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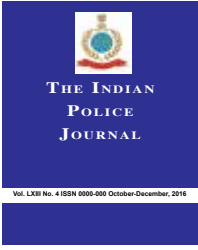
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Editorial

Indian Police has undergone unprecedented changes in the past few decades. This has led to a metamorphosis of the Police and it has been responding to the changing scenario with aplomb. However, there still remains much to do in this regard. This is what Shri B.B.S. Chauhan, IPS(Retd.) has vouched for in his article, "It is time we have Another National Police Commission." The main challenge confronting the Police today is the rising public expectations and new variety of crimes such as terrorist financing, e-money laundering, and cyber security, etc. In order to focus on these challenges, he suggests that routine work like traffic regulation, issuance of summons, etc. may be outsourced and private sector may be involved in undertaking routine portfolio.

In a paper, 'Emerging Prisoner Rights: Indian Constitutional Law View' Shri M. Muthukumar provides in-depth analysis of human rights of prisoners and role of Judiciary in protecting them. Shri Caesar Roy, in his paper, 'West Bengal Correctional Services Act, 1992 and Prison Reforms in West Bengal' analyzes the prison reforms in the country in backdrop of West Bengal Services Act, 1992.

Prof. S.D. Sharma, in his paper, "Health as Human Right: Gender Focused Strategy an International Width" urges to make health a human right as a part of gender focused strategy. The protection and promotion of the health of women is required in controlling child marriage, pre-natal test of the pregnancy, proper medication and all forms of care. Nutritious food should be provided to the lactating mother for the safety and health of infant and mother as well.

Police Training has substantial impact on the capacity development and attitudinal and skill orientation of police personnel, influencing their professional competence and their service delivery mechanism during their entire service. Considering the crucial role that Police plays in law enforcement, security and access to justice, the capacity development of police is indispensable for good governance and quality service delivery to the citizens to ensure substantive justice. As considerable investment is made in training, it is imperative that it should be efficient, need based, smartly managed and goal oriented. Shri Rajendra Kumar, IPS and Shri Vineet Kapoor, in their paper, "Training Needs Based Police Training Innovation in Madhya Pradesh" deal with conceptual issues in police training and how they have been taken up in developing an environment of motivated police training culture and professional orientation to Police Training in Madhya Pradesh.

Since quite some time, Media trial has drawn the attention of Stakeholders of policing, internal security and administration of criminal Justice System. It has resulted in many problems for the police and Judiciary, adversely affecting law

and order and delivery of justice. Prof. S. Sivakumar and Dr. Lisa P. Lukose, in their paper, 'Media Trial, Public Opinion and Human Rights' underline the peril of Media Trial, urge the media to uphold its duty and responsibility towards the society by recognizing that trial by media is in itself injustice to the accused and a serious threat to administration of the Justice.

In a very innovative Study on 'Distribution of Incidents and Registration of Crime Across Jammu & Kashmir: A Study (2005-2014)', Shri Ramesh Pandita comes to conclusion that crime incidents in State of Jammu & Kashmir have not shown any substantial growth during the period 2005-2014. Since there is no steep increase in the incidence of crime in Jammu & Kashmir during the last decade, it can be said that difference in the incidence of crime and their registration in the state goes almost parallel.

In addition to above, this issue of the Indian Police Journal discusses 'A Study on the Changing proportion of Un-natural Deaths in Punjab with Special Reference to Road Accidents (1996-2013)'; 'Personality Factors Among Police Personnel of Rajasthan'; 'Family Environment and Drug Abuses in Kashmiri Youths'; 'Motor Vehicles Act, 1988 – An Analysis from Practioner's Point of View'; 'B-Track - Technology Driven Traffic Management' and 'The Daubert Standards and Evidentiary Value of Forensic Handwriting Reports in Indian Judiciary: A Review'.

**Editor-In-Chief
(Parvez Hayat)**

Training Needs Based Police Training Innovations in Madhya Pradesh



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Rajendra Kumar¹, Vineet Kapoor²

Keywords

Needs Based Police Training, Training Innovations, Capacity Development, Organizational Development, Police Personnel.

Abstract

The Police Training as mentioned by Gore Committee Report and then by several subsequent Police Reforms Documents has been more traditionalist, with very slow inclusion of changes in Training Philosophy, Content and Pedagogy, based on the changing realities of police profession competencies in India. It was interesting to note that the TNA exercise revealed a lot of issues which the Gore Committee Report had already pointed out. The Training Need Analysis exercise revealed the major changes in the following issues, which enabled to shift the focus from existing Police Training Paradigms TNA for each SI Specialization, which included- Subedar for Reserve Police Line Management, SI for Police Station duties, SI for Forensic Science- Finger Print, Questioned Documents and SI for Radio and Telecommunications.

The Police Training has a substantial impact on the capacity development and attitudinal and skill orientation of Police Personnel, which guides and influences their professional competence and their service delivery during their entire service span.

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Considering the crucial role police plays in law enforcement, security and access to justice, the capacity development of police is a serious issue of governance and quality service delivery to the citizens. Additionally, considering the amount of time which is spent on institutional training of an Indian police recruit of any rank, which ranges between twelve to twenty four months, during which recruits get full pay and allowances, the cost involved in paying for their full salary along with the institutional cost of police training, amounts to a very cost intensive enterprise. Considering the cost involved in training and the impact and influence training has on police personnel, it is important that the training of police is efficient, needs based, smartly managed and goal oriented. This paper deals with conceptual issues in Police Training and how various conceptual issues on Police Training have been taken up in developing an environment of motivated police training culture and professional orientation to Police Training in the state of Madhya Pradesh.

Part I

The Role of Training in Organizational Development

The training innovations in the police training, needs to be addressed from the perspective of developing a police service which caters to the emerging needs of society which is governed by a democratic polity. The post colonial continuities in the policing subcultures in India get reflected in the way the police organizational structures are formed and human resources within it are nurtured in terms of attitudes, values, skills and knowledge variables. These variables need to be understood from the demand paradigms of a democratic governance environment in which the public expectations and the resultant institutional response mechanisms must be analyzed, in order to arrive at any meaningful understanding of capacity building of the police services in India. Another aspect of the changing demands on the policing practices is the rapid technological and social change which has a direct bearing on the change in the security environment, criminal behaviour, public order management and law enforcement. Capacity Building efforts through qualitative and needs based training input must be in the context of service delivery of police services and what the public expectations are there from the police. It has also to see what the expectations of the Law from the Police are, is the enforcement of Law as per the normative

standards. Police being a public service, involved in security and justice sector, it is crucial that the police is seen as a dependable organization trusted by people. This places a huge premium on the police capacity building and organizational development. A police service must critically evaluate that its role as an agency trusted by the public. If there are some deficits in these areas then Organizational Development Goals must be set and priorities for Training must be defined in order to arrive at an Organizational Development perspective. Training plays a crucial role in organizational development. Therefore the Organizational Structure and Organizational Development Goals make a very important contribution in defining Training Needs of the Organization.

Training as a Professional Issue in the Police Organization

The training policy and practice must be based on the following major ideological principles and organizational goals

- Appreciate the importance of training as a professional competency within police
- Identify adult learning principles and their utility in day to day training activity
- Apply different Interactive learning and training methodologies by using appropriate methods and resources in the training output and delivery

For achieving the above

- Invest in Individuals and their Improvement
- Invest in organizational and institutional development
- Invest on improvements in systems and process

The Training Environment within the Police or any other large organization like the police must have a distinct focus on :

- The training needs of the organization and the capacity development of its personnel
- The Role of training in achieving organizational development goals.

The Concept of Training Needs Analysis and its Role Organizational Developemnt

The identification of the training needs is recognized as one of the most

important steps in training. (Anderson, 1994, Bowman and Wilson, 2008). The Training Needs Analysis (TNA) is an ongoing process of gathering data to determine what training needs exist so that training can be developed to help the organisation accomplish its objectives (Brown, 2002). This first step in training process is primarily conducted to determine:

- Whether training is needed,
- What needs to be taught,
- Who needs to be trained,
- How Training would be conducted?

Therefore, the main purpose of the training needs analysis is that only when there is a match between training needs and the content of training, beneficial outcomes to organizational performance can be realized (Van Eerde, et al, 2008)

Components of Training Needs Analyses

Different components of training needs analysis are suitable for different purposes and organizational settings. Most relevant components for training needs analysis for the police could be listed below. One or more than one components could be utilized for TNA. these include:

- **Organizational Analysis.** An analysis of the organization's strategies, goals, and objectives. *What is the organization overall trying to accomplish?* The important questions being answered by this analysis are who decided that training should be conducted, why a training program is seen as the recommended solution to an organizational problem, what the history of the organization has been with regard to employee training and other management interventions.
- **Person Analysis.** Analysis dealing with potential participants and instructors involved in the process. The important questions being answered by this analysis are who will receive the training and their level of existing knowledge on the subject, what is their learning style, and who will conduct the training. *Do the employees have required skills?* Are there changes to policies, procedures, software, or equipment that require or necessitate training?
- **Work analysis / Task Analysis.** Analysis of the tasks being performed. This is an analysis of the job and the requirements for

performing the work. Also known as a task analysis or job analysis, this analysis seeks to specify the main duties and skill level required. This helps ensure that the training which is developed will include relevant links to the content of the job.

- **Performance Analysis.** Are the employees performing up to the established standard? If performance is below expectations, can training help to improve this performance? Is there a *Performance Gap*?
- **Content Analysis.** Analysis of documents, laws, procedures used on the job. This analysis answers questions about what knowledge or information is used on this job. This information comes from manuals, documents, or regulations. It is important that the content of the training does not conflict or contradict job requirements.
- **Training Suitability Analysis.** Analysis of whether training is the desired solution. Training is one of several solutions to employment problems. However, it may not always be the best solution. It is important to determine if training will be effective in its usage.
- **Cost-Benefit Analysis.** Analysis of the return on investment (ROI) of training. Effective training results in a return of value to the organization that is greater than the initial investment to produce or administer the training

Methods Used in Training Needs Analysis

Methods of Training Needs Analysis are basic research tools which are used to conduct a sort of action research, where different techniques are used to collect the data, process the data and interpret the outcomes in order to come to actionable solutions and planning for training. The methodological dimension is to bring an objective approach to the mini research conducted to find out solutions based on Training Design and Delivery to reach to defined organizational aims. Several basic needs assessment techniques include: direct observation, questionnaires, consultation with persons in key positions, and/or with specific knowledge, review of relevant literature, interviews, focus groups, assessments/surveys, records & report studies, work samples and other methodological tools. A combination of these methods could be used and a lots of reviews are needed with the important stakeholders who

have commissioned the TNA or are in the process of doing it. Its always better to have a good mix of professional scholars, academicians and working professional from within the organization concerned. In the Police its necessary that there is a fair mix of practicing police officers and research professionals in order to have a methodologically sound TNA which is well grounded on the professional front as well.

The Training Needs Analysis in the Context of Police

The Training Needs Analysis, in the context of the police needs to be reflective of the demands, the democratic polity and social and technological change places on the governance structures in general and policing practices in particular. The training needs analysis through the paradigmatic context of Knowledge, Skills and Attitudes required from a police personal also needs to be understood from the context of the values and skills the Law Enforcement Agent imbibes while getting inducted in the service through the induction training and later on through the on the job trainings

The Training Needs and Training Design has to cater to the organizational structure of the police. The fact that the modalities of a hierarchically divided police service, where there are four induction levels at the time of the entry into the service makes it important to critically evaluate the form, content and effort put in the induction training of various ranks. It has been observed that the major amount of effort and resources are deployed to innovate and build the capacity of the training of the higher ranks, with the major neglect of the lower ranks particularly the constabulary. Considering this context of the development of the training resources and efforts, the paucity of adequate priority provided to the constable training reflects a pertinent and consistently blatant neglect of the training of those police personals that form more than eighty percent of the police strength. They form the base of the Police Pyramid. Since this huge majority of the police services actually forms the 'face' of the police at the grass roots level, the persistent neglect of their capacity building through qualitative inputs to their training ultimately leads to less than satisfactory output at the grassroots level in terms of public satisfaction levels from police performance.

The Organizational Development Needs must address Training in

any large organization. The Police must locate its training in the wider context of the Organizational Development police must undertake.

Part- 2

Needs Based Capacity Building of Police through the Strengthening of Police Training Institutions and Personnel -A Case Study of the MP Police

The MP Police has undertaken a focused initiative in strengthening the Police Training Systems. This is based on a professional orientation to the Training Management and considered importance given to it as an essential police specialization. Considering the vital importance and impact Police Training, both induction and on the job training, makes on the capacity of the police to perform and live up to the expectations of the law and society, MP police has started certain initiatives in strengthening the institutional structure and building up the capacities of the Individuals involved in Training Management and Delivery. Aiming at a systemic improvement, the Police Training Branch of MP Police has initiated an approach which focuses on substantial improvements in institutional and individual development with a three dimensional focus, that is:

- **Training Needs Based Policy and Practice** - The overarching focus is on the culture of police training by influencing the defining of training needs and tailoring the practice through the identification of training needs based training policy which includes Training Syllabi, Training Schedule, Inventory Management and holistic Training Management and its live contact with the needs of professional policing in the field.
- **Institutional Development of Police Training** - Focus on the institutional development in terms of infrastructure, logistics, trainee facilities, environment and training culture
- **Individual Development of Police Training** - Focus on the individual development in terms of competency development of trainers and training managers
- **Culture Change in Police Training** and mainstreaming it with professional priority of policing

Prioritizing Police Training as a Professional specialization in MP

Copyright: Kumar and Kapoor 2015



Training Needs Based Policy and Practice

2.1. Identification of Training Needs and Development of Training as a Professional Issue

The overarching focus is on the culture of police training by defining of training needs and tailoring the practice through the identification of training needs based training policy which includes Training Syllabi, Training Schedule, Inventory Management and holistic Training Management and its live contact with the needs of professional policing in the field. The effort is generated to improve the status of Police Training as a professional specialization and mainstream organizational development goals through police training.

2.1.2 Training Needs Analysis and Designing of New Syllabi

The MP Police Training Branch has also developed a well grounded Training Needs Analysis Program, which looks scientifically into aspects of training needs and capacity building needs for professional policing and then revamp the syllabi and training design accordingly. Initiating this approach the MP Police has revised and updated the syllabi for the induction and in service training of the different ranks of the Police Services. This work is also a continuous process and is going on at a fast

pace. This is a part of the Policy and Process Improvement program and aims at the overall contribution to the improvement of the police training culture.

