crime is not a new phenomenon. What is new is their involvement in the changing nature of crime and the frequency of their contact with the Criminal Justice System. The scarcity of data to account for women's crime and dearth of studies particularly on the phenomenon of female criminality brings forth an important question: *Are women offenders in India a 'category' in crime?*

## Keywords:

Female offenders, women criminals, gender gap, crime data

## Introduction

Women engage in almost every type of criminal activity. Much like their male counterparts, females are involved in property offenses, simple assault, robbery, and even murder. While males have always engaged in greater number of criminal acts, women's participation in crime is increasing (Morris, 1987).

In recent years, media has been bringing out news on women's involvement in crime. Though female offenders have become a sensationalized topic, the issue of criminality of women has never gained much importance among criminologists in India. The reasons are fairly obvious. Female offenders represent a small proportion of arrested offenders, are less of a threat, and create few social problems.

While women's involvement in the world of crime is not a new phenomenon, what is new is their involvement in the changing nature of crime.

Some excerpts from media:

- Bangalore Police nabbed a 40-year old woman serial killer (Times of India, 2008)
- Cat-woman behind 20 burglaries in MMR arrested (Mumbai Mirror, 2013)
- Mumbai Cops have managed to arrest the maid who stole jewellery and cash worth Rs 71 lakh from TV actress Rupali Ganguly's house (Mid-day, 2015)

The above media articles give an impression that is very aptly captured in a statement by a veteran journalist S. Hussain Zaidi with Jane Borges in his book "Mafia queens in Mumbai" that women criminal are "gutsier, far more scheming and lethal, when it came to pursuing their goals". Crime in India is not a male bastion anymore.

## Gender Gap in Crime

The gender difference in crime is universal: Throughout history, for all societies, for

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all groups, and for nearly every category of crime, females offend less than males (Cauffman, 2008)

In India, crimes committed by women are not considered statistically significant. Thus with 4.9 per cent (NCRB, 2015) of females accounting for various sections of IPC crimes, women offenders constitute a numerically smaller population compared to male offenders. But

statistics reveal that there is an upward trend in the crimes committed by women considering their involvement in total cognizable crimes has increased from 3.1 per cent in 1990, to 4.1 per cent in 1995 to 4.7 per cent in 1996 to 5.8 per cent in 2006 to 6.2 per cent in 2010 to 6.5 per cent in 2012 to 10.2 per cent in 2014. This shows that the percentage has almost doubled in the last 20 years.

**Table 1.1 Male Female Ratio for Selected Offenses in India**

Indian Penal Code (IPC)	Offense/ Year	Male: Female Ratio		
		2013	2014	2015
	Murder	93.8 / 6.2	94.2 / 5.8	93.6 / 6.39
	Riots	94.4 / 5.6	94.8 / 5.1	95.03 / 4.96
	Theft	96.9 / 3.1	97.9 / 2.03	97.95 / 2.04
	Dowry Deaths	80.6 / 19.4	79.3 / 20.6	79.07 / 20.92
	Cheating	95.6 / 4.4	96.56 / 3.43	95.65 / 4.34
	Cruelty by Husband and Relatives	78.6 / 21.4	80.40 / 19.59	80.89 / 19.10
Special and Local laws (SLL)	Immoral Traffic Prevention Act, 1956	63.0 / 37.0	69.66 / 30.33	67.94 / 32.05
	Prohibition Act	78.3 / 21.7	79.02 / 20.97	78.31 / 21.68
	Narcotics and Psychotropic Substances Act, 1985	96.3 / 3.7	97.24 / 2.75	97.38 / 2.66
	Dowry Prohibition Act	80.9 / 19.1	80.25 / 19.74	79.30 / 20.69

Source (NCRB, 2014): Ratio of Percentages Calculated Based on the Data in Table 12.2

From the above table, one can observe that the percentage share of women in crime compared to males is low in violent offenses (murder, riots) and petty offenses (theft, cheating). The percentage of crime is almost one-third of males in offenses which are perpetrated against women and girls (dowry), those related to prostitution but such figures do not really represent “an increase in women’s crime”. In such cases, there could be further differences, where women were involved with male offenders, rather than on their own.

Since statistics do not give details about the *quality* of crime, it is difficult to comment on the severity of crimes committed by women.

### Data on ‘Female Crime’

Due to their relative small numbers, women offenders are frequently considered to be mere “complications” in general for data collection and research. Small populations of female offenders mean that researchers interested in them will have fewer subjects for study, complicating statistical findings and of course, lowering the generalizability of data (Brodsky, 1975).

In India, Police, Courts and Prison form the source of crime records. While police maintain crime records as FIRs, Courts maintain charge-sheets, Prisons maintain demographic and legal information on under-trials, convicts, detainees in their law and judiciary unit.

As all crime data are maintained as individual records in the registers, there is no collated data exclusively on female criminals. For instance:

- Police maintain data on offenders who have committed more than two offences. While such records of both male and females are available in crime and index registers and are maintained as a soft copy so that records can be retrieved as and when needed, there is no detailed or exclusive information on women offenders or *modus operandi* of crimes committed by females as this information is considered *insignificant*.
- The total figures of recidivism (repeated offenses by the same person) are published as statistics in 'Crime in India' a Government of India publication. No sex specific data is available, giving an impression that all recidivists are men (Refer to Table 11.1)

**TABLE 11.1**

**Recidivism Amongst Persons Arrested under Total IPC Crimes During 2014**

Sr No.	State/UT	Total No. Of Persons Arrested	New Offenders		Old Offenders Convicted In The Past						
			No.	Percentage To Total	Once		Twice		Thrice or more		Percentage Of Recidivists ((7)+(9))
					No.	Percentage To Total	No.	Percentage To Total	No.	Percentage To Total	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
<b>STATES:</b>											
1	Andhra Pradesh	166211	154225	92.8	9935	6	1644	1	407	0.2	7.2
2	Arunachal	3162	3033	95.9	91	2.9	38	1.2	0	0	4.1
3	Assam	147268	125510	85.2	15825	10.7	5780	3.9	153	0.1	14.8
4	Bihar	259154	235616	90.9	18230	7	3265	1.3	2043	0.8	9.1
5	Chhattisgarh	75370	57280	76	16451	21.8	1452	1.9	187	0.2	24
6	Goa	4057	4030	99.3	25	0.6	2	0	0	0	0.7
7	Gujarat	180946	165879	91.7	14291	7.9	696	0.4	80	0	8.3
8	Haryana	77368	71932	93	3636	4.7	1549	2	251	0.3	7
9	Himachal	19355	16944	87.5	1124	5.8	641	3.3	646	3.3	12.5
10	Jammu &	36612	33981	92.8	2194	6	307	0.8	130	0.4	7.2
11	Jharkhand	58570	47586	81.2	8400	14.3	2103	3.6	481	0.8	18.8
12	Karnataka	205579	189020	92	16214	7.9	103	0.1	42	0	8
13	Kerala	249069	245488	98.6	2742	1.1	688	0.3	151	0.1	1.4
14	Madhya	399382	346235	86.7	41881	10.5	8860	2.2	2406	0.6	13.3
15	Maharashtra	338308	333261	98.5	4136	1.2	650	0.2	261	0.1	1.5
16	Manipur	1744	1728	99.1	16	0.9	0	0	0	0	0.9
17	Meghalaya	3316	3253	98.1	43	1.3	20	0.6	0	0	1.9
18	Mizoram	2404	1765	73.4	512	21.3	90	3.7	37	1.5	26.6
19	Nagaland	1140	954	83.7	137	12	47	4.1	2	0.2	16.3
20	Odisha	106903	106903	100	0	0	0	0	0	0	0
21	Punjab	46638	40781	87.4	4929	10.6	740	1.6	188	0.4	12.6
22	Rajasthan	207601	192998	93	10748	5.2	3075	1.5	780	0.4	7
23	Sikkim	2063	1968	95.4	65	3.2	30	1.5	0	0	4.6
24	Tamil Nadu	261812	243142	92.9	15040	5.7	2942	1.1	688	0.3	7.1
25	Telangana	145550	130809	89.9	12167	8.4	2132	1.5	442	0.3	10.1
26	Tripura	6601	3038	46	3447	52.2	112	1.7	4	0.1	54
27	Uttar Pradesh	481178	472603	98.2	7684	1.6	802	0.2	89	0	1.8
28	Uttarakhand	11450	9301	81.2	1679	14.7	470	4.1	0	0	18.8
29	West Bengal	219526	194218	88.5	15690	7.1	7260	3.3	2558	1.1	11.5
<b>TOTAL</b>		<b>3718137</b>	<b>3433481</b>	<b>92.3</b>	<b>227332</b>	<b>6.1</b>	<b>45498</b>	<b>1.2</b>	<b>11826</b>	<b>0.3</b>	<b>7.7</b>
<b>UNION TERRITORIES:</b>											
30	A & N Islands	851	838	98.5	13	1.5	0	0	0	0	1.5
31	Chandigarh	2913	1470	50.5	1239	42.5	147	5	57	2	49.5
32	D&N Haveli	406	389	95.8	0	0	17	4.2	0	0	4.2
33	Daman & Diu	343	298	86.9	45	13.1	0	0	0	0	13.1
34	Delhi UT	63786	54698	85.8	5963	9.3	2125	3.3	1000	1.6	14.2
35	Lakshadweep	51	36	70.6	9	17.6	6	11.8	0	0	29.4
36	Puducherry	4325	3756	86.8	295	6.8	91	2.1	77	1.8	10.7
<b>TOTAL UT(S)</b>		<b>72675</b>	<b>61485</b>	<b>84.6</b>	<b>7564</b>	<b>10.4</b>	<b>2586</b>	<b>3.3</b>	<b>1134</b>	<b>1.6</b>	<b>15.3</b>
<b>TOTAL (ALL)</b>		<b>3790812</b>	<b>3494966</b>	<b>92.2</b>	<b>234896</b>	<b>6.2</b>	<b>47884</b>	<b>1.3</b>	<b>12960</b>	<b>0.3</b>	<b>7.8</b>

The scarcity of collated data, itself, is indicative of the lack of importance attached to the problem of female crime relegating this phenomenon to a secondary place. Thus we lack adequate information to understand the phenomenon of female criminality. Even when it comes to studies on female criminality in India, the response is not encouraging.

### **Studies on Female Criminality in India**

Following are some studies on female criminality initiated in India:

Ahuja (1968) observed that the incidence of crime was rather low in lower caste families whereas Rani in her study (1983) found that slightly more than 50 per cent women criminals belonged to backward castes. However, both of them found that the incidence of crime was high among women of low economic classes. It reflects the fact that the causative factor of criminality among women is economic constraint. (Cherukuri, 2008)

Mishra and Gautam (1982) revealed that the female criminality increases as the level of education decreases and vice versa. They endorsed the studies of Ahuja and Rani which showed that women criminals were generally young in age, married, illiterate and who also came from very low-income groups.

Prasad (1982) also maintained that illiteracy was an important factor in women criminality. His study also showed that areas of conflicts in women's life included unhappy marital life, addiction of the husband to alcohol, drugs, gambling etc., his lack of interest in family matters and love to his wife, sexual incompatibility, discordant relationship with in laws and members in the family, family's low income and excessive expenditure etc (Planning Commission, 2004).

Sohoni (1989) focused on socio-demographic profile of female convicts in Yeravda prison. She dealt with issues like age, marital status, religion, and other socio-economic characteristics. She provides a detailed analysis of female convicts' criminological profile and the nature of female criminality. Criminality for her is rooted in the individual and in their personality, as well as the broader socio-economic parameters within which they may be functioning.

Bajpai and Bajpai (2000) also give a socio-biological character to the Indian Female offender. They find that most of the convicted female offenders are extraordinarily extrovert and that sexual dissatisfaction, personality tilt, lack of alternative sources of livelihood, revenge and bad company are important factors leading to crimes committed by females.

Shankardass (2000) raises the most pertinent theoretical questions regarding women and crime in India, problematizing 'male-stream' criminology, Western feminist criminology, and the need to advance feminist criminological theories in India. These are two different set of issues and both need an elaborate analysis to make sense of crime and punishment in a holistic perspective. There is a need for a more comprehensive understanding of women and crime - their contexts, women's structural position in the family (as against their 'maladjustment'), and their resistance. Having done this, there is also a need to look at lives of women offenders and the control process that goes on in the prison. This gives a complete picture of society's reaction to women violators and the way prison official attempt to re-socialise inmates into patriarchal norms that they have broken. (Cherukuri, 2008)

Cherukuri (2008) attempts to explain the phenomenon of women committing crimes against women in her study conducted in

Chanchalguda prison in Hyderabad. In her study, she found that more than two-thirds were convicted for dowry related crimes. These women were all mothers-in-law or sisters-in-law who had either murdered or harassed women for dowry. This study clearly shows the high incidence of women committing dowry related crimes. None of the respondents in her study admitted to committing these crimes. Cherukuri identifies dowry as a "patriarchal enterprise". Her study however does not explain the reason why women commit crimes against women.

Sangita Chatterji (2009) observed in her study that most of the women convicts in prison were themselves victims of family violence. The violence inflicted on them included both physical and verbal abuse. Child marriage also violated their rights as children and few reported wife abuse as well, which was perceived as a routine part of marital life.

Mahuya Bandyopadhyaya (2010) observed that "the majority of women prisoners were under trials; they came from poor families living in slum areas of the city, many of them were school dropouts; educated prisoners were a rarity, murder, dacoity, drug dealing and dowry related offenses were the most common crimes; women prisoners were generally first time offenders and most of them had a male case partner.

From the above, it can be concluded that the number of studies on female offenders in India are limited. The dominant trend of studies on women in crime in India have been to understand the causative factors, socio-demographic and personality characteristics, women as victims, women as accomplices in crime and the prisons as institutions of control.

## Conclusion

The problem of female crime has attracted the attention of sociologists and criminologists very recently. It has, suddenly become an issue of

importance, with the result that some studies on female criminality have been initiated. As far as India is concerned, the change in attitude is very little and the apathetic attitude continues.

From the criminal statistics, it is clear that there are more women involved now in criminal justice system than there were 20 years ago. A deeper issue is what does this mean? Are more women turning to crime as their lives have started resembling those of men? Have the attitudes of criminal justice professionals towards female offenders changed? Are more and more women becoming vulnerable to committing crimes? The implication of the increase is not clear.

As no exclusive data on women in crime is maintained at source (Police Stations), it does not reflect in data sets of either Crime in India or Prison Statistics in India.

Reducing offender population in the criminal justice system is the objective behind preventive policing and correctional services. An integral part of data analysis is also the identification of areas that are vulnerable to crime and that future efforts are concentrated to further understand the factors associated with women's involvement in crime. Thus police and prison officials should use specific data and information on women offenders to enhance outreach efforts by involving civil society organisations to deliver services to help them settle in legal work options and deter them from crime.

While the studies done are important to understand some aspects of female crime, there is an absence of academic rigour to consistently pursue studies on the *contextual* understanding of women's crime. There is immense scope for a holistic approach to the issue of vulnerability of women to crime, which is yet an uncharted domain in India.

The study of women and crime ultimately contributes to our knowledge about crime, thus it is time women were *considered* a 'category'

in crime in India. That will pave the way for research which will enhance the understanding of female criminality in the study of crime.

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# Psychological Well-Being of Police Functionaries

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## Abstract

Psychological well being has been the focus of intense research attention in recent years. Life satisfaction is also a key indicator of well being (Ryff & Keyes, 1995). The present investigation was undertaken to study the impact of Group (Awarded, Suspended & Average) and Rank (Junior, Senior) on satisfaction with life. The sample of the present investigation consisted of 168 male police functionaries (56 Awarded, 56 Suspended and 56 Average) belonging to two ranks Junior Rank and Senior Rank (84 in each Rank) in the age range of 25 to 57 years who had a minimum of at least 3 years of continuous service in the police organization. They were all non-IPS policemen belonging to the state of Haryana and Union Territory of Chandigarh. Statistical techniques were used and the results were good and significant showing average police functionaries low on satisfaction with life. Policy makers thus should emphasize making average police functionaries performance oriented so that they feel satisfied with their lives and perform better at their work place.

## Keywords:

Well-Being, Satisfaction with Life, Cognitive, Awarded, Suspended and Average policemen & Junior- Senior policemen.

## Abbreviations Used:

Satisfaction With Life Scale (SWLC), Awarded (AW), Suspended (S) & Average (AV), Analysis of Variance (ANDVA), Not Significant (NS), Standard Deviation (SD).

## Introduction

Psychological well-being of police officers is essential to have a productive and healthy police service. Psychological well-being resides within the experience of individual (Campbell et.al., 1976) and has become the focus of intense research attention in recent years.

Some researchers use the term wellness interchangeably with health and well-being thereby conveying that wellness is a broader

term encompassing both health and well-being.

Meyers, Sweeney and Witmer (2000) define wellness as a way of life oriented towards optimal health and well-being in which body, mind and spirit are integrated by the individual to live more fully within the human and natural community. For employees to experience wellness, they must be encouraged to grow as human beings – through awareness campaigns and targeted

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## Author Intro:

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education programmes. Psychological well-being includes self-acceptance, personal growth, purpose in life, environmental mastery, autonomy and positive relations with others. Psychological well-being refers to the achievement of one's full psychological potential (Carr, 2003) and engagement with the existential challenges of life (Lindley & Joseph, 2004) whereas emotional well-being is an excess of positive over negative feelings and personal psychological functioning is the presence of more positively than negatively perceived self-attributes, such as personal growth (Keyes, 2002). Social well-being refers to social acceptance, social actualisation, social contribution, social coherence and social integration while emotional well-being includes positive affect, negative affect, life satisfaction and happiness.

According to Shmotkin (1998) subjective well-being (SWB) refers to the overall evaluation that people make about the quality of their life, generally by summing up their essential life experiences along a positive-negative continuum. According to Diener, Oishi and Lucas (2003) subjective well-being refers to people's emotional and cognitive evaluations of their lives, including what people call happiness, peace, fulfillment and life satisfaction.

A conception that has gained prominence among sociologists is the emphasis on life satisfaction as the key indicator of well-being (Ryff & Keyes, 1995). Life satisfaction is considered to be the cognitive component of subjective well-being and refers to an individual's personal judgement of well-being and quality of life based on his or her own chosen criteria (Diener, 1984). It is seen to complement happiness, the more effective dimension of positive functioning. Research has shown that objective measures of quality of life (i.e. income, education) are often weakly related to people's subjective self-reports of the extent to which they are satisfied with their lives. A one-to-one relationship between observable life

circumstances and subjective judgements of life satisfaction does not always exist (Sousa & Lyubomirsky, 2001).

It appears that in some cultures there is a positivity disposition; people are socialized to look on the bright side of things which can lead them to give weight to good things in their lives and give relatively little weight to bad things when making life satisfaction judgements (Diener & Biswas-Diener, 2000).

Wellness is not experienced uniformly by police members, but varies from one individual to another (Dworkin, Haney, Dworkin & Telschow, 1990; Worrall & May, 1989). According to Hart, Wearing, and Headey (1993), while trying to establish the determinants of police officer's psychological well-being, positive and negative work experiences must also be taken into account. Hart, Wearing, and Headey (1995) in a study found that personality characteristics such as neuroticism and extraversion were the strongest predictors of well-being in police officers. They examined personal and work related factors which contribute to police officer's psychological well-being within a perceived quality of life framework that integrates personality, coping processes and a police officer's positive (beneficial to well-being) and negative (harmful to well-being) work experiences. They found that positive and negative work experiences independently contributed to an officer's perceived quality of life, and organizational rather than operational experiences were more important.

Sharma (1999) reviewing researches conducted in the Indian context on stress and well-being highlighted how job related stress has serious adverse consequences for the employee's well-being.

Johnson et al. (2005) carried out a study on the experience of work-related stress across 26 occupations including police officers, prison



officers, teachers, ambulance workers, social services etc. It was found that as physical health deteriorates, so does psychological well-being. Likewise, as physical health and psychological well-being deteriorate, job satisfaction goes down.

Pasillas, Follette and Chaney (2006) while comparing the work of law enforcement officers to other emergency personnel found that police work tends to have more of a negative impact on the mental well-being of police officers. They found that higher levels of occupational stress are associated with greater psychological distress in law enforcement professionals (Collins & Gibbs, 2003; Brown, Fielding, & Grover, 1999; Mearns & Mauch, 1998; Violanti & Aron, 1993).

Family situations also affect the psychological well-being besides, stress and organizational factors. According to Finn (2000) and Burke (1994; 1993; 1989) work-family conflict is an important variable in determining work attitudes as well as emotional and physical well-being of police officers. Generally, work-family conflict appears to be more strongly related to job-related attitudes such as job satisfaction, job distress and turnover while family-work conflict is more strongly related to attitudes such as life satisfaction (Adams et al., 1996; Frone et al., 1992).

Waters and Ussery (2007) state that law enforcement officers face a problem in their careers regarding shift work. Constant change of shifts (on a weekly or bi-weekly basis) leads to serious health problems. Changing sleep patterns, digestive system circadian rhythms, and other bodily functions affect both physical and psychological well-being. The process of readjustment to shift change schedules exacts a toll on each officer. In addition, normal family life is disrupted when the officer must sleep during the day or be absent from special events that conflict with his tour of duty.

Police sub-culture also plays an important role in officers well-being. According to Skolnick (2008) the feelings of loyalty and brotherhood, sustaining a silence code unquestionably protect cops against genuine threats to safety and well-being. Police are obliged to back up each other, protect each other, and follow each other into situations of grave danger.

Siwach (2001) conducted a study on 300 police personnel of different ranks selected from North Indian states. Rank wise differences were found on well-being, gazetted officers and non gazetted officers scored significantly higher than the subordinates. Subordinates and non gazetted officers differed significantly whereas non gazetted officers and gazetted officers did not differ on well-being. Further, the gazetted officers, non gazetted officers and subordinates scored differently on life satisfaction. The gazetted officers scored the highest on life satisfaction revealing that life satisfaction is high in senior officers. He concluded that the gazetted officers and non gazetted officials scored higher than subordinates on police specific stress but have more life satisfaction and better psychological well-being than the subordinates indicative of the fact that besides being in stress and their health being affected yet they are psychologically fit and have high life satisfaction and psychological well-being.

Rothmann and Ekkerd (2007) investigated the differences in the perceived wellness of police members based on gender, qualifications, age and rank in the South African Police Service. 673 police personnel of different ranks viz Constables, Sergeant, Inspector etc. were included in the study. Four different age groups were taken such as 30 years and younger officers, 31-40 years, 41-50 years and 51-60 years of age. Perceived wellness showed a two-factor structure consisting of wellness and unwellness. Wellness consisted of positive aspects of psychological, emotional, social, physical, spiritual and

intellectual well-being. Unwellness consisted of the negative aspects of psychological, emotional, social, physical, spiritual and intellectual unwell-being. Statistically significant differences were found between perceived wellness of employees in terms of age groups as well as ranks. The youngest age group (20-30 years) showed the highest levels of perceived wellness and also scored the highest on unwellness, while the third group i.e. (41-50 years) scored the lowest on perceived wellness and scored the lowest on unwellness.

Rank wise, constables scored significantly higher than other rank groups regarding perceived wellness as well as unwellness. According to Rothmann and Ekkerd (2007) constables are very young and have the advantage of being in a physically healthy state, not feeling stagnated in their job and still seeing the work of a police official as challenging, which contributes to a feeling of wellness. A high feeling of unwellness in this same group perhaps might be due to receiving low salaries, a feeling of being the junior in the organisation and having to react to instructions from all the higher ranks, feeling insecure in the workplace and still having to “earn” a place in the organisation.

**Objective of the Study** was to examine the impact of Awarded, Suspended and Average Groups of police functionaries and Junior and Senior Rank on satisfaction with life.

### **Hypothesis of the Study:**

- (i) It is expected that Awarded, Suspended and Average Group policemen will differ on life satisfaction.
- (ii) It is expected that the Junior and Senior Rank policemen will differ on life satisfaction.

## **Method**

### **Design**

The objective of the present investigation was to determine the effect of Group (Awarded, Suspended, Average) and Rank (Junior, Senior) on cognitive and emotional well-being. For this purpose a two-way factorial design incorporating three levels of Group performance i.e. Awarded, Suspended and Average and two levels of Rank Junior (Constable, Head Constable, Assistant Sub-Inspector) and Senior (Sub-Inspector, Inspector and Deputy Superintendent of Police), i.e., (3\*2=6) with 28 police functionaries in each condition was employed. The total number of police functionaries were 168. They were all male non-IPS policemen belonging to the state of Haryana and Union Territory of Chandigarh.

To measure the cognitive component of psychological well-being, the Satisfaction with Life Scale devised by Diener et al. (1985) was used. These police functionaries were administered this scale.

### **Sample**

The present investigation was undertaken to study the impact of Group (Awarded, Suspended, Average) and Rank (Junior, Senior) on satisfaction with life.

The sample of the present investigation consisted of 168 male police functionaries (56 Awarded, 56 Suspended and 56 Average) belonging to two ranks Junior Rank and Senior Rank (84 in each Rank) in the age range of 25 to 57 years who had a minimum of at least 3 years of continuous service in the police organization. They were all non-IPS policemen belonging to the state of Haryana and Union Territory of Chandigarh.

These police functionaries were administered, the Satisfaction With Life Scale (Diener et al., 1985).

Means and standard deviations were computed and analysis of variance was conducted in order to analyze the raw data that consisted of scores on all the above mentioned variables.

Three groups of police functionaries 56 Awarded, 56 Suspended and 56 Average comprised the sample of the present study. The total sample being 168. In each of these three groups, functionaries of two ranks: Junior Rank comprising of 28 functionaries and Senior Rank comprising of 28 functionaries were taken.