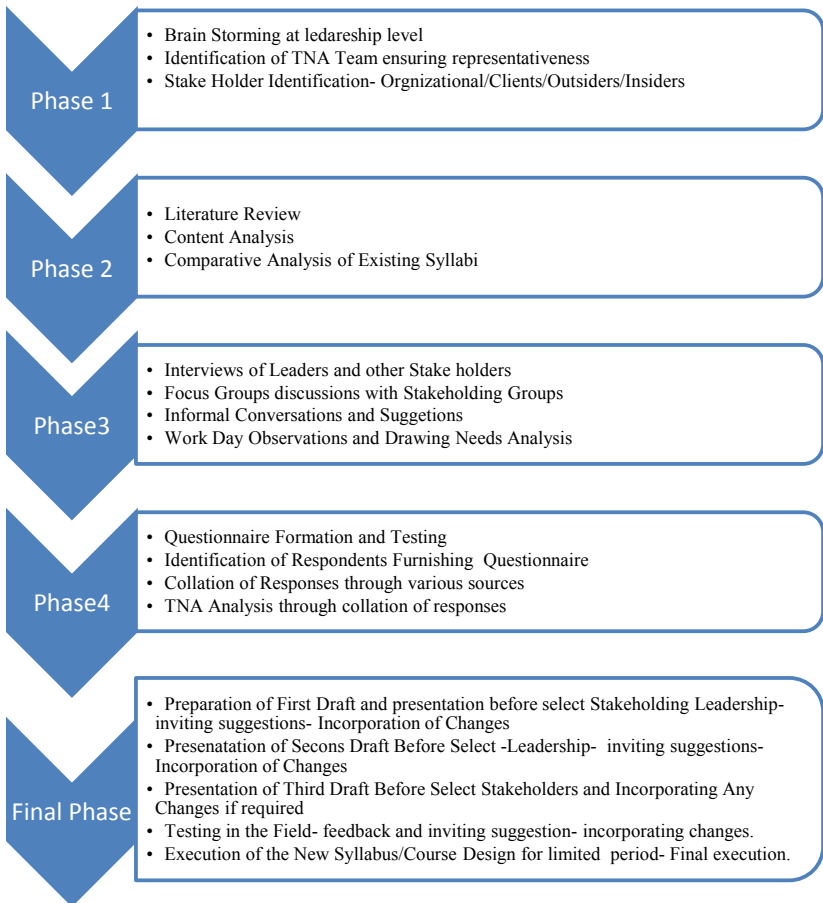
The new syllabus lays emphasis on the proportionality of attitude, Skills, Knowledge and Values redefined through the democratic policing norms. It has come out as one of the most successful attempts at police reforms as these efforts target the majority of the strength of the police services that is the constabulary and other subordinate ranks, which forms the ‘face’ of the police on the streets where actual public-police interface happens. This paper deals with the Training Needs Exercise for designing these syllabi and covers the context and content of ‘out doors’ and ‘indoors training’ through its needs based realities. The infrastructural elements, hard skills and soft skills elements needed for the effective and impact oriented training are discussed from the developmental context of a public oriented police service. Imbibing the context of best practices in India and abroad, the design and development of training content and then its delivery and its experimentation through a period of three years, marks the relevance of discussing this effort as a live example of successful attempt at police reforms through training. This paper relates to the context of training innovations for police services in India as it is located in the wider context of the capacity building of the law enforcement structures in the country and the overall dimensions of police reforms.

Thrust Areas of Training in Madhya Pradesh:

- Emphasis on Training of Field level police officers
- Emphasis on Constable and Non Gazatted officers Training
- Discouraging Top Heavy and Elitist bias in training
- Training of Trainers as a thrust area.
- TNA –Training Needs Analysis as the basis of all training

FLOW CHART

Training Needs Analysis Flow Chart Training Improvement Design through TNA conducted by MP Police 2010-2012



Kumar and Kapoor 2015

2.1.3 The TNA Exercise and Targeted Trainings

The Training Needs Analysis started since 2010, targeted particular training modules, starting from constables basic training to SI and DSP. Basic Training has been the thrust area, as in service courses and pre

promotion courses have been planned for the second phase, considering the enormity of the task and limitations of implementation as per desired expectations. The TNA focus area includes:

- In depth TNA -Training Needs Analysis done for assessing the Training Needs of SI and DSP.
- Separate TNA exercise done for SI and DSP.
- TNA involved careful consideration of various stakeholders' views through questionnaire, focus group discussions and interviews.
- The stakeholders included PS level leadership, Senior Police Officers, Trainers, Members of civil administration, members of public and the experienced SI and DSP themselves.
- DSP New Syllabus launched in 2010 -now operational. SI New Syllabus was launched in January 2012

TNA project for SI has included all SI level specializations and separate TNAs have been done where these issues were not very well covered:

- Inclusion of Psychology and Behavioral Science as major module.
- Inclusion of Cyber Crime and Computers as a compulsory subject
- Inclusion of a module on Personality Development
- Inclusion of Practicals in each subject , in which the trainee has to prepare a project and appear before a panel of examiners through a Power Point Presentation- Aimed to build confidence and public speaking skills amongst the trainees.
- The Syllabus includes practical exercises, learning through doing, simulations, group exercises, mock exercises, public speaking skills and other interactive techniques based on the nature of each subject.

The Following modules which were a passing reference in traditional syllabi and almost absent in most of the constable level syllabi, have now been mainstreamed as core disciplines:

- Police Ethics and Human Rights
- Soft Skills expected in police work
- Communication Skills
- Anti- Terrorism Training
- Intelligence Collection Modules and Practical

- Interpersonal Skills and Conflict Management
- Cyber Forensics
- Community Policing
- Use of Technology in Policing
- Child Protection
- Gender Mainstreaming and Violence against Women

2.1.4 TNA Based Shifting Focus of the Police Training Needs Analysis

- The Police Training as mentioned by Gore Committee Report and then by several subsequent Police Reforms Documents has been more traditionalist, with very very slow inclusion of changes in Training Philosophy, Content and Pedagogy, based on the changing realities of police profession competencies in India. It was interesting to note that the Training Need Analysis exercise revealed a lot of issues which the Gore Committee Report had already pointed out. The TNA exercise revealed the major changes in the following issues, which enabled to shift the focus from existing Police Training Paradigms TNA for each SI Specialization, which includes- Subedar for Reserve Police Line Management, SI for Police Station duties, SI for Forensic Science- Finger Print, Questioned Documents and SI for Radio and Telecommunications.
- Constable TNA included a holistic improvement and up gradation of Constable's Syllabi, which suffered historical and sustained neglect as this lowest level functionary's training received the least importance and hence very meager improvements were there.

2.1.5 Needs Based Training Innovations

The Training Needs Analysis based training innovations are based on the survey based analysis of the needs of the field where the police trainees have to ultimately perform. Therefore the syllabi and training design is based on Practical Orientation in Training which is nearer to the realities in the field and caters to the preparation of trainees for the actual job they have to perform. Various innovations, content and methodological changes are incorporated in the pre existing syllabi to include:

- Experience Sharing Exercises Speakers from the field coming every week and interacting with the trainees

- Moot court arranged regularly
- Investigation audit training with experienced police officers
- Mock Exercises on various police duties, bandobast and security duties
- Case Studies related to day to day policing at the PS level suited to civilian police job roles
- Simulation Exercises related to crime investigation, Law and Order duties and routine beat and surveillance duties
- Exposure visits and critical evaluation sessions on the field visits with the experienced trainers and invited guest officers who bring field realities after the actual visit on the spot.

Exposure Visits and On the job Training for the basic training schedule-

- Police Station within three months of training
- Court Room
- Executive Magistrate's Office
- Remand Home
- Hospital
- PM Room
- NGO offices
- Reserve Police Lines and other police offices

2.1.6 Basic Features of TNA of Constable's Training

The basic features of TNA of constable Training are as follows:

BASIC STRUCTURE

- In depth TNA -Training Needs Analysis done for Constable's Training.
- TNA involved careful consideration of various stakeholders' views through questionnaire, focus group discussions and interviews.
- The stakeholders included PS level leadership, Senior Police Officers, Trainers, Members of civil administration, members of public and the constables themselves.
- Constable's New Syllabus launched in 2010 -now operational.
- Healthy mix of Outdoor and Indoor Training

- Training aimed at producing more competent police constables for day to day Law Enforcement in civilian police environment
- Emphasis on basics of traditional subjects of Law and Procedure Security and Law and Order, Police Station Management, Investigation and Forensics
- Out door training elements of Drill, Endurance Training, multiple obstacles, unarmed combat skills and Field Tactics and Modern Weapons.

o SOFT SKILLS COMPONENTS

- Emphasis on attitudinal and behavioral training
- Personality Development as full paper
- Communication and interpersonal Skills as a full paper
- Ethics Training, Democratic Values and Ethical Behavior as a full paper
- Emphasis on Gender Sensitization sensitization towards vulnerable groups
- Management principles as an important ingredient

o OPERATIONAL ASPECTS OF TRAINING

- Full paper on Computer Applications and its use in Policing- 100% constables passing out from Training Schools know computers
- Compulsory course on Driving Skills -100% constables passing out from Training Schools know Driving
- Compulsory course on Unarmed Combat
- Jungle Camp Compulsory for constables with an emphasis on field tactics
- Urban operations and tactics are also included in the syllabus
- On the Job Training for Constables
- Practical papers included in each course. The constables have to actually demonstrate what they have learnt through practical actions – for example what is the procedure of securing a scene of crime, or how to operate a wireless set, how to use a hand cuff and what are the legal norms for it, how to service a summons etc are some examples.

2.2 Institutional Development of Police Training

The MP Police has a clear focus on developing Police Training Institutions in terms of infrastructure, logistics, trainee facilities, environment and training culture. The MP Police has developed a standardized norm for logistics and infrastructural improvement based on an approach which focuses on professional aspects of police training and building trainee facilities at all levels of police training starting from the constable's training up to the training of senior officers. The efforts are directed in developing a culture of police training which is based on motivated learning environment. Apart from attracting funds from the center and the state resources, the training branch is ensuring efficient utilization of funds through a needs based and grounded approach in building up of training facilities which are modern, well equipped, suitable to the needs and context of police training and are trainee friendly.

A vigorous activity is going on in Police Training Institutions across the state. This is generated through a sustained approach in taking up police training as a serious professional issue which is mainstreamed as any other police specialization. The top leadership in the state has seen to it that in terms of planning, policy and practice the Police Training gets importance as a specialization and as a professional priority. This has helped in the overall contribution to the improvement of the police training culture in the state.

2.2.3 Infrastructural Improvements

The major thrust area for improvements is in the building component. State as well as the Central Government grants through the 13th Finance Commission, has given a big contribution towards building and equipments components. The infrastructural improvements can be listed as:

- New Training, Residential and Administrative Buildings and Outdoor Training Facilities at PTS Indore, with fully furnished and well equipped Training Premises. Standardization of Building and Equipment Norms. Raising the status of the Police Training School from School to a Training College. Raising the capacity of the Training Center from 250 trainees to 1500 trainees, with major component of women trainees.

- New Training, Residential and Administrative Buildings and Outdoor Training Facilities at PTS Gwalior and Rewa, with fully furnished and well equipped Training premises. Standardization of Building and Equipment Norms. Raising the status of the Police Training School from School to a Training College in Gwalior. Raising the capacity of the Training Center from 250 trainees to 1200 and 800 trainees in Gwalior and Rewa respectively.
- Up gradation of Training Buildings and Residential facilities in the older training centers at PTS Pachmarhi and Umaria and adding new complexes to the existing infrastructure, raising the capacity of trainees from 250 to 500 each.
- Upgrading the existing Academy and Opening New Training Center at Sagar with new training building and converting existing battalion headquarter into a training center.
- New Academy building at Bhopal and raising an integrated Training Complex there.
- Specialized Centers like Telecommunication Training Center at Indore and Armed Police Training Center at Indore also get new Building and Residential complexes and upgradation of their Training Facilities and equipments.
- The thrust on the Constable Training - the State has been following a Bottom Up Approach, where the Training facilities for the lower ranks, particularly the constabulary was given priority as the constabulary portrays the Base of Police Human Resource Pyramid.
- The 13th F.C. grants have helped the state police to cover up the basic infrastructural requirements. There remains a lot to be done at the level of improvement of the basic and in service training of the cutting edge middle management level police trainees and also for the improvement of the basic requirements of the specialized police trainings

2.2.4 Major Components of Infrastructural and Logistics Improvement

The major components of the Training Improvements related to Infrastructural and Logistics improvements comprise of:

- State of Art Building components, with standardized norms for Training Rooms, Administrative Blocks, Outdoor Training

Facilities and Hostel and Mess Facilities.

- Economies of scale are used to integrate several components into larger structures so that facilities get integrated in one building, thereby reducing the cost and maximizing the utility.
- Computer Labs for Trainee constables apart from other senior ranks, as computer training is made essential for all police recruits.
- Weapon Simulators for each training center right upto the level of Constable Training Centers.
- Mess facilities have been mechanized, with fully automated kitchens, with rotimaking machines, vegetable cutters, boilers, mechanized washing and cleaning facilities and tabled dining facilities for the entire constabulary.
- Sports facilities for all levels of trainees right from the constables to the DSP trainees.

2.3.1 Individual Development of Police Training through Training Managers and Trainers.

The systemic changes and organizational development of training cannot take place without a focused approach on the Individual development in terms of competency development of trainers and training managers. Since both training managers and administrators are as important part of Police Training effort as the police trainer, an integrated approach on training improvement must focus on both.

2.3.2 Training Managers and Trainer Orientation Program

Training Managers and Trainer orientation Program is aimed at developing the Attitude, Skills and Knowledge of the Trainers and Training Managers to build their capacity to accept police training as a professional specialization and ensure their appreciation of building a Motivated learning Environment based on a progressive Police Training Culture. The objective is to develop their capacity and willingness to contribute to the Police Training with a positive attitude. It is also aimed at creating opportunities to develop their understanding of professional concepts of Training in general and Police Training in particular, so that they acquire necessary skills and competencies to deliver as a Training Manager or Trainer, in which ever capacity they are employed in the

training institutions and other training set ups.

The Madhya Pradesh Police has embarked upon a twofold strategy to achieve this aim:

- a. Training Leaders and Manager's Attitudinal Orientation and Competency Development
- b. Trainers' Attitudinal, Skills and Competency Development.

2.3.3 Training Leaders' and Managers' Attitudinal Orientation and Competency Development

The focused improvement in training delivery for the Police is essentially an Organizational Development Initiative which cannot be achieved without the active support and involvement of the top leadership and top management of training, both at Headquarters and institutional level. In order to achieve a holistic development of the police training this group of leaders and Training Managers who are heading Training institutions and various disciplines within the training institutions need to be targeted. The approach is to have a focused workshop on Training Concepts and Approached which deal with Training as a specialization and how Attitudes, Skills, Knowledge and Competencies of Leaders and Managers can impact the strengthening the Police Training and its sustainability.

A series of workshop, Focused Discussions and Distinguished Lectures and Training Programs have been designed to achieve this goal. The workshops and training programs are designed with a realization that the leaders and training managers have a live contact with the Training Needs and Demands of the field and that their contribution is vital for the success and effectiveness of the entire program

2.3.4 Trainers' Attitudinal, Skills and Competency Development

Trainers are the agents who are responsible for the ultimate delivery of the Police Training and building up of the Police Training Environment and Culture in the field. The program is premised on this realization that most of the trainers contributing to the police training come from active police service in Indian Police Training Environment and hence their field exposure and experience of Policing is a vital asset but they are rather raw as trainers. Their attitudinal orientation as a trainer, their

ethical orientation as a trainer, their skills as a trainer and their knowledge of assigned disciplines as a trainer need to be worked up. Since there is no systemic and inherently designed and activated program on Essential trainer qualifications in most of the police training settings, it is imperative that the Trainer Development Program is highly essential and crucial aspect of the strengthening of the Police Training and Learning Environment. Initially a series of Training of Trainers Program mainly focused on the attitudinal and skill development of the trainers are designed. The aim is to have a universal coverage of the Trainers and to build it as a professional competency which is considered essential and mandatory for their professional output.

2.3.5 Trainer Development

The culture of traditional trainer centered didactic training could be changed only through the change in the attitude and skills of the Trainers, building a motivated learning environment and through the pedagogical improvements in Training Methods and Training Resources. These changes have been incorporated through the following efforts;

2.3.6 Investing in the Faculty by Organizing Training of Trainers' Programs (TOT)-

- There has been a comprehensive approach to Faculty Development
- Most of the Trainers posted in the training institutions are trained in Training of Trainers programme
- Trainers are having orientation in interactive learning methodology and adult learning principles.
- Training culture of Training Institution is getting changed to an interactive and motivational learning environment.

2.3.7 Promoting Trainer Skill Development and Use of Training Resources

The Trainer's skill development through the use of Training Resources is the key to change the training environment. This is achieved through the following efforts:

- Development of low cost training resources geared to cope up with

the higher number of trainees and disproportionate assets to meet the requirements

- Development of Low Cost Obstacle Course through discarded materials
- Development of open air class sheds with higher seating capacity
- Development of Simulation Rooms with innovative use of resources and creativity
- Culture Change of Police Training

2.4.1 Culture Change through the Involvement of Agencies other than Police in Police Training

The TNA exercise and survey has revealed that the civilian police training environment has to cater to the democratic Policing Ideals which the traditional police training environment with its insular training arrangements and its closing the doors to the involvement of other agencies and experts prohibits.

The culture change in Police Training addresses the following major concerns;

- Culture Change is important to bring a motivated training environment which generally the police training institutions , particularly the civilian police training institutions lack.
- Trainer Motivation, Facilities for the trainees and better training curriculum suited to the needs of the job which the police personals have to perform is the bedrock for development in a result oriented democratic training environment
- Greater Emphasis to the Training of the Constables and the subordinate ranks which constitute more than three fourth of the police service is the need of the hour for a more result oriented ethical and democratically oriented police services where the values and skills of each police personal makes a difference to the lives and liberty of the common citizens of the country

The change in culture of Police Training in MP has consciously involved outside agencies and experts and their active involvement in Police Training. This has not only helped to develop a better training delivery in terms of expertise and resources but it has also catered to the pooling

of resources and funds, which have attracted better training content and training delivery. It has also added to better exposure of the police trainees to the real world, where they have to deliver their services and understand the context and perspective of different sections of the society. This assimilation at the juncture of induction level police training or the in service level police training has helped the trainees to have a singular perspective of the society from a police trainers' perspective, which is the norm in the traditional police training and has incorporated changes to involve greater assimilation of Ideas and Perspectives of the society where they have to ultimately serve. Some of the efforts made by Madhya Pradesh Police in this direction include:

- Specialized training is organized with outside support mechanisms
- Linkages with Universities and their active involvement with police training in terms of faculty and training resources and reading material. MOU with Universities like the Tata Institute of Social Sciences Mumbai, National Law Institute University Bhopal, Indore University, IIM Indore etc.
- Linkages with NGOs and think tanks working in the area of Criminal Justice and other related fields in terms of faculty and training resources and reading material
- Collaboration with UNICEF for Child Protection Training
- Collaboration with Women and Child Development Department for Violence Against Women and DV Training
- Collaboration NHRC, SHRC for Human Rights Training
- Collaboration with Disaster Management Institute for Disaster Management Training
- Collaboration with Ministry of Social Justice for Sensitization Training

Police Training is a professional police priority, which needs aggressive mainstreaming efforts in police organizational culture. The Police Training involves more than two years of extensive efforts, where fully paid police recruits get training, which is considerably large amount of time spent in Police Education. Looking at this scenario, the job skills and attitudes learnt during the basic training have a deep impact on the police personnel and their capacity to perform and deliver their mandated duties. A Training Needs Based Training design and syllabus

implemented through a well structured training program and content handled by expert Training Managers and delivered through the TOT trained Training faculty can go a long way, in upgrading the status of training as a professional issue and bringing about the desired changes for the improvement of police performance and service delivery. The Madhya Pradesh Police has started certain initiatives in line with this training philosophy based on Training Needs Analysis where focused development of Training Institutions and Trainers and Training Managers has been given priority. The efforts are generated to project Training as a professional discipline which directly impacts on the capacity building of the police recruits and their performance in the society.

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Emerging Prisoner Rights – Indian Constitutional Law View



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Keywords

Human Rights, Constitutional Law Perspective, Criminal Justice, Role of Indian Judiciary

Abstract

Prison sentence deprives prisoner's right to liberty. But at the same time it should not deprive a prisoner of other basic rights. In fact so many persons are in the jails who are under trial. The major problems faced by these prisoners are inhuman treatment in jails, facing poor conditions, lack of proper medical treatment, etc. In India every human being has socio-economic and political rights. In many states, presumption of innocence is a legal right of the accused in a criminal trial, and it is also regarded as international human right under Article 11 of Universal Declaration of Human Rights. Apart from these under common law, the accused is presumed innocent in criminal proceedings. India is one of the member countries of United Nations, so India should follow the Universal Declaration of Human Rights. All of us know that law is an instrument of social change. So this article provides in depth analysis and a critical examination of what are the new emerging human rights of prisoner and role of Judiciary in protecting the human rights of prisoner.

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Introduction

Prisoners and detainees may be subjected to torture or other ill-treatment. They may be held in conditions that are so poor that they amount to cruel, inhuman or degrading treatment. Prisoners as 'persons' are entitled to all those rights available to 'persons'. The treatment meted out to prisoners differs from country to country. The laws relating to prisoners in India have been influenced by international instruments on one side and on the other the practice of treating prisoners. Inhuman treatment, custodial violence, handcuffing of prisoners, third degree methods, which are more often than not used and practiced by police officials during the course of their official duties, are against the norms of the civilized nations and are barbarous activities violative of the principles of rule of law and human dignity. The main objective of the police is to apprehend criminals, to protect law-abiding citizens and to prevent commission of crimes and to maintain law and order. The questions arise how far the government is liable for the police atrocities violating the constitutional and legal norms and to what extent the judiciary has controlled and curbed the irresponsible and illegal actions of the police officials, which are perpetrated by them during the course of the performance of their duties. The present article will attempt to seek answers to these queries.

Human Rights Approach to Prisoner Rights

All human beings are born free and equal in dignity and rights¹. Human Rights are commonly understood as those Rights which are inherent to the human being. Every human being is entitled to enjoy his or her human Rights without distinction of race, colour, sex, language, religion, political or other opinion, National or social origin, property, birth or other status².

Human rights are legally guaranteed by human rights law. This protects individuals and groups against actions which interfere with fundamental freedoms and human dignity. They are expressed in treaties, customary international law, bodies of principles and other sources of law. Human rights law places an obligation on states to act in a

1 Article 1 of Universal Declaration of human Rights

2 Article 2 of Universal Declaration of Human Rights

particular way and prohibits states from engaging in specified activities. However, the law does not establish human rights since they are inherent entitlements, which come to every person as a consequence of being human. Treaties and other sources of law generally serve to formally protect the rights of individuals and groups from actions or abandonment of actions by governments, which interfere with the enjoyment of human rights. Human Rights are interrelated and interdependent. The violation of one right will often affect several other rights³.

Criminal Justice

The main purpose of administration of criminal justice has always been to punish the offender. It is the state which punishes the criminals. Punishment necessarily implies some kind of pain inflicted upon the offender or loss caused to him for his criminal act which may either be intended to deter him from repeating the offence or may be an expression of society's disapprobation for his anti-social conduct or it may also be directed to reform him and at the same time protect the society from law breakers. Whatever be the end of criminal justice, the fact remains that the importance of punishment has been recognized even under the ancient legal systems of the world for the protection and welfare of the state and its people⁴.

Administration of justice through courts of law has now become one of the important functions of the state. The courts administer justice according to laws framed by the legislature. The chief merits of administration of justice are its uniformity, certainty, impartiality and equality.

International Legal Aspects of Prisoner Rights

According to the Universal Declaration of Human Rights, none may be subjected to arbitrary arrest, detention or imprisonment.⁵ Detention is seen as 'arbitrary' when there is no legal basis for detention or there are

3 NHRC, New Delhi (2004): Know your rights- International Human Rights Conventions.

4 Dr. N.V. Paranjape, Studies in Jurisprudence and Legal Theory, (Central law agency: Allahabad) 2007, P, 167.

5 Article 9 of Universal Declaration of Human Rights

grave violations of the right to a fair trial. Detention and imprisonment which is lawful under national standards may be considered arbitrary under international standards. Under international human rights law, all defendants have the right to a fair trial. But in many countries throughout the world, detainees are held without due process and prisoners are convicted in trials where these safeguards have been ignored. In some instances people are held for long periods without trial.

The International Convention on Civil and Political Rights (ICCPR) came into force on 23 March, 1976. The ICCPR provides that any person deprived of their liberty shall be treated with humanity and dignity⁶. The article imposes a requirement of separation of prisoners in pre-trial detention from those already convicted of crimes, as well as a specific obligation to separate accused juvenile prisoners from adults and bring them before trial speedily. There is also a requirement that the focus of prisons should be reform and rehabilitation, not punishment. The UN Standard Minimum Rules for the Treatment of Prisoners came into force in 1955. The standards set out by the UN are not legally binding but offer guidelines in international and municipal law with respect to any person held in any form of custody. Convention on the Rights of Persons with Disabilities entered into force on the 30th March' 2007 and has 82 signatories. The Convention's purpose is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Indian Constitutional Law Perspective

Indian Constitution is a mother document for all the citizens of India. In fact, the prisoner rights have been taken by the Supreme Court by way of Article 21 of the Indian Constitution. But at the same time in practical aspects it is very difficult to enforce the prisoner rights. Fundamental rights and Directive principles of state policy both are the key to protect the prisoner rights. Apart from Indian Constitutional law, there are so many other statutory provisions which also protect the prisoner rights like that of Criminal Procedure Code.

6 Article 10 of ICCPR

Right to Privacy

Right to Privacy is an implicit right of Article 21 of the Indian Constitution⁷. Now this article has been widened by the Indian Judiciary. So, Right to personal liberty includes the Right to life. Right to Privacy is one of the major rights under the concept of Right to life. Supreme Court as well as various High Court decisions are protecting the right to Privacy of the Prisoner. In *Kharak Singh v. State of Uttar Pradesh*⁸, the petitioner challenged the Constitutional validity of the Uttar Pradesh Police Regulations. Under this regulation domiciliary visits are permissible. Domiciliary visits are nothing but domiciliary visits at night, and periodical enquiries by officers not below the rank of Sub Inspector. The petitioner contention was that the Uttar Pradesh Police regulations infringed the Article 21 of the Indian Constitution. The court observed that the domiciliary visits are unconstitutional and it will affect the privacy of the person.

Right Against Inhuman Treatment

The Supreme Court has in several cases condemned the Police brutality and torture of prisoners, accused persons and under trial. In this connection, the Supreme Court has observed in *Raghubir Singh v. State of Haryana*, that police torture is “disastrous to our human rights awareness and humanist constitutional order”. In the words of the court,

“The states at the highest administrative and political levels, we hope, will organize special strategies to prevent and punish brutality by police methodology. Otherwise, the credibility of the rule of law in our Republic vis-à-vis the people of the country will deteriorate”.¹⁰

In *Kishore Singh v. State of Rajasthan*,¹¹ the Supreme Court held that the use of “third degree” method by police was violative of Article 21 and directed the Government to take necessary steps to educate the

7 Article 21 of the Constitution of India states that, “No person shall be deprived of his life and personal liberty except procedure established by the law”.

8 1963 AIR 1295

9 AIR 1980 SC 1087

10 M.P.Jain, Indian Constitutional Law, 6th edition (Lexis Nexis Butterworths Wadhwa: Nagpur) 2010, P, 1209.

11 AIR 1981 SC 625

police so as to inculcate a respect for the human person.¹²

Right to Bail

The object of arrest and detention of the accused person is primarily to secure his appearance at the time of trial and to ensure that in case he is found guilty he is available to receive the sentence. If his presence at the trial could be reasonably ensured otherwise than by his arrest and detention, it would be unjust and unfair to deprive the accused of his detention, it would be unjust and unfair to deprive the accused of his liberty during the pendency of the criminal proceedings against him.¹³ In *Hitendra Vishnu Thakur v. State of Maharashtra*¹⁴ case the court held that, if investigation is not completed within a stipulated time and the status of the accused is not determined, the accused will then acquire a right to ask bail. In *Mangal Hemrum v. State of Orissa*,¹⁵ the court observed the right or the entitlement conferred on the accused to be released on bail after 90 days or 60 days" as the case may be must be considered to be an absolute right, subject" of course to the cancellation of the bail if the requirement of section 437(5) are satisfied.