**Awarded** functionaries were those who had been given significant awards like medals and certificates and had never been placed under suspension in their entire police service.

**Suspended** functionaries were those who had been placed under suspension at least once for a period of one month or more, in their entire police service.

**Average** functionaries were those who had neither received significant awards nor had been placed under suspension in their entire police service.

The age of police functionaries ranged from 25 to 57 years, the mean age 43.35, SD 8.95. Only those police functionaries were included in the present study who had a minimum of at least three years of continuous service in the police organization. The average length of service ranged from 3 to 39 years and the mean length of service was 21.29, SD 9.91. The study was carried out on policemen belonging to the state of Haryana and Union Territory, Chandigarh. The police functionaries belonged to the middle socio-economic income group.

## Test

- Satisfaction With Life Scale (Diener et al., 1985)

## Brief Description of Tests:-

### Satisfaction With Life Scale (SWLS).

(Diener, Emmons, Larsen, & Griffin, 1985).

**The Satisfaction With Life Scale (SWLS) has been developed by Diener et al. (1985). SWLS is a self-report measure designed to assess a person's global judgement of life satisfaction which is theoretically predicted to depend on a comparison of life circumstances to one's standards.**

Life Satisfaction is a conscious cognitive judgement of one's life in which the criteria for judgement are upto the person (Pavot & Diener, 1993).

The SWLS is a 5-item scale, assessing satisfaction with the respondent's life as a whole. The items of the scale are global rather than specific in nature, allowing respondents to weigh domains of their lives in terms of their own values, in arriving at a global judgement of life satisfaction.

Respondents are required to rate their responses along a 7-point scale, ranging from 'strongly disagree, disagree, slightly disagree, neither agree, nor disagree, slightly agree, agree to strongly agree'. The range of scores is from 5 to 35, with higher scores indicating a greater degree of satisfaction with life.

**In India, it has been extensively used by Bhandari & Goyal (2004), Bhandari, Upmanyu & Rattan (2004), Bhandari (2006), Bhandari & Duggal (2006) and Singha (2006) on students, adults and retired professionals.**

## Scoring

Scoring of the test was done as per the instructions provided in the scoring manual of the test. These raw scores were then subjected to various statistical treatments and analyses.

**Table 1: Means and SDs of Awarded, Suspended and Average Group of Police Functionaries**

Sr. No.	Variables	Awarded (N=56)		Suspended (N=56)		Average (N=56)	
		Means	SDs	Means	SDs	Means	SDs
1.	SWLS	29.07	3.57	28.70	4.58	25.16	6.18

**Table-2: Means and Sds of Junior and Senior Rank Police Functionaries**

Sr. No.	Variables	Junior Rank N=84		Senior Rank N=84	
		Means	SDs	Means	SDs
1.	SWLS	27.18	5.82	28.11	4.42

**Analysis of Variance:**

As the means showed differences a three way analysis of variance (ANOVA) [Edwards, 1968]

(3x2=6) has been performed to see if the three Groups (Awarded, Suspended and Average) and the two Ranks (Junior and Senior) emerge as significant determiners of satisfaction with life.

**Analysis of Variance for SWLS: Satisfaction With Life**

Source	SS	df	MSS	F	Level of significance
GROUP (G)	521.46	2	260.73	10.85	p<.01
RANK (R)	36.21	1	36.21	1.50	NS
G x R	29.89	2	14.94	0.62	NS
Within	3893.00	162	24.03		

**Analysis of Variance for SWLS: Satisfaction With Life**

Analysis of variance for satisfaction with life depicts that the main effect of Group [F (2,162) = 10.85, p<.01] is significant. The main effect of Rank and the two-way interaction of Group x Rank have turned out to be insignificant.

**25. Impact of Group and Rank on Satisfaction with Life**

The application of 3x2 ANOVA revealed that the main effect of Group was found to be significant, the F-value being [F (2,162) = 10.85, p<.01]. The mean scores on satisfaction with life were found to be higher for the Awarded Group followed by

the Suspended Group with the Average Group showing the lowest satisfaction with life scores (Mean : Aw = 29.07, S = 28.70, Av = 25.16). This indicates that satisfaction with life, the cognitive aspect of psychological well-being is highest in the **Awarded Group in comparison to the Suspended Group whereas, the Average Group has the lowest life satisfaction scores.** The t-ratio also revealed that Awarded Group is significantly higher on life satisfaction than the Average Group (t = 4.09, p<.01) while the Suspended Group is higher on life satisfaction than the Average Group (t = 3.43, p<.01).

Hence, hypothesis (i) is accepted and (ii) is not supported.

## Conclusion

### The significant findings of the analysis of variance are summed up below:

As regards satisfaction with life, the main effect of Group emerged significant. Mean scores revealed that the Awarded Group had the highest satisfaction with life in comparison to the Suspended Group whereas, the Average Group had the lowest life satisfaction. t-ratios further revealed that the Awarded Group and the Suspended Group were significantly higher on life satisfaction than the Average Group.

Thus in this study it is revealed that in order to have a police force which is satisfied with its life its essential that average performers are motivated and given rigorous work trainings to perform better at work. Also rotational workshops should be held with high performers and who had success stories with the average performers to instill morale building in them and to make them achievement oriented.

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# Crypto-Currency and its Challenges



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## **Abstract**

Crypto-currencies network runs contrary to the very fundamentals of transparency and accountability that countries are trying to build to tackle terrorism, human trafficking, money laundering, tax evasion and other types of criminal activities. There is need to look at ways for the Governments to disrupt and such currency that might be designed and deployed by terror outfit, non-state actors or insurgent groups. In cases of implementation of orders for seizing and freezing the funds held in crypto-currencies, law enforcement agencies may find it difficult to investigate in the absence of a counterparty (for example, a central administration).

## **Keywords:**

Crypto-currency, Transparency, Accountability, Challenges, Terror, outfit, Insurgent, Implementation, Counterparty

## **What is a Crypto-Currency?**

Crypto-currency is a digital or virtual currency that uses “cryptography” for security. A crypto-currency is difficult to counterfeit mainly because of this security feature. Digital representation of money consists of a computer code and their organic nature. These are not issued by any central authority, rendering them theoretically immune to Government interference. The anonymous nature of these currencies make them well suited for a host of nefarious activities such as money laundering, financial terrorism and tax evasion etc. Such currencies also represent a serious phenomenon that is already changing how traditional finance and banking works. The first decentralized crypto-currency to capture the public imagination was Bitcoin launched in 2009 by a shadowy figure with the pseudonym

Satoshi Nakamoto who first published the Bitcoin White Paper in 2008. As of today, there are more than hundred crypto-currencies as listed on CoinMarketCap.com, most of which are clones of clones. As on October 18, 2017, the total Market cap of these currencies was 165,432,156,792 USD with Bitcoin at the top having a market cap of 90,131,000,151 USD. The unit price of one Bitcoin is presently (as on October 18, 2017) over 5000 USD. It is surprising to note that the value of a unit of Bitcoin was just 0.0007 USD when it was launched in 2009. The concept of Bitcoin was based on an open-source, ownerless transparent currency to replace the Government backed currencies which were claimed to be susceptible to risk of manipulation during exchange or settlement. Satoshi himself pointed out in 2009:

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## **Author Intro:**

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*“..... indeed, there is nobody to act as central bank or federal reserve to adjust the money supply as the population of users grows. That would have required a trusted party to determine the value because I don't know a way for software to know the real world value of things.”*

It is believed that Bitcoin was created for political reasons as a challenge to the global banking system during the height of the Great Global Recession.

### **How it works ?**

The Bitcoin protocol comprises a widely distributed ledger (known as Blockchain) of the transaction history of the entire Bitcoin money supply. Unlike cash, the entire transaction history of a Bitcoin can be traced to its initial release into the money supply. Cryptographic techniques combine with this distributed ledger to allow Bitcoin to satisfy two critical functions of any medium of exchange: proof of ownership and proof that the funds have not been double-spent. Proof of ownership is established by a digital signature based on a cryptographic combination of a public alpha-numeric key, similar to an account number and a private alpha-numeric signing key (like password). This digital signature allows certain participants in Bitcoin system, called ‘miners’ or nodes to search for the transactions history of the user in the Blockchain and verify that the payer does indeed own the funds being transferred. To ensure that the funds are not being double-spent, transactions are not considered complete until they appear in the Blockchain Master Ledger. Transactions are appended to the master ledger in blocks (hence called Blockchain) approximately every ten minutes. Typically, six or more miners must all confirm a given block of transactions before the ecosystem accepts verification and moves onto the next block of transactions. The miner that verified the block first is rewarded with newly created Bitcoins, which is how Bitcoins are added to the money supply. This miner also

collects any transaction fee volunteered by the two sides of each transaction. The reward to mining is halved approximately every four years so there is a predefined limit to the creation of Bitcoins with no more than 21 million Bitcoins ever to be created. The final Bitcoin is expected to be created around the year 2140.

### **Emerging Threats**

There is ample evidence that non-state actors especially cybercriminals are using crypto-currencies. One of the most common criminal uses of such currencies (particularly Bitcoin) is for ransom ware, where cybercriminals encrypt a victim's data and only release it upon payment generally in Bitcoins. Another common usage is for the purchase of illicit goods including drugs on online services similar to Silk Road. There is little evidence, as of now, that terror organizations are using crypto-currencies on a meaningful scale, the situation may change in future if non-state actors feel they have more to gain-politically, economically or operationally.

### **Specific risks posed by Crypto-currencies**

- (i) The cross-border reach and anonymity  
Crypto-currencies can be used to conceal the illicit origin or sanctioned destination of funds, thus facilitating the Money Laundering, Terrorist Finance and evasion of sanctions. Their traceability is limited due to user anonymity. These vulnerabilities are not only theoretical but have been exploited in practice. Crypto-currencies are often the currency of choice in cyber-related criminal activity. For example, Bitcoin was used in Silk Road, a “dark web” market place for illegal goods that was shut down by US law enforcement authorities in 2013. In May this year (2017), large scale ransom ware attack dubbed as

“WannaCry” spread a malicious software to around 3 lakh computers in 150 countries where access to data was blocked unless a ransom was paid through Bitcoin. In the past, a pro-ISIS blog “Al-Khilafah Aridat” had discussed as to how Bitcoin can be used to fund the Caliphate in occupied areas in Iraq and Syria. The post stated that they (Bitcoin) are untraceable by western governments and therefore, they will not be stopped by regulating screening process. The blog discussed the decentralized nature of crypto-currencies specially stating that they are able to access markets that cross all borders and nation-state regulations to send money instantly and in a way that is untraceable. Similarly, The Ibn Taymiyyah Media Centre, an online Jihadist propaganda organization is learnt to have shown interest in crypto-currencies.

(ii) Difficulty in Law Enforcement

Crypto-currencies network runs contrary to the very fundamentals of transparency and accountability that countries are trying to build to tackle terrorism, human trafficking, money laundering, tax evasion and other types of criminal activities. There is need to look at ways for the Governments to disrupt and such currency that might be designed and deployed by terror outfit, non-state actors or insurgent groups. In cases of implementation of orders for seizing and freezing the funds held in crypto-currencies, law enforcement agencies may find it difficult to investigate in the absence of a counterparty (for example, a central administration)

(iii) Exchange Control

Though crypto-currencies do not meet the legal definition of a currency, they can be used to effectively conduct a cross-border transfer of a fiat currency (legal tender

whose value is backed by the Government that issued it) while bypassing traditional payment systems and in violation of certain rules that might have been framed by different countries to regulate inflow of foreign funds. For example, Foreign Contribution (Regulation) Act in India could become ineffective if some organizations start receiving money in the form of Crypto-currency from outside the country and get it exchanged into fiat currency. The instances of evasion involving Crypto-currencies have already been reported in media in some countries notably China where authorities have taken a tough stand and there were speculations that all Chinese Bitcoin Exchanges would be closed. The step is attributed to Chinese regulatory moves as authorities are learnt to be concerned with the reports that their country was practically becoming a cottage industry for mining and exchanging Bitcoin and other crypto-currencies.

(iv) Consumer Protection

In early 2017, a study conducted by CCAF-Global Crypto-Currency Benchmarking found that nearly half of small exchanges acting as custodians do not have a written policy outlining what happens to customer funds in the event of a security breach as there is a high degree of complexity associated with Blockchain scalability that eventually could lead to entire system collapse. It is said that about 81 % of active wallet providers are based in North America and Europe alone. The average wallet provider is a small company majority of whom having less than 11 employees. The total number of estimated Crypto-currency wallets has grown over 4x, from 8 million in 2013 to 35 million in 2016 indicating steep rise in the

number of users. Lured by the high prices of Crypto-currencies, cyber criminals have started using phishing scams to steal them. It was pointed out in a recent report that there were attempts to steal wallet IDs and credentials that would allow them to withdraw money from their victim's wallet. The anonymous nature of these currencies makes it almost impossible to track the theft or where the money went. Nowadays, some cloud mining companies have started guarantee for fixed returns on investment in crypto-currencies which appear to be scams. Gainbitcoin is one such company which pools individual investments in Bitcoin to pay for the "mining" of Bitcoins. The company guarantees its investors return of 10% per month on their principal investment which are locked in for a period of 18 months contract. Providing fixed returns creates suspicion because Bitcoin mining is an expensive computational process and the only way to create new Bitcoin and therefore highly unpredictable.

(v) **Operational Risks**

In early 2016, the semi-annual risk survey published by US Office of the Comptroller of the Currencies (OCC) stated that crypto-currencies pose a high risk. The survey mentioned that criminals are persistent in their use of such currencies and that the role that virtual currencies have in funding these criminal activities by providing anonymity for cyber criminals including terrorists and other groups seeking to transfer and launder money globally. Likewise, the federal agency that oversees national banks in US has also called crypto-currencies an "operational risk" due to their perceived role in facilitating and enabling cybercrime. According to media reports, ISIS and organized crime

syndicates were strategically using a shadow banking system (dark web) and crypto-currencies to systematically launder tens of millions of dollars on a regular basis, while law enforcement watched helplessly.

### **Role of Law Enforcement Agencies**

It is a known fact that organized crime infiltrates any faction of society where there is an opportunity to make quick and easy money, therefore, law enforcement needs to stay abreast of all crypto-currencies, knowing how they are being used and manipulated. The process for obtaining information from a crypto-currency should be the same as obtaining it from a bank on the basis of 'KYC' rules. However, due to pseudo-anonymous nature of crypto-currencies, it is a challenging task to monitor their actual use. Their trans-national reach requires close cooperation between law enforcement agencies across the globe as different countries have adopted different approaches. A few have banned entirely the use of crypto-currencies, some have prohibited their banks from dealing in them, some including India, have issued consumer warnings and some have done nothing till date. There are a few who have recognized crypto-currencies with certain conditions. If acceptance of crypto-currencies is increased significantly on a global level, it could affect the behavior of both the consumers and producers and as a consequence, change the relevance of monetary policies. As a new way of payment, crypto-currencies can be effectively used in illegal activities even though they do not fit into any standard definition of currency, foreign exchange or money. Besides, anonymity is one of the main features of crypto-currencies that helps hide the source of income. The sensitization of law enforcement agencies all over the world is needed because of the fact that as of now, nearly 50 national currencies are supported by crypto-currency payment companies. Majority of

transactions, both in terms of value and number of transactions, are national-to-crypto currency and vice versa. As of now, crypto-currencies are unlikely to be stable enough or trusted enough for widespread use and funding is only one small but critical part of terrorist operations. Although, crypto-currency technologies continue to have significant limitations for terrorist use, those barriers should decline over time and cause the use of digital currency to spread to other groups. Terrorist embrace of crypto-currency is not yet apparent, it is not likely far off on the horizon and it might go well beyond terrorism. Their unique and widely accessible technology challenges the very bedrock of the global banking system. Policy makers and law enforcement agencies need to examine the key challenges that, if overcome, would enable non-state actors including terror outfits to leverage crypto-currencies for their political, economic or operational gains. The changes in perception to crypto-currencies in future, in terms of trusting them as more secure, resilient and easily available currency may greatly increase the likelihood of adoption and popularity. Given the large scale technological infrastructure requirements, crypto-currencies have not yet become the medium of choice for insurgent groups involved in civil conflicts. Any group attempting to deploy such a currency for everyday use needs access to technological sophistication like competencies in networking, computation and cryptographic techniques. However, in some developed countries such as Scotland, supporters of separatist movement had issued a Crypto-currency (ScotCoin) in the recent past. Similarly, in Iceland, AuroraCoin was launched to counter Government's strict capital control regime after Bitcoin was banned in the country.

### **Stand of other countries**

Although Crypto-currencies are now around eight years into existence, most of the countries still do not have explicit systems that strict,

regulate or ban these. They seem to have adopted a 'wait and see' approach. The decentralized and anonymous nature of Bitcoin has challenged many Governments on how to allow legal use while preventing criminal/ suspicious transactions. Most countries are still analyzing the ways to properly regulate the Crypto-currencies which continues to remain in a grey area and their becoming potential competitors for money will be decided by public confidence. As regards international cooperation on crypto-currencies, the issue can be as complicated as it is necessary because different countries take a very different approach in their national laws. Effective regulations on crypto-currencies will require more detailed cooperative arrangements globally because of borderless transactions involved. The importance of such cooperation is underscored by the failure of Mt Gox, where reportedly more than 480 million USD had disappeared (2014) allegedly due to large scale hacker attacks.

There are reports that China's central bank has developed its own crypto-currency. With this, China may become the first country to test a national crypto-currency.

### **Position in India**

Concerned with the rise in crypto transactions in spite of the ambiguity about its legal status in India, the Union Ministry of Finance was learnt to have formed an Inter-Disciplinary Committee to examine the regulatory framework with regard to VCs. Reserve Bank of India had also voiced its concern stating that VCs were 'susceptible to misuse' by terror outfits and fraudsters for laundering money. The RBI has made it clear that it has not given any license and authorization to any entity to deal with VCs. In January 2015, RBI had, in connection with the use of VCs, issued a note which said that acceptance of money under Money-Circulation/Multi-Level Marketing/Pyramid Structures was a cognizable offence under the Prize Chit and Money Circulation

(Banning) Act- 1978. Earlier in December 2014, RBI had issued an advisory followed by a caution to investors to be wary of using virtual currency because of the associated security, financial and legal risks. After RBI advisory, the public sector Indian Bank withdrew banking services to BTCX India, the first Bitcoin trading platform in India. It may also be mentioned that on March 3, 2017, ASSOCHAM had organized a summit on crypto-currencies in Delhi in which Union Law Secretary had indicated that Government regulation was sure to follow if people had confidence in virtual currencies. There are speculations that the government may roll out the country's own crypto-currency.

### **Conclusion**

With globalization of commerce and the increasing porosity of territorial boundaries, the use of crypto-currencies will only continue to grow. There is real demand for private currencies that are not necessarily tied to any particular government and for a frictionless payment system that accomodates and best suits the increasing decentralized and trans-national

character of modern e-Commerce. A section of economists is of the opinion that there would be boom and bust before the sector finds its natural balance and in the meantime, there is an urgent need for more targeted approach on regulatory responses. Another area of concern is the possibility of non-currency applications of Blockchain technology such as sophisticated systems for encrypted storage and emerging forms of decentralized web and communication services. International bodies have a role to play in strengthening the people's understanding of crypto-currencies more broadly. For the present, concerns about financial stability or implication of monetary policy are less immediate but require further analysis and close monitoring as crypto-currencies have emerged as the "wild west" of money markets with no oversight, no controls and no rules. With the introduction of Blockchain, the possibility of a disruption of the global banking system cannot be ruled out given the increasing number of users. One should also remember Gresham's law that bad money drives out good money and the fundamental truth of crypto-economy that economy is mathematics plus social psychology.

# Developing Paradigms of Drowning Deaths in the State of Haryana, India

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## Abstract

In the present study attempt has been made to study the developing paradigms of deaths due to drowning in the Haryana state of India from year 2011 to 2016. The data for the study has been collected from the various State public information officers of 19 districts of Haryana under Right to Information. The parameters such as gender, age, type of water body, mode, district and season of drowning have been selected to study the trend of drowning deaths in each district of Haryana state. Total 2526 cases have been registered at police stations falling under 19 districts of Haryana during year 2011 to 2016. Among the cases registered, male victims were found to be more in number as compared to female victims. Similarly among different types of drowning, the accidental drowning was the major cause of death and maximum accidental deaths were reported among male victims as compared to females. The age group 18-45years was found to be more prone to drowning deaths. The maximum number of cases of drowning has been reported in district Hisar, whereas minimum number of deaths due to drowning was in districts Gurugram.

## Keywords:

Drowning deaths, Haryana, Homicidal drowning, Suicidal Drowning, Accidental drowning

## Background

Drowning, either intentional or unintentional, is the leading cause of deaths worldwide. The diagnosis of drowning is very difficult and the burden of proving intentional drowning has to be established by considering additional factors like presence of wound, cuts and bruises on the body of the victim. These types of cases are routinely reported by police officials and form major part of medico-legal investigation. According to NCRB

report 2015, drowning is the second major cause of unnatural accidental deaths in India after road traffic accidents. According to World Health Ranking report, India was ranked 32<sup>nd</sup> in the world in drowning death cases [1,2]. The trend of drowning deaths also depends upon many factors, one of them being the socio-economic status of that geographical area [3]. Therefore, drowning deaths are comparatively more in less-developing countries than developing countries [4-6] and higher in rural areas as

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compared to urban areas [7-9]. According to a report published by “The Hindu newspaper”, children are more prone to drowning (over 26,000 drowned in 2005 in India), particularly in India as compared to others countries [10], these may be because of a casual approach in taking measures. There is a need to take serious preventive actions to reduce this epidemiology of drowning. The management and prevention of drowning cases are most important as per public health is concerned.

In the present study, the developing paradigm of drowning cases has been critically evaluated by collecting data from all the districts of Haryana state from year 2011 to 2016. Haryana state is located in the northern part of India with a population of 27.76 million by 2016 [11]. Haryana forms an area cover of 2.09 percent of India with growth rate of 19.90%. As per 2011 census, the total population of Haryana is 25,351,462 of which males population is 13,494,73 while female population is 11,856,728 respectively [12]. The main occupation of people of Haryana is agriculture. Therefore, large network of rivers and canals flow through the state. The rivers such as Ghaggar, Markanda, Tangri and canal systems such as western Yamuna canal, Bakhra canal, Jui canal, Jawahar Lal Nehru canal and Gurgaon canal are the major source of irrigation in the state. In addition to this, there are a large number of ponds and lakes. Due to the presence of large number of water bodies, Haryana has higher incidents of drowning accidents. According to NCRB report 2015, Haryana stood at 8<sup>th</sup> position in drowning casualties [1]. Therefore, the present study has been designed to study the pattern of drowning deaths by undertaking five variables such as age, sex, season, type of water body and district in which maximum and minimum deaths took place in Haryana state from the year 2011 to 2016. The aim of the study was to identify the common contributing factor in drowning incidence in Haryana state, so

that information obtained would assist forensic scientists and government officials engaged in the management and prevention policies.

## Material and Method

**Collection and analysis of samples:** In present study data has been collected from 19 district of Haryana from the various districts offices of Senior Superintendent of Police under Right to information. The information was asked to provide in the format attached with RTI letter. The data of different districts were compiled to determine the pattern of drowning deaths in Haryana state from the year 2011 to 2016 by considering the following five variables:

- ❖ **Age:** Age of drowned victims was divided into three categories:
  - **Group A:** It includes drowned victims of age group 0-18years.
  - **Group B:** It includes drowned victims of age group 18-45 years.
  - **Group C:** It includes drowned victims of above 45 years of age.
- ❖ **Gender:** The number of male and female died due to drowning in different districts of Haryana was determined.
- ❖ **Type of water body:** The type of water body in which drowning death took place was determined:
 

• <b>River</b>	<b>Canal</b>
• <b>Pond</b>	<b>Sewerage</b>
• <b>Lake</b>	<b>Well</b>
• <b>Unknown</b>	
- ❖ **Mode of drowning:** The mode or manner of drowning deaths occurring among males and females in different district was determined:
  - **Accidental**
  - **Suicidal**
  - **Homicidal**
  - **Unknown**

❖ **Season of drowning:** The season in which maximum and minimum number of drowning death took place was determined:

- **Summer**
- **Autumn**
- **Winter**
- **Spring**

❖ **Location of drowning:** The number of cases reported in different districts of Haryana from year 2011 to 2016 was determined to study the trend of drowning deaths occurring among different districts of Haryana. The drowning data was collected from the following districts of Haryana.