Right to Publication of Book

Indian Constitution clearly states that every person has a freedom of speech and expression.¹⁶ So every person has a right to express the opinions and ideas to share with other person. In *State of Maharashtra v. Prabhakar Pandurang*¹⁷ case the petitioner had been detained by the government of Maharashtra under section 30(1) (b) of the Defence of India Rules, 1962. He had written a book with the permission of the state government, a book in Marathi under the titled 'Anucha Antarangaat' (inside the Atom). The contentions of the state government, that a person

12 Dr. J.N. Pandey, " The Constitutional Law of India, 49th edition(Central Law Agency: Allahabad), p, 278

13 R.V. kelkar's, Criminal Procedure Code, edited by K.N. Chandrasekharan Pillai, 6th edition , (Eastern Book Company: Lucknow) 2012, P, 289

14 1994 AIR 2623

15 (1982) Cri L.J. 687 (Orissa)

16 Article 19 (a) of the Indian Constitution

17 AIR 1966 SC 424

detained loses his freedom and he is no longer a free man and, that therefore, he can only exercise such privileges as are conferred on him by the order of detention. The court observed in this case that the book is purely of scientific interest and it cannot possibly cause any prejudice to the defence of India, Public safety or maintenance of public order. The government rejection amounts to infringement of the personal liberty of the prisoner.

Right to Receive Books and Magazines inside the Jail

While the main aim of the administration of justice is improving the moral values of justice. In this regard many state prison rules that clearly state that the prison authorities are obliged to allow the study of books and magazines to the accused person. In *George Fernandes v. State of Maharashtra*,¹⁸ the petitioner was detained by Commissioner of Police. Under detention he was refused to receive the magazines and books. But the court observed that the detainees are allowed to study the periodicals and books. Further, the security officers are providing all the facility to the prisoners. In *M.A. Khan v. State and another*¹⁹ case the petitioner filed the case against the state government. The petitioner wanted to receive the periodicals at own cost and wrote a letter to government for getting permission. But the government was not allowing to purchase or receive the periodicals. But the court directed that the state government should allow receiving of the periodicals by the petitioner.

Right to Reasonable Wages For Work

In the case of *Gurdev singh and others of v. State of Himachal Pradesh*,²⁰ the court held that, the jail spread over the sufficient area is looked after by the prisoners for which they are paid wages enabling them to support their families. In *P. Bahaskara Vijayakumar v. State of Andhra*²¹ Pradesh, the petitioner filed public interest litigation. He was a student who visited the jail for doing internship work. He observed that some of the prisoners

18 (1964) 66 Bom LR 185

19 AIR 1967 SC 254

20 1992 Cr. L.J. 2542

21 AIR 1988 AP 295

were getting low wages, despite doing hard work. So he filed the public interest litigation. Finally, the court allowed the petition and directed the state government to constitute a committee to consider the various aspects and fixed a scale of wages payable to the prisoners which would be fair and considerate to them and would not be unfair to the rest of the society.

Right to Health and Clean Environment

Every prisoner has the right to health and clean environment in jails. Because the Supreme Court as well as various High Courts decisions clearly say that right to health and clean environment is implicit right of Article 21 of the Indian Constitution. The medical officer of the prisoner is required to keep prisons clean and hygienic. Every prisons authority will provide clean drinking water to the prisoners in jails. There must be hygienic arrangements for rest rooms.²²

Conclusion

A review of the decisions of the Indian Judiciary regarding the protection of Prisoner Rights indicates that the judiciary has been playing a role of savior. The Supreme Court has come forward to take corrective measures and provide necessary directions to the executive and legislature. Liberty and freedom are the elements of prisoner's human right and democracy. Whenever a person is arrested by the police and taken to the police lockup, the police will immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at state cost, provided he is willing to accept such legal assistance. The State Government will provide necessary funds to the concerned Legal Aid Committee for carrying out this direction. Our Constitution mandates free legal aid to be provided to the weaker sections of the society. So the state should conduct free legal aid clinic in every prison. Right to clean environment is a constitutional right. So

22 T.N. Mathur v. State of U.P. (1993) Supp I SCC 722

the government has enacted the legislation to provide clean environment in prison. It is mandatory to appoint a protection officer for every prison. Another aspect of prisoner right which requires attention is whether a convicted person, after release on serving the prescribed sentence has a right to be considered for public employment, not to be regarded as a convict and a right to be treated equally with other citizens when there is an open selection for Government / private jobs and a right to have the stigma of a “convict” removed. Recently the Supreme Court of India has ruled that delay in execution of sentence is one of the reason for commutation of sentence.

Corrigendum

Due to Printer's mistake, co-author, Ms. Meenal Dadarwal's name was missing in the paper, 'A Correlational Study & Psycap: EQ Hardiness & Job Stress in Rajsthan Police Officers' published in Jan-March, 2016 Issue, Vol 63, No 1 of The Journal. It is certified that she is the co-author of the Paper.

- Editor

West Bengal Correctional Services Act, 1992 and Prison Reform in West Bengal



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Caesar Roy¹

Keywords

Prison, Reform, Correction, Overcrowding, Female Prisoners, Legal Aid, Medical Facilities, Human Right, Reform Committees.

Abstract

There has been a drastic change in the manner in which prisons are viewed today. The prison system or the term that is more preferable 'correctional services' is being handled in a manner, aimed at redeeming the offenders rather than avenge them. The existence of prisons in our society is an ancient phenomenon since Vedic period where the anti-social elements were kept in a place identified by the rulers to protect the society against crime. Prisons were considered as a 'House of Captives' where prisoners were kept for retributory and deterrent punishment. Prisons have been included at Entry No. 4 in the State List (List II) in the Seventh Schedule of the Constitution of India. Thus, States have all the responsibilities to bring about any change which may be needed in the current prison law to address any issue which has a bearing upon prison management on universally acceptable principles.

"Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care."

— **Mahatma Gandhi**

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Introduction

The management of prisons in the country is regulated by the Prisons Act, 1894. This Prisons Act, 1894 has generally remained unchanged except some minor amendments executed by the individual States from time to time to suit their local conditions. West Bengal State has enacted altogether a new law, namely, West Bengal Correctional Services Act, 1992 (West Bengal Act XXXII of 1992), which has included some of the progressive provisions in consistence with the new correctional philosophy.

Historical Background

The modern prison in India originated with the Minute by TB Macaulay in 1835. He recommended that a committee be appointed to suggest measures to improve discipline in prisons. Consequently, on 2nd January, 1836, a Prison Discipline Committee was constituted by Lord William Bantick for this purpose. The committee submitted their report in 1838 to Lord Auckland, the then Governor General which revealed prevalence of rampant corruption in the subordinate establishments, the laxity in discipline and the system of employing prisoners on extramural labour on public roads. The committee recommended more rigorous treatment of prisoners and rejected all notions of reforming criminals lodged in the prison through moral and religious teaching, education or any system of rewards for good conduct. Following the recommendations of the Macaulay Committee between 1836 to 1838, Central Prisons were constructed from 1846.

Sir John Lawrence, a renowned jurist, again examined the conditions of Indian prisons in 1864. Consequently, Second Commission of Enquiry to look into prison management and discipline was appointed by Lord Dalhousie. The commission in their report did not dwell upon, the concept of reformation and welfare of prisoners. It, instead, laid down a system of prison regimentation occasioned with physical torture in the name of prison discipline. However, the commission made some specific recommendations in respect of accommodation, diet, clothing, bedding, medical care of prisoners only to the extent that these were incidental to discipline and management of prisons and prisoners. In 1877, a Conference of Experts met to inquire into prison administration.

The conference proposed the enactment of a prison law and a draft bill was prepared.

The Fourth Jail Commission was appointed by Lord Dufferin in 1888 to inquire into the prison administration. This commission reiterated that the uniformity could not be achieved without the enactment of a single Prisons Act. Again, on the basis of its recommendation, a consolidated Prisons Bill was prepared providing some rigorous prison punishments such as gunny clothings, imposition of irons on hands and feet, penal diet, solitary confinement and whipping. Ultimately in 1894, the draft bill became law i.e. Prisons Act of 1894 with the assent of the Governor General of India which is the current law governing management and administration of prisons.

International Scenario

The Universal Declaration of Human Rights which states that: “No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment.”¹ The International Covenant on Civil and Political Rights (ICCPR) remains the core international treaty on the protection of the rights of prisoners. India ratified the Covenant in 1979 and is bound to incorporate its provisions into domestic law and state practice. According to ICCPR “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”²

The International Covenant on Economic, Social and Cultural Rights (ICESR) states that prisoners have a right to the highest attainable standard of physical and mental health.³ Apart from civil and political rights, the so called second generation economic and social human rights as set down in the ICESR also apply to the prisoners. The earlier United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955 consists of five parts and ninety-five rules. Part one provides rules for general applications. It declares that there shall be no ‘discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’⁴ At the same time there is a strong need for respecting the religious belief and

1 Article 5 of Universal Declaration of human Rights 1948, <http://www.un.org/en/documents/udhr/>, last visited on 20.05.2013

moral precepts of the group to which a prisoner belongs.⁵ The standard rules give due consideration to the separation of the different categories of prisoners.⁶ It indicates that men and women be detained in separate institutions. The under-trial prisoners are to be kept separate from convicted prisoners. Further, it advocates complete separation between the prisoners detained under civil law and criminal offences. The UN standard Minimum Rule also made it mandatory to provide separate residence for young and child prisoners from the adult prisoners. On the issue of prison offences and punishment, the standard minimum rules are very clear. The rules state that “no prisoner shall be punished unless he or she has been informed of the offences alleged against him/her and given a proper opportunity of presenting his/her defense.”⁷ It recommends that corporal punishment, by placing in a dark cell and all “cruel, in-human or degrading punishments shall be completely prohibited as a mode of punishment and disciplinary action” in the jails.⁸ Subsequent UN directives have been the Basic Principles for the Treatment of Prisoners (United Nations 1990) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nations 1988).

Beside this, United Nations codified standards of treatment for prisoners across different economic, social and cultural contexts in a number of documents. Some of them are given below –

- Standard Minimum Rules for the Treatment of Prisoners (OHCHR), 1955, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council

2. Article 10 of International Covenant on Civil and Political Rights, 1966, <http://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>, last visited on 20.05.2013

3. Article 12 of International Covenant on Economic, Social and Cultural Rights, 1966, <http://www.un-documents.net/icescr.htm>, last visited on 21.05.2013

4. Rule 6(1) of United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955, <http://www.refworld.org/docid/3ae6b36e8.html>, last visited on 21.05.2013

5. *Ibid*, Rule 6(2)

6. *Ibid*, Rule 8

7. *Ibid*, Rule 30(2)

8. *Ibid*, Rule 31

by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Adopted by General Assembly resolution 37/194 of 18 December 1982.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Adopted by General Assembly resolution 39/46 of 10 December 1984.
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles of Detention), 1988, Adopted by General Assembly resolution 43/173 of 9 December 1988.
- Basic Principles for the Treatment of Prisoners (UNPTP), 1990, Adopted by General Assembly resolution 45/111 of 14 December 1990.

Problems Of Prison

Despite the relatively low number of persons in prison as compared to many other countries in the world, there are some very common problems across prisons in India. Some of them are discussed below –

Overcrowding

Most of the prisons face problems of overcrowding and shortage of adequate space to lodge prisoners in safe and healthy conditions. Most of the prisoners found in prisons come from socio-economically disadvantaged sections of the society where disease, malnutrition and absence of medical services are prevalent. When such people are cramped in with each other in unhealthy conditions, infectious and communicable diseases spread easily. This apart, life is more difficult for inmates and works more onerous for staff when prisoners are in over capacity. Overcrowding has also begun to affect the attempts of the prison administration to empower prisoners with skills that would involve them in gainful

employment after release. The National Police Commission had pointed out that 60% of all arrests were either unnecessary or unjustified.⁹ The police often look upon imprisonment as an easy solution and use preventive sections of law, like 151 of the Criminal Procedure Code indiscriminately. The liberal use of the power to arrest, while contributing significantly to the problem of overcrowding, leads to increased expenditure on jails. One way to deal with the problem of overcrowding is to decriminalize certain offences and find alternatives to imprisonment, particularly in petty offences and make minor offences compoundable. Delay in completing cases is responsible for overcrowding in jails. An important factor responsible for delaying trials is the failure of the agencies to provide security escort to the under-trials to the courts on the dates of trial hearings. Speedy trials are frustrated by a heavy court workload, police inability to produce witnesses promptly and a recalcitrant defence lawyer who is bent upon seeking adjournments, even if such tactics harm his/her client. Fast track courts have helped to an extent, but have not made a measurable difference to the problem of pendency.

Delay in Trial

It is apparent that delay in trial finds an under-trial prisoner (UTP) in jail for a longer period while awaiting the decision of the case. The release of UTP on bail where the trial gets protracted would hopefully take care to a great extent the hardship caused in this regard. It has to be remembered that production before the court on remand dates is a statutory obligation and the same has a meaning also inasmuch as that the production gives an opportunity to the prisoner to bring to the notice of the Court, who had ordered for his custody, if he has faced any ill-treatment or difficulty during the period of remand. It is for this reason that actual production of the prisoner is required to be insured by the trial court before ordering for further remand. The mental agony,

9. The National Police Commission: The Third Report, Chapter XXII, 1980, <http://bprd.nic.in/writereaddata/linkimages/4097048343-THIRD%20REPORT.pdf>, last visited on 21.05.2013

expense and strain which a person has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Art.21. Speedy trial would encompass within its sweep all the stages including investigation, inquiry, trial, appeal, revision and retrial.

Neglect of health and hygiene

The health of prisoners and lack of adequate medical facilities in Indian prisons is one of the greatest problems. There has also been an alarming rise in the percentage of HIV positive inmates. Special and urgent care is required to look after such cases. Due to overcrowding, inmates have to live in extremely unhygienic conditions, with little concern for health or privacy. In some prisons toilets are open, denying the prisoner his basic right to privacy and human dignity, and are also dirty. Water shortage is very common rule. The toilets prove to be the ideal breeding grounds for health hazards and epidemics. Non-availability of adequate medical facilities for prisoners is largely due to the lack of full time doctors as well as lack of basic infrastructure, like well equipped ambulances, stretchers, dispensaries, hospital beds etc. sometimes, the prisoner may need expert and urgent medical attention which is not available within the jail premises. Transporting the sick prisoner out in the absence of vehicles and escort in districts sometimes poses a problem. Drug addiction is on the increase in prisons and in many cases leads to other diseases, such as AIDS and Tuberculosis. The nexus between drugs and crime is getting stronger day by day. Besides suffering from physical ailments, the prisoner also undergoes considerable stress and trauma during his stay in prison. Imprisonment is often accompanied with depression and a feeling of isolation and neglect.

Insubstantial food and inadequate clothing

There is not much to doubt that the rules contained in concerned Jail

Manual dealing with food and clothing etc. to be given to prisoners are not fully complied with always. All that can usefully be said on this aspect is the persons who are entitled to inspect jails should do so after giving shortest notice so that the reality becomes known on inspection. The system of complaint box introduced in Tihar Jail during some period needs to be adopted in other jails also. The complaint received must be fairly inquired and appropriate actions against the delinquent must be taken. On top of all, prisoners must receive full assurance that whoever would lodge a complaint would not suffer any evil consequence for lodging the same.

Deplorable condition of Prison staff

Central to the prison administration is the problem of demoralization and lack of motivation of the prison staff that was reiterated by most participants in the workshop, particularly those belonging to the prison department. It was pointed out that the conditions in which the lower echelons of the prison staff lived were in some cases worse than those of the prisoners. This was seen as an important factor contributing to the poor functioning of the prisons, apathy of the prison staff towards the plight of the prisoners, corruption and the overall deprivation of the prisoners of their basic amenities. Such substandard conditions of service produce a culture of frustration and dehumanization in the service which often spills over and gets translated into aggression on prisoners. The higher officials of the prison, majority of whom are on deputation from the police service, consider this as a punishment posting and are generally too demoralized to contribute significantly to the building up of the department. Most of them are merely time servers. The next rank officials (such as Superintendents/Deputy or Asst Superintendent/ Jailers etc.), are also demoralized because of poor service conditions, lack of career opportunities and low public esteem. At the grassroots level (such as Head Warden/Wardens etc.), they remain inside the prison walls, interacting with prisoners most of the time. This factor, combined with their pathetic service conditions, has the effect of dehumanizing them. Some of them develop vested interests and join hands with criminals. Some prisons suffer from severe under staffing and also lack of other infrastructure related posts, like those of engineers who could aid in making living and sanitary conditions more comfortable for inmates and

thus lessen the load on the prison staff. The deplorable service conditions are made worse by the near complete absence of vertical mobility in the department, especially for the lower or middle order ranks. Jail officials are known to occupy the same post for twenty five to thirty years which is often the cause for lack of motivation.

Condition of women prisoners

A large number of women prisoners were detained in jails as under-trials for a long time. Women, due to their ignorance, are not even getting the benefit of proviso to Section 437 of Criminal Procedure Code, 1973, according to which they can be released on bail even in non-bailable cases. Women suffer from a low social and economic status within their own families and find it harder to get back into society upon release than men. Social factors that marginalize their participation in mainstream society and contribute to the rising number of women in prison include poverty, lack of social support, separation or single motherhood, and homelessness. Lack of financial support and social ostracisation makes life after release a veritable hell. Particularly difficult situations for women are separation from children and other significant people, including family. Some women are pregnant when they come into prison and this can be a particularly difficult time, physically and psychologically. World over, it has been found that prison services are not sensitive enough in timely recognition and treatment of their mental health problems and do not address their vocational and educational needs adequately when compared to men. As mentioned earlier, women are more liable to abuse.

Streamlining of jail visits

Prison visits fall into three categories: (I) relatives and friends; (II) professionals; and (III) lay persons. In the first category comes the spouse. Visit by him/her has special significance because majority of them were in the age group of 18 to 34, which shows that most of them were young and were perhaps having a married life before their imprisonment. For such persons, denial of conjugal life during the entire period of incarceration creates emotional problems also. Visits by a spouse are, therefore, of great importance. It is, of course, correct that at times visit may become a difficult task for the visitors. This would be

so where prisoners are geographically isolated. This apart, in many jails facilities available to the visitors are degrading. At many places even privacy is not maintained. If the offenders and visitors are screened, the same emphasizes their separation rather than retaining common bonds and interests. There is then urgent need to streamline these visits. The frequent jail visits by family members go a long way in acceptance of the prisoner by his family and small friendly group after his release from jail finally, as the visits continue the personal relationship during the term of imprisonment, which brings about a psychological communion between him and other members of the family.

Lack of legal aid

In India, legal aid to those who cannot afford to retain counsel is only available at the time of trial and not when the detainee is brought to the remand court. Since the majority of prisoners, those in lock up as well as those in prisons have not been tried, absence of legal aid until the point of trial reduces greatly the value of the country's system of legal representation to the poor. Lawyers are not available at the point when many of them mostly need such assistance. The poor in prison do not always get the provisions in law though the State is obliged to provide legal aid because some prisoners are either illiterate or do not understand the prisoner's right. The lack of good and efficient lawyers in legal aid panels at that time was also a common problem.

Role of Judiciary in Prison Reform

The need for prison reforms has come into focus during the last three to four decades. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. Prisoner's rights have become an important item in the agenda for prison reforms. Our prison system has been under the close scrutiny of judiciary since long, prison being an institution primarily for persons remanded to judicial custody or sentenced to undergo jail sentence by the courts only. The Indian Supreme Court has been active in responding to human right violations in Indian jails and has, in the process, recognized a number of rights of prisoners by interpreting Articles 21, 19, 22, 32, 37 and 39A of the Constitution in a

positive and humane way.

In *State of Maharashtra v. Prabhakar*,¹⁰ aid of Article 21 was made available perhaps for the first time to a prisoner while dealing with the question of his right of reading and writing books while in jail.

A challenge was made to the segregation of prisoners in *Bhutan Mohan Pattnaik v. State of Andhra Pradesh*,¹¹ and a three Judge bench stated that resort to oppressive measures to curb political beliefs (the prisoner was a Naxalite because of which he was put in a 'quarantine' and subjected to inhuman treatment) could not be permitted. The Court, however, opined that a prisoner could not complain of installation of high-volt live wire mechanism on the jail walls to prevent escape from prisons, as no prisoner had fundamental right to escape from lawful custody.

In *Sunil Batra(I) v. Delhi Administration*,¹² the Supreme Court held that convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess. The Court further held that the fundamental rights of prisoners cannot be curtailed and found that solitary confinement without procedural fairness was unconstitutional. The Court however, did clarify that sections 73 and 74 of the Indian Penal Code leave no room for doubt that solitary confinement is by itself a substantive punishment, which can be imposed by a court of law; it did however also state that it cannot left to the whim and caprice of prison authorities.

In *Charles Shobraj v. Superintendent*,¹³ the Supreme Court again held that like you and me, prisoners are also human beings. Hence, all such rights except those that are taken away in the legitimate process of incarceration still remain with the prisoner. These include rights that are related to the protection of basic human dignity as well as those for the development of the prisoner into a better human being.

*Sunil Batra(II) v. Delhi Administration*¹⁴ is the landmark case in prison reforms. This case recognized the various rights of prisoners in the most comprehensive manner. The Supreme Court held that no

10. AIR 1966 SC 424

11. AIR 1974 SC 2092 : (1975)3 SCC 185

12. AIR 1978 SC 1675 : (1978)4 SCC 494

13. AIR 1978 SC 1514 : (1978)4 SCC 104

14. AIR 1980 SC 1579 : (1980)3 SCC 488

prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of the court. All other freedoms belong to him to read and write, to exercise and recreation, to meditation and chant, to comforts like protection from extreme cold and heat, to freedom from indignities such as compulsory nudity, forced sodomy and other such unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security, to the minimal joys of self-expression, to acquire skills and techniques. A corollary of this ruling is the Right to Basic Minimum Needs necessary for the healthy maintenance of the body and development of the human mind. This umbrella of rights would include: Right to proper Accommodation, Hygienic living conditions, Wholesome diet, Clothing, Bedding, timely Medical Services, Rehabilitative and Treatment programmes.

In the case of *Prem Shankar v. Delhi Administration*,¹⁵ the Court held that the provisions of the Punjab Police Rules that every under trial who is accused of a non-bailable offence with more than 3 years imprisonment be handcuffed was violative of Articles 14, 19 and 21. The court held that the nature of the accusation is not the criterion. There has to be a clear danger of escape break out of police control and that would be the detriment.

The *Supreme Court in Kishore Singh v. State of Rajasthan*¹⁶ held that human dignity was not to be ignored even in prisoners. Solitary confinement and putting fetters was to be restricted only in rarest of rare cases for security reasons.

In *Francis Coralie Mullin v. Administrator Union Territory of Delhi*,¹⁷ the Supreme Court observed that the right to life for prisoners includes the right to live with human dignity and includes adequate nutrition, clothing, shelter, facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing with fellow human beings.

Another landmark judgement pronounced by the judiciary in *Rudal Shah v. State of Bihar*¹⁸ is the right to compensation in cases of illegal deprivation of personal liberty. It held that violation of a constitutional

15. AIR 1980 SC 1535 : (1980)3 SCC 526

16. AIR 1981 SC 625 : (1981)1 SCC 503

17. AIR 1981 SC 746 : (1981)1 SCC 608

18. AIR 1983 SC 1086 : (1983)4 SCC 141

right can give rise to a civil liability enforceable in a civil court and; secondly, it formulates the bases for a theory of liability under which a violation of the right to personal liberty can give rise to a civil liability.

In *Sheela Barse I v. Union Territory*,¹⁹ it was held that jailing of non-criminal mentally ill persons is unconstitutional and directions were given to stop confinement of such persons.

Again in *Citizens Democracy v. State of Assam*,²⁰ it was held that handcuffing of under-trials and convicts and putting them under fetters was not permissible. The Court further held that handcuffing and tying with ropes of patient-prisoners lodged in the hospitals is inhuman and in utter violation of human rights guaranteed under international law and the law of the land.

In *Ramamurthy v. State of Karnataka*,²¹ the Supreme Court of India has strongly brought out the need for bringing in a basic uniformity in laws and regulations governing prisons in the country. The apex Court has specifically directed the authorities to deliberate about enacting of new Prison Act to replace the century old Prisons Act, 1894 and to examine the question of framing of a new model All India Jail Manual.

Finding and Recommendations of Different Reform Committee Reports

Various Committees, Commissions, Working Groups like, All India Jail Committee (1919-1920); Jail Inquiry Committee (1940); W. C. Reckless Report on Jail Administration in India (1951-52); All India Jail Manual Committee (1957); Working Group on Prisons (1972); All India Committee on Jail Reforms (1980-83); National Expert Committee on Women Prisoners (1986); Kapoor Committee on Prison Administration : Security & Discipline (1986); All India Model Prison Manual Committee (2000); Parliamentary Committee on Empowerment of Women (2001-02) have been constituted from time to time by the State Governments as well as the Government of India to improve the prison conditions to the extent as are conducive to the reformation and rehabilitation of prisoners

19. (1993)4 SCC 204 : 1993 Cri.L.J 3540 (SC)

20. AIR 1996 SC 2193 : (1995)3 SCC 743

21. AIR 1997 SC 1739 : (1997)2 SCC 642

in the changing scenario.

The process of review of prison problems in the country, continued even after the enactment of Prisons Act, 1894. The first ever comprehensive study was launched on this subject with the appointment of All India Jail Committee (1919-1920). It is indeed a major landmark in the history of prison reforms in India and is appropriately called the corner stone of modern prison reforms in the country. For the first time, in the history of prison administration, reformation and rehabilitation of offenders were identified as one of the objectives of prison administration. The committee made following recommendations –

- The care of prisoners should be entrusted to the adequately trained staff drawing sufficient salary to render faithful service.
- The separation of executive/custodial, ministerial and technical staff in prison service.
- The diversification of the prison institutions i.e. separate jail for various categories of prisoners and a minimum area of 675 Sq. Feet (75 Sq. Yards) per prisoner was prescribed within the enclosed walls of the prison.

The first decade after independence was marked by strenuous efforts for improvements in living conditions in prisons. A number of Jail Reforms Committees were appointed by the State Governments, to achieve a certain measure of humanization of prison conditions and to put the treatment of offenders on a scientific footing. Some of the committees which made notable recommendations on these lines were –

- The East Punjab Jail Reforms Committee, 1948-49;
- The Madras Jail Reforms Committee, 1950-51;
- The Jail Reforms Committee of Orissa, 1952-55;
- The Jail Reforms Committee of Travancore and Cochin, 1953-55;
- The U.P. Jail Industries Inquiry Committee, 1955-56; and
- The Maharashtra Jail Industries Reorganization Committee, 1958-59.

While local Committees were being appointed by State Governments to suggest prison reforms, the Government of India invited technical assistance in this field from the United Nations. Dr. W. C. Reckless, a U.N. Expert on Correctional Work, visited India during the years 1951-

52 to study prison administration in the country and to suggest ways and means of improving it. His report 'Jail Administration in India' is another landmark document in the history of prison reforms. Some of the salient recommendations made by Dr. W. C. Reckless are as follows –

- Juvenile delinquents should not be handed over by the courts to the prisons which are meant for adult offenders.
- A cadre of properly trained personnel was essential to man prison services.
- Specialized training of correctional personnel should be introduced.
- Outdated Prison Manuals be revised suitably and legal substitutes be introduced for short sentences.
- Full time Probation and Revising Boards be set up for the after-care services and also the establishment of such boards for selection of prisoners for premature release.
- An integrated Department of Correctional Administration be set up in each State comprising of Prisons, Borstals, Children institutions, probation services and after-care services.
- An Advisory Board for Correctional Administration be set up at the Central Government level to help the State Governments in development of correctional programmes.
- A national forum be created for exchange of professional expertise and experience in the field of correctional administration.
- A conference of senior staff of correctional departments be held periodically at regular intervals.

In pursuance to the recommendations made by the Eighth Conference of the Inspectors General of Prisons, which was held in the year 1952 and also by Dr. W. C. Reckless, the Government of India appointed the All India Jail Manual Committee in 1957 to prepare a Model Prison Manual. The All India Jail Manual Committee was also asked to examine the problems of prison administration and to make suitable suggestions for improvements to be adopted uniformly throughout the country.