- |                         |                        |
|-------------------------|------------------------|
| 1) <b>Ambala</b>        | 2) <b>Bhiwani</b>      |
| 3) <b>Faridabad</b>     | 4) <b>Fatehabad</b>    |
| 5) <b>Gurugram</b>      | 6) <b>Hisar</b>        |
| 7) <b>Jhajjar</b>       | 8) <b>Jind</b>         |
| 9) <b>Kaithal</b>       | 10) <b>Kurukshetra</b> |
| 11) <b>Mahendragarh</b> | 12) <b>Nuh</b>         |
| 13) <b>Palwal</b>       | 14) <b>Panipat</b>     |
| 15) <b>Rewari</b>       | 16) <b>Rohtak</b>      |
| 17) <b>Sirsa</b>        | 18) <b>Sonipat</b>     |
| 19) <b>Yamuna Nagar</b> |                        |

## Result and discussion

The present study reported the characteristic pattern of drowning deaths in the state of Haryana from the year 2011 to 2016. Total 2526 drowning death cases have been reported from 19 districts of Haryana. The maximum numbers of drowning cases had been reported in Hisar district (324) followed by Fatehabad (253), Sirsa (213) and Bhiwani (210), while minimum number of cases of deaths have been reported in Gurugram (31) (Table-1). But surprisingly Kurukshetra having large number of water bodies, still number of death due to drowning was moderate i.e. 142

during 2011-2016. As regarding the year-wise (2011-2016) trend of drowning deaths, there is an increase in a number of cases from the year 2011(391), 2012 (446), 2013 (447) 2014 (511) afterward a decline from the year 2015 (426) and 2016 (305). The trends of drowning deaths were studied by considering following parameters:

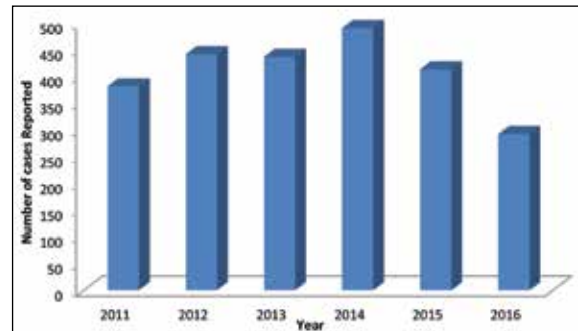


Figure 1: Number of drowning deaths occurred from year 2011-2016

**Age groups:** In order to determine the age group more susceptible to drowning deaths, in the present studies all the persons have been divided into the following three groups:

- Group A ranges from 0-18 years of age
- Group B ranges from 18-45 years of age
- Group C ranges from 45 and above years of age

It is evident from Figure-3 and Table-4, the maximum number of drowning deaths were reported among the age group B (18-45years) followed by age group C (above 45years) and least in the age group A (0-18 years).

District-wise analysis of data shows that maximum cases of drowning in age group A, which has been reported from Ambala district and minimum from district Palwal and Panipat. In age group B, maximum cases were reported from the district Hisar, while minimum from district Gurugram. Similarly, maximum cases of drowning in age group C, were reported from Fatehabad district and minimum from Palwal district (Table-4).



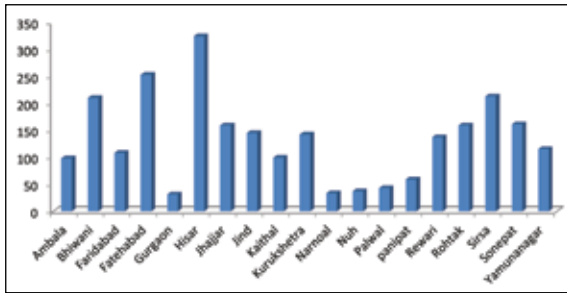


Figure 2: Number of drowning cases reported in different district of Haryana from year 2011 to 2016

**Gender:** While studying the gender based trend of drowning deaths, it was observed that male victims (83.8%) were more prone to drowning deaths as compared to the female victim (13.6%) as is evident from Figure-4. A similar finding has also been reported by Thakar and Guleria (2015), while studying the pattern of drowning deaths in Himachal Pradesh [13]. Schmetmann and Williamson (2004) extensively studied the drowning deaths in New South Wales (Australia) from 1986-2002. They also reported maximum number of drowning deaths among male victims as compared to females [14].

The male victims tend to dominate in all the age groups A, B and C. The maximum number of drowning death has been reported from district Hisar and minimum in district Gurugram (Table 2).

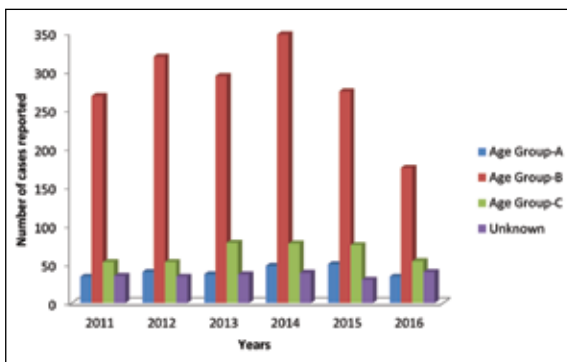


Fig-3: Number of drowning cases reported in relation to age groups from year 2011-2016

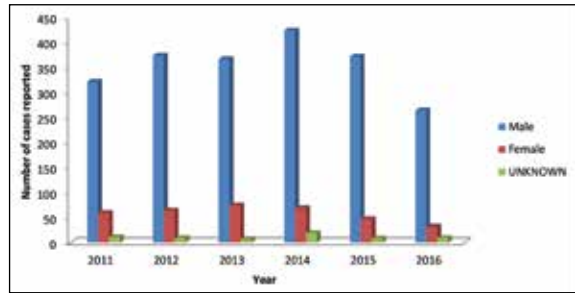


Fig-4: Number of drowning cases reported in relation with gender form year 2011-2016

**Season of drowning:** The reports of drowning fatalities have been received throughout the year, but still in the present study, maximum numbers of drowning deaths have been reported during the summer (39%) which is followed by monsoon (23%), spring (20%) and winter (15%) season (Fig-5). During summer month, swimming and other water-based recreation activities increase to maximum, therefore; incidence of drowning death also becomes more. In one of the previous study, the drowning deaths in Guangdong area, china have also reported maximum during summer as a higher risk season for drowning deaths [15]. Table 5 elucidates the number of cases reported in different districts of Haryana in relation to different seasons.

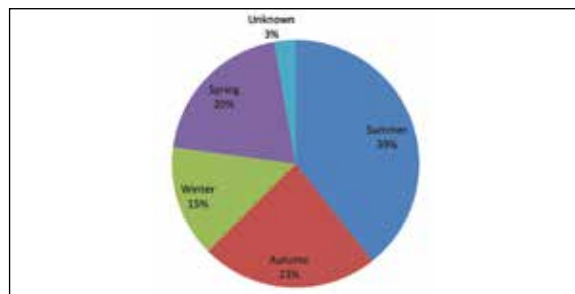
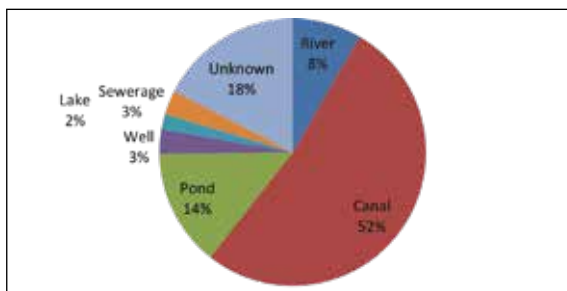


Fig-5: Percentage distribution of drowning death during different seasons from year 2011-2016.

**Type of water body:** In Haryana a variety of drowning deaths have been reported in different types of water bodies (Canals, Lakes, Ponds and rivers etc.) in Haryana state of India, but the maximum number of drowning death took place

in canals (52%) while minimum (2%) have been reported in lakes (Figure-6). The reason for the maximum number of deaths in the canal may be linked to the presence of large networks of canals which flow through different districts of Haryana state. In earlier studies, the same pattern of drowning death in Punjab and Himachal Pradesh states has been observed i.e. maximum number of drowning deaths in canal and river and minimum in the pond and well [13, 16]. The findings of present study differ from that of specified by Shetty and Shetty (2007), they reported maximum number of drowning deaths in wells and ponds in Mangalore city, India [17]. In present study, no cases of drowning deaths in bath tubs in swimming pools were reported, however, drowning deaths in both the water bodies are quite high in some countries like Japan (65%) followed by Canada (11%) and USA(11%) [18].

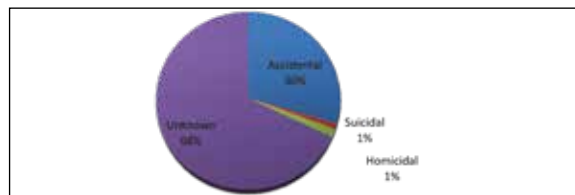
The maximum cases of deaths in canal were reported in district Hisar and minimum in Panipat. The drowning deaths in pond constituted 14% with maximum deaths in Bhiwani district and minimum in Fatehabad district while in the river, it accounted for 8% with a maximum number of cases reported in Sirsa district and minimum in Palwal and Fatehabad district. The maximum number of deaths in sewerage (3%) was reported in Ambala district while in well (3%) the maximum number of drowning incidence was reported in Bhiwani and minimum in Panipat and Jhajjar (Table-6).



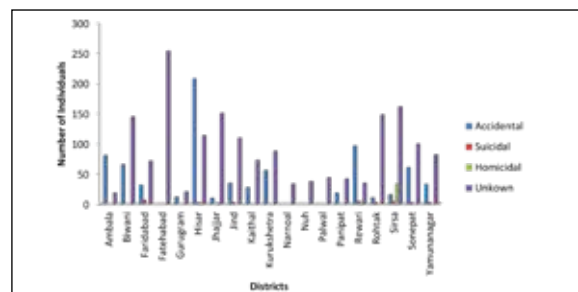
**Figure 6: Percentage distribution of drowning deaths in relation to water bodies from year 2011-2016.**

**Mode of Drowning:** Among the reported drowning cases, the mode or manner of drowning for a maximum number of cases was unknown (68%) (Figure7). Accidental drowning was a major cause of death in Haryana state which constituted 30% with 653 male and 96 females victims. Suicidal and homicidal drowning deaths were exceptionally uncommon in Haryana state, While Kuchewar et al. (2013) reported maximum cases of suicidal drowning (57.3%) in Yavatmal, Maharashtra [19]. In present study, Suicidal and homicidal drowning together constituted 2% of total reported cases. The number of male's death due to suicidal drowning was 20 and females was 5 while the number of males died due to Homicidal drowning death was 33 and females was 6 (Table 3).

As far as district-wise mode of drowning is concerned, the accidental deaths are more in Hisar district and minimum in Jhajjar district. Maximum cases of Suicidal deaths were reported in Faridabad district and minimum in Panipat and Rohtak district whereas Homicidal deaths were reported only in Sirsa, Rewari, Jhajjar and Hisar district (Figure 8).



**Figure 7: Percentage distribution of drowning deaths in relation to mode of drowning from year 2011-2016.**



**Figure 8: Number of drowning deaths reported in different districts of Haryana in relation to Mode of drowning from year 2011-2016.**

**Table 1: Number of cases reported in different districts of Haryana from year 2011 to 2016**

S. No.	District	2011	2012	2013	2014	2015	2016	Total 2011-2016
1.	Ambala	18	17	11	14	23	15	98
2.	Bhiwani	45	31	35	43	36	20	210
3.	Faridabad	14	15	20	14	22	23	108
4.	Fatehabad	42	36	40	50	44	41	253
5.	Gurugram	4	5	4	5	8	5	31
6.	Hisar	52	50	65	67	55	35	324
7.	Jhajjar	22	29	20	47	13	28	159
8.	Jind	26	29	44	26	15	5	145
9.	Kaithal	17	18	19	14	15	16	99
10.	Kurukshetra	19	20	27	29	38	9	142
11.	Narnool	5	2	5	9	5	7	33
12.	Nuh	2	9	10	7	9	0	37
13.	Palwal	1	12	6	11	7	6	43
14.	Panipat	9	13	14	7	10	6	59
15.	Rewari	29	31	20	18	20	19	137
16.	Rohtak	16	24	23	47	27	22	159
17.	Sirsa	32	44	33	55	32	17	213
18.	Sonipat	26	39	31	29	25	11	161
19.	Yamunanagar	12	22	20	19	22	20	115
	<b>Total</b>	<b>391</b>	<b>446</b>	<b>447</b>	<b>511</b>	<b>426</b>	<b>305</b>	<b>2526</b>
	<b>Percentage</b>	<b>15.4</b>	<b>17.6</b>	<b>17.6</b>	<b>20.22</b>	<b>16.86</b>	<b>12.0</b>	

**Table 2: Percentage of distribution of male and female deaths due drowning from 2011-2016.**

Year	Males	Percentage	Females	Percentage	Unknown	Percentage	Total
2011	321	82.9	59	15.0	11	2.81	391
2012	373	83.6	64	14.3	9	2.0	446
2013	366	81.8	74	16.5	7	1.5	447
2014	423	82.7	69	13.5	19	3.7	511
2015	371	87.0	47	11.0	8	1.8	426
2016	264	86.5	32	10.4	9	2.9	305
<b>Total</b>	<b>2118</b>	<b>83.8</b>	<b>345</b>	<b>13.65</b>	<b>63</b>	<b>2.4</b>	<b>2526</b>

**Table 3: Total number of cases reported in different districts of Haryana in relation to Mode of drowning from year 2011-2016.**

District	Accidental 2011-2016		Suicidal 2011-2016		Homicidal 2011-2016		Unknown 2011-2016	
	Males	Females	Males	Females	Males	Females	Males	Females
Ambala	76	4	-	-	-	-	16	2
Bhiwani	65	1	-	-	-	-	122	22
Faridabad	29	2	5	1	-	-	61	10
Gurugram	10	1		-	-	-	17	3
Hisar	171	36	2	-	1	1	90	23
Jhajjar	6	2	-	-	-	1	125	25
Jind	26	8	-	2	-	-	97	12
Kaithal	23	4	-	-	-	-	69	3
Kurukshetra	51	4	-	-	-	-	73	14
Nuh	-	-	-	-	-	-	37	-
Palwal	-	-	-	-	-	-	34	9
Panipat	17	-	1	-	-	-	37	4
Rewari	81	15	3	1	2	1	31	3
Rohtak	8	2	1	1	-	-	126	21
Sirsa	13	2	4	-	30	3	141	20
Sonepat	51	9	2	-	-	-	83	16
Yamunanagar	26	6	2	-	-	-	72	9
<b>Total</b>	<b>653</b>	<b>96</b>	<b>20</b>	<b>5</b>	<b>33</b>	<b>6</b>	<b>1480</b>	<b>233</b>

(-): No case reported

**Table 4: Age-wise distribution of drowning deaths in different districts of Haryana during year 2011-2016.**

S. No	District	Age Group-A (0-18 yr)	Age Group-B (18-45 yr)	Age Group-C (45 yr above)	Unknown	Total
1.	Ambala	24	52	22	-	98
2.	Bhiwani	32	151	32	11	210
3.	Faridabad	5	78	5	4	108
4.	Fatehabad	57	179	57		253
5.	Gurugram	4	10	4	46	31
6.	Hisar	51	200	51	18	324
7.	Jhajjar	22	113	22	8	159
8.	Jind	31	95	31	11	145
9.	Kaithal	13	70	13	14	99
10	Kurukshetra	21	98	21	14	142
11	Narnool	-	-	-	33	33

S. No	District	Age Group-A (0-18 yr)	Age Group-B (18-45 yr)	Age Group-C (45 yr above)	Unknown	Total
12	Nuh	3	17	3	15	37
13	Palwal	1	30	1	11	43
14	Panipat	3	39	3	16	59
15	Rewari	25	90	25	1	137
16	Rohtak	27	109	27	-	159
17	Sirsa	32	131	32	32	213
18	Sonipat	22	122	22	-	161
19	Yamunanagar	19	88	19	-	115
	<b>Total</b>	<b>243</b>	<b>1672</b>	<b>390</b>	<b>221</b>	<b>2526</b>
		9.6	66.1	15.4	8.7	

Table 5: Season-wise of drowning deaths from year 2011-2016.

S. No.	District	Summer	Monsoon	Winter	Spring	Unknown	Total
1.	Ambala	32	24	14	28	-	98
2.	Bhiwani	86	51	28	37	8	210
3.	Faridabad	45	23	29	11	-	108
4.	Fatehabad	111	65	25	49	3	253
5.	Gurugram	14	10	1	6	-	31
6.	Hisar	124	75	41	74	10	324
7.	Jhajjar	55	32	26	40	6	159
8.	Jind	60	36	19	30	-	145
9.	Kaithal	36	35	11	17	-	99
10.	Kurukshetra	57	35	21	25	4	142
11.	Narnool	-	-	-	-	33	33
12.	Nuh	10	5	12	10	-	37
13.	Palwal	24	11	3	5	-	43
14.	Panipat	18	17	7	4	13	59
15.	Rewari	57	26	18	36	-	137
16.	Rohtak	63	37	20	39	-	159
17.	Sirsa	90	42	45	36	-	213
18.	Sonipat	57	33	37	34	-	161
19.	Yamunanagar	51	27	12	25	-	115
	<b>Total</b>	<b>990</b>	<b>584</b>	<b>369</b>	<b>506</b>	<b>77</b>	<b>2526</b>
	<b>Percentage</b>	<b>39.1%</b>	<b>23.1%</b>	<b>14.6%</b>	<b>20.0%</b>	<b>3.0%</b>	

(-): No case reported

**Figure 6: Number of drowning deaths reported in different districts of Harayana in relation to different water bodies from year 2011-2016.**

S. No.	District	River	Canal	Pond	Well	Lake	Sewerage	Unknown	Total
1.	Ambala	5	25	28	5	-	28	7	98
2.	Bhiwani	14	91	56	26	3	1	19	210
3.	Faridabad	6	42	11	3	29	17	-	108
4.	Fatehabad	1	150	1	3	-	1	97	253
5.	Gurugram	7	-	20	2	2	-	-	31
6.	Hisar	16	266	32	3	-	2	5	324
7.	Jhajjar	-	79	-	1	-	1	78	159
8.	Jind	30	69	32	4	-	1	9	145
9.	Kaithal	21	38	27	2	4	3	4	99
10	Kurukshetra	13	51	45	2	-	3	28	142
11	Narnool	-	-	-	-	-	-	33	33
12	Nuh	-	27	-	8	2	-	-	37
13	Palwal	1	9	-	2	-	-	31	43
14	Panipat	18	7	14	1	-	9	10	59
15	Rewari	-	76	45	8	-	1	7	137
16	Rohtak	1	125	27	2	1	3	-	159
17	Sirsa	49	131	8	-	5	-	20	213
18	Sonipat	25	53	8	2	1	3	69	161
19	Yamunanagar	5	80	5	-	-	1	24	115
	<b>Total</b>	<b>212</b>	<b>1319</b>	<b>359</b>	<b>74</b>	<b>47</b>	<b>74</b>	<b>441</b>	<b>2526</b>
	<b>Percentage</b>	<b>8.3</b>	<b>52.2</b>	<b>14.2</b>	<b>2.9</b>	<b>1.86</b>	<b>2.9</b>	<b>17.4</b>	

## Conclusion

During the study period (2011-2016), the incidents of drowning deaths in Haryana were 2526. The frequency of occurrence of drowning deaths decreases significantly from the year 2015 to 2016. The males and middle age group were more prone to drowning deaths. The accidental drowning was the major cause of death. Homicidal and suicidal drowning was reported to be uncommon in the present study. The maximum number of drowning incidents took place in canals and frequency of occurrence of drowning deaths was the highest in the summer and monsoon season.

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# Small Particle Reagent Technique for Detection of Latent Fingerprints: A Review

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## Abstract

Small particle reagent technique is used to detect latent fingerprints on non-porous crime scene evidence, including those that have been accidentally or deliberately wetted. Conventional small particle reagent is formulated by suspending a finely powdered, insoluble, binary salt, usually molybdenum disulfide or titanium dioxide, in water containing a few drops of a surfactant. A commercial liquid detergent is generally used as a surfactant. In modified small particle reagent, a luminescent dye is added to the composition. In either case, the insoluble salt adheres to the fatty components of the sweat residue. The small particle reagent technique is also referred to as *wet powdering*.

## Keywords:

Fingerprints; Fluorescence; Latent; Small particle reagent

## 1. Significance of the small particle reagent technique

The most common base material used for formulating small particle reagent is molybdenum disulfide, MoS<sub>2</sub>, an insoluble, binary inorganic salt of dark gray shade. When suspended in water, containing a few drops of a surfactant, and applied to a latent impression, this salt gets adsorbed on the sebaceous constituents of sweat residue [1]. The salt is pulverized before preparing its suspension and hence the technique is often referred to as wet powdering. The particle size in the range 1-10 µm is deemed appropriate for detection of latent impressions. The crystalline structure of molybdenum disulfide too is critical for developing optimum

quality fingerprints. Base materials like titanium dioxide, cobalt oxide, graphite and photocopier toner may substitute for molybdenum disulfide [2]. Haque et al. [3] proposed the use of mixed oxide of iron in place of molybdenum disulfide. However, the results obtained with this reagent were mostly of low quality.

The sebaceous sweat largely contains fatty acids, lipids and glycerol derivatives. These biomolecules are quite stable and retain their composition in latent fingerprints for relatively long periods. Moreover, these are insoluble in water. For this reason, small particle reagent is able to detect fingerprints on those items which have remained immersed in water for varying time periods [4].

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In actual crime cases, such a situation arises when the criminal sprays water on the crime scene after committing the offence. It is also possible that the crime scene may be an outdoor location and the physical evidence becomes exposed to high humidity or rainfall. In such cases, conventional methods fail to detect latent fingerprints. However, since small particle reagent technique is sensitive to insoluble sebaceous constituents of sweat, it works on such surfaces. In fact, this method has been used to detect fingerprints on vehicles wet with rain or on glass, metal and plastic items recovered from aquatic systems [5]. It has also been used to develop fingerprints on water-soaked firearms [6]. The detection process does not interfere with subsequent ballistic analysis. The small particle reagent method has also been used to detect latent fingerprints on raw ivory articles [7]. In addition, it works on plastic bags, wax paper, glass and painted utilities [8].

Small particle reagent method works on containers which become contaminated by the commodity they hold. For example soft drink cans and glasses are often wetted by the beverage. Regular powders fail to detect fingerprints on such surfaces, but small particle reagent technique gives results.

The power method often fails to develop fingerprints on items which have a rough texture or an irregular shape. The reason is that the powder cannot be brushed to every nook and corner of such a surface. Yet, when the article is treated with a suspension, either by dipping or by spraying, the composition touches every segment of the surface and chances of detecting fingerprints are far greater. The molybdenum disulfide-based small particle reagent has been successful in lifting latent impressions from glass bottles coated with arson accelerators, including gasoline, diesel, turpentine oil and thinner [9, 10].

The surfactant – also called a *surface active agent* – is an important component of small particle

formulation. It has two functions. Firstly, it delays the sedimentation of the insoluble salt. Secondly, and more importantly, it ensures a uniform application of suspension on the surface. Usually, a commercial liquid detergent serves as a surfactant in small particle reagent formulations. Its concentration in the composition is critical to optimum development of fingerprints. If it is too little or too excess, the quality of prints is lowered [11]. In an investigation by Jasuja et al. [12], the synthetic detergent was replaced by a naturally occurring surface active reagent, saponin which, in turn was extracted from the plant, *Sapindus mukorossi*. The natural surfactant worked as well as its synthetic counterpart, but had the advantage of being biodegradable and cost-effective.

The fingerprints developed by molybdenum disulfide-based composition are dark gray in color. Proper contrast is not achieved if the background color of the surface too is dark. For such surfaces, molybdenum disulfide is replaced by titanium dioxide,  $TiO_2$ . Since titanium dioxide is white in color, it gives a good contrast on dark surfaces [13]. In fact, the titanium dioxide-based composition gives clear and sharp fingerprints on adhesive materials [14].

## 2. Methodology

Small lots of molybdenum disulfide (7.5 g) are added to water (75 mL) and a commercial liquid detergent (0.3 mL or 2-3 drops), for example, Genteel<sup>R</sup> or Easy<sup>R</sup>. The suspension is agitated and transferred to a tray or a spray bottle.

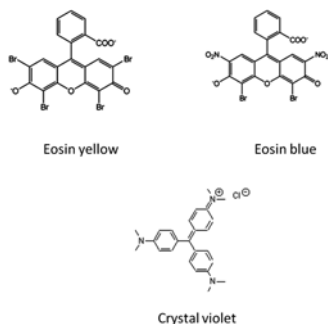
The surface bearing the latent fingerprints is either sprayed with or dipped in the small particle reagent formulation [2]. On vertical surfaces, the reagent is sprayed directly above the region where fingerprints are likely to be present. As it drips down, it covers the latent impressions. It takes 1-3 minutes for the fingerprints to develop. Thereafter, the item is washed under a gentle stream of water for about 30 seconds to remove the excess material.

The developed fingerprints are photographed. These are then allowed to dry either under natural conditions or with the aid of a hair dryer. Finally these are lifted by using the fingerprint tape.

An advantage of small particle reagent technique is that after the fingerprints have been photographed and lifted, the surface may be rendered clean by wiping with moist cotton. No permanent stains are left on the surface after impressions have been developed.

### 3. Modified small particle reagent

In the modified version of small particle reagent, molybdenum disulfide is used in concert with a fluorescent stain, such as rhodamine 6G and basic yellow 40 [15]. Alternately, molybdenum disulfide may be replaced by basic zinc carbonate, while a host of fluorescent stains, such as cyano blue, rhodamine 6G, rhodamine B, acridine orange and basic yellow 40 may be used as fluorescent dyes [16]. Since basic zinc carbonate is white in color, it gives a good contrast on dark colored surfaces. If the background color is pale or light, a good contrast can still be achieved by illuminating the developed prints with radiation of a suitable wavelength. The fluorescent characteristic of the stain also assists in developing fingerprints on multi-colored surfaces. Other commonly luminescent organic dyes, such as eosin yellow, eosin blue and crystal violet may also be used. Their structures are depicted in Fig. 1.



**Fig. 1** Fluorescent stains commonly used in modified small particle reagent technique

The eosin Y-based fluorescent small particle reagent was prepared as follows. To a suspension of basic zinc carbonate (5.0 g) in water (75 mL), eosin Y (0.015 g) and a commercial liquid detergent (0.3 mL or 2-3 drops) was added. The contents were thoroughly mixed. The suspension was sprayed on the surface bearing latent impression. This surface was earlier immersed in water for a specific period of time. After waiting for one minute, the item was washed under a gentle stream of water for 40 seconds and then dried with a hair dryer for 30 seconds. Clear and sharp fingerprints developed [17].

The developed fingerprints were illuminated with radiation having 505-550 nm wavelength. When observed through red goggles, the fingerprints showed fluorescence. The composition detected fingerprints on a wide variety of compact disks, both recordable and re-writable, without despoiling the stored data [18]. Similar results were obtained with the aid of an eosin B-based small particle composition. [19]. The stored data was neither damaged nor erased when latent impressions are detected by this method. Moreover, new files may be added to the compact disks on which small particle formulation had been applied. A sample fingerprint developed on compact disk is shown in Fig. 2.



**Fig. 2** A fingerprint developed on compact disk

A sample fingerprint developed by crystal violet-based small particle reagent on glass which had been immersed in water for 36 hours is depicted in Fig. 3 [20, 21].



**Fig. 3 A Fingerprint developed on a glass article after 36 hours of immersion in water**

Another representative fingerprint developed by eosin blue-based small particle reagent on aluminium foil that was exposed to water for 7 hours is shown in Fig. 4 [19].



**Fig. 4 A Fingerprint developed on aluminium foil after 7 hours of immersion in water**

Fluorescent small particle reagent may be used to detect latent fingerprints on articles removed from arson sites [22]. It also develops blood marks exposed to arson simulation [23].

## Conclusion

Small particle reagent is an efficient and sensitive technique to develop fingerprints on wet non-porous items. It gives good results even on dry surfaces. The method is simple and may be operated even by an amateurish hand. The modified small particle reagent has a further advantage since due to its fluorescent characteristics, it can develop weak and faint

fingerprints, as well as latent impressions impinged on multi-colored items. The compositions have a relatively long shelf life of 6-8 weeks.

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# Law Reform Research on Female Child Marriages in India

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## Abstract

Many countries, have adopted strategies to curtail the percentage of the child marriages, including the promotion of free education and other schemes to prevent child marriages, but still more could be done on this. It is evident from the various surveys and studies that child marriages are prevalent in all parts of the world and in India particularly. Rate of child marriages in all the states of India and in all social groups is unacceptably high.

## Keywords:

Law Reform, Strategies, Curtail, Married, HIV infection, Mortality, Methodology, non-doctrinal, Legislations, Prohibition

## Problem Identification

### 1. Introduction and need to study:

Child marriage in India has been an illegal act since more than hundred years, but the boys and girls are still getting married before 18 years of the age or the status of marriages is imposed on them by their parents. The child marriage is gross violation of the human rights of any child, but the implications of such marriages are more severe on female child than the male child, because she will be exposed to violence, abuse and exploitation and lose her access to right to education, nutrition, health, and most importantly her childhood. Delaying marriage for girls can contribute towards reducing maternal and infant mortality, preventing HIV infection, improving women's educational and economic status, and ensuring women's rights and gender equality<sup>2</sup>.

In a study conducted on child marriages in India, based on the census of 2011, it was found that

3% girls between 10 and 14 years of age were got married and about 20% girls were married before attending the age of 19 years<sup>3</sup>. The World Health Organization, in a report mentioned that 11% of the births worldwide are amongst adolescents and which account for 23% of diseases<sup>4</sup>.

Child marriage has also been connected with the fertility and population growth of the country<sup>5</sup>. Due to child marriage, girl child will not be able to complete the education and she will fail to secure financial stability further in the life due to early maternity or other outcomes of the marriages. Ending child marriage is a target under the Sustainable Development Goals.

Many countries, have adopted strategies to curtail the percentage of the child marriages, including the promotion of free education and other schemes to prevent child marriages, but still more could be done on this. It is evident from the various surveys and studies that child

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marriages are prevalent in all parts of the world and in India particularly. Rate of child marriages in all the states of India and in all social groups is unacceptably high<sup>6</sup>.

This research aims at analysis of current legislation, finding out the gaps in current legislation and suggesting remedies for such gaps.

### Research Methodology

Researcher is using doctrinal and non doctrinal methods.

For non – doctrinal research, the opinion of experts, the general public and more particularly of the victims of the child marriages will be taken into consideration through interviews.

Doctrinal part of the research will include analysis of all the statutes dealing with child marriage, judicial decisions and international documents.

#### A. Existing legislations and practices relating to child marriages

##### 1. Analysis of legislations and practices:

Statutes mentioned below are statutes made for females, giving them special status as intended by constitutional forefathers in Article 15(3). The definition of child in all the statutes stated below makes it clear that child means person who has not completed the age of 18 years.

#### a. The Prohibition of Child Marriage Act, 2006 (PCMA):

Section 3 of the PCMA made child marriage a voidable marriage at the option of the one party to it. Parliament has made child marriage as a punishable offence under Section 9 and person above the age of 18 years of age solemnizing marriage with a girl child shall face rigorous imprisonment for two years and with fine which may extend to one lakh rupees. Other Sections<sup>7</sup> of the statute made other people also liable under this act for performing, conducting, directing, abetting or promoting or permitting solemnization of a child marriage.

It is clear from above mentioned statutory provisions that, Indian legislatures have been trying to protect the child marriages and practices relating to it, at the same time parliament considered child marriage as a criminal activity.

#### b. The Protection of Children from Sexual Offences Act 2012 (POCSO):

POCSO is not directly dealing with the issue of child marriages. But the Act is based on the reference data collected by National Crime Records Bureau (NCRB). Said data collected by NCRB which indicates the increase of sexual offences against children in India. This can be confirmed by the “Study on the

1 Delaying Marriage for Girls in India: A Formative Research to Design Interventions for Changing Norms

2 A Statistical analysis of CHILD MARRIAGE IN INDIA, Based on Census 2011 published by Young Lives and National Commission for Protection of Child Rights (NCPDR)

3 World Health Organization Report on “Early Marriages, Adolescent and Young Pregnancies”, Sixty-Fifth World Health Assembly dated 16<sup>th</sup> March, 2012

4 <http://www.costsofchildmarriage.org/> last assessed on 17<sup>th</sup> Jan 2018

5 District Level Household & Facility Survey – 3, available on [http://rchiips.org/pdf/INDIA\\_REPORT\\_DLHS-3.pdf](http://rchiips.org/pdf/INDIA_REPORT_DLHS-3.pdf) last assessed in 15<sup>th</sup> Jan 2018

6 Section 10 and 11 of Prohibition of Child Marriage Act, 2006

7 Available on: <https://www.childlineindia.org.in/pdf/MWCD-Child-Abuse-Report.pdf> last accessed on 25<sup>th</sup> Jan 2018

Child Abuse in India 2007<sup>8</sup>”, conducted and published by the Ministry Women and Child Development, Government of India. Above mentioned studies refer to harmful traditional practices relating to the child marriages and adverse effects of these marriages and how it will result in the violence against girl child<sup>9</sup>.

Reference of POCSO is also relevant at this stage because it makes “penetrative sexual assault<sup>10</sup>” on the child as a punishable offence under Section 6 of the POCSO. But it is not the rape under Section 375 of Indian Penal Code.

Exception 2 to Section 375 of the Indian Penal Code is in the direct conflict with Section 5 (n) of the POCSO. This conflict also makes it difficult to operate as per true intention of the POCSO Act that is reflected in the preamble which states, “*in a manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy, physical, emotional, intellectual and social development of the child*” preamble also states that, “*sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed*”.

**c. The Protection of Human Rights Act, 1993 (PHRA):**

PHRA defines human rights as “*the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in international covenants and enforceable by courts in India*”<sup>11</sup>. In the light of current PHRA, the Convention on the Elimination of All Forms of Discrimination Against Women

(CEDAW) and the Convention on the Rights of the Child (CRC), the forced sexual intercourse with the girl child would be a gross violation of her liberty and dignity guaranteed by the Indian Constitution and by above mentioned international documents.

**d. The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act):**

JJ Act defines a child who requires care and protection in Section 2 (14), “*a child who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage*”. It is clear from above section that child who married before 18 years of age requires care and protection. JJ Act also makes it compulsory to produce the child before Child Welfare Committee for rehabilitation.

**e. Guardianship in Muslim Marriages (Jabbar) and The Dissolution of Muslim Marriage Act, 1939:**

It is very much possible in Muslim religion to impose a status of marriage on minor through a parent or any other person authorized to solemnize the marriage of the Minor and the right is recognized by the Quran know as *Jabbar*.

A woman married under Muslim law is to obtain a decree of dissolution of marriage if she is given away in marriage by her father or other authorized person before she attained the age of 15 years and she repudiates the marriage before attaining the age of 18 years provided that the marriage has not been consummated.

<sup>8</sup> Ibid page number 7

<sup>9</sup> Section 5 (n) of POCSO

<sup>10</sup> Section 2(d) of PHRA

<sup>11</sup> <http://parliamentofindia.nic.in/ls/debates/vol7p15.htm> last assessed on 29<sup>th</sup> Jan 2018 at 8.00 pm

This provision deals with girls below the age of 15 years who have got married. So this act makes it difficult for Muslim female to repudiate the marriage. Even if it is void marriage under PCMA she has to take decree of dissolution of her marriage under this Act before attaining the age of majority. And if there is forceful sexual intercourse by the husband, that will amount to enjoyment or consummation of that marriage and girl child will be deprived of her right to repudiate the marriage.

**f. The Hindu Marriage Act, 1955(HMA):**

A Hindu girl can file a petition for divorce on the ground that her marriage under Section 13(2)(iv) of the Act, whether consummated or not, was solemnized before she attained the age of 15 years and she has repudiated her marriage after attaining the age of 15 years but before attaining the age of 18 years.

This provision is also in conflict with the PCMA because according to PCMA marriage below the age of 15 years of age is void marriage and there is no need to seek divorce under the HMA.

One more conflict or anomaly is that the girl child getting married before the age of 15 can repudiate the marriage after attaining the age of 15 and before 18 years of her age under HMA. The question comes of *locus standi*. The helpless child, who has been forced to the marriage, will not be able to approach the court and repudiate the marriage.

It is obvious from above discussion that child is a person below 18 years of age who is entitled to the protection of her fundamental human rights. It is also quite clear that due to Exception 2 to the Section 375 of Indian Penal Code husband will not be punished for sexual intercourse

with girl child if there is marriage between them. In other words Parliament *per se* is prohibiting child marriages but for the girl child who needs care and protection, there is no remedy available.

**g. Article 15(3) of Indian Constitution of India:**

Article 15(3) has given special status to the females and children by separating them from the general public and the intention of the constitutional framers is also relevant at this point and in this problem against the backdrop of analysis of above statutes.

The Constitutional Assembly discussed and finalized above provision after the suggestion given by Prof. K. T. Shah. Prof Shah had suggested addition of the scheduled class and schedule tribes into the Article 15(3) in the words,

*“Sir, it must be distinguished from the preceding article. I read it, at any rate, that this is a provision for discrimination in favour of women and children, to which I have added the Scheduled Castes or backward tribes. This discrimination is in favour of particular classes of our society which, owing to an unfortunate legacy of the past, suffer from disabilities or handicaps. Those, I think, may require special treatment; and if they do require it, they should be permitted special facilities for some time so that real equality of citizens be established. The rage for equality which has led to provide equal citizenship and equal rights for women has sometimes found exception in regard to special provisions that, in the long range, in the interest of the country or of the race, exclude*



women from certain dangerous occupations, certain types of work. That, I take it, is not intended in any way to diminish their civic equality or status as citizens. It is only intended to safeguard, protect or lead to their betterment in general; so that the long-range interests of the country may not suffer.

In regard to the scheduled castes and backward tribes, it is an open secret that they have been neglected in the past; and their rights and claims to enjoy and have the capacity to enjoy as equal citizens happen to be denied to them because of their backwardness. I seek, therefore, by this motion to include them also within the scope of this sub-clause (2), so that any special discrimination in favour of them may not be regarded as violating the basic principles of equality for all classes of citizens in the country. They need and must be given, for some time to come at any rate, special treatment in regard to education, in regard to opportunity for employment, and in many other cases where their present inequality, their present backwardness is only a hindrance to the rapid development of the country.<sup>12</sup>

The response given by Dr. Ambedkar to this is interesting and required and relevant at this point to understanding the position of females in the country

*“With regard to amendment No. 323 moved by Professor K.T. Shah, the object of which is to*

*add “Scheduled Castes” and “Scheduled Tribes” along with women and children, I am afraid it may have just the opposite effect. The object which all of us have in mind is that the general public. For instance, none of us, I think, would like that a separate school should be established for the Scheduled Castes when there is a general school in the village open to the children of the entire community. If the words are added, it will probably give a handle for a State to say, ‘Well, we are making special provision for the Scheduled Castes’. To my mind they can safely say so by taking shelter under the article if it is amended in the manner the Professor wants it. I, therefore, think that it is not a desirable amendment.<sup>13</sup>”*

The response of Dr. Ambedkar clearly negates the amendment suggested by Prof. K. T. Shah. Further it is also suggested that the intention of the Constitutional makers is to give freedom to the females and children from the patriarchal glitches. Statutes controlling marriages are against the spirit of constitution due to two reasons, firstly every statute operating in one sphere has not considered other sphere or other statute present. Secondly, amendments are inserted in statutes without looking into the loopholes of overall system.

It is clear from above analysis of all the statutes which, deals with female and children are not in consonance with the intention of the constitutional makers. Legislature framing has been legislating without understanding previous statutes, their provisions and their effects on current legislation.

<sup>12</sup> Ibid

<sup>13</sup> (2013) 9 SCC 431

## 2. Analysis of Judicial Decisions:

There are various judgments delivered describing evils of rape on female which needs attention in this research.

### 1. State of Haryana vs. Janak Singh<sup>14</sup>

Supreme Court in this case has referred the Bodisattwa Gautam<sup>15</sup> case and mentioned its paragraph number seven:

*“Rape is one of the most heinous crimes committed against a woman. It insults womanhood. It violates the dignity of a woman and erodes her honour. It dwarfs her personality and reduces her confidence level. It violates her right to life guaranteed under Article 21 of the Constitution of India”*

### 2. State of Karnataka vs Krishnappa<sup>16</sup>

An 8 year girl was raped and it has been mentioned in paragraph 15 of the judgment that,

*“Sexual violence apart being a dehumanizing act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience”*

### 3. Thomas S. Eisenstadt, Sheriff Of Suffolk County, Massachusetts vs. William R. Baird<sup>17</sup>

Supreme Court of United Nations observed that

*“Yet the marital couple is not an independent entity with a mind and heart of its own, but an association of two individuals each with a separate intellectual and emotional makeup.”*

Combine reading of above cases states horrifying effects of the rape on the person. The effects of

rape are horrifying for a child.

If the child has been forced to keep the sexual relations, it is *prima facie* a case of rape. There is no material difference between rape and forceful sexual relations with the child.

## B. Qualitative Data Analysis:

### a. Interviews of victims, lawyers and expert

Qualitative data analysis is divided into two parts including interviews of the experts and victims of child marriage.

#### 1. Interview of Anjum Saida (victim is known by a different name):

Anjum is living in a small town called Vengurla, Tal. Vengurla, Dist. Sindhudurg. She got married at the age of 14. She has an 8 month old baby. Her husband is a farmer and she is living with the extended family of the husband. She had never seen her husband before marriage. Anjum further said that she loved to go to school but in 8<sup>th</sup> grade suddenly one day she was asked by her parents to quit school. Six days later she got married. She had to undergo all the ceremonies without understanding anything. During the marriage, while the others ate, Anjum and her husband were brought to the house. They sat next to each other on the bed and were fed rice and milk. This was the first time she saw him. They did what was expected from newly married Muslim couple. She washed his feet. He made salaam (a traditional religious greeting) and they sat on the bed and said a prayer together. The next night they had sex for the first time. She woke up in the morning and felt absolutely terrible. She cried while, thinking about, what her life would be now. She mourned for her freedom that was gone. After few months she got to know that she

14 (1996) 1 SCC 490

15 (2000) 4 SCC 75

16 405 US 438, 31 L Ed 2<sup>nd</sup> 349 S Ct 1092

is pregnant and both of them had no sufficient money to visit hospital so they borrowed it from his grandmamma and visited hospital. She had difficult pregnancy.

Towards the end of her pregnancy, the baby stopped moving. It turned out that there was no amniotic fluid left. She was told that if she gave birth to baby at home, neither she nor the child would survive. So they decided to hospitalize her and go for C section delivery. By that time she had given birth to Hibiba.

This story is self explanatory and talks about all the evils of the child marriages.

## **2. Interview of Sukanya Jadhav (victim permitted to use her name for research work):**

Mrs Sukanya Jadhav is another victim of child marriage. She was forced to marry by her mother (as her father abandoned her mother immediately after the birth of Sukanya) at the age 15 without considering her educational achievements. When researcher had a word with mother of the victim, he came to know that mother forced the victim into marriage to avoid any kind of mishap with child. First few months after marriage were really good for Sukanya. Her husband promised her to support her education and he started doing so. Due to her college hours, housekeeping hampered. She started neglecting taunts. But her husband one day visited her class in the college and had taken her back home. That was the last day when she attended her college. After few days her husband had told her that he married due the pressure created by the family members. After few months one day her husband expelled her from home without giving any reason. They filed complaints against each other in courts and police station. Both of them spent substantial amount for court proceedings. After spending 5 years in the courts and without getting relief, she approached the Community Legal Care Centre of Symbiosis Law School, Pune. After taking rounds of counseling, finally the divorce

petition filed by them converted into the mutual consent divorce and she got relief from all the matrimonial proceedings at the age of 25 years.

This example is evident that child marriages hamper the progress of the girl child.

## **3. Interview of Sunita Shinde(victim permitted to use her name for research work):**

Sunita is another victim of child marriage. She is from Mahagaon, Tal. Gadhinglaj, Dist. Kolhapur. Sunita's marriage solemnized with Sambhaji Shinde in year 2002 at the age of 15. Sambhaji married her after his divorce from his first wife. She agreed to marry Sambhaji due to the pressure put on her by her family members including mother and also considering the agricultural property and Sambhaji's pension which he has been receiving from Indian Army. He was forced to resign due to his addiction to alcohol. But Sunita was unaware about the addiction. After the marriage for few days Sambhaji avoided taking alcohol. But after few weeks of marriage he started taking alcohol and then he started beating her. She also got to know later that Sambhaji married her only to satisfy her mother's wish and to come out of frustration of failed first marriage. In addition to all these sufferings she got to know that she is pregnant. She delivered a baby at her maternal home. After the birth of the child she got the news of demise of her husband. After the death of her husband she started fighting for the agricultural property as the possession of the property had been taken by her brother –in – law after the death her husband and he is not allowing her to enter the property. She has been fighting the case against her brother-in-law since December 2003 and still she has not got the property. Now the case is pending in Court.

## **4. Interview with Prof Nagesh Sawant:**

Prof Nagesh Sawant is a Human Rights expert. In an interview Prof Nagesh Sawant explained

about constitutional provisions relating to females and child and its connection with international documents. He explained the constitutional framers' intentions for inserting the provisions relating to females and children. He also mentioned the role of judiciary to curb the child marriages and how judiciary worked to maintain the spirit of Constitution focusing on Article 15(3).

#### 5. Interview with Adv Latika Salgoankar:

In an interview with Adv Salgonkar, she explained the concept of marriage in ancient times and concept of child marriage in Hindus, Muslims, Christians and Parsi. She also explained the Guardianship in Muslim marriages i.e. *Jabbar*. A female child in Muslim personal law is in a disadvantaged position always. And she can be given away in the marriage by any person including father, father's father, brother or nearest paternal uncle, Quazi or Court. Prior to Dissolution of Muslim Marriage Act, 1939, she was not in a position to repudiate the marriage on any ground including a fraud or negligence. She also mentioned the disparity between the various existing laws.

### C. Analysis of interviews and legislations

From above interviews with victims, practicing lawyers and experts, it is clear that child marriages in India are resulting into painful consequences for the girl child and her family.

The following inferences can be drawn from the

analysis of legislations and interviews:

- i. Due to child marriages, there is a detrimental effect on girl child's health, her education, her employability, her nutrition, and her general well being.
- ii. Girl child is willing to repudiate the forceful marriage or report the sexual abuse, but it is not possible for her either due to provisions present in various statutes or due to no support from State or social organizations.
- iii. *No locus standi* to any other person or next friend of the child to file a case on the behalf of child in any statute.
- iv. Statues mentioned above are apparently inconsistent with each other and there is a need to harmonise the same.
- v. The Preamble to our Constitution brings out our commitment to social justice, but unfortunately, implementation of current statutes clearly brings out that social justice laws are not implemented in the spirit in which they are enacted by Parliament.<sup>18</sup>

The problem lies in the system, in legislations. There are legislations but legislations are either failing in implementation or in conflict with each other.

### D. Suggestion/Reforms

On the basic of analysis, a researcher gives the following suggestions about improving the current situation in the form of legislation.

## **The Dissolution of Marriages Act, 2018**

An Act to consolidate and amend the provisions relating to child marriage.

### **CHAPTER I**

#### **PRELIMINARY**

**1. Short Title of the Act:**

This Act may be called as The Dissolution of Child Marriages Act, 2018

**2. Application of Act:**

- 1) This Act applies to all the females married under any legislative law or personal laws before or after commencement of this Act irrespective of their religion.
- 2) This Act extends to the whole of India except the State of Jammu and Kashmir.

**3. Definitions:**

In this Act unless context otherwise requires –

- 1) “child” means any person who has not completed the age of 18 years;
- 2) “child marriage” means a marriage to which either of the contracting parties is a child;
- 3) “welfare of child” means any decision taken regarding the child, to ensure fulfillment of his basic rights, identity, social well – being and physical, emotional and intellectual development;
- 4) “Court” means court under whose jurisdiction the child ordinarily resides.

**4. Overriding effect of the Act:**

Any text, rule or interpretation of any law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act.

### **CHAPTER II**

#### **DISSOLUTION OF MARRIAGES**

**5. Grounds for Dissolution of Marriages:** A woman married under any legislative or personal law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds if she has been given away in the marriage before attending the age of 18 years, namely:

- 1) that she, has been given away in marriage by her father or other guardian or person by fraud or by negligence;
- 2) that the husband has failed to perform, without a reasonable cause, his marital obligations for a period of one year or more;
- 3) That the husband treats her with cruelty, that is to say,
  - i. habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or
  - ii. attempts to force her to lead an immoral life or
  - iii. attempts on her any sexual activity without her consent, or
  - iv. disposes of her property or prevents her exercising her legal rights over it

- 4) on any other ground which is recognized as valid for the dissolution of marriages under any legislative law or personal or customs or usages.

#### **6. Procedure and practices for dissolution of the marriages:**

The child or on the behalf of child any other person may file a complaint on any ground mentioned in Section 5:

- 1) Any person who has care and affection for the child may file a case into the court for dissolution of the marriage or report it to the appropriate authority made under any other law.
- 2) She is entitled to get protection under existing laws.  
provided that, the police officer of the area has under the obligation to provide all support and protection with the help of lady police officer, till she receives such protection.
- 3) Court is bound to dispose of any of the application or complaint received under this section within 60 days of time.

#### **7. Punishment for forceful marriage of the child**

- 1) No person shall give or agree to give away the child in the marriage under any of the laws made for the marriages or custom or usages.
- 2) No person shall abet, participate, promote or solemnize a child marriage.
- 3) If any person contravenes the provisions of sub-section (1) he shall be punishable with imprisonment which may extend to seven years or with fine of two lakh rupees or with both.
- 4) If any person contravenes the provisions of sub-section (2) he shall be punishable with imprisonment which may extend to three years or with fine of one lakh rupees or with both.

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# Whether India is Ready for Online FIRs



The Indian Police Journal  
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## Abstract

The criminal justice system is set in motion once a complaint is registered as a First Information Report (FIR) under section 154 Cr.P.C. However, the common man faces hurdles in registering an FIR in a police station. Non-registration promotes impunity for the accused and causes injustice. It also biases the system in favor of the powerful few in society. Senior police officers and courts have time and again emphasized that free registration of crime is mandatory, yet compliance is not complete. We examine the reasons for this malaise and suggest ways about implementing the ideal of free and fair registration of FIRs.

## Keywords:

FIR, criminal justice system, free crime registration, Lalita Kumari judgement

## Introduction

According to section 154 Cr. P.C. the police are required to register an FIR whenever they receive information of commission of a cognizable offence. However, complaints of non-registration are frequent and have been persistent for a long time. The Cr.P.C. does not mention the words FIR explicitly but provides a definition of information cognizable offences in Section 154 (1). The said section states as under:

*Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in*

*such form as the state government may prescribe in this behalf.*

Thus, any information about a cognizable offence, oral or written, has to be entered by the officer in charge of a police station in a book meant for the purpose. This information, which is also signed by the informant, is known as the First Information Report, or FIR. An FIR can be registered only for cognizable offences, which have been defined in Section 2 (c) of the Cr.P.C. as under:

*“Cognizable offence” means an offence for which and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;*

Cognizable offences are usually serious in nature, for instance, murder, rape, theft, waging war against government of India etc. Once FIR

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## Author Intro

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is registered under section 154 Cr.P.C. the police officer may proceed for investigation, and make efforts for the discovery and arrest of the accused and collect related evidences. Upon completion of investigation, the officer in charge of the police station is required to submit a police report under section 173 Cr.P.C. to the competent magistrate to initiate the process of criminal trial.

Remedies to citizens for police refusal to register are available in law. For instance, section 154 (3) Cr.P.C provides that if an officer in charge of a police station refuses to register the FIR, then the citizen may approach the Superintendent of Police of the area concerned by post who would cause an investigation to be done. Further, any magistrate empowered under section 190 Cr.P.C may also order investigation in any case of cognizable offence. Various courts have time and again considered the issue of refusal of the police to register FIRs and have passed judgments directing registration of FIRs. Action has also been initiated against police officers who do not comply with the responsibility cast on them by section 154 Cr.P.C.