In pursuance to the recommendations made by Dr. W. C. Reckless and also by the All India Jail Manual Committee, the Central Bureau of Correctional Services was set up under the Ministry of Home Affairs in 1961 to formulate a uniform policy and to advise the State Governments on the latest methods relating to jail administration, probation, after-care,

juvenile and remand homes, certified and reformatory schools, Borstals and protective homes, suppression of immoral traffic, etc.

In 1972, the Ministry of Home Affairs, Government of India, appointed a Working Group on Prisons which presented its report in 1973. This Working Group brought out in its report the need for a National Policy on Prisons. Its salient features are as under –

- To make effective use of alternatives to imprisonment as a measure of sentencing policy.
- Emphasized the desirability of proper training of prison personnel and improvement in their service conditions.
- To classify and treat the offenders scientifically and laid down principles of follow-up and after-care procedures.
- That the development of prisons and the correctional administration should no longer remain divorced from the national development process and the prison administration should be treated as an integral part of the social defence components of national planning process.
- Identified an order of priority for the development of prison administration.
- The certain aspects of prison administration be included in the Five Year Plans.
- An amendment to the Constitution be brought to include the subject of prisons and allied institutions in the Concurrent List, the enactment of suitable prison legislation by the Centre and the States, and the revision of State Prison Manuals be undertaken.

The Government of India has constituted an All India Committee on Jail Reforms under the chairmanship of Mr Justice A. N. Mulla in 1980 the committee submitted their report in 1983. This committee examined all aspects of prison administration and made suitable recommendation respecting various issues involved. A total of 658 recommendations made by this committee on various issues on prison management. Some of the important recommendations are given below –

- Inclusion of the subject of prisons and allied institutions in the

Concurrent List of the Seventh Schedule to the Constitution of India;

- Enactment of uniform and comprehensive legislation embodying modern principles and procedures regarding reformation and rehabilitation of offenders.
- There shall be in each State and Union Territory a Department of Prisons and Correctional Services dealing with adult and young offenders – their institutional care, treatment, aftercare, probation and other non-institutional services.
- The State shall endeavour to evolve proper mechanism to ensure that no under-trial prisoner is unnecessarily detained. This shall be achieved by speeding up trials, simplification of bail procedures and periodic review of cases of under-trial prisoners. Under-trial prisoners shall, as far as possible, be confined in separate institutions.
- Since it is recognized that imprisonment is not always the best way to meet the objectives of punishments the government shall endeavour to provide in law new alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure, etc., in addition to the ones already existing and shall specially ensure that the Probation of Offenders Act, 1958, is effectively implemented throughout the country.
- Living conditions in every prison and allied institution meant for the custody, care, treatment and rehabilitation of offenders shall be compatible with human dignity in all aspects such as accommodation, hygiene, sanitation, food, clothing, medical facilities, etc. All factors responsible for vitiating the atmosphere of these institutions shall be identified and dealt with effectively.
- In consonance with the goals and objectives of prisons, the State shall provide appropriate facilities and professional personnel for the classification of prisoners on a scientific basis. Diversified institutions shall be provided for the segregation of different categories of inmates for proper treatment.
- Programmes for the treatment of offenders shall be individualized and shall aim at providing them with opportunities for diversified education, development of work habits and skills, change in attitude, modification of behaviour and implantation of social and

moral values.

- The State shall endeavour to develop vocational training and work programmes in prisons for all inmates eligible to work. The aim of such training and work programmes shall be to equip inmates with better skills and work habits for their rehabilitation.
- Payment of fair wages and other incentives shall be associated with work programmes to encourage inmate participation in such programmes. The incentives of leave, remission and premature release to convicts shall also be utilized for improvement of their behaviour, strengthening, of family ties and their early return to society.
- The State shall provide free legal aid to all needy prisoners.
- Prisons are not the places for confinement of children. Children (under 18 years of age) shall in no case be sent to prisons. All children confined in prisons at present shall be transferred forthwith to appropriate institutions, meant exclusively for children with facilities for their care, education, training and rehabilitation. Benefit of non-institutional facilities shall, whenever possible, be extended to such children.
- Young offenders (between 18 to 21 years) shall not be confined in prisons meant for adult offenders. There shall be separate institutions for them where, in view of their young and impressionable age, they shall be given treatment and training suited to their special needs of rehabilitation.
- Women offenders shall, as far as possible, be confined in separate institutions specially meant for them. Wherever such arrangements are not possible they shall be kept in separate annexes of prisons with proper arrangements. The staff for these institutions and annexes shall comprise of women employees only. Women prisoners shall be protected against all exploitation. Work and treatment programmes shall be devised for them in consonance with their special needs.
- Mentally ill prisoners shall not be confined in prisons. Proper arrangements shall be made for the care and treatment of mentally ill prisoners.
- Probation, aftercare, rehabilitation and follow-up of offenders shall form an integral part of the functions of the Department of Prisons and Correctional Services.

- Most of the persons sentenced to life imprisonment at present have to undergo at least 14 years of actual imprisonment. Prolonged incarceration has a degenerating effect on such persons and is not necessary either from the point of view of individual's reformation or from that of the protection of society. The term of sentence for life in such cases shall be made flexible in terms of actual confinement so that such a person may not have necessarily to spend 14 years in prison and may be released when his incarceration is no longer necessary.

Thereafter, Government of India has constituted another committee on 26th May, 1986, namely, National Expert Committee on Women Prisoners under the chairmanship of Justice Krishna Iyer who has submitted its report on 18th May, 1987. The Government of India has shown serious concern over the growing threats to the security and discipline in prisons posing a challenge as how to make prisons a safe place. Consequently, the Ministry of Home Affairs, Government of India has constituted a All India Group on Prison Administration-Security and discipline on 28th July, 1986 under the chairmanship of Shri R.K. Kapoor who submitted their report on 29th July, 1987.

In pursuance to the directions given by the Hon'ble Supreme Court in a case of *Ramamurthy v. State of Karnataka*,²² the Government of India has constituted All India Model Prison Manual Committee in November, 2000 under the chairmanship of Director General of Bureau of Police Research & Development (BPR&D) to prepare a Model Prison Manual for the Superintendence and Management of Prisons in India in order to maintain uniformity in the working of prisons throughout the country. Among its important recommendations, the Committee is believed to have suggested setting up a Department of Prisons and Correctional Services to deal with adult and young offenders. It also recommended setting up a fulltime National Commission on Prisons. It believed that young offenders aged between 18 and 21 should not be confined to prisons meant for adult offenders, as they become more prone to crimes while in the company of more experienced and hardened criminals. It similarly recommended that persons arrested for politico-

22. AIR 1997 SC 1739 : (1997)2 SCC 642

economic agitations for public causes should not be confined to prisons with regular prisoners. The main recommendations of the Committee are as follows –

- To review the laws, rules and regulations governing the management of prisons, treatment of prisoners and to make recommendations for devising good practices and procedures on the basis of comparative analysis of the provisions of the States Prison Manuals by identifying gaps in their provisions for managing and administering prisons.
- To examine various aspects relating to treatment of prisoners with special reference to their basic minimum needs compatible to the dignity of human life in the light of the recommendations made by the All India Committee on Jail Reforms (1980-83), Supreme Court Judgments and various international instruments to which India is a party.
- To look into the procedure regarding the internal management of prisons with a view to uphold the rights of the prisoners and the development of prison staff in terms of custody, security institutional discipline, institutional programmes for the specialized treatment of women, adolescents, children and mentally sick person, staff recruitment and training and to suggest measures with a view to develop prisons as correctional institutions.
- To scrutinize and analyze the implications of the proposed Prison Management Bill being finalized by the Ministry of Home Affairs, Government of India.
- To finalize the draft of Model Prison Manual by evolving national consensus on the relevant issues relating to Prison Reforms in India.
- Any other matter relating to management of prison administration that the committee may like to consider.

Prison Statistics In India

According to the Prison Statistics 2011 published by the National Crime Records Bureau,²³ there are a total of 1382 prisons in the country, housing a total population of 372926 prisoners as against a stipulated capacity of

23. National Crime Records Bureau, Ministry of Home Affairs, Government of India, <http://ncrb.gov.in/>, last visited on 22.05.2013

332782 prisoners (representing an occupancy rate of 112.1%) distributed across 1382 establishments throughout the country. Out of this number, as of 2011, 34.5% were convicts, 64.7% were under trials and the balance 0.7% being detenues and 0.2 being others. The average occupancy of prisons in the country was 115.3% for males and 69.3% for females. This implies an overcrowding of 15.3% for males against the stipulated / authorized capacity, while for female wards/prison are under populated to the tune of 30.7%. The worst scenario in terms of overcrowding of male prisoners was found in A&N Island and Lakshadweep (413.4% and 493.8% i.e. overcrowding of 313.4% and 393.8% respectively). Among the smaller states, the most manageable situation was found to be in Nagaland (39.2% i.e. under populated by 60.8%).²⁴

As per the Prison Statistics India 2011, out of a total of 241200 under trial prisoners in the country, the pendency of cases in the courts is as follows²⁵ –

- Pending for 3 months – 96665 cases (40.1%)
- Pending for 3 months to 6 months – 50126 cases (20.8%)
- Pending for 6 months to 1 year – 41455 cases (17.2%)
- Pending for 1 year to 2 years – 30261 cases (12.5%)
- Pending for 2 to 3 years – 13592 cases (5.6%)
- Pending for 3 to 5 years – 7615 cases (3.2%)
- Pending above 5 years – 1486 cases (0.6%)

Salient Features of West Bengal Correctional Services Act, 1992

It is the Prisons Act, 1894, on the basis of which the present jail management and administration operates in India. This Act has hardly undergone any substantial change. The Prisons Act of 1894 lays down the minimum conditions for upkeep and treatment of prisoners and imposes limitations on custodial authorities to the type of treatment that can be given to those in penal custody. The Act also provides for separation of male from female prisoners, under trial from convicted prisoners and

24. Ibid.

25. Ibid

male prisoners under the age of 21 years from those above 21 years. The various provisions of the Act are the guiding force behind the Prison Manuals formulated by each State. Later, the West Bengal Correctional Services Act, 1992 was passed with an object to amend and consolidate the law relating to prison and persons detained therein in West Bengal. Except some sections (Sections 11, 14, 15, 39, 40, 41 and 89), this Act came into force on 14th April, 2000.²⁶ The main purpose of this Act is that the welfare of the prisoners may be provided so that they may come to mainstream of the society. This Act omits certain old provision of the West Bengal Jail Code in order to provide better treatment of the lifestyle of the prisoners who are detained in prison. This Act has 30 chapters consisting 108 sections. In chapter 1 of this Act some words and phrases are defined. Chapter 2 deals with establishment of different categories of correctional home. Functions of those correctional homes are mentioned in chapter 3. In chapter 5 admission of prisoners are discussed. Delivery of prisoners is mentioned in chapter 6 and classification of prisoners is discussed in chapter 7. Regarding visitors of the prison, it is mentioned in chapter 9 whereas letters, interviews and interrogations of the prisoners are described in chapter 15. Care and treatment of prisoners, their educational facilities and also their hygienic and sanitary arrangements are mentioned in chapters 10, 11 and 12 respectively. Chapter 16 deals with labour and wages in correctional home. Remission, release and parole procedures of the prisoners are discussed in chapter 17. Chapter 27 deals with probation and after care services. In chapter 18 transfer of prisoners are mentioned. Provisions regarding female prisoners, condemned prisoners, lunatics and under trial prisoners are mentioned in chapters 19, 20, 21 and 22 respectively. Special provision for Division I Prisoners are discussed in chapter 23. Attendance procedure and rights of prisoners are mentioned in chapter 24 and 25 respectively. Offences committed by the prisoners and their punishment are discussed in chapter 26 whereas in chapter 28 establishment and other provisions regarding open correctional homes are mentioned.

All the provisions regarding prison and prisoners in West Bengal as mentioned in this Act are made maintaining all the provisions of the West Bengal Jail Code 1968, the All India Committee on Jail Reforms, 1980-

26. Published in the Calcutta Gazette, Extraordinary, vide Notification No. 358-H.J. dated 30.03.2000

83 and the Model Prison Manual, 2003. At present the West Bengal Jail Code 1968 is being revised to bring it in conformity with the provisions of the West Bengal Correctional Services Act, 1992. This is to say that till the revision is complete, the Jail Code will remain in force. After passing of this Act, the Prisons Act, 1894, the Prisoners Act, 1900, the Identification of Prisoners Act, 1920, the Transfer of Prisoners Act, 1950, and the Prisoners (Attendance in Courts) Act, 1955, in their application to West Bengal, are repealed.²⁷

Drawbacks of West Bengal Correctional Services Act, 1992

Now according to the West Bengal Correctional Services Act, 1992, prisoners have some rights and accordingly they are enjoying the same. But still some important provisions relating to prison reform are either absent or lacking. Accordingly, some drawbacks are given below depending upon Mulla Committee Report, 1983 and Model Prison Manual, 2003 –

- According to the recommendation of the Mulla Committee all under-trial prisoners should be effectively produced before the presiding magistrates on the dates of hearing. Therefore in case of lack of resources to provide escorts for under-trial prisoners, videoconferencing should be used as an effective alternative for hearing and not merely for extension of dates. According to Model Prison Manual an under-trial prisoner shall be produced before the court, on the due date of hearing, in person. However, for extension of detention in custody, the prisoner may be produced before the court either in person or electronic media like, video-linkage. But this Act does not mention video conferencing as a means for production of prisoner's in court.
- This Act does not address the issue of jail adalats. It is the summary disposal of cases and hearings held within prisons, of those cases in which the accused prisoner is ready to plead guilty.
- There are no specific provisions in the Act which deal with grievance redressal mechanisms in correctional homes. Both the Mulla Committee and Model Prison Manual have made so many recommendations regarding grievance redressal mechanisms. None

27. Section 108 of West Bengal Correctional Services Act, 1992.

of them has been followed by this Act.