A five Judge Constitution Bench of the Supreme Court headed by the Chief Justice of India considered the question whether “a police officer is bound to register a First Information Report (FIR) upon receiving any information relating to commission of a cognizable offence under Section 154 in *Lalita Kumari v. Govt. of U.P* [W.P.(Cr1) No; 68/2008]. The Bench noted that the Supreme Court had expressed divergent views in the matter on earlier occasions. For instance, the Supreme Court had carved out a special category in the case of medical doctors in the case of *Santosh Kumar and Suresh Gupta*. The Court allowed a preliminary inquiry in this case before registering an FIR. The Court was also cognizant of the CBI Manual which envisages a preliminary inquiry before registering the FIR.

It was held that registration of FIR is mandatory.

However, if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. The Supreme Court also issued some guidelines regarding the registration of FIR. However, the question as to when a preliminary enquiry is to be held was left open. The Court said that this will depend on the facts and circumstances of each case. An illustrative category of cases in which preliminary inquiry may be made were stated to be matrimonial/ family disputes, commercial offences, medical negligence cases, corruption cases, and cases where there was more than three months of unexplained delay in reporting. The judgment was passed on 12<sup>th</sup> November 2013 and nearly 5 years have passed yet the complaints of refusal to register FIRs are as frequent if not more than before passing the judgment.

### **Reasons for refusal to register an FIR**

It has been observed that not all crimes are reported and registered by the police (Verma, Qureshi, and Kim, 2017). Let us consider why the police are sometimes reluctant to register an FIR. An examination of the *Lalita Kumari* judgment will show that the Supreme Court has also not given a short and simple order as to the compulsory registration of FIRs but has created a new construct of a ‘preliminary enquiry’ in certain cases. What makes the judiciary and the police stop short of registering FIRs immediately in all cases? The reasons are not far to seek. One oft quoted reason is the filing of ‘false FIR’. If registration of FIRs is made ‘free’ and immediate, any motivated complainant may file frivolous and/or serious charges against an innocent person. The loss of reputation which that respectable person will suffer because of the allegations is itself a punishment for him/her,



irrespective of the outcome of trial, which may take a long time to complete.

However, the reluctance of many police officers to register FIRs is not simply based on the possibility of harming the reputation of a respectable member of the society. More often, the decision of registration of FIR is based on social system, political party in power, caste, language or other extraneous grounds. This is where the non-registration of FIRs does the most harm. In the present circumstances, it is difficult for a poor person who does not have access to any powerful connections to lodge an FIR particularly against the high and mighty. The very reason for making laws is to ensure legal equality between citizens, to empower the poor to fight the injustice perpetrated by the rich and powerful. A democratic set-up should not be a jungle raj, where might is right, rather it should be the rule of law. The intent of the law makers while drafting article 154 Cr.P.C. was to empower people to register their complaints with the police. However, the 'law in practice' is working to take away this basic right of the citizens to merely register an offence. The rule of law should rather encourage the registration of offences, not only where the accused are rich and powerful, but especially where they are rich and powerful, because it is they, who have more avenues of getting out of legal trouble.

Thus, we are caught between the devil and the deep sea. On the one hand, we must ensure immediate and compulsory registration of an FIR as per provisions of section 154 Cr.P.C. On the other hand, what provisions of law do we have or should have to protect the reputation of a respectable citizen on registration of a false FIR against him. This is particularly true after the Supreme Court judgment which has made all FIRs (except in certain cases of sexual assault etc.) public documents. This is the question which we now examine.

## **The Dark figure of Crime**

Some crimes are not reported to the police. Of the reported crimes, not all are registered by the police. The dark figure of crime consists of both unreported and unregistered crime. The true extent of crime will perhaps will never be known because it is exceedingly difficult to estimate the quantum of the dark figure of crime (Penny, 2014). The dark figure of crime promotes impunity for the accused and hinders justice for victims of crime. If the ends of justice are to be met, then it is expected that the police will not only register all offences but will actively encourage victims to come forward and report offences.

Non-registration of FIRs causes the dark figure of crime to rise further. It leads to less registration of crime. Since non-registration discourages complainants to come forward it also promotes less reporting indirectly. In this way, non-compliance of Section 154 Cr.P.C has a two-fold negative effect causing the dark figure of crime to rise.

## **Duality of the Indian Criminal Justice System**

The criminal justice system in India lives under a duality of sorts. This is very similar to the duality observed by the Presidents Commission on Crime in the US in the 1960s. The Commission observed the 'law in books' is very different from 'the law in practice' (Walker, 1992). In India, the head of a police station is the officer in charge, popularly called the Station House Officer (SHO). The SHO gets instructions from his superior police officers and the judiciary to register all cognizable offences as FIRs. Sometimes action is also taken against those SHOs who failed to register cases. However, that is only on surface. The reality is quite different.

The hypocrisy of Indian criminal justice system, specifically, the police, is the continuance of two parallel systems of reporting crime and their investigation by the police. After introduction of computerization in the police, especially the CCTNS, the information is received electronically too. The CCTNS is the Crime Criminal Tracking and Networking System, a project initiated by the Union Ministry of Home Affairs across all states and Union Territories of the nation (MHA, 2014). Under one process, information received is enquired as a complaint, while in some other cases information is registered as an FIR. Enquiry/ investigation ensue in both cases by police officers.

If one examines the number of complaints in any district of the country, chances are that the number of complaints will mostly be found to be more than the number of FIRs registered. It seems there is a filter which is applied to a complaint before it is registered as an FIR. I would leave the nature of this filter to the imagination of the reader. However, the fact remains that most complaints continue to be enquired into as complaints and are not treated as FIRs.

Who takes the decision whether an FIR must be registered or not? And what are the factors upon which this decision is based? There is no simple formula or test for this. It depends on facts and circumstances of each case. Consider the news published in the Behbal Kalan firing case in the Hindustan Times dated August 12, 2018. The paper quotes a government release stating that the names of police officials were included in the FIR following recommendations of Justice Ranjit Singh Commission (Hindustan Times, 2018). It may be noted that this case is not one covered under the exceptions listed in the Lalita Kumari Judgment of the Supreme Court, yet an enquiry (not preliminary but full) was held to determine the contents of the FIR. The 'First' in the FIR has been lost somewhere. The report of the Commission was not the first information report.

A detailed enquiry was held and then the system has come up with the First Information report. The paper further states that the state police chief did not want the names in the FIR, but certain political persons insisted on it on account of maintaining image of a political party. Without commenting on the veracity of this particular news item, it is certainly indicative of the situation obtaining in most states of India. The decision to register FIRs and the content which should be allowed to go into it are determined by a multiplicity of state and non-state actors. They may be police officials, Commissions of Enquiry headed by Judges, political executives, political party functionaries, or other depending on the facts and circumstances of each case.

Research has shown that citizen compliance and police legitimacy are enhanced when the police are perceived as just in their interactions with the public (Qureshi et al., 2016). Police cannot hope to appear legitimate if it resists attempts to implement free registration of crime. As a country, we have been unable to determine a simple process, till date, as to the simple task of allowing a victim to register his complaint to the police. To compensate for it, we have laid down a complex system of laws, judgments and protocol, which still does not allow the hassle-free registration of a crime as envisioned in Section 154 Cr.P.C.

### **The solution**

Technology has solved many of the world's pressing problems. The criminal justice system has been slow to adopt technology, though limited use of technology can be found in most places. One significant change for the better for the ordinary citizen is the availability of a copy of the FIR on the internet. Now citizens can obtain a copy of the FIR registered easily by downloading it from the internet. Technology has also been sought to solve the issue of registration

of FIRs. The concept of e-FIR has been floated as a solution to the problem of cumbersome process of registering an FIR. The idea is that as soon as a complainant submits or uploads his complaint, it gets registered as an FIR. The complainant gets a copy of the FIR electronically and an investigation officer is deputed. This is not a new concept and has been and has been used in several countries and in India.

Several research papers have been published on the issue of online FIRs in India. For instance, Farsole, Kene, and Bhujade (2014) discuss about an e-police record management system. They focus on the infrastructure of an e-police system infrastructure, its implementation and necessity. In a related paper Iyer et al. (2016) develop an application to collect complainant's data through a mobile phone app. The system is expected to facilitate online interaction with information exchanges over the application and the web portal. The relevant softwares are written using the Android SDK (software development kit) and mostly use the Java programming language which provides complete access to the Android APIs. Similarly, Lal et al., (2016) have proposed a smart system which facilitates online complaints registration. Yerigadi, Sonde, and Pillai (2016) have titled their paper as 'Online FIR registration and SOS system'. The system proposes to register online FIR and an SOS project which is the first of its kind. However, the system only provides online registration of complaints and not FIRs.

There are many similar papers which have proposed various software-based applications to facilitate online lodging of complaints (Bhujade et al., 2014; Chaudhari et al., 2018; Iyer et al., 2016). These papers have proposed systems for registering complaints with the police but do not incorporate FIR registration. The process of registration of an FIR requires the signatures of the complainant, which is not covered by these papers.

However, the CCTNS system implemented by the Ministry of Home Affairs (MHA) in all police stations already has provisions for complaint registration online. The core software is provided by the MHA, while states have been allowed customization of the application to allow complaint registration as per their requirements. Let us look at some of the Indian implementations of online complaints.

The state of Jharkhand has a website for its police where citizens can lodge online complaints. The complaints are received centrally and are enquired into by police officers deputed for each one of the complaints. Similarly, Tamil Nadu government has provisions for filing online complaints, checking the status, etc. The Himachal Pradesh government's online form needs you to describe your problem in detail. All complaints must be restricted to 2000 words in the given application. In Haryana, the online portal 'Haryana Harsamay' has been working since January 2015. The portal provides dozens of citizen services including online complaints, viewing of FIRs, character verification services and the like. The required fee for the services can be paid online as well. However, no state in India except Delhi provides a facility for lodging of online FIRs.

The most important difference between the online complaint and online FIR is the legal requirement of obtaining the signature of the complainant on the FIR, which is not a requirement for complaints. The online complaint process in most states requires the user to create a username and password and then authenticates the user with an OTP (one-time password). This authentication is different from the legal requirement of obtaining signatures as provided in section 154 Cr.P.C.

### **Delhi Police**

It was on August 16<sup>th</sup>, 2015 that Delhi Police

started the online registration of FIRs of vehicle theft on a pilot basis. An e-police station was created for the purpose. A citizen can lodge an FIR for an auto theft online and can immediately download and print a copy of the FIR. The legal requirement of obtaining the signature of the complainant is fulfilled by an investigating officer (IO) deputed for the purpose. The IO who is assigned a particular case would visit the complainant, obtain his signatures, proceed to the scene of crime and conduct investigations. The FIR number remains the same as was generated at the time of lodging the FIR, though the signatures are obtained later (usually within 24 hours).

The e-FIRs have made registration of vehicle thefts easier with the police as there is no way the police can dither on the registration process. An analysis of the figures of registration of vehicle thefts shows a dramatic increase in the number of vehicles thefts registered with the Delhi Police. It is obvious that the increase in figures is not because of a sudden increase in the theft of vehicles but is rather due to ease of reporting and consequent registering of FIRs by the police. This is a possible solution to the problem of non-registration of FIRs.

### **The solution to non – registration of FIRs**

The system of e-FIR can be an acceptable solution. However, it is true that the reputation of a person can be harmed if a false FIR is registered against him or her, especially in offence of a sexual or heinous crime nature. Several courses of action for relief are available for such a person. One remedy available is the provision of anticipatory bail u/s 438 of the Cr.P.C. He or she could also file a defamation suit in the Court. Another remedy is to file a petition u/s 482 of the Cr.P.C. to quash the F.I.R. Action against the complainant can also be taken u/s 182 IPC in case of false information.

The Law Commission of India suggested further safeguards in 2012 to protect innocent citizens from false and frivolous FIRs. It recommended an amendment in Sec. 358 of the Cr.P.C. to discourage false complaints which are a reason for harassment of some people and results in an arrest. Other safeguards include a provision under section 195(1) (a) Cr.P.C, which states that a person making a false complaint can be prosecuted by a public servant against whom the false complaint was made. In addition to the above, High Courts are empowered to quash criminal proceedings on lawful grounds by the virtue of Sec. 482 of the Code of Criminal Procedure, 1973.

The above suggests that adequate provisions are already in place to prevent the harm which may be caused to individuals on registration of a false FIR. However, the number of cases where such action has been taken against persons filing false FIRs is negligible. Neither the police actively pursue such cases, nor have the courts been very serious regarding punishing the persons who have filed false FIRs. Therefore, there is a need to implement these provisions to put an end to the practice of giving false information to police.

### **Crime registration in the United States**

Most states in the US have slightly different reporting procedures. On average, almost all states encourage online reporting or over the phone on 911 or to their local police departments. For example, in Dayton, Ohio, you could file crime reports online. The online police report system allows victims to submit a report immediately and print a copy of the police report for free. You cannot file a report online if it is an emergency, in which case you are required to call 911. Most people do not have to visit a police station to file a crime report and the 911 call or the online report is taken as official information of crime. Therefore, there

is no differentiation between a so called official report and otherwise (contrast with India where FIRs and complaints are treated separately). All reports to police are taken cognizance of and are investigated as per extant guidelines of various state police departments.

Many police agencies encourage filing of crime reports through various innovative programs. For instance, the Ashland Police Department in Oregon runs a program called “You Have Options”. Starting January 2013, victims were given the option of reporting their sexual assault in a variety of ways, including “Information only,” “Partial Investigation,” and “Complete Investigation”. The police in Ashland have developed a short video that depicts the need for such a program and talks about skepticism of sexual assault reports and attitude of people which blames victims.

### **Blind reporting**

There are situations when the victim/ informant does not want to disclose the identity of the individual who gives the information to police. In such cases, called Blind Reporting, the name of victim/informant is not disclosed. Law enforcement personnel can conduct a limited investigation, if not a full investigation. The given information may reveal patterns of behavior of specific accused persons or geographic locations which need to be checked.

### **Jane Doe reporting**

In addition to blind reporting, some states in the US have enacted laws to explicitly provide victims the option of using a pseudonym (i.e., false name) on all legal and medical documents associated with the sexual assault. Other states have made provisions that allow victims to request privacy regarding their name and other identifying information. In such cases, all reports are archived and can be effectively searched in a database. During trial, victims can testify in court either using a pseudonym (e.g., Jane Doe

or John Doe) or using only their first name. This decision is taken in consultation with the advocates and the court. This promotes faith in the criminal justice system and increases citizen compliance (Dai, Frank and Sun, 2011).

### **Conclusion**

Keeping in view the principles of natural justice, right of a citizen to be heard, provisions of section 154 Cr.P.C and judgments of various courts it seems natural to allow citizens the right to get an FIR registered for cognizable offences. There should be no requirement of a preliminary enquiry. An investigation should follow the registration of the FIR. This would allow the poor and weaker sections of the society to set the law in motion. At present, with the complaint system being closed within the police department, there is no judicial oversight over a large number of complaints filed by citizens before the police. In case a false FIR is made, there are adequate provisions in law available to close the case and punish the false informant. There should be no fear of reputation being harmed as people very well understand that motivated elements can file false FIRs to malign someone. Moreover, the truth will come out during investigation, which must be completed as swiftly as possible.

Implementation of section 154 Cr.P.C. in its undiluted form is not only possible but desirable. The process of registration of FIRs may be made simple by allowing multiple modes of providing information. Most states in India have provided online portals to citizens enabling them to lodge complaints. The complaints are all enquired into and final reports are prepared. The same or similar system can be used to lodge online FIRs. The Government of India has already provided CCTNS facilities to all states. Adequate hardware and software has already been provided in most locations. The use of these facilities to promote free registration of FIRs will give legitimacy

to the criminal justice process and increase the faith of the common man in law.

Unless citizens are allowed unhindered and equal access to the criminal justice system, for which registration of FIR is the first step, there can be no equality before law, or equal protection of law, as envisioned in Article 14 of the Constitution of India.

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# Analysis of Relationship between Hawala & Terror Finance in Indian Context

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धर्मो रक्षति रक्षितः

(The Law Protects When it is Protected)

## Abstract

Abstract: Hawala system was introduced long before the introduction of modern banking system, and such system was expanded in most parts of world by the then traders' community for safety in transactions. The word hawala means **trust**. But in course of time it became a **tool for economic offenders to shift money to a tax haven**, more over different nefarious elements like arms; gold and narcotics offenders used this mode **for either receiving or paying money**. In recent times, however, it has been observed that terror outfits have also used this channel to transfer funds for the purpose of engineering and sustaining terror activity. The objective of this paper is to discuss the role of hawala with different nefarious elements and with terror outfits. Relevancy of scientific evidence to prove such cases along with necessary points for fruitful investigation are also discussed in the document. Several suggestions have been appended at conclusion that may be considered by the enforcement agencies and other stakeholders for appropriate use to solve the problem.

## Keywords:

Hawala, Finance, Terror, N.I.A, India, Pakistan

## Introduction

“**Hawala**”, in Arabic, means “**to transfer**,”<sup>1</sup> and from **Sanskrit root**<sup>2</sup>, it is also known as “**Hundi**” meaning “**to collect**”. Jain (1929)<sup>3</sup> defines hundi as “**a written order-usually conditional -made by one person on another for the payment, on demand or after a specified time, of a certain sum of money to a person named therein.**” Concept of hawala was introduced around 8<sup>th</sup> century between the Arabic and Muslim traders

in **Silk route** with the object of preventing theft in the same route.<sup>4</sup> **Hawala is a traditional and alternative Asian Remittance System**, which is existing in Asia, Middle East, North Africa, South Asia and the Horn of Africa. It is known as **fei qian in China, padala in Philippines, Hui kuan in Hong Kong, and phei Kwan in Thailand**. An operator of Hawala is known as **hawaladar or hawala operator**.

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### Defining Hawala:

**Jost and Sandhu** (2000)<sup>5</sup> define hawala very aptly as “**money transfer without money movement**”. According to FATF (**Financial Action Task Force**) it can be defined as-“**Alternative remittance systems that covers any system used for transferring money from one location to another and generally operating outside the banking channels**. The services encompassed by this broad definition range from those managed by large multinational companies to small local networks. They can be of a legal or illegal nature and make use of a variety of methods and tools to transfer the money”<sup>6</sup>. **Trehan** (2002)<sup>7</sup> coined Hawala/ Hundi as a type of **Underground or parallel banking system**. It can also be called as **Informal Value Transfer System (IVTS)**<sup>8</sup>.

### Technique of operation

“A” is residing in Country “X” want to transfer some amount of money to “B” in Country “Y”. For the same purpose “A” contacted “C” (a hawala operator) in Country “X” to transfer the money to “B” in country “Y” and “C” will assign a **specific code** for “B” for the specific transaction. “C” contacted “D” (another hawala operator) in country “Y”, where “D” is having business transaction with “C” and “C” will inform the very **specific code** assigned to “B” for the specific transaction. “D” will hand over the money to “B” as per instruction of “C”, when “B” will inform **right code** to “D” as assigned by “C”.

According to Trehan (2002)<sup>9</sup> Hawala operates through- (i) Legitimate business, (ii) Gold/ Silver Trading, (iii) Remittance system, (iv) Money changers, (v) Underground Financial Houses, apart from the findings of Trehan (2002)<sup>7</sup> **FATF Report** (2013)<sup>9</sup> also mentioned additional points like- (i) **Settlement through cash transport** – notably cash couriers and (ii) **Value settlement through trade transactions**, including through

over or under families already existed in such trade. When a hawaladar asks about his profession, trade system, trade secretes or about his/ her Clients the subject maintains silence. Therefore it can be presumed that **secrecy is the most important character of operation through hawala channel**.

### Worldwide networking:

Certain literature and reports published by different journals and Governmental Agencies, gisted below illustratively, provide very valuable and credible information regarding existence of hawala networks worldwide beyond reasonable doubt-

1. Edwina Thompson (2006)<sup>10</sup>, Julien Mercille (2011)<sup>11</sup>, FATF Report (2014)<sup>12</sup> had mentioned the presence of hawala networks in Afghanistan and its nexus with drug trade.
2. Pohit and Taneja (2000)<sup>13</sup> while discussing the matter relating to Informal trade between India and Bangladesh had pointed out the fact that – “**Eighteen percent of the informal traders in Bangladesh reported using the ‘hawala’ for making payments.....**”
3. U.S. Dept. of State Report (2016)<sup>14</sup> also pointed out existence of hawala rackets in Netherland.
4. Raza and Ijaz (2017)<sup>15</sup> had pointed out the presence of hawala rackets in Pakistan, also acknowledged the presence of Hawala rackets in Pakistan
5. Malit et al (2017)<sup>16</sup> had mentioned the presence of hawala channels in UAE and **use of the same by low-income Pakistani migrants for remitting their earning to their country**.
6. Jason Miklian (2009)<sup>17</sup> also informed the existence of largescale use of hawala by the traders of Terai region of Nepal.



## Hawala as a component of Money

### Laundering:

From the following academic references like-Passas (1999)<sup>18</sup>, Jost and Sandhu (2000)<sup>5</sup>, Ballard (2003)<sup>19</sup>, de Goede (2003)<sup>20</sup>, Maimbo (2003)<sup>1</sup> hawala can as well be construed as a component of **money laundering**. Relation between money laundering and criminal networks can be exemplified from the Annual Report of **UNODC (2016)**<sup>21</sup>.

With the objective of preventing money laundering, the Government of India had enacted the **Prevention of Money Laundering Act, 2002(15 of 2003)** with the following objectives-

- (i) To prevent and control money laundering;
- (ii) To confiscate and seize the property obtained from laundered money; and
- (iii) To deal with any other issue connected with money laundering in India.

Prior to enactment of PMLA the following laws were available to the enforcement community to deal with such unlawful activities-

- (a) **The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974** (52 of 1974) (COFEPOSA); and
- (b) **The Foreign Exchange Management Act, 1999** (42 Of 1999) (FEMA).

Even in **Vineet Narian v. Union of India**<sup>22</sup> the Apex Court, while considering 'Hawala' transactions as a matter involving great public interest, directed CBI and revenue authorities to properly and expeditiously investigate the matter without further loss of time.

**Involvement of Hawala channels have come to notice along with other nefarious and unlawful activities in Indian context in some of the cases decided by our constitutional courts as mentioned below:**

1. **Hawala as a mode to shift money from India to abroad illegally-** In **Ramnish**

**v. CBI**<sup>23</sup> while rejecting the appeal of the appellant Suresh Kait J. of Delhi H.C. had mentioned the fact of use of hawala channels to transfer money out side of India (Vide para 18).

2. **Instance of relation between hawala and offender of aircraft hijacking case-** In **Abdul Latif Adam Momin v. Union of India**<sup>24</sup> where Punjab and Haryana High court had mentioned the communication between the appellant and another accused to transfer fund to the family member of one of the accused of Kandahar Aero plane hijack matter (Vide para 26).
3. **Hawala-Narcotics relation-** In **Saifudheen v. Circle Inspector of Police**<sup>25</sup> while dismissing the appeal of the appellant kerala High Court took notice of the link between the Narcotics dealer and Hawala transaction (Vide para 11).
4. **Hawala as a vehicle to shift fund (where the fund was acquired by means of misappropriation of public exchequer) to abroad for the purpose of procuring arms and ammunition to accelerate terror activities-** In **Jayanta Kumar Ghosh v. National Investigation Agency**<sup>26</sup> while rejecting the prayer of the appellant for bail Gauhati High Court underlined the use of hawala channel to transfer money obtained by means of extortion and misappropriation of funds to outside India to procure arms and ammunition, with the objective of carrying out further insurgency activity [Vide para 15 (c)].
5. **Hawala as a mode to transfer the proceeding of profit after circulation of fake currency-** In **Shaik Akram v. National Investigation Agency**<sup>27</sup> while rejecting appeal of the appellant against order of conviction Andhra Pradesh and Telangana High Court mentioned the use of

hawala channels to transfer profit, earned after circulation of fake Indian Currency Notes (Vive para 7). Even in **Narendra Kumar v. State of W.B.**<sup>28</sup> Calcutta High Court had also acknowledged the relationship between the operatives of Fake Currency and Terror activities.

6. **Hawala – Cattle smuggling relationship- In Jibu D Mathew v. State Represented by Insp. of Police, C.B.I./ A.C.B, Cochin**<sup>29</sup>, where the petitioner, who served as commandant of 83<sup>rd</sup> Battalion of B.S.F at West Bengal was apprehended with cash amounting to Rs. 45,30,500/- by A.C.B. of C.B.I. at Aleppey Railway Station on 30.1.2018 at 5.15 P.M. after getting down from Shalimer Express, while rejecting his bail application his lordship B. Sudheendra Kumar J. of Kerala High Court had mentioned the relationship between Cattle smuggling and Hawala (vide para-7), relied on the investigation report regarding the role of the petitioner to help the terrorists by permitting them to smuggle Hawala money, weapons etc. crossing the International Border (vide para-8) and considering the seriousness of the case, Ld. Judge admitted the plea of the respondent (i.e. C.B.I) for through investigation by N.I.A. to find out the involvement of the petitioner in any act of betraying the Nation by assisting the terrorists and smugglers (vide para 8).

### **Hawala and Terror Finance relationship:**

**Colin Powel**, the former Secretary of States, the U.S.A. said that “**Money is the oxygen of terrorism**”<sup>30</sup>. Monetary source for funding terror incidents can be divided into two categories viz-

- (1) **Internal source**, this source can be further subdivided into-
  - (a) Extortion by means of abduction;

- (b) Imposing levy on Industrial /Trade organizations; and
- (c) Looting incidents of Financial Institutions and Treasury; and
- (d) Donations from likeminded persons.

(2) **External source** i.e.

- (i) Funding from outside the country by using unofficial way of transaction i.e. Hawala channels and in reverse way a terror outfit organization can also use hawala as vehicle to shift fund to some other organization or places with the objective of carrying out further terror activities and
- (ii) Funding through NGO source, which can be exemplified from the issue of cancellation of FCRA registration of IRF (Islamic Research Foundation, an organization run by Zakir Naik). Fund transfer to an NGO of Pakistan (which is an Umbrella organization of a terror outfit under the guise of NGO) can also be clearly seen from the instance of cancellation of registration of ISNA Development Foundation (IDF) by Canada Revenue Agency (CRA) in 2013. Can be exemplified from FATF Report<sup>31</sup>.

Transaction through hawala is an illegal act and its connection with other nefarious activities, and role of hawala in T.F. (Terror Finance) cannot be ruled out. Even the reason behind starting of Jain Hawala case was due to detention of militants from J & K by a law enforcing agency. It can reasonably be concluded that terror funding from external source can be reached very efficiently to the concerned terror organizations using Hawala as one of the vehicle for the same. The following literatures and reports have also acknowledged

the relationship between Hawala and Terror Finance -

(i) Report of the Group of Ministers on National Security (2001)<sup>32</sup>, (ii) Jamwal (2003)<sup>33</sup>, (iii) Trehan (2002)<sup>34</sup>, (iv) Ved Marwah (2009)<sup>35</sup>, (v) Saini (2009)<sup>36</sup>, (vi) Brig. Dushyant Singh (2009)<sup>37</sup>, (vii) Anand Kumar (2012)<sup>38</sup>, (viii) The Consultative Committee of Members of Parliament attached to the Ministry of Home Affairs (2013)<sup>39</sup>, (ix) Vivek Chadha (2014)<sup>40</sup>, (x) Garge (2015)<sup>41</sup>, (xi) Vivek Chadha (2015)<sup>43</sup>, (xii) Sahay and Pandya (2017)<sup>43</sup>, and (xiii) Garge and Sahay (2018)<sup>44</sup>.

Apart from academic and governmental references relating to relation between Hawala and TF, there are a good number of cases decided by the constitutional Court's cases from India, which had unambiguously acknowledged the role of hawala in Terror Funding incidents-

1. **Involvement of Hawala Channels in financing Khalistan movement- Lal Singh v State of Gujarat & Anr**<sup>45</sup> while rejecting the appeal of the appellant, the Apex Court division bench comprising M.B. Shah and S.N. Phukan, JJ had underlined the fact of financing terror activities of Khalistani outfits through hawala collected from different places Like England, Canada etc (Vide para 27). From the Confessional Statement of A2-Mohd. Sharief it was also clear that an organization under the name and style K2 i.e. Khalistan and Kashmir was also found to boost up Khalistan and Kashmir movement (Vide para 29).
2. **Terror funding through Hawala Channels for terror activity in J & K-State (NCT of Delhi) v. Ahmed Jaan**<sup>46</sup> while accepting the appeal of the appellant (i.e. NCT of Delhi) against the order of acquittal of the respondent in Sessions Trial the Hon'ble Supreme Court had

noticed the relation between "Tehreek-ul-Mujahideen' (TUM) of J&K and the respondent. Moreover suspected hawala money amounting to Rs. 30000/-, a letter containing coded information relating to explosives and the communication between the respondent and his Pakistani counterparts etc, and the transfer of money to Kashmir valley for terror activity through Carpet dealers and Commissions agents of goat were also mentioned (Vide para 3).

3. **Bombay Blast Funding through Hawala Channels- Yakub Abdul Razak Memon v. State of Maharashtra through C.B.I**<sup>47</sup> while rejecting the appeal of the appellant Apex court's division bench comprising P. Sathasivam & Dr. B.S. Chauhan, JJ. had mentioned several times about the use of money obtained through hawala to facilitate serial bomb blast in Bombay in 1992. *This is a notable case of involvement of Dawood Ibrahim gang in Financing and orchestrating terror activities in Indian Territory controlling the same from Pakistan.*
4. **Red Fort Attack matter- Terror funding through Hawala Channels- Mohd. Arif @ Ashfaq v State of NCT of Delhi**<sup>48</sup> while rejecting the appeal of the appellant, the Apex court division bench comprising V.S. Sirpurkar and T.S. Thakur, JJ. had mentioned use of money obtained through hawala to facilitate Red Fort attack case [Vide para 9 and 72( c)].
5. **Hawala- Parliament attack case- In State (N.C.T. of Delhi) v. Navjot Sandhu @ Afsan Guru**<sup>49</sup> the Apex court had mentioned the reference relating to hawala in the order of the case [Vide para 18 (1)].
6. **Hawala & Terror Finance in India- Involvement of Dawood Ibrahim gang-**

**In Kirtibhai Madhavlal Joshi v. State of Gujarat**<sup>50</sup> while rejecting the appeal of the appellant *Gujarat High Court had mentioned involvement of D-Company in terror finance through Hawala Channels in India* (Vide Para-7).

Apart from academic and judicial references the role of Hawala in Terror Finance was also taken serious note of in Parliamentary proceedings.<sup>[51, 52]</sup> In recent times some cases investigated by NIA, where terror finance through Hawala was acknowledged.<sup>[53, 54]</sup> There are references of use of hawala mode by terror outfits like AQ for fund transfer prior to 9/11 can be referred from the statement of Chairman Evan Bayh (2001)<sup>55</sup> as follows-“ In this war against terrorism, one of the most critical battles will take place not in a foreign land, but in the financial world, as we seek to paralyze terrorist activities by cutting off the head of groups like al Qaeda. ... **One system which Bin Laden and his terrorist cells use to covertly move funds around the world is through ‘hawala’, an ancient, informal, and widely unknown system for transferring money. Although most Americans have never heard of hawala, that system almost certainly helped al Qaeda terrorists move the money that financed their attack on the World Trade Center and the Pentagon.**” and even ISIS also depends on hawala channels as an integral tool to move money around the world to support affiliate groups and carry out external attacks<sup>56</sup>. Therefore, it can be safely concluded that hawala channels are the most useful channels for a terror organization to transfer fund to conduct terror related activities. Even Indian judiciary had also acknowledged the terror-finance in India through hawala<sup>[45-50]</sup>, the whole incidents were orchestrated under the guidance of ISI, this can be correlated with the Gujarat High Court observation in Isaak Ibrahim Sandhi Novda case<sup>57</sup> relating to conspiracy of ISI against India, further more the role of ISI in patronizing the

terror activities in India by virtue of providing financial assistance to the terror outfits, was also acknowledged by the MHA in Lok Sabha<sup>58</sup>, and the Parliamentary Committee on External Affairs (2017-18)<sup>59</sup> also acknowledged the role of Inter Service Intelligence in instigating terror activities in Indian Territory by means of logistics, training and financial assistance with deep annihilation.

### **Summary of Modus operandi adopted and purposes of hawala transactions:**

1. The whole system runs without any legal affiliation and in **utmost secrecy**.
2. Use of **under invoicing** and **cash trading** to facilitate money transfer to separatist leaders of Kashmir through hawala.<sup>53</sup>
3. Involvement in switching money from India to abroad for the purpose of tax evasion.<sup>23</sup>
4. Involvement in narcotics trading.<sup>[10, 11, 12, 25]</sup>
5. Relationship with Fake Indian Currency Notes circulating rackets.<sup>27</sup>
6. Use of the same to procure arms and ammunition to continue further insurgency.<sup>26</sup>
7. Use of this channel by International terror organizations.<sup>[55, 56]</sup>
8. In Indian context there is reference of financing terror activities.<sup>[45- 50]</sup>
9. Involvement of Dawood Ibrahim gang.<sup>[47, 50]</sup>
10. Recovery of Huge amount of Indian Currency Notes, Foreign Currency, Arms and Ammunitions, Currency counting machine without any valid reasons<sup>60</sup>.
11. Having international network<sup>[10-17]</sup>, in a case of NIA it was found that funds were shifted through a Bangladeshi Hawala operator to facilitate terror activity<sup>[61]</sup>.
12. Arrest of Hawala operators with alleged link with ISI.<sup>[62, 63]</sup>

13. There is a reference to using of phone, fax or e-mail etc by the hawala operators to exchange information among them<sup>64</sup>.
14. Receiving money through hawala via Pakistan, Dubai and Sharjah<sup>65</sup>.
15. There is a judicial reference to collection of charity money by Kashmiri terror outfits from the charitable as well as business houses of Pakistan<sup>45</sup>.

**List of Active Terror outfits in Indian Territory<sup>66</sup> and their role in the use of hawala as a vehicle of Terror Finance. The details of such Outfits generally remain shrouded in secrecy. However an illustrative list of such organisations as have entered public domain are given below-**

- List of terrorist groups active in Jammu and Kashmir-
  - Lashkar-e-Tayyaba (**LeT**)
  - Hizb-ul-Mujahideen (**HM**)
  - Jaish-e-Mohammad (**JeM**)
  - Harkat-ul-Mujahideen (**HuM**)
  - Al Badar (**AB**)
- Terrorist groups like **LeT, IM, HM, HuJI, Al Badr**, etc. are active in the hinterland of the country, particularly in Uttar Pradesh, Maharashtra, Gujarat, Karnataka, Kerala, Rajasthan, Andhra Pradesh and Delhi.

Funding source of **Hizb-ul-Mujahideen (HM)** – According to **FATF Report** (October 2015)<sup>67</sup> where the source of funding of HM was mentioned as-“An ongoing investigation in India alleges that Hizb-ul-Mujahideen (HM) has been receiving funds originating from Pakistan through different channels in support of its terrorist activities in India. **HM is claimed to be actively involved in furthering terrorist activities in India and has raised over INR 800 million within the past eight years.** This group has been designated as a terrorist organisation by India, US and the EU. **Funds raised in other countries are also reportedly**

**being transferred or diverted to trusts and front organisations of HM in Pakistan. Once the money reaches India, it is distributed through various conduits at various places to the active terrorists and families of killed HM terrorists.** It is further alleged that the banking sector was extensively used for transfer of funds to various bank accounts for the aforementioned activities. Funds have also been moved via money value transfer services (MVTs). The funds are mainly used to financially support members of active and killed militants of the organisation, including family members. HM allegedly incurs expenditure on mobile communication, medical treatment of militants, arms and ammunitions, clothing and other military equipment.” The same matter (Rising of fund by Hizb-ul-Mujahideen) was also manifested in Lok Sabha Proceeding through **LS.US.Q. (LOK SABHA UNSTARRED QUESTION)No. 3853 FOR 22.12.2015<sup>68</sup>.**

Country Reports on Terrorism 2016 by U. S. Dept. of State<sup>69</sup> had provided us the following information about the area of Ops. & Source of Funds for (i) Lashkar e-Tayyiba (LeT), (ii) Indian Mujahideen (IM), (iii) Jaish-e-Mohammed (JeM) as follows-

1. **Lashkar e-Tayyiba (LeT):** LeT has global connections and a strong operational network throughout South Asia. LeT maintains a number of facilities, including training camps, schools, and medical clinics in Pakistan. **LeT is also active in Afghanistan. LeT collects donations in Pakistan and the Gulf as well as from other donors in the Middle East and Europe – particularly the United Kingdom, where it is a designated terrorist organization. In 2016, LeT front organizations continued to openly fundraise in Pakistan and solicited donations in the Pakistani press.**

2. **Indian Mujahedeen (IM):** Operates in India, Nepal, and Pakistan. **Suspected to obtain funding and support from other terrorist organizations, as well as from sources in Pakistan and the Middle East.**
3. **Jaish-e-Mohammed (JeM):** Operates in India, including the state of Jammu and Kashmir; Afghanistan; and Pakistan, particularly southern Punjab. *To avoid asset seizures by the Pakistani government, since 2007 JeM has withdrawn funds from bank accounts and invested in legal businesses, such as commodity trading, real estate, and the production of consumer goods. JeM also collects funds through donation requests in magazines and pamphlets, sometimes using charitable causes to solicit donations.*

The same report<sup>69</sup> also mentioned-“.....India and the United States pledged to strengthen cooperation against terrorist threats from groups including *al-Qa’ida (AQ)*, *ISIS*, *Jaish-e-Mohammad (JeM)*, *Lashkar e-Tayyiba (LeT)*, and *D-Company*, including through greater collaboration on designations at the UN.....”

Amongst this list Link between Indian Muzahidin (IM) and Terror finance through hawala is already mentioned in Suppl. Charge Sheet<sup>65</sup>. More over in Kashmir Terror Finance matter separatist and secessionist leaders of J & K, including the members/cadres of the Hurriyat Conference, who have been acting in connivance with active militants of proscribed terrorist organizations **Hizb-ul-Mujahideen (HM)**, **Dukhtarane Millat**, **Lashkar-e-Toiba (LeT)** and other terrorist organizations/associations and gangs for raising, receiving and collecting funds by using Hawala as one of the mode was also found<sup>70</sup>. There is arrest of two hawala operators from Muzaffarnagar, UP in case RC-20/2017/NIA/DLI, pertaining to terrorist financing of **Lashkar-e-Taiba [LeT]**<sup>71</sup>. In RC-06/2011/NIA/DLI (Delhi Hawala Channel

Funding Terror in J&K), National Investigation Agency on 20.04.2018 had filed a charge sheet against the accused Shahid Yusuf, a self-styled Supreme Commander of **Hizbul-Mujahiddin (HM)**, a proscribed terrorist organization, active in the state of Jammu and Kashmir for willfully raising, receiving, collecting ‘**terror funds**’ and holding proceeds of terrorism’ for furtherance of terrorist activities<sup>72</sup>. Committee on Estimate (2017-18)<sup>73</sup>; Ministry of Home Affairs on their report had acknowledged hawala as one of the important source of terror funding as “.....On the source of funding for terrorism and unlawful activities in J&K, North East and other parts of country, the **Ministry in the note stated that there are various sources of terror financing, the main ones being counterfeit currency and Hawala transactions.....**” More over in the aspect of J & K Terror Finance case the main objective was for causing disruption in Kashmir Valley by way of pelting the security forces with stones, burning schools, damaging public property and waging war against India. Even **Sahay and Pandya (2017)**<sup>43</sup> had mentioned that the amount paid to every stone pelter for a single incident ranges from Rs. 200 to Rs. 500 of Indian Currency. Role of Pakistan in using social media to instigate terror activity (including the incidents of stone pelting) in Kashmir valley can be referred from the proceeding of Rajya Sabha on 27<sup>th</sup> July 2016<sup>74</sup> and also from the scholarly work of **Genl. Hooda (2018)**<sup>75</sup>.

### **Possible relationship between Rohingya and Islamic Terror outfits with respect to Indian Perspective**

Rohingyas are the illegal migrants in Indian Territory since 2012-13 after the conflict between Rohingyas and Buddhists in Myanmar; more over India is not a signatory of Convention Relating to the Status of Refugees, 1951 and Protocol Relating to the Status of Refugees,

1967 of United Nation. There is also a reference to the arrest of a Rohingya Muslim has been made by the National Investigation Agency from Hyderabad in connection with Burdwan blast case<sup>76</sup>. In January, 2016, the security agencies have busted a module involved in arranging fake/ fraudulently obtained Indian travel documents for Bangladeshis/Rohingyas and arranging visas of Middle-East countries<sup>77</sup>. Even MHA advisory<sup>78</sup> dated 8<sup>th</sup> August 2017 had clearly mentioned-“**2.....Illegal migrants are more vulnerable to getting recruited by terrorist organizations.....**” According to Ashok Sajjanhar (2017)<sup>79</sup> possibility of (i) relationship between ARSA (Arakan Rohingya Salvation Army) with Al Qaeda, Islamic State, Jamaat-ud-Dawa, Lashkar-e-Taiba etc and (ii) Role of ISI to train the Rohingya refugees cannot be ruled out. Observation of Ashok Sajjanhar (2017)<sup>79</sup> can be further reinforced by the reference of sympathy of terror outfits towards Rohingyas, already mentioned in the charge-sheet of National Investigation agency in Boudh Gaya Serial Blast Case<sup>80</sup> and from the affidavit of Govt. of India in Supreme Court, dated 18<sup>th</sup> Sept. 2017<sup>81</sup> where it is clearly mentioned that the *link of section of Rohingyas with the Pakistan based terror outfits and similar organizations operating in other countries and involvement in illegal/ anti-national activities like mobilization of funds through hundi/hawala channels etc (vide para 28 and 29 respectively)*. Even to blame the Union of India under the guise of human rights,

### Terror related cases statistics:

#### State-wise extent of LWE violence (2013- 2017)<sup>83</sup>

State	2013		2014		2015		2016		2017	
	I	D	I	D	I	D	I	D	I	D
Andhra Pradesh	28	7	18	4	35	8	17	6	26	7
Bihar	177	69	163	32	110	17	129	28	99	22
Chhattisgarh	355	111	328	112	466	101	395	107	373	130
Jharkhand	387	152	384	103	310	56	323	85	251	56
M.P.	1	0	3	0	0	0	12	2	3	1

Rohingya infiltrators had claimed atrocities by BSF on them, but in investigation such a claim was found false<sup>82</sup>. **Therefore it can be safely concluded that existence of Rohingyas within Indian Territory is not at-all healthy in terms of internal security aspect.**

### Invocation of provisions of I.P.C & Unlawful Activities (Prevention) Act in Terror Finance cases:-

1. Sec. 120B of I.P.C- Punishment of criminal conspiracy.
2. Sec 121 of I.P.C- Waging, or attempting to wage war, or abetting waging of war against the Government of India.
3. Sec. 124-A of I.P.C- Sedition.

### Relevant Sections of Unlawful Activities (Prevention) Act-

1. Sec. 13. Punishment for unlawful activities.
2. Sec. 16- Punishment for a terrorist act.
3. Sec. 17- Punishment for raising fund for terrorist act.
4. Sec. 18- Punishment for conspiracy, etc.
5. Sec. 20- Punishment for being a member of terrorist gang or organization.
6. Sec. 38- Offence relating to membership of a terrorist organization.
7. Sec. 39- Offence relating to support given to a terrorist organization.
8. Sec.40- Offence of raising fund for a terrorist organization.

State	2013		2014		2015		2016		2017	
	I	D	I	D	I	D	I	D	I	D
Maharashtra	71	19	70	28	55	18	73	23	69	16
Odisha	101	35	103	26	92	28	86	27	81	29
Telangana	8	4	14	5	11	2	7	0	5	2
Uttar Pradesh	0	0	0	0	0	0	0	0	0	0
West Bengal	1	0	0	0	0	0	0	0	0	0
Others	7	0	8	0	10	0	6	0	1	0
<b>Total</b>	<b>1136</b>	<b>397</b>	<b>1091</b>	<b>310</b>	<b>1089</b>	<b>230</b>	<b>1048</b>	<b>278</b>	<b>908</b>	<b>263</b>

I= Incidents, D= Deaths

#### Security Situation in North East Region (2013- 2017)<sup>84</sup>

Year	Incidents	Extremists Arrested	Extremists Killed	Arms Recovered/ Surrendered	SFs Killed	Civilians Killed	Extremists Surrendered	Persons Kidnapped
2013	732	1712	138	1596	18	107	640	307
2014	824	1934	181	1255	20	212	965	369
2015	574	1900	149	897	46	46	143	267
2016	484	1202	87	698	17	48	267	168
2017	308	995	57	432	12	37	130	102

#### Trends of Terrorist Violence in J&K (2013- 2017)<sup>85</sup>

Year	Incidents	SFs Killed	Civilians Killed	Terrorists Killed
2013	170	53	15	67
2014	222	47	28	110
2015	208	39	17	108
2016	322	82	15	150
2017	342	80	40	213

#### Trends of Infiltration Attempts v. Net Infiltration (Estimated) in J & K (2013-2017)<sup>85</sup>

Year	2013	2014	2015	2016	2017
<b>Infiltration Attempts</b>	277	222	121	371	406
<b>Net Infiltration (Estimated)</b>	97	65	33	119	123

Note - SFs stands for Security Forces and LWE stands for Left Wing Extremism.

In case of LWE violence, total number of incidents and deaths has reduced in 2017 than 2016. In our opinion, it is due to the demonetization and limiting personal cash. Even in North-East also positive result of demonetization and personal cash limit was found in 2017 than 2016 with respect to terror activities. But in J&K Infiltration

attempts are having increasing trend from 2015 to 2016 and from 2016 to 2017, during the same time Infiltration Attempts & Net infiltration also increased and in number of terror incidents, slight increase was also observed in 2017 than 2016. This might be due to patronage of terror outfits from the territory of Pakistan (i.e. P.O.K).



### Procedure to cancel bail application matters:

Bail means the release of a person arrested or imprisoned, with or without security for his appearance at a later date. Apex court in **Gudikanti Narasimhulu v. Public Prosecutor**<sup>86</sup> and in **Sanjay Chandra v. Central Bureau of Investigation**<sup>87</sup> held that bail is the rule and jail is the exception. In **Kartar Singh v. State of Punjab**<sup>88</sup>, it was held that when the designated court under TADA refuses bail, it would not take away the power of the High Courts to consider an application for bail under Article 226 of the constitution. In **Pawan Kumar Pandey v. State of UP**<sup>89</sup>, where Allahabad High Court held that if the accused is otherwise entitled to bail, the same should not be refused on the ground of his criminal antecedents. In **Nikesh Tarachand Shah v. U.O.I**<sup>90</sup>, where division bench of apex court had struck down Sec. 45 (1) of PMLA 2002 (i.e. conditions to grant bail) holding it as violative of Articles 14 & 21 of Constitution of India.

But contradiction can also be referred from (i) **Rajesh Ranjan Yadav @ Pappu Yadav v. CBI**<sup>91</sup>, while rejecting the appeal for the bail by the appellant, charged u/s. 302/34/120B of IPC apex court held that an accused lodged in jail (even if he is a Member of Parliament) cannot be granted bail u/s 437, 439 Cr.P.C on the ground of long detention in jail. (ii) **Pramod Kumar Saxena v. Union of India & Others**<sup>92</sup>, Hon'ble Apex Court has held that mere long period of incarceration in jail would not per-se be illegal, if the accused has committed offence, he has to remain behind bars, *as such detention in jail even as under trial prisoner would not be in violation of Article 21 of the Constitution of India.* (iii) Even in **Y.S. Jagan Mohan Reddy v. CBI**<sup>93</sup>, the apex court, while cancelling the application of the appellant for bail observed-<sup>16</sup>. *While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in*

*support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."*

### Grounds to allow bail:

- In **Prahlad Singh Bhati v. State (Govt. of NCT of Delhi)**<sup>94</sup> apex court had fixed the criteria for granting bail as- (i) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations. (ii) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail. (iii) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt, there ought always to be a prima facie satisfaction of the court in support of the charge. (iv) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.
- In **Chaman Lal v. State of U.P.**<sup>95</sup> while granting the bail apex Court has laid down certain factors, namely, the nature of accusation, severity of punishment in case of conviction and the character

of supporting evidence, reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and prima facie satisfaction of the Court in support of the charge which are to be kept in mind.

- Hono'ble Supreme Court in **Dataram Singh v. State of U.P.**<sup>96</sup> had mentioned that the following points should be considered while granting bail-(i) Whether the accused was arrested during investigations when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses; (ii) If the investigating officer does not find it necessary to arrest an accused person during investigation, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed; (iii) Whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the investigating officer; (iv) If an accused is not hiding from the investigating officer or is hiding due to some genuine and expressed fear of being victimized, it would be a factor that a judge would need to consider in an appropriate case; (v). Whether the accused is a first-time offender or has been accused of other offences and if so, the nature of such offences and his or her general conduct; and (vi) The poverty or the deemed indigent status of an accused is also an extremely important factor and even Parliament has taken notice of it by incorporating an Explanation to Section 436 of the Code of Criminal Procedure, 1973.

Therefore, considering the Apex court's observation relating to the grounds to grant bail in **Prahlad Singh Bhati**<sup>94</sup>, **Chaman Lal**<sup>95</sup> and

**Dataram Singh**<sup>96</sup> matter and comparing the facts with the **modus operandi of hawala rackets & purposes of hawala transactions** (Supra) and other judgments<sup>[91, 92 and 93]</sup> the court should not consider the plea of bail of the accused even after filing of charge-sheet but the subject should be in jail custody until the finishing of the trial, otherwise there will be possibility of involvement in fresh terror activity or the suspect may flee the country with the object of escaping trial.

### **Management of Scientific evidence for securing optimum rate of conviction:**

Scientific evidence is such evidence which, generally, never betrays the process of administration of justice, if collected, preserved and analyzed properly. Apex court had mentioned the utility of scientific evidence to counter the problem of hostile witness in several cases<sup>[97, 98]</sup>. Even in **Gajraj v. State (NCT) of Delhi**<sup>99</sup>. The Hono'ble Apex Court held that even if there were serious discrepancies in oral evidence of witness, accused can be convicted on basis of **conclusive scientific evidence**.