- According to the recommendation of the Mulla Committee, there should be four types of living accommodation: barracks (for not more than 20 prisoners), dormitory (for not more than four to six prisoners), single seated accommodation and cells for segregation, whereas according to Model Prison Manual there should be three types of living accommodation viz., barracks (for not more than 20 prisoners), single rooms, and cells for segregation. But in this Act these types of separate living accommodations have not been mentioned, only it is mentioned that the prisoners shall generally be accommodated in cells and wards.
- According to Mulla Committee Report 1983, the classification of under-trial prisoners on the basis of their socio-economic status should be abolished. According to Model Prison Manual 2003, no classification of prisoners shall be allowed on grounds of socio-economic status, caste or class. The classification of under-trial prisoners should be done only on the basis of security, discipline and institutional programme. No classification on the basis of social status should be attempted. At present, prisoners in Indian jails are classified into different classes not on the basis to their criminal record but according to their social, economic and educational background. The West Bengal Correctional Services Act is not the exception in this regard also.
- According to the recommendation of the Mulla Committee all cells are to be fitted with flush type latrines. The ratio of latrines to prisoners should be 1:6, and the system of open basket type latrines should be discontinued. It is also mentioned that every prison must provide cubicles for bathing at the rate of one for ten prisoners, with proper arrangements to secure privacy, whereas according to Model Prison Manual Each barrack used for sleeping will have sufficient number of attached WCs, urinals and wash places. The ratio of such WCs will be 1:10 prisoners. The ratio of the WCs, which can be used during the daytime, will be 1:6 prisoners. Every prison will provide covered cubicles for bathing, at the rate of one for every ten prisoner, with proper arrangements to ensure privacy. These provisions are not followed totally in the Act of 1992.
- According to the recommendation of the Mulla Committee there

should be provisions for different diets for non-labouring and laboring prisoners, nursing women, and children accompanying women prisoners. Also a provision for special diets on religious festivals and national days should be specified in the rules. It is further stated that norms for prison diet should be laid down in terms of calorific and nutritious value, quality and quantity. In order to break the monotony of the diet, menus should be prepared in advance, under the guidance of nutrition experts. But these provisions are not followed strictly in this Act.

- According to Model Prison Manual the prison hospitals may be divided into Types 'A' and 'B'. Big hospitals, with 50 beds and above shall be called 'A' type hospitals. Other hospitals, with less than 50 beds, shall be called 'B' type hospitals. In each hospital there will be Chief Medical Officer (in the rank of Civil Surgeon with post-graduate qualification), Assistant Civil Surgeon, Staff Nurse, Pharmacist, Male/Female Nursing Assistant, Laboratory Technician, Psychiatric Counselor and Junior Assistant adequate in numbers. But in this Act no such specifications of hospitals along with adequate numbers of doctors and officers have been mentioned, only it is laid down in the Act that in every correctional home (other than a subsidiary correctional home), there shall be a hospital and in every subsidiary correctional home, there shall be a sick room with at least four beds for segregation of sick prisoners.
- According to the recommendation of the Mulla Committee there should be no limit on incoming letters for prisoners. It is also mentioned that all illiterate or semi-literate prisoners should be provided help in writing letters, whereas according to Model Prison Manual there shall be no limit on the number of incoming letters to a prisoner. But in this Act nothing is mentioned about number of incoming letters a prisoner can receive and there is also no such provision for illiterate or semi-literate prisoners to write letters.
- According to Model Prison Manual the prison a prisoner may be permitted the use of telephones on payment, to contact his family and lawyers, periodically, wherever such facility is available but only at the discretion of the superintendent of the prison. But in this Act there is no such provision.

- According to the recommendation of the Mulla Committee Enclosures for women in common prisons must have a double-lock system and should be renovated so as to ensure that women prisoners do not come in view of male prisoners. Pregnant and nursing women should be prescribed a special diet and exempted from unsuitable kinds of work. Women should be permitted to retain their mangal sutras, glass or plastic bangles, etc. According to Model Prison Manual an adequate and nutritious diet should be given to nursing women and to children accompanying women prisoners. Female prisoners shall be allowed to retain, in moderation, certain ornaments of small value such as mangal sutras, bangles and toe rings. All the provisions mentioned above are absent on the present Act.
- According to the recommendation of the Mulla Committee there should be a separate ward for women in prison hospitals. According to Model Prison Manual every women's prison shall have a ten-bed hospital for women. At least one or more woman gynaecologist and psychiatrist shall be provided. Modern equipment for X-ray, ECG, ultrasound and sonography should be available. These are not available in this Act.

Some Suggestions

The West Bengal Jail Code Revision Committee constituted in the August, 1978 in its interim report recommended certain revision of existing West Bengal Jail Code for betterment of conditions of prison towards reformative and rehabilitative perspective.²⁸ This committee recommended some important provisions relating to prison reform in West Bengal to make the prisons as correctional institutions rather than detention home. Some of the provisions have adopted in the West Bengal Correctional Services Act, but still some changes are required. Some suggestions have been given below, which may be implemented at the legislative (amendment of the West Bengal Correctional Services Act, 1992) and administrative level as well as by the judiciary, which would make prison reform more effective in West Bengal –

28. Published in the Calcutta Gazette, Extraordinary, dated 12.08.1978

- An important problem relating to over-crowding of prisons can be tackled by reducing the population of under-trial prisoners by speedier trials in special fast-track courts, Lok Adalats, special courts and via video conferencing. Prisons should be linked with Video Conferencing facility with Chief Judicial Magistrate/ Additional Chief Judicial Magistrate/Sessions Courts for conducting judicial remand extension of the under-trial prisoners u/s 167 of Criminal Procedure Code, 1973. However, it should be ensured that the prisoners should not be forced to plead guilty in such fast-track courts in the hope of getting a lesser sentence. What is more surprising is that many prisoners keep languishing in jails long after they are acquitted, because of the lack of coordination between the court and prison administration. Modern methods of information technology and e-governance should be pressed into service for improvements in this regard.
- An amendment should be made in the Cr.P.C. to make it possible for an under-trial prisoner to plead guilty at any stage of the trial. The plea bargaining system may be considered for introduction after adopting necessary safeguards.
- According to the reformatory theory of punishment, the confinement of offenders in prison is meant to reform and rehabilitate them as useful citizens rather than penalizing them even after marked positive changes are noticed in them. Hence, the release of lifers and hardened criminals before their stipulated terms should be given serious thought. As far as possible, easier bail provisions, using section 436-A of the Cr.P.C and use of the Probation of Offenders Act, 1958 should be pressed into service. It would not only reward good behaviour of these prisoners, but also take care of the over-crowding in prisons.
- The classification of prisoners into divisions or classes should be done away with on the basis of social status, education and habits of life, or on the basis of committing a political offence, as the prison authorities must not perpetuate inequalities while distributing basic amenities which are necessary for a dignified human life, albeit while in prison. Political prisoners or any other prisoners for that matter as a class cannot be put on a higher pedestal or be considered higher in the hierarchy between the prisoners. There can be no distinction

of a rich or poor prisoner. Therefore, classification of Division-I prisoners in the said Act is also required to be looked into by the State of West Bengal. To grade prisoners according to their status is alien to the Constitutional Scheme. Rich, poor, irrespective of class, colour, creed and race all are equal. What the Correctional Services Act proposes to give to the political prisoners are the common basic minimum amenities, which are necessary for dignified human living, to which all prisoners ought to be entitled. Therefore, all these amenities except a separate kitchen should be provided to all the prisoners. A common kitchen having proper hygiene and infrastructure run by the prisoners should be available to all the prisoners, irrespective of any class to which a prisoner belongs. For distribution of food, the State cannot create classes. However, it may provide food considering the health condition of an inmate of a Correctional Home. A weak or sick may require healthier or special diet. Common reading room having newspapers, magazines and other books at fixed hours should be available to all prisoners.

- Legal aid camps should be organized in the prison frequently. Legal literacy drives should be launched with the aim not only of sensitizing the prison administration but also of spreading awareness amongst prisoners about their rights and obligations. It is necessary to keep identifying those who need and deserve legal aid. Prison authorities should also prepare a list of prisoners who need legal aid. Provision of plea bargaining can be applied to the prisoners effectively in order to provide maximum relief to the poor inmates who are languishing in prison in petty offences.
- Actually the numbers of legal aid lawyers are less as compared to numbers of inmates demanding aid. One of the reasons for such inadequacy is the poor honorarium paid to the legal aid lawyers and also delays in payment of fees to them. So one panel of lawyers should be prepared and handsome honorarium should be paid to them. Lawyers actually who are engaged to deal with the cases of prisoners, sometimes do not follow up the cases properly. So in the above panel, only those lawyers should be included who have at least 3 years of practical experience.
- It is better that the final year law students may visit the prison and can help the prisoners by providing legal aid to them. Even they can help in drafting applications and petitions.

- To make legal aid efficient and easily available, there is urgent need for para-legal staff to work in prisons with both convicts and undertrials. It was further suggested that there should be greater involvement of Lok Adalats in criminal cases, which at present is limited. Lok Adalats should deal not only with compoundable cases but also with cases where the accused pleads guilty. Lok Adalat involvement to be greater and that constant monitoring of prisons were necessary to identify inadequacies and shortcomings in the prison administration.
- In this Act surprisingly some provisions have been made regarding bed, mosquito-net, table, chair, tooth-brush, tooth-paste, newspaper, writing material or use of toilets. A slight improvement in the living conditions in correctional homes in itself will erode the classification which the correctional services Act acknowledges. Therefore, it is suggested that provisions of the correctional services Act should be looked into with a new humanistic approach and explore the feasibility that the correctional homes guided by reformative and restorative policy provide basic amenities to all and there remains no need to assign nomenclature to the prisoners for providing better facilities or privileges to only one class ousting the other.
- It is necessary to take special care to rehabilitate women prisoners as it is harder for them to find acceptance in the society after release. They should be equipped with vocational skills to empower them on their return to the society. Arrangements should be made for women to reside in special homes if they find it difficult to get accepted in society after release. At least one woman medical officer must be available at times to attend to women prisoners.
- Compulsory education for illiterate prisoners should be provided. Scope to continue education of the prisoners should be increased. Vacant posts of part time teachers be filled up and more teachers be appointed.
- There is a need for a thorough overhauling of the arrangements in prisons to provide medical care and facilities. Most prisons are not equipped with an effective communication system that would inform the concerned authorities in case of a medical emergency. Besides establishing such a system, inmates must be thoroughly briefed about how to seek medical aid in case of emergency.

Suitable arrangements should be made to provide psychiatric counselling to those suffering from chronic depression, particularly to women prisoners. NGOs' help should be enlisted in dealing with drug addicts and in establishing drug de-addiction centres.

- Manpower shortage has been another bane of the Indian prison system which needs to be beefed up for better prison management and security. The State Governments should periodically review the requirements of different types of staff required, including medical, and take steps to remove the shortage. There is considerable stagnation amongst different ranks in the prison department due to lack of promotion opportunities. The governments should carry out a cadre review and create additional opportunities for promotion for different ranks based on a work study. Apart from reinforcing manpower, prison officials of all ranks also need to be given special training and orientation for further improving prison security and making Indian prisons better places, yoked to the cause of reforming and rehabilitating deviant members of the society. A conscious policy towards the induction of more women in the prison administration is necessary to bring about gender balance and sensitivity within the system.
- There should be no limit on incoming letters for prisoners and there should be no restriction in the number of letters prisoners may send at their own cost. All illiterate or semi-literate prisoners should be provided help in writing letters. A prisoner may be permitted the use of telephones on payment, to contact his family and lawyers, periodically, wherever such facility is available but only at the discretion of the superintendent of the prison.
- Special consideration should be given to women prisoners in the matter of premature release. Female prisoners should be allowed to retain, in moderation, certain ornaments of small value such as mangal sutras, bangles and toe rings etc. Every woman's prison shall have a ten-bed hospital for women. At least one or more woman gynaecologist and psychiatrist shall be provided. The children of women prisoners living in the prison shall be given proper education and recreational opportunities
- Letters addressed by prisoners to the government, judiciary, IG of Prisons or high functionaries should be forwarded to them

immediately without being censored, and dated receipt should be given to the prisoner.

- The District Judge should visit each prison in his jurisdiction once a month and give opportunity to all the prisoners to put up their grievances or requests, if they so desire, in the absence of prison officers.
- Each prison should have a complaint box fixed at a prominent place within the reach of inmates. Complaints from the prisoners should be registered and promptly remedied. The key to the lock of the box should remain with the District Judge who should open it at the time of his monthly visit to the jail and take necessary action. The directives issued by the higher judiciary should be followed.

Conclusion

Prisons should be treated as hospitals by rehabilitating the prisoners in healthy social life through scientific, psychological and therapeutic treatment. Prison staffs should consider themselves as doctors of the de ceased mind. Crimes will be in every modern society, but it is task of those prison staffs to see that human resources of the nation are not wasted away. West Bengal Correctional Services Act may be adequate for reformation of the prisoners but the personnel implementing the law in the prison is quite inefficient, ineffective, unskilled and unwilling also for reformation of the prisoners. Therefore a continuous critical review is necessary to make this law more effective.

Health as Human Right: Gender Focused Strategy an International Width



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Keywords

Human Rights, Health Right of Women, International Law, National Policy, Protection of Health, Nutritious Food, Physical Exercise, Care of Health.

Abstract

Health denotes the condition of a person's body and mind, it includes mental and physical health and healthy environment for protecting the health of a human being. A good health means state of being free from illness or injury. It is complete physical, mental and social wellbeing and not merely the absence of disease or infirmity. Right to health is a fundamental human right of human being because, human rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of the respective country. Thus, right to health is essential for dignified life. Health protection and promotion of the women is the paramount duty of the state, these obligations enumerated in the national and international legal instruments, such as Constitution of World Health Organization 1946, Universal Declaration of Human Rights 1948, International Covenant on Economic, Social and Cultural Rights 1966, International Convention on the Elimination of All forms of Discrimination 1979, Convention on the Rights of Child 1989, International Convention on the Elimination of All Forms of Racial Discrimination 1965, and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 and Constitution of the different countries. All the legal instruments

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provide the health right of the women for the development of the society because, all round development of the women is essential and necessary for the progress of the democratic nation. The protection and promotion of the health of women require controlling child marriages, pre-natal test of the pregnancy, proper medication and all form of care, which is related to the health of women. Nutritious food should be provided to the pregnant women for the safety of the health of infant and mother too, because, the lack and not having sufficient nutritious food to the mother during the pregnancy caused unrecoverable loss to the child resulting into premature birth to baby. Thus, all kind of care is required for the health of the women.