Some relevant settled positions of law, laid down by our constitutional courts from time to time, regarding scientific evidence, which are necessary to appreciate the value of scientific evidence against the accused are given below-

1. **Power of Legislature to intercept telephonic calls:** Apex court in **State of Maharashtra v Bharat Shantilal Shah**<sup>100</sup>, while considering the issue whether interception of conversation would cause invasion of an individual's right to privacy or not, the court had held that *legislature has competence to put reasonable restriction on right to privacy by means of telephone call interception*.
2. **A cell phone is a computer-** In **Syed Asifuddin v. State of Andhra Pradesh**<sup>101</sup>, while rejecting the appeal filed by the

appellant u/s. 482 of Cr.P.C, Andhra Pradesh High Court **held that a cell phone is a computer as envisaged under the IT Act, 2000.**

3. **Role of CDR (Call Details Record) in the investigation** - In *State (N.C.T of Delhi) v Navjot Sandhu @ Afsan Guru*<sup>49</sup> the Apex Court held that- “..... **We are, therefore, of the view that the call records are admissible and reliable and rightly made use of by the prosecution.**” Even in *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid and Others v. State of Maharashtra and Others*<sup>102</sup>, link between the terrorists who committed attack on Mumbai, popularly known as Mumbai Terror Attack (M.T.A) or 28/11 incident with their Pakistani gurus were established beyond reasonable doubt with the help of call Details Record.
4. **Evidence of Mobile Tower Location (MTL)** - In *Mohd.Arif @ Ashfaq v. State (N.C.T of Delhi)*<sup>48</sup> where the *Apex court had accepted Mobile Tower Location (M.T.L) as accepted evidence.*
5. **Identification of voice recovered by means of Interception of Telephonic Calls:** In *CBI v. Abdul Karim Ladsab Telgi*<sup>103</sup> Bombay High Court has laid down that **taking a voice sample of an accused as sample for comparing and identifying it with a tape recorded or telephonic conversation is not violative of the fundamental rights of the accused guaranteed by Art. 20(3) of the Constitution.** The same view was adopted by Allahabad High Court in *Ritesh Sinha v. State of U.P.*<sup>104</sup>.
6. **Evidentiary value of tape recorded voice**<sup>49, 105 and 106</sup>: Tape recorded conversation is **admissible** in evidence provided that the conversation is relevant

to the matters in issue, that there is identification of the voice and that the accuracy of the conversation is proved by eliminating the possibility of erasing the tape record. *A contemporaneous tape record of a relevant conversation is a relevant fact and is admissible u/s. 7 of the Evidence Act.* It is also comparable to a photograph of a relevant incident. *A tape recorded statement is admissible in evidence subject to the following conditions:*

- a. The voice of the speaker must be identified by the maker of the record or other persons recognizing his voice. Where the maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.
  - b. The accuracy of the tape recorded statement must be proved by the maker of the record by satisfactory evidence: direct or circumstantial.
  - c. Possibility of tampering with or erasure of any part of the tape-recorded statement must be totally excluded.
  - d. The tape recorded statement must be relevant.
  - e. The recorded cassette must be sealed and kept in a safe or official custody.
  - f. The voice of the particular speaker must be clearly audible and not be lost or distorted by other sounds or disturbances
7. **Admissibility of transcription of a recorded conversation** - In *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*<sup>107</sup>, the Hono'ble Apex Court while considering the admissibility of transcription of recorded conversation

in a case where the recording has been translated and the same has been verified by the panch witnesses., the *Hon 'ble Supreme Court held that as the voice recorder had itself not subjected to analysis, there is no point in placing reliance on the translated version. Without source, there is no authenticity for the translation. Source and authenticity are the two key factors for electronic evidence.*

8. **Communication through e-mail** - In **Tomso Bruno and Anr. v. State of U.P.**<sup>108</sup>, apex court held that the *computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by section 65 B of the Evidence Act.* Moreover Calcutta High Court in **Abdul Rahaman Kunji v. State of West Bengal**<sup>109</sup> while deciding the admissibility of email *held that an email downloaded and printed from the email account of the person can be proved by virtue of Section 65B r/w Section 88A of Evidence Act. The testimony of the witness to carry out such procedure to download and print the same is sufficient to prove the electronic communication.* In **Babu Ram Aggarwal & Anr. v. Krishan Kumar Bhatnagar & Ors.**<sup>110</sup> u/s. 65B Delhi High Court held that *it has to be proved that the computer during the relevant period was in the lawful control of the person proving the email.*
9. **Evidence relating to storage of electronic evidence-** In **Dharambir v. Central Bureau of Investigation**<sup>111</sup>, where Delhi High Court held that a **hard disc** is a document within meaning of Section 3 of Evidence Act. Again in **Shamsher Singh Verma v. State of Haryana**<sup>112</sup> apex court held that **compact disc (CD) is a document.**
10. **Evidence regarding movement of the suspect** - In **Tomaso Bruno & Anr v. State of U.P.**<sup>108</sup> apex court held that **CCTV footage is the best evidence.** In **Kishan Tripathi v. The State**<sup>113</sup>, where it was held that Original Hard Disk containing CCTV Footage is a primary evidence u/s 62 Indian Evidence Act.
11. **Communication through social media** - In **Tata Sons Limited & Ors v. John Doe (S)**<sup>114</sup> wherein Rajiv Sahai Endlaw J. of Delhi High Court had permitted the plaintiff to serve the summons on one of the defendants through Whatsapp, text message and e-mail. Use of social media by terror organizations (an ISIS/ ISIL activist) can be referred from the case of **Mehid Masroor Biswas v. State of Karnataka**<sup>115</sup> while rejecting the appeal of the appellant for bail, L. Narayana Swamy, J. of Karnataka High Court held that *promoting terrorist organization through social media, waging war against nation is prejudicial to safety and security of nation.* Furthermore to create hatred and excite disaffection against the State Government, among the police force and the public at large by using social media can be exemplified from **Shashidhar Venugopal Naidu v. State of Karnataka**<sup>116</sup>.
12. **Specific compliance required to be fulfilled relating to Electronic evidence** - In **Anvar P.V. v. P.K. Basheer**<sup>117</sup> - Three-Judge Bench of the Apex court held that **in the absence of certificate u/s 65-B of the Evidence Act, a secondary evidence of electronic records like CD, VCD, Chip etc. is not admissible in evidence.** Delhi High Court in **Kundan Singh v. The State**<sup>118</sup>, held- A certificate u/s 65B can be filed even thereafter, and need not be filed alongside. The witness who had tendered the electronic record in evidence

can be recalled u/s 311 of the Cr.P.C. for the purpose of producing the certificate. The underlying basis of this view is that initial lapse on the part of the party should not detain the court from having the required evidence before it, which will assist the court in discovery of the truth. The court shall seek all evidence before it which is essential for a just decision of the case. All endeavour is to be made to decide the case on merits, rather than exclude what may be important evidence on technical considerations. **Rajasthan High Court in Paras Jain and Ors. v. State of Rajasthan**<sup>119</sup> has held that *non filing of certificate u/s 65B Evidence Act is not an incurable irregularity and can be rectified later on*. In **Shafhi Mohammad v. State of Himachal Pradesh**<sup>120</sup> apex court division bench comprising Adarsh Kumar Goel and U. U. Lalit JJ. held that—“14.....In a case where electronic evidence is produced by a party who is not in possession of a device, applicability of Sections 63 and 65 of the Evidence Act cannot be held to be excluded. In such case, procedure under the said Sections can certainly be invoked. If this is not so permitted, it will be denial of justice to the person who is in possession of authentic evidence/witness but on account of manner of proving, such 9 document is kept out of consideration by the court in absence of certificate under Section 65B(4) of the Evidence Act, which party producing cannot possibly secure. Thus, requirement of certificate under Section 65B (h) is not always mandatory....”

13. In **Smt. Selvi v. State of Karnataka**<sup>121</sup> where apex court held that no individual should be forcibly subjected to any of the techniques like Narco-analysis, Polygraph (lie Detector) test and Brain Electrical

Activation Profile (BEAP) test, whether in the context of investigation in criminal cases or otherwise, Doing so would amount to an unwarranted intrusion into personal liberty i.e. violation of Art. 20 (3) and Art. 21 of Constitution of India

### **Important questions need to be answered during investigation with supporting evidence**

To ensure completion of an investigation in a case of terror finance through hawala channel in a highly professional manner and expeditiously, and in order to **enhance chances of securing conviction** in the court, the Investigation Officer has to prepare himself very thoroughly with the type of information essentially required to be brought on record in the case diary. ***An illustrative list of all such questions as shall get him the much needed information to prepare a failsafe case against the accused is given below-***

1. Who are the arrested persons? What are their addresses and nationalities?
2. Whether the accused/(s) had any sympathy towards any radical group or not? If yes then how such sympathy developed? Whether such sympathy motivated the accused/(s) to enter into a criminal conspiracy?
3. What are the incriminating articles seized from the arrested person/(s) and where the items were seized from ?
4. Who supplied the incriminating articles? Who is/are the end receiver/(s) of such incriminating articles?
5. If the subject/ (s) had previous criminal history, then what type of criminal activity?
6. Whether he/ they was/ were prosecuted / convicted for the previous criminal history or not?

7. With whom he/ they was/ were in contact? What was the objective for such contact?
8. Whether any change was observed in his/ her financial capacity by his/ her neighbours or not?
9. What is his official source of income?
10. Whether bank statement of the arrested person/ (s) shows evidence of suspected transaction or not? If yes then what are the details?
11. Whether his/ her/ their life style is/ are giving any clue regarding his/ her/ their excess income than his/ her/ their official source of income? Is there any evidence relating to Suspected Transaction Report (STR) in the bank A/C of the arrested person/ (S)
12. Is he/ she inclined to any specific ultra regions group or not? Is there any evidence regarding the acquaintances of the subject/ (s) with terror outfits or not? Whether the accused/ (s) has/ have any direct or indirect link with external agencies of inimical countries? If yes then how such link was established? Whether the subject/ (s) had received any political patronage or not? If yes then what was / were the reason(s) for the patronage?
13. Is/ are he/ she/ they tech savvy or not?
14. If yes then, is/ are he/she/ they preferred end to end encrypted communication through social media or not?
15. If yes then why he/she/they preferred end to end encrypted communication through social media?
16. If any additional media device seized from the suspect/(s) then for what reason he/she/they kept such thing/(s)?
17. What about the Call Details Record (C.D.R) of the arrested person/ (s)?
18. Whether they had any telephone call to any foreign country or not?
19. If they made such a call, what purpose they did so far?
20. Is there any evidence regarding a telephone discussion or discussion in social media regarding placing of demand for supply of money through hawala channel coupled with mode of supply?
21. Is there any evidence regarding mobile tower location of the arrested persons in sensitive areas of the international border famous for smuggling or not?
22. Whether the subject/ (s) had visited any foreign country or not? If yes, then what was/ were the purpose/ (s)? Who did the subject/ (s) meet there?
23. Who are giving support to them?

### **Towards preventive measures:**

Announcement of demonetization, followed by limiting personal case are the most important steps adopted by the U.O.I for the purpose of controlling terror finance. The result of such an act can be reflected from the following tables-

**Table- A<sup>122</sup>**

Sl. No	Heading	1 <sup>st</sup> November 2015 to 31 <sup>st</sup> October 2016	1 <sup>st</sup> November 2016 to 31 <sup>st</sup> October 2017
1	Number of terror incidents in the hinterland of the country	01	Nil
2	Number of terror incidents in Jammu and Kashmir	311	341
3	Number of LWE related incidents	1078	857
4	Number of militancy related incidents in the North-East.	507	323

### No. of Stone Pelting Incidents in J & K (2015-17)<sup>123</sup>

Year	2015	2016	2017
Number of Stone Pelting Incidents in J & K on SFs	730	2808	1261

Therefore, it can be seen that demonetization, and consequent limiting of personal cash reflected a significant effect on overall terror related aspect in our country during the initial phase when cash supply got squeezed very significantly. However, it is also worth noting now that with the achievement of currency level to pre-demonetisation level, the incidents of stone pelting have also started rising in the valley. It strongly suggests existence of a positive correlation between supplies of excess cash, as part of the cash supply from the otherwise lawful channels gets diverted to Hawala channels, through the modus operandi alluded to above, for delivery to outfits bent upon terror funding directly and indirectly. Hence, movement of cash from one region to another region in unusual quantity also needs to be monitored by the enforcement agencies to ensure its non diversion to hawal channels.

#### Conclusion:

Hawala/ hundi is one of the **ancient banking system** but in course of time its link with bad (**Anti social/national**) elements started taking firm roots that, in turn, pose formidable challenges before the law enforcement agencies to control such unlawful activities. There are reference of use of hawala channel by International Terrorist groups and terror outfits operating within the country, which confirms the relation of Hawala/Hundi with anti social/ anti national elements posing threat for internal security. Announcement of demonetization coupled with limiting personal cash had put a big crunch on hawala, therefore, oxygen supply (ready and unaccounted cash) to terror incidents had reduced, which can be referred from the

tables [121, 122]. It is also necessary that our prosecutors should seriously and convincingly impress upon the judiciary not to grant bail easily after the submission of charge-sheet, there might be the chance either the accused person/(s) will be engaged in further terror activities or the subject/(s) will flow away from the country. Apart from expectation from judiciary it is necessary to adopt **multi pronged approach** to tackling the same among all the enforcement agencies assigned to prevent and act against hawala operators in order to generate synergy and consequent improvement in the effectiveness of their concerted efforts. This multi pronged approach may consist of components like-

1. **Bilateral Int. sharing** regarding organized criminal gangs with the countries having friendly relations can also act as a deterrent against the involvement of hawala channels in TF.
2. **Surveillance on social media-** It is one of the important factors which will help the investigating agencies to control the terror related incidents, as there are academic references of use of social media by terror outfits<sup>75</sup>, there are judicial reference of use of social media to spread terror activity<sup>115</sup> and to create hatred and excite disaffection against the State Government, among the police force and the public at large by using social media<sup>116</sup>. Even Committee on Estimate (2017-18)<sup>73</sup>, Ministry of Home Affairs, Lok Sabha also acknowledged the misuse of internet and social media for spreading radicalization among the young mass with extreme annihilation. The basic reason for using social media like whatsapp by the terror outfits for communication is “End to End

Encryption” i.e. all the conversation will convert into codes. Therefore it (End to End Encryption) will also help hawala operators for safe communication mode for transaction. Scholarly academic work of Richard A. Posner (2008)<sup>124</sup> and Julie E Cohen (2013)<sup>124</sup> had discussed the use of utility of privacy in internet domain by terror elements. Apex court in **Justice K.S. Puttaswamy (Retd.) v. Union of India**<sup>126</sup> while upholding Right to Privacy as constitutional right apex court observed that National Security will prevail over Right to privacy (vide para 479).

3. **Monitoring on** (i) source of fund and (ii) utilization of received fund by NGO which are receiving foreign aid is also helpful.
4. Tab on infiltration of illegal migrants across the border.
5. **Surveillance on bulk cash transport-** There are references of arrest of individual entity<sup>127</sup> arrest of group of persons<sup>128</sup> with huge cash to facilitate terror activities and arrest of maoist cadres<sup>129</sup> with huge cash, gold bars and other incriminating articles, therefore law enforcing agencies should keep vigilant observation on unusual bulk cash transport.
6. **Legal sanctity to undercover ops** can help in better prosecution of terror suspects with strong evidence being collected and brought against the criminals in the court as hawala transactions and networks are essentially shrouded under many layers of secrecy that will stonewall the progress of investigation in the normal manner it is currently allowed under the CrPC and other extant laws. Keeping in view frequent references of use of hawala channels by the terror outfits to sponsor and sustain very many unlawful activities posing formidable challenge to internal security through illegal activities

like Arms and Narcotics trafficking, trafficking in human beings etc, it will be very gainful to adopt **Undercover Operations** process to counteract such challenges effectively by incorporating enabling provisions in the extant laws. It is worth mentioning that countries like the U. S. A.<sup>130</sup>, England and Wales<sup>131</sup> have accorded legal recognition to undercover ops by the enforcement agencies, and the same has been found to be quite effective in dealing with elements indulging in criminal activities of the nature that pose a grave threat to the internal security of the country.

7. **Sec. 39 of UAPA-** Offence relating to support given to a terrorist organization, which is punishable with imprisonment for a term not exceeding ten years, or with fine, or with both *need to be converted to life imprisonment or death sentence to enhance its deterrence value.*

It is hoped that with a more judicious use of resources, close cooperation and coordination among different enforcement agencies and value addition in the human resources through useful capacity building programmes, the steps that have since been initiated in our country, it will be possible to counteract the menace of hawala operations more efficiently and effectively.

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during 2008 which is more than 100 per cent increase compared with 2007, but that rate was an incident and may not correlate with cybercrimes rates. Cyber Security Malaysia said, the number is not from the rate of cybercrimes analysis but only from the complaint they received. Furthermore, they said, they cannot analyze the actual statistic because police, Bank Negara, Securities Commission and Malaysian Communications and Multimedia Commission (MCMC) have their own statistics and they have not been able to collate these statistics to see the clearer image about cybercrimes.

There are many factors that cause the statistic of cybercrime which cannot be detected or analyzed. First, the aggressive development of today's technology making this crime is very difficult to be detected. Second, law enforcement officials lack necessary technical expertise to deal with a criminal activity. Third, once criminal activity has been detected, many businessmen are reluctant to lodge a report because they are afraid of adverse publicity, embarrassment, loss of public confidence, investor loss, or economic repercussions. Due to these factors, the actual number of cybercrime cases and the statistic of cybercrime in our country cannot be recorded accurately.

There are three major categories of cybercrimes which are crimes against the person, property and the government. The first category of cybercrimes is cybercrime against a person. Cybercrime against a person includes harassment via email or cyber-stalking. Cyber Stalking means following the moves of an individual's activity over internet. It can be done with the help of many protocols available such as e-mail, chat rooms, user net groups while, harassment can be included sexual, racial, religious, or others. This crime usually happens to women and teenagers. There is a case which happened to a girl in Ahmedabad, Gujarat India. She was lured to a private place through cyber chat by a

man with his friends, who attempted to rape her. Luckily she was rescued by a passerby who heard her piercing cries.

Second category of cybercrimes is that of cybercrimes against all forms of property. These crimes include computer vandalism by transmission of harmful programmes to other computers through internet. The other example is a cybercriminal can take the contents of an individual bank account. One widespread method of getting people's bank account details is the money transfer email scam. People receive emails requesting help with transferring funds from another country. Hacking into company websites is property trespass, and stealing information is property theft. Internet time theft is also one of the cybercrimes against property. It is done by an authorized person in the usage of the internet hours which is actually paid by another person.

The third category of cybercrimes is against governments. Cyber terrorism is the most serious type of crime in this category. Hacking into a government website, particularly the military sites, is one manifestation of cyber terrorism. The example of cybercrime against government is web jacking. By web jacking, hackers gain access to and control over the website of another, they even change the content of website for fulfilling a political objective or for money.

Cybercrimes are everywhere and can happen to anyone, at any time. Some examples of cybercrime are identifying theft, storing illegal information, computer viruses, and fraud. We will discuss each example in detail.

First, we will talk about identify theft. What is actually identify theft? Identity theft, also known as ID theft, is a crime in which a criminal obtains key pieces of personal information, such as Social Security or driver's license numbers, in order to pose as someone else. The information can be used to obtain credit, merchandise, and

services using the victims' name. There are two main types of identity theft named account takeover and true name theft. Account takeover identity theft refers to the type of situation where an imposter uses the stolen personal information to gain access to the person's existing accounts. True name identity theft means that the thief uses personal information to open new accounts. The thief might open a new credit card account, establish a cellular phone service, or open a new checking account in order to obtain blank checks. To prevent, don't keep all of your identification and financial information at one place and never write down your PIN (personal identification numbers) anywhere. Besides, never respond to emails or snail mail that requests personal information such as passwords or PIN numbers.

Storing illegal information is also considered as a cybercrime. Criminals often use the Internet to obtain and transfer illegal images. What do we mean by illegal images on the web? This means images and in some cases text, which you see or may be inadvertently exposed to on a website, which contains any of the following:

- Child abuse images (also known as 'child pornography').
- Criminally obscene content which means images featuring acts of extreme and violent sexual activity.

Those who come across this type of crime, should not just ignore it they must report it. It is important because reports from the public help the IWF (Internet Watch Foundation) to remove the images from the internet and to support the investigative processes which could bring those responsible to justice. Child sexual abuse images record the real abuse of a child and your reports to the IWF might help the authorities to trace and rescue a young victim from further exploitation.

Next is computer virus. A computer virus is a small software program that spreads from one computer to another computer and that

interferes with computer operation. A computer virus may corrupt or delete data on a computer, use an e-mail program to spread the virus to other computers, or even delete everything on the hard disk. Computer viruses are most easily spread by attachments in e-mail messages or by instant messaging messages. Therefore, you must never open an e-mail attachment unless you know who sent the message or unless you are expecting the e-mail attachment. Computer viruses can be disguised as attachments of funny images, greeting cards, or audio and video files. Computer viruses also spread by using downloads on the Internet. Computer viruses can be hidden in pirated software or in other files or programs that you may download.

Last but not least, fraud. Fraud is a deliberate misrepresentation which causes another person to suffer damages. Fraud can be committed through many media, including mail, wire, phone, and the Internet (computer crime and Internet fraud). Several types of criminal fraud include false advertising, advance-fee fraud, bankruptcy fraud, etc. The best way to prevent fraud in both personal and organizational finances is to develop processes that protect sensitive information, enforce accountability, and consistently review financial records.

## **The Different Types of Cyber Crimes**

Internet is growing today but many people have become victims of hacking, theft, cyber stalking, Child soliciting etc. which are various types of cybercrimes. Cybercrime is committed over the internet. Lawmakers, law enforcement, and individuals need to know how to protect themselves and the people for which they are responsible. The following are different types of Cybercrimes.

### **1. Hacking**

This type of crime is done when a person's computer broken into by an unauthorized users.



So, the personal and sensitive information is stolen by the unauthorized person. The criminal uses a variety of software to hack a person's computer irrespective of its location.

## **2. Theft**

When a person downloads music, movie, video, eBook, games and various software (software piracy) by violating copyrights –this is one of the cyber crimes.

## **3. Electronic Fund Transfer Crime**

In this crime, a criminal accesses information about a person's bank account, credit cards, social security, debit card and other sensitive information, which results in major financial losses to the person and even spoils the person's credit history. This crime happens in cash transactions of e-marketing and other banking services.

## **4. Malicious software**

This internet-based software or programs is used to disrupt a network. This software not only steals sensitive information/data but also causes damage to another software present in the system.

## **5. Cyber Stalking**

This is a kind of online harassment where crime is used to send various illegal online messages or emails. So, the targeted persons' lives are more miserable.

## **6. Child soliciting and abuse**

In this crime, criminals solicit minors via chat room for the purpose of child pornography.

## **7. Electronic vandalism, terrorism and extortion**

A number of individual and protest groups have hacked the official web pages of various governmental and commercial organizations even the defense information of a country.

## **8. Telemarketing Fraud**

Cyberspace now abounds with a variety of

investment opportunities such as stocks, bonds, sale of items, online lotteries etc.

## **9. Denial-of-service Attack**

Denial-of-service is the act by which a user of any website or service is denied the use of service of the website. So, this crime targets the web server of the website and flows a large number of requests to that server. This causes a use of maximum bandwidth of the website and the targeted website slows down or is not available for some time.

## **10. Data Diddling**

It is an unauthorized alteration of data. This is done by virus programs that change the system's data which is entered by the user.

## **11. Spamming and Email Bombing**

Spam (junk mail) is a message sent by the criminal with a web link or some business proposal. Clicking in this link results in installing a malware into our system or redirecting to a phishing website.

Email Bombing is a technique where criminal sends a huge number of emails to target address. So, the target email address or mail server is crashed.

## **Those at risk for Cybercrime**

Everyone who uses a computer is at the risk of becoming a victim of a cybercrime if they are not careful. There are many ways to protect yourself, but the best defense is to always be on the lookout and have your eyes wide open. Installing an anti-virus on the computer, along with spyware and malware is also a step that must be taken to stay protected.

In many cases of cybercrime the perpetrator of the crime is never caught. This happens in less than 20% of all cases. Technology is just far too advanced and the crimes are taking place so rapidly that this is almost impossible.

### **Ways to fight cybercrime by individuals.**

To fight back the individual and businessman should be proactive, not reactive. We do not have to remain at the receiving end of crime forever. The fight against cybercrime starts in our very own home. We should not reply to any e-mail from unknown persons, we should learn to report spam mails to the e-mail servers. We should not upload our personal information on social networking sites or our account details on other such sites. Also the use of antivirus softwares can be a great help to fight against viruses and worms.

### **Ways to fight cybercrime by government**

The author of the "Lovebug" virus remains free because his nation did not have cybercrime laws. The "AnnaKournikova" virus caused billions of dollars in damage, but the individual who distributed it received only 150 hours of community service as a penalty. Cybercrime is not "armed robbery", not "pen and paper crime" and should not be handled as such. Fighting Cybercrime requires intelligent knowledge and that has to be IT intelligence. What I mean is this, men of the regular Police force should not be allowed to investigate crimes committed over the internet. IT experts should be recruited into law enforcement agencies to assist in the fight. At this hour when cybercrime is growing by leaps and bounds with growing technology, the government needs to strengthen criminal penalties against computer crimes; work to harmonize laws against cybercrime internationally; and improve coordination among law enforcement authorities in different jurisdictions.

### **Conclusion**

There will always be new and unexpected challenges to stay ahead of cyber criminals and

cyber terrorists but we can win only through partnership and collaboration between both individuals and government. There is much we can do to ensure a safe, secure and trustworthy computing environment. It is crucial not only to our national sense of well-being, but also to our national security and economy.

### **Staying Safe Against Cybercrime**

Cybercrime is an increasing concern in the www. World. Cybercrime is something that could affect us all, although still undefined in any constitutional act. Cybercrime is any type of crime that occurs over the computer or by electronic means. The victim does not even have to know the perpetrator for a crime to be committed. This includes the perpetration of crimes as well as actually committing those crimes or targeting someone in an attempt to commit a crime. Every single day there seems to be a new way to commit cybercrime and thousands of unsuspecting people are becoming victims.

### **Types of Cybercrime**

There are many different types of cybercrimes that could be committed. Among them pornography is among one of the worst. Oftentimes it is not just pornography but what that leads to. This includes prostitution, drug activity and crimes against children. Cyber stalking is another crime that could result, as well as identity theft and money laundering or phishing. There are many types of crimes out there, each bringing many consequences with it. Some of the crimes take control over your computer system or invade it with a virus. Other scams steal your identity or your credit card information. There are just so many ways by which cybercrime can be committed.

**Conclusion**

It is very scary to think that you could be the victim of a crime over the internet but it is certainly a possibility and one that increases in likeness on a daily basis. Cybercrimes are taking place in the millions every year and that is an

alarming number. There are many different types of crimes being committed and it is up to each person to protect themselves to the best of their ability. It is the only way to fight back against this crime.

# Revisiting Police Social Work in India: An Agenda of Human Rights

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## Abstract

The present paper explores police social work practice in India. It reviews traditional welfare approach of social work profession and contemporary rights based approach to police setting. Experiences and studies indicate that police often face an allegation of violation of human rights while dealing with people in conflict with law. As a matter of fact, it undermines inhumane working and living conditions of police personnel at cutting edge level. Hence, the paper argues that human rights articulated in the UDHR provides space for police social work advocacy for dimensions of human rights in India.

## Keywords:

Social Work, Police Social Work, Human Rights, India

## Introduction

In the contemporary time, policing is a complex task to handle with the increasing crime and conflict, decreasing conviction or punishment to the potential criminals who can manage bail easily and reinforcing insecurity of children, women and weaker sections of society. To do so, the police are constantly working hard day and night, using their all tactics, information, caliber and latest technology, however, the situation is not up to the mark. This means small leak can lead to disaster, violence and issues of law & order and public order eventually. On the other hand, round the clock duty, frequent transfer, political interference in day-to-day activities and unwritten orders from high-ups make the situation worse for those who feel that their human rights are neglected or ignored while overemphasized human rights of accused are (who already violated other's right by one or

the other way (Gahlawat, 2014 and Kaur, 2014, Tondon, 2007).

## Social Work and Human Rights: Interlinked

According to the International federation of Social Worker (2014) "Social work is a practice-based profession and an academic discipline that promotes social change and development, social cohesion, empowerment and liberation of people." Principles of social justice, human rights, collective responsibility and respect for diversities are central to social work. Underpinned by theories of social work, social sciences, humanities and indigenous knowledge, social work engages people and structures to address life challenges and enhance well being. On the International level, social workers have embraced the concept of human rights as a

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## Author Intro

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key component in their profession. Thus, the philosophy of Human rights occupies a central role in the social work profession, both in the United States and elsewhere, social workers, therefore, could benefit from a better understanding of human rights and the relationship of those rights to the profession. In recent policy statement, the National Association of Social Workers( 2000) has taken efforts to link human rights with the social work profession. Since Human Rights and social work are natural allies, social workers need to be aware of this conceptual link and the power of working in concert with human rights organizations and activists throughout the world. Hence, social workers have expressed the need to establish social work as a human rights profession and integrate human rights into social work teaching, research, and practice (Reichert, 2003).

### **What is Police Social Work?**

Contextualizing Police social work Internationally it is defined as 'professional social work practice within police station houses, court houses and jail setting to provide a variety of social services to victims of crime, people accused of crimes and their families. Some workers also counsel police officers and members of their families under job related stresses. They sometimes act as advocates and public relations specialists for police departments and help in mediation with various community groups. A major activity is helping to resolve domestic troubles for which the police are often called(Barker 1998 cited in Sinha, p.97). Police social workers are professionally trained social workers or individuals with related academic degrees employed within police departments or social service agencies who receive referrals primarily from police officers. Their primary functions are to provide direct services such as crisis counseling and mediation to individuals

and families experiencing social problems such as mental illness, alcohol and substance use and abuse, domestic violence, and child abuse, among others. Additional functions of police social workers include training police officers in stress management, mental illness, substance abuse, domestic violence, and child abuse; providing consultation to police officers; and counseling police officers and their families (Patterson, 2013)

### **Police Social Work Practice in India**

The Tata Institute of Social Sciences (TISS) started in 1936 as the first South Asian Institution for professional social work education in India. In post independence era, the need for training and preparing competent and committed professionals to work in the field of criminal justice, human rights, police and corrections; undertake research and documentation for dissemination of knowledge in the etiology of crime and social reintegration of crime affected persons & groups; and reach out to the larger community through field action projects and extension, at the local, regional, national and International levels emerged, which paved the way for social work education in the field. The specialization in the social work education in India focuses on providing a framework for studying criminology, defining crime and its social construction, criminal laws and ethical issues that confront the field (Raghavan, 2012; Jaswal and Pandya, 2015 ). The focus is also to map the nature of victimization and controlling crime as well as bringing accused to the justice process. So, the social work has to work with each components of criminal justice such as police, prosecution, parole, probation, prison and judiciary. The domain of trained social work practitioner with police system providing services to the victims or needy population includes;

1. Guidance and Counseling;
2. Family Support (including police families);
3. Referral Services;
4. Social Investigation;
5. Rescue and Rehabilitation;
6. Crisis Management;
7. Crime Prevention etc (Prayas,2012; Sinha 2012).

### **Scope of Police Social Work in India: Human Rights Issues**

Police deal people on behalf of the State and put them into the state custody for prevention of crime and maintaining law & order. This way, police intervention demands deprivation of liberty and freedom. In this sense, police are concerned with human rights. Here, social work is inextricably linked to need based intervention and can look into check and balance of human rights violation in police setting. Thus, the role of social workers is significant for protection and promotion of human rights in the development of democracy and transforming democratic institutions in the country like India where political institution of police was created by colonial government through enactment of police Act, 1861.

From the medieval to contemporary time, Indian Police have been facing the human rights issues pertaining to the illegal arrest and arbitrary detention, custodial torture and cruel inhuman

treatment in the custody of police etc. Way back, the Torture Commission (1855) observed “the alleged use of torture in extracting confessions in police cases” (MADRAS, 1855, p. 3). After Independence, National Police Commission (NPC) found that nearly 60% of total arrest made by police are unjustified or unnecessary, which has 43% on extra burden on jails or prisons (Third Report of National Police Commission, 1981). Recent years have witnessed the debate on police reform in many fora, Government<sup>1</sup> and Non-governmental organizations (NGOs)<sup>2</sup> have addressed the issue of human rights concerned with accused in custody who demand right to bail out from police station itself in bailable cases, protection of victims and witnesses in justice process as well as community’s right to peace and development in social process. Many attempts have been made and were made in the past by introducing innovative ideas to make police as service oriented to citizen rather force through community policing, police -public interface and people friendly policing and even smart policing recently, However all these efforts could not reap the real benefits due to not being taken into consideration for institutionalizing these into reality. The piecemeal approach cannot be sustained in producing desired results. For example, the New Police Acts<sup>3</sup> initiated by state governments have not subscribed the idea of community policing within legal framework and also no state has accepted police reforms in toto.

\* Government of India appointed Ribeiro Committee (1998-99), Padmanabhaiah Committee on Police Reforms (2000), Committee on Reform on Criminal Justice System ( 2003), Committee on New Police Act, 2005 Committee on Draft National Policy of Criminal Justice Policy (2007) and Supreme Court Judgment on Prakash Sigh Vs. Union of India & Others (Writ Petition (civil) 310 of 1996) and Second Administrative Commission on ‘Public Order (2007)

Non-Government Organizations (Commonwealth Human Rights Initiatives, People Union for Civil Liberties, People Union for Democratic Rights, Asian Centre for Human Rights, Amnesty International India, South Asian Documentation Center and Human Rights Advocacy and Research foundation and Human Rights Law Network are constantly engaged their efforts for police reform in India)

Assam Police Act, 2007, Bihar Police Act, 2007, Chhattishgarh Police Act, 2007, Delhi Police Amendment Bill, 2010, Goa Police Bill, 2008, Karnataka Police Draft Act, 2007, Kerala Police Draft Act, 2008, Gujarat Police Act, 2007, Haryana Police Act, 2007, Himanchal Police Act, 2007, Punjab Police Act, 2007, Rajasthan Police Act, 2007, Sikkim Police Act, 2007, Tamil Nadu Police Draft Bill, 2008, West Bengal Police Draft Act, 2007, Tripura Police Act, 2007, Uttarakhand Police Act, 2007

## Emerging Models

Since last decade, the police reforms have got momentum after apex court judgment which has generated reform process by combined efforts of government and civil society engagement. As a result, new police acts came into existence, new mechanism was established in some of the states and also new methodology of working evolved in few places. However, a comprehensive reform in the country in a uniform way is the need of the hour. Even the political power structure is not prepared to leave the clutch of the police control for its vested interest in the development of politics through interference of the police work. Nevertheless, new avenues have opened up by the current exercise of relating police reform with police social work in India. These can be summarized as;

1. Community Justice Model;
2. Custodial Justice Model; and
3. Social Justice Model

### 1. Community Justice Model

Community justice broadly refers to all variants of crime prevention and justice activities that explicitly include the community in their processes and set the enhancement of community's quality of life as a goal. These approaches share a common core in that they address community level outcomes by focusing on short and long term problem solving, restoring victims and communities, strengthening normative standards, and reintegrating offenders. The concept of community justice can be seen as a challenge to traditional criminal justice practices and concepts that draw distinct boundaries between the role of state and the role of communities in the justice process. In a community justice model, priority is given to the community enhancing its responsibility for social control while building its capacity to achieve this and other outcomes relevant to

enhance the quality of community life. Thus, community justice focuses on promoting public safety and the quality of community life. The community justice deals with the enhancement of community living, especially by reducing the inequalities of ghetto life, the indignities of disorder, the agony of criminal victimization, and the paralysis of fear. Since community policing also visualizes same philosophy, it is closely linked to community justice. Thus, Community policing could be theorized in the context of community justice ( David and Todd (2000).

#### 1.1 Experiences of Community Policing

In independent India, the law and order was made a state subject under the Constitution and some states have implemented the community policing in their respective states. They are known by different names as;

- Village Resistance Group in West Bengal
- Village Defense Parties in Karnataka
- *Gram Rakshak Dal* in Gujarat
- Janamaithri Suraksha Padhathi in Kerala
- Friends of Police Movement (FOP), Ramnad district, Tamil Nadu.
- Parivar Paramarsh Kendra, Raigarh district, Madhya Pradesh.
- Community Liaison Groups, Uttarakhand.
- Trichy community policing, Trichy district, Tamil Nadu.
- Gram/Nagar Raksha Samiti, Rajnandgaon, Chhattisgarh.
- Mohalla Committee in Maharashtra

However, community policing has lost its relevance due to not being institutionalized by state governments in their police reform initiatives including new police acts in different states in recent years. The Police social work practice can take up the issue of community policing for reviving its existence and relevance in shaping democratic policing including the work involved to mobilize community resources including motivating the citizenry, media(social

media) and community social responsibility from industry-community interface. Community policing was proved successful in its efforts to resolve conflict and maintain peace at the per-litigation phase through ADR (alternative dispute Resolution mechanisms like mediation, arbitration and negotiation) to reduce the pending in court. With the help of community policing, the use of social media for prevention of crime and protection of victims and witnesses might be done effectively (TISS, 2013).

## 2.2 Experiment of Community Layering

The police social work can start working with low income groups or vulnerable and weaker sections of society by providing them knowledge base or taking up their cause for social justice. They can also train the youths in community who have a passion for working with law and justice. The police social worker can impart training especially to women from lower economic background to be part of Para-legal workers. The training will also help them in understanding their role and responsibilities in the field of legal literacy (including legal aid to the person in crisis) and access to justice at different level of justice process but the workers (bonded and child labor) are facing exploitations at the hands of employer from unorganized sectors. Moreover, the women in distress or a farmer in agrarian crisis facing stress due to debt burden is prone to suicidal tendencies, which has become a problem of law and order in community.

The police social worker can also take initiative in the community awareness campaign for mandatory registration of crime incidents/accidents which ensures victims' justice. As Non-registration of crime is a serious problem in our country(India) and elsewhere, Raghvan in his study (2010) found various factors responsible for non-registration of crime are (a) seriousness of offenses; (b) corruption; (c) family conflicts; (d) lack of community support; (e) Political Pressure; (f) Police biases due to caste, class,

gender as well as other reasons etc. In this context, the recent judgment of Supreme Court (Lalita Kumari Vs Government of U.P. (W.P. CrI No.68/2008 SCC) made it mandatory that each and every incident or accidents pertaining to crime must be reported to the police. Failure to do so, the legal action may be initiated against the reporting officer. Considering the highest Court verdict, the role of police social worker could be as the educator to create awareness among the community people about the significance of crime reporting in the justice process. The role of social worker could also be as a translator, writer and enabler who could translate the format of a First Information Report (FIR or NC) in a local and regional language which will be easily understood by the complainants and Law enforcement and he could also translate the text and content of the incident pertaining to crime, which ensures legal process as soon as possible.

## 2. Custodial Justice Model

Another area of concern with police social work is to protect the human rights of an accused/suspect in police custody. Police social worker is guided by the Universal golden rule of presumption of innocent until proved guilty beyond reasonable doubt. The Constitutional safeguards specially Article- 21 of the CONSTITUTION OF INDIA-Protection of Life and Personal Liberty and Article- 22 of the CONSTITUTION OF INDIA-Protection against arrest and detention in certain cases.

As illegal arrest and detention is a major problem of policing in India. In Joginder Kumar Vs. State of Uttar Pradesh (AIR 1994 SCC 1339), The Supreme Court of India observed: "The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?" To control police



power of arrest and detention and use of torture, the Supreme Court of India in a leading case of *D.K. Basu vs. State of West Bengal* (AIR 1997 SCC 610) has issued guidelines to be followed by police during arrest and detention. These guidelines are necessary for each and every police officer to follow up. However, the studies revealed that Supreme Court guidelines are not followed up because of various reasons pertaining to social-political and cultural aspects that exist in our country (Action Aid, 2004). As India is a signatory to ICCPR, the provisions on arrest and bail are made to manifest the letter and spirit of Article 9(3) and (4) of the ICCPR that provide that one-trial detention must-be-the exception and that any person whose liberty is curtailed due to arrest or detention must bring before a court without delay to review the lawfulness of his detention and order his release, if so required. The gap between theory and practice of law can be bridged by implementing rules that will maximize the liberty of citizen generally, while ensuring their safety. This task cannot be properly accomplished if we assume that “law enforcement is forever at odds with civil liberty.

Police social worker by way of translating these guidelines into the regional or local language and dissemination of the same to the local people, local bureaucratic & elective bodies and local governance builds up a consensus among the masses to use these guidelines as a tool for protection of their rights in custody or police station or at the time of police raids.

### 2.1 Police Custody Visit :

The continuous presence of a social worker at the police station makes a difference in many ways; firstly, the police less indulge in the inhuman treatment of the person in their custody or police lock-up; Second, the workers inspect the police lock up with the permission of the station house officer to ensure health and hygiene in the custody as well as mental health as the police generally allege custodial deaths due to heart attack or illness. In such a situation, the social worker provides the mental care to the detenu and bridges the community and custody. If necessary, the assistance or medical help is sought from (private or government doctors) especially in the case of violence against women & children.

**Table 1 : Human Rights Violations by Police in Custody (2011-2015)**

Year	Deaths in Police Custody	Others Human Rights Complaints against police in custody	Legal action against Police (Major)*	Legal Action against Police (Minor)*	Trial in Court	Conviction
2011	104	61,765	4,482	15,004	439	47
2012	109	57,363	4,199	11,900	158	42
2013	118	51,120	3,980	13,724	154	53
2014	93	47,774	4,637	12,549	126	44
2015	97	54,716	3,754	14,254	92	25
<b>Total</b>	<b>521</b>	<b>2,72,738</b>	<b>21,052</b>	<b>67,431</b>	<b>969</b>	<b>211</b>

Crime in India (2012 & 2015)

\* Major and Minor punishment meted out by the departmental inquiry within police department.

Over the past five years, data revealed 521 custodial deaths cases due to one or other reasons (natural causes) need the professional care of the

person in custody. Another aspect, around 30% of the total complaints registered against police got the penalty either minor or major. Very few

cases reached the court of law where convicted rarely only 1 percentage.

### 3. Social Justice Model

The constant engagement in the policing related tasks generate enormous tension and stress among the lower rank police officials and burden on their families to manage the day-to-day activities. Article 7 of the International Covenant on Economic, Social and Cultural Rights, (ICESCR, 1966) recognizes the right of everyone to enjoyment of just and favorable conditions of work, which ensure in particular decent living for themselves and their families; safe and healthy working conditions; rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. They do not give up their basic rights by signing up to the police services. The humane conditions of work are the key to the efficient and effective working of the policemen.

#### 3.1 Counseling Police in Stress Situation

A study conducted by Tripathi, Naithu, Thapa, and Biswas (1993) on Stress, Health, and Performance in Uttar Pradesh Police found that the different types of problems that are faced by the police personnel are; Irregular working hours; Leave problems; No social life; No promotion; family neglected and separation; Risk to life; No government support; Inadequate infrastructure; Pressure of Officers Political Influence; Frequent transfers Transport House; Attitude of Officers; Children Education ;Mess inadequate and Poor salaries. Another study by Channabasavanna, SM (1996) on 'Mental Health Problems among Police Personnel suggested structural changes within police system so that long term stress arising from work and family services could be better dealt with. However, police organizational related hazards affect police morale supported by Bureau of Police

Research and Development(1996) highlighted the fact that in the past few years the duties related to law and order, VIP Security etc. Have gained the upper hand and as a result of which Police are not paying adequate attention to its main role of controlling crime; increasing trend of crime has been accompanied by a declining rate of conviction, which is mainly due to the poor quality of investigation as well as prosecution. There has been growing tendency among the police officers to align themselves with various politicians and influential persons and political interference has long been a matter of great concern and a major cause of the decline in the morale and professional of police. Kamsudhar Mandal (Work Improvement Committee) has proved to be a revolutionary scheme for increasing motivation, efficiency and effectiveness of police force experimented in the North area of Mumbai Metropolitan Region. It is based on Quality Circle and Kaizen system of Japan. In the Kamsudhar Mandal, there is the participation of constabulary to Commissioned in the decision-making process at police station level. It fulfills the higher needs of human beings like self-esteem and self-actualization within a very orthodox and traditional organization like police (TISS, 2013).

#### 3.2 Prevention of Police Suicide

235 police personnel committed suicide in the country during the year 2013. Maharashtra (40 suicides) has reported the highest number of such suicides accounting for 17.0% followed by Tamil Nadu (31 suicides) and West Bengal (29 suicides). Nearly 34.0% (80 out of 235) suicides of all India level were reported in the age group between 18-35 years, followed by 28.5% (35-45 years), 28.1% (44-55 years) and 9.4% (above 55 years) respectively during 2013 (Crime in India 2013). The police social worker can work closely with police at the individual level and found out their cause of distress through counseling, interactive session and interface with clients or

complaints. The worker also while being present at the station level can find out dealing with high ups and reflect in their behavior pattern led to unseen circumstances or complexities in daily life. A social worker can also take up home visits to police families. They can conduct the counseling session with family members especially female who are under stress. Later, they can shift their focus onto children related issues such as girl child marriage, saving and health and hygiene problems etc. Here, the role of the social worker could be proved an effective tool to bring some difference in police families.

**Table -2 Police Casualties**

<b>Year</b>	<b>Police Personnel Killed</b>	<b>Police Personnel Injured</b>
2009	954	4,020
2010	872	5,859
2011	867	3,299
2012	821	3,375
2013	740	3,723
2014	731	3,234
2015	737	3,486
<b>Total</b>	<b>5,722</b>	<b>26,996</b>

Source : Crime in India (2009-2015)

Table 2 shows that 15 police personnel killed every day and 74 police personnel injured each day. It means injuries inflicted almost five times per death of policemen in a day in the country. It has been observed that incidents of police casualties (both fatal and non-fatal) have shown a mixed trend during the last seven years wherein ‘accidents’ and ‘anti-terrorist/ extremist operations were the main cause of deaths of police personnel. The significant study investigates the circumstances in which policemen lose their lives in the course of their duty including accidents to that the operational risks and hazards can be identified and reduced through precautionary strategies and training.

### **3.3 Rehabilitation of Police Families**

The widows of police casualties who need rehabilitation generally are not getting adequate support from the government once they lose their loved ones. The Police social work while working for their genuine cause does some kind of need assessment survey and provides them accordingly vocational training for their livelihood. Educational support is given to the children who are minor and the disabled who need special care. To do so, they can also mobilize government, non-governmental and industry support.

### **3.4 Police Research: Exploring Synergy for Quality**

The quality of social science research is very poor in India fundamentally because the research agenda is set by the funding agency (Parasuraman, 2015) similarly, the quality of police research is also found poor and almost underutilized potential in the field. The Bureau of Police Research and Development (BPR&D) is a premier or nodal agency working for police research in India for the last five decades. The Bureau has touched almost all corners of policing or police related issues to make it more effective and efficient police force rather than service to its citizen in the democracy. The valuable recommendations of the various field-based research findings are the light of the day. This could be one of the reasons that the police system in our country is intact. The way they deal with the problems of law and order, investigation, administration, coordination and public relations etc are not producing the desired result. Nevertheless, the piecemeal approach of Police Research in India will not go a long way unless some concerted or collaborative efforts (synergy for sustainability and quality control with premier Institutions like IIMs, IITs, NLUs, TISS) are made. The important thing is full academic freedom and acceptance of emerging realities from ground reality as prerequisites.

Some of emerging areas of research are enlisted;

1. Relevance of SMART Policing in New Millennium
2. People Friendly Police in 21st Century
3. Disaster Management and Role of Police
4. Need and Relevance of Juvenile Police Unit (JAPU)
5. Whether Rural Policing in Decentralized Governance
6. De-criminalization and Role of Police
7. Rehabilitation of Offenders with Stakeholders (Police)
8. Development, Crime, and Police
9. Relevance of Moral Policing in Democracy
10. Need for the Community Policing

### 3.5 Police Reforms: A Strategic Agenda of Change

The issue of Police Reforms in India examined by various High Powered Committees and Commissions like Khosla Commission, Dharamvira Commission and Malimath Committee etc has been prepared by the Police Act Drafting Committee (2006) and Second Administrative Commission (2007)<sup>4</sup>. However, police reforms got momentum by Supreme Court Judgment in (*Prakash Singh vs. Union of India*(2006(8) SCC 1). The Apex Court has issued various directions for police reforms for the immediate compliance by the Central Government and/or State Governments. The

long overdue directions aim at insulating police from any pressure whatsoever, particularly political pressure, separation of investigation from the law and order etc. Any concern for police reform, however, will be incomplete if it does not take into account the inhuman work culture ruling police force in India. (Tondon, 2007) A few civil society organizations have been playing a vital role in taking the agenda ahead. But it is not sufficient. The social work profession and professionals can bring forward the police reforms, the movement in the public fora and make it as a public agenda, for local and general election a new human rights movement in India. It is because a large number of people in this country have faced or have been facing police high-handedness and unhealthy experiences while simply visiting the police station. Thus, the urgent need for public, media and human rights bodies to reform police is necessary for good governance and development. The worker's role goes beyond police wall to reach out to the public, interact with them and discuss the reform related aspect in segments like groups of the marginalized community, women's group, street children groups and weaker sections of society who might have some grievances with law enforcement and may come forward with some valuable suggestions. The role of social media is crucial to bringing like minded people to one platform to share the differences and similar concern on police reform aspect.

**Table 3: Police Social Work Model Emerged**

Phase	Police Social work	Intervention Strategy
<b>Welfare Approach</b>	Target Group Complainants, Victims of Crime & Violence and disputes, Juvenile, Youth Offenders, women,	Referrals, Rescue and Rehabilitation of child and women, Socio-Legal Support, assistance in advocacy of case in court of law, judicial, prison and police station.  Outcome: One sided or individualistic oriented. Limited result and recognition only in society.

Phase	Police Social work	Intervention Strategy
<b>Rights based Approach</b>	Target Group Victims of Crime and abuse of power, System, Individual Police, Police Family.	Protection of human rights in custodial abuses (Rights against illegal arrest and detention and against Torture), Human Rights of Police, Police Research, Police Reform.  Outcome: Integrated result oriented and greater recognition in both system and society.

## Conclusion

No doubt, police social worker has the area of potential and a lot of things can be done, however, if the police social work reaches out to the needy and vulnerable population. Who can recognize their role and identity is a dilemma yet. As people still consider that social work means charity (identity crisis of social work profession in India specially in rural areas). Another way round, the police themselves can make a huge difference if they implement law honestly and make an arrest and detain people judiciously and moreover, treat people with the human manner in custody, if policemen can give enough time to the complainant, they are best to change agent, however, power politics, vested interest and police used as an instrument corruption and political interference in the police have made force behave in crisis in such a way that it has lost the faith of the people. In this context, collaborative efforts of two professions (Police profession and social work profession) can make a difference to common men and policemen's lives altogether through protection of human rights of police and public both in democracy.

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## Note for Contribution

The Indian Police Journal (IPJ) is the oldest police journal of the country. It is being published since 1954. It is the flagship journal of Bureau of Police Research and Development (BPRD), MHA, which is published every quarter of the year. It is circulated through hard copy as well as e-book format. It is circulated to Interpol countries and other parts of the world. IPJ is peer reviewed journal featuring various matters and subjects relating to policing, internal security and allied subjects. Over the years it has evolved as academic journal of the Indian Police providing critical inputs to the stakeholders of policing and internal security.

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The paper/article on crime, criminology, general policing, internal security, forensic science, forensic medicine, police organization, law and order, cyber crime, organized crime, white collar crime, crime against women, gender policing, juvenile delinquency, human resource development, police reforms, organizational restructuring, performance appraisal and service delivery, social defence, police family, police housing, police training, human rights, intelligence, corruption, terrorism and counter terrorism, community policing and allied subjects can submitted.

The paper/article with keywords and abstract should be between 2000-4000 words. The paper/article should be original and have not been published in any journal. A brief detail about author should be also submitted. The paper can be submitted through email: [editoripj@bprd.nic.in](mailto:editoripj@bprd.nic.in).

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