Introduction

Father of the Nation Mahatma Gandhi rightly indicated the cooperative factor for avoiding the misdeed created by the human race to divide the human being for strong determination of own interest. In this context, he expressed his anxiety in his unique style of academic ideology that "All humanity is one undivided and indivisible family, and each one of us is responsible for the misdeeds of all the others. I cannot detach myself from the wickedest soul"¹ In the same outward philosophical academic manner Bernard Shaw also stated categorically that "the worst sin towards our fellow creatures is not to hate them, but to be indifferent to them: that's the essence of inhumanity."² These observations of great academic philosophers can be correlated with the right to health of the female of world community; it requires developing special natural ability to do something well and easily accessible to the women to construct their physical and mental well being as new stage in the changing dimensional situation.

Human rights denote and reflect the rights relating to life, liberty, equality and dignity of individual guaranteed by the Constitution and legal

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¹ Mahatma Gandhi expressed his views pertaining to the co-operation, affection, love, coexistence and better developmental system of the society.

² Bernard Shaw (The Devil's Disciple, Act II)

instruments of the respective country. Besides, the domestic provisions of the Constitutional laws of the land, International law also provides the human rights aspects for the human beings. Right to health is one of the most importance aspects of the basic concept of the human rights. Human rights are natural boons of the nature; these cannot be confined only in the legal instruments. To provide good health to the citizens of the country are the natural and legal duty of the democratically elected government. In this context, it is apt to quote Ravindra Nath Tegore that nature is the teacher of teachers, although nature cannot deliver the lecture and cannot write on the blackboard, but nature is affecting the body and feelings of human beings in 24 hours". Thus, to develop and maintain good health and sound mind is the natural expectation, desire, and necessity of every creature of the society. This need and want is a natural phenomena, hence, even without having any codified provisions of law health right should be recognized as basic human right of every human race especially of women because, about the law G.W. Keeton, rightly expressed that "at the outset, however, one point of terminology must be noticed. The term "law" is used in two distinct senses. We do not mean the same thing when we speak of "the law" or the law generally, as when we speak as "a law," meaning some particular rule of law, e.g. a statute or a judicial decision. In most foreign languages this distinction is still more clearly marked, for different words are used to convey the different ideas."³ He further explained law that "unfortunately, the foreign terms for the law include also the distinct meaning of Right, or a right. This second meaning has no place in English, which, however, has introduced a second meaning of its own, which has a separate term allotted to it in most continental languages⁴."

Sir John Salmond suggested that the above difference between English and Continental terminology was a reason for the divergence between English and Continental juristic thought; to which Professor Goodhart replied in the following words:

"Plausible as this theory may sound; it is doubtful whether it is actually correct. The word *jus* has the same double significance (i.e. as on the continent), but the Romans as essentially practical as the modern

³ G.W. Keeton, *The Elementary Principles of Jurisprudence*, Second Edition (1949) 55-56. A Law: *lex, loi, Gesetz, Legge*: The Law; *just, droit, Recht, Diritto*.

⁴ *Ibid*.

English jurist. Is not the difference due rather to the fact that for over six hundred years English justice has been centralized and efficient, while that on the continent has been in a constant state of flux? It has been unnecessary to justify the existence of law to the English readers. Perhaps the recent popularity of philosophical legal discussion in America is due to the fact that the administration of law is less certain in that country than it is in England⁵. "The basic special object of "the law" and "a law" is to protect and recognize the human rights, which are pertaining to the inherent dignity, equality and inalienable rights of all members of the human family. These rights are the foundation of freedom, justice and peace in the world. The violation and disregard of the human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people⁶. Human rights are sources for the human development and maintaining peace and tranquility in the society by observing the principle of rule of law and ideal welfare norms of the democracy. Rule of law according to Dr Thomas Fuller (1548-1734), a British physician and intellectual asserts; "Be you ever so high, the law is above you." Thus according to rule of law these rights are the tools for the rebellion⁷ against tyranny and oppression.

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5. Goodhart, Cambridge Law Journal. p 136 Sir John Salmond suggested that it is the difference in nomenclature which has caused the difference between English and continental jurisprudence (assuming such a clear distinction to exist—a hypothesis which has not passed unchallenged); See Friedmann, legal theory, Chap. 29. But the first difference is no more a cause than the second. They are both the results of a more fundamental difference— the difference in the origins of the law of England, and the law of the continent (or rather the law of continental Western Europe). Professor Goodhart indicated that the Romans, although as practical as English jurists, nevertheless, preserve the double signification which does not reappear in English, and the difference is due, therefore, to the fact that nations whose languages contain a word denoting at once law, justice, and rights have all derived their legal ideas from Rome. The English, however, built up their system from their primitive institutions, and their original language therefore supplies name for the legal conceptions those evolve—conceptions which differ materially from those of Roman Jurisprudence. It is thus no accident that the word 'law' is Anglo-Saxon, and is not derived from Latin. (See for detail the reference as cited supra note 3.)
 6. The basic documents of the human dignity and freedom known as "Universal Declaration of Human Rights" 1948 adopted and proclaimed by the United Nations General Assembly Resolution 217 A (III) of 10 December 1948.
 7. Quoted by Lord Denning in *Gouriet v Union of Post Office Workers* (1978) AC 435.

Human rights are the ways and means to promote the development of friendly relations between nations. These are equally accessible to all the human beings without any discrimination of sex, race, cast and place of birth. All the human rights are universally applicable to all social rational creatures for promoting the worth of human person, social progress and better standards of life in the larger freedom. Human rights promote universal respect, co-operation and coexistence in the society. These are the natural instruments for greatest happiness of full realization of the world human family.

As the universal and natural character of human rights, it is proper to quote Vivekananda as pioneer of the natural ideology of rights, he said "a man who born in nature shall have the duty to mark for the betterment of the humanity". Right to health of women as human right is essential for the prosperity of the family. Mother's good and sound health is necessary for the baby and child. Henceforth, it is a basic human right of the half population of the world. This is also essential for the peace in the society. In the same way, the basic purpose, aim, object, and goal of the human rights is to provide peace, tranquility and security to the human being. In this reference, Michael Douglas expressed his views that "human rights for everyone are the necessary foundation upon which all of us may build a world where everybody may live in peace and serenity and plenty." In the developing countries right to health is the main goal to achieve social justice and security. India is also developing and poor country; it requires the health right of the women for achieving high priority." Social justice concept of the right to health can be proved by quotation of the justice Krishna Iyer, he opined that "India is a poor country, thus poverty jurisprudence and social justice must receive high priority." Henceforth, it is apt to say that health as human right should be kept in high priority and for the purpose separate legislation may be framed by the international and national political community.

Philosophical Aspect and Background of Women's Health-

Every human being wants to enjoy good and sound health by help of the nature, because nature has great role in the physical, mental, social, political and economic development of human being. Good health of female member of the society is not important only for the female, but it is very essential for all the members of the family, particularly and generally it is apt and relevant for the society. Right to health should be treated as inherent dignity, equality and inalienable rights of all females of the society. It is need for the universal and effective recognition of

right to health of the female for the protection of the human rights and fundamental freedoms and for promoting the social progress and better standards of living.

Right to health of the women is closely related to other human rights e.g. economic, social, and cultural rights; food, shelter, hygiene, proper work, and family conditions of women. Henceforth, in broader sense right to health imply more than just access to medical care and medicines. Health care of the female requires to provide all facilities to the female which are very essential for the protection and to maintain health of the female. It requires providing 24 hours emergency free facility by the health department especially to the female. It is also the social duty of the private medical institutions to provide free medical help to the women of the particular country. It is the expectation of every female citizen of the world society that this right should be protected by the elected government of the republic countries of the world. This right has its own important for the wellbeing and increasing of the age of the female candidates of the human society. The goal of equality can be full filled by providing good health to the female, because, female's good health and wellbeing is more important rather than the male counter partner of the family. The health of the female includes the health of the babies and children. The good health of the female requires for the good health of the child. The sound health of the female is the foundation of the justice, equity and fraternity. Right to health of the female is the humane concept; it has a commitment to history to make human rights a viable reality.

Protection of health of the female worker is more important than the protection of the other social creatures, because it requires more attention for the betterment and welfare of the society. Thus, for the better health of the female workers demands the better and adequate wages for the fulfillment of the necessities of maintain health. In this reference, Albert Einstein rightly said that "In talking about the human rights today, we are referring primarily to the following demands: protection of the individual against arbitrary infringement by other individuals or by the government; the right to work and the adequate earning from the work; freedom of discussion and teaching; adequate participation of the individual in the formation of his government. These human rights are now a day's recognized theoretically although by abundant use of formalistic, legal manoeuvres, they are being violated to a much greater

extent than even a generation ago".⁸

To recognize the health right of the women as human right is one of the strong steps in strengthening the dignity, the physical ability, freedom, peace and justice which are the paramount work of the United Nations. Basically to recognize the new human right in the international legal instrument is the function of the United Nations. Thus, this is the duty of the General Assembly of the United Nations to adopt the new resolution as International Convention for the special right of the Women. This argument pertaining to the function of the United Nations can be supported by quoting the message of the Mr Ban Ki-moon, Secretary General of United Nations on the eve of the Human Rights Day on 10th December 2010, he said "human rights are the foundation of the freedom, peace, development and justice and the heart of the work of the United Nations around the world. Laws to protect and promote human rights are indispensable. But quite often, progress comes down to people-courageous women and men-striving to protect their own rights and the rights of others-determined to make rights real in the people's lives. It is these human rights defenders to whom we dedicate this year's observation of Human Rights Day. Defenders are a diverse group. They might be part of civil society organization, a journalist or even a lone citizen, spurred to action by abuses close to home. But they all share a commitment to expose wrongdoing, protect the most vulnerable and impunity. They stand up, speak out and today they tweet in the name of freedom and human dignity. Human rights defenders play a vital role in the fight against discrimination. They investigate violations and help victims gain justice and support".⁹

He further argued as pioneer of the human rights protector of the vulnerable groups of the society such as women that "far too often, their work entails tremendous risk. Defenders are harassed, stripped of their jobs and wrongfully imprisoned. In many countries, they are tortured, beaten and murdered. Their friends and family members are also subjected to harassment and intimidation. Women human rights defenders face additional risk, and therefore, need additional support. This human rights day is an occasion to salute the courage and achievement of human rights defenders everywhere- and to pledge to do more to safeguard their work. States bear the primary responsibility to protect human rights advocates.

⁸ Albert Einstein, Address at Chicago Decalogue Society, 20-2-1954.

⁹ Human Rights News letter Vol 18 No. 1, January 2011, No. 1 p3.

I call on all states to ensure the freedom of expression and the freedom of assembly that mark their work possible. When the lives of human rights advocates are endanger, we are all less secure. When the voices of human rights advocates are silenced, justice itself is drowned out".¹⁰

The above message of the Secretary General of the United Nations reflects the future and present welfare plan as supreme function of the United Nations for the welfare of the women and other vulnerable marginal people of the world community. The aforesaid function of the international peacemaking and welfare organization includes the function of the protection of health of human kind.¹¹

The object of the welfare concept and characteristics of the human rights expressed by the Mr justice K.G. Balakrishnan, Chairman of the National Human Rights Commission on the eve of Human Rights Day 10th December 2010, which perpetuates as follows-

"We all are born free and entitled to basic human rights which manifest in the spirit of live and let live. The human rights day reminds us of basic human rights which find place in the Universal Declaration of Human Rights which was evoked by the United Nations in 1948. The theme of this Universal Declaration of Human Rights is that human rights of all should be respected, protected and promoted. Therefore, the onus lies on us. The National Human Rights Commission since its inception in the year 1993 under the protection of Human Rights Act has evolved a bridge between the government authorities and the people of this country in protecting and promoting of the human rights of the all. But no rights come without duties, and therefore it is the duty of all of us to respect the basic human rights of each other and help build up such an atmosphere in the society where the people express themselves freely and move without fear much in the spirit of our country¹²."The

¹⁰ Ibid.

¹¹ Welfare word includes the health, happiness, and fortunes of a person or group. It also reflects and indicates the function of the organization to give help to the people indeed and in need. Welfare is the system under which the state provides pension, health care and education to the entire human race.

¹² Human Rights News Letter Vol. 18 No 1, January 2011 p 3. Chairman of the NHRC also described the achievement of the Human Rights Commission on the occasion of the Human Rights Day that "on this solemn occasion, I would like to say that the National Human Rights Commission imbibes and promotes the values of humanity. It has taken number of initiative in recommending guidelines to the government

above categorical expression of the NHRC Chairman reflects the basic, primary, fundamental and foundational essential integrands of human rights for the promotion and protection of essential and necessary inalienable rights of the all human beings. The aforesaid message of the Chairman fastened the forward the motion of human rights for the all rights including the health right of everyone, and especially females health right is one of the main concern of the democratic Constitutional governments.

Conceptual Idea of Health- Health denotes the condition of a person's body or mind, it includes mental health, physical health and healthy environment for protecting the around health of a human being. A good health means state of being free from illness or injury.¹³ This conceptual idea reflects the general meaning of the health in this way that if any human being is not in good health it means he is ill, but this is not the general aspect of the health, it is a confusing definition of the health. In real sense, the absence of illness does not mean that one is in good health. According to the Constitution of the World Health Organization (WHO), "health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity". Health means the enjoyment of highest attainable standards of health is one of the fundamental rights of every human being without distinction of race, political belief, economic and social condition".¹⁴ Mental and physical health is the development of the basis of human personality. Good health

for framing policies on issues which impact the human rights. These include Right to Education, Health, Food and Clean Environment beside civil and Political Rights. The trust of the people in the Commission reflects in the number of complaints received by it. But at the same time, the rising number of complaints of human rights violations should also be a matter of concern for all in the society and the systems of the governance. Ours is world's largest successful democracy but not without its share of challenges which, among others, manifest in terrorism, naxalism, environment degradation, health hazards, poverty, unemployment, equality." He appealed to the people to work for a society where the dignity of human being is not undermined and, the people live peacefully in mutual co-existence in a healthy environment without discrimination.

¹³ Oxford Advanced Learner's Dictionary, (2000) 597. The word healthy is also related to the human health, it indicates good health and not likely to become ill, everyone keeps himself healthy by eating well and exercising regularly, eating well means healthy diet, good climate and life style for wellbeing.

¹⁴ World Health Organization, preamble, par. 1, 2, adopted by the International Health Conference (New York), 19-22 July 1946.

is very essential for survival, long life and new generating of progressive ideas; it is a motional requirement for the development of the society, by good health individual may perform excellent activities in all the spares of individual and collective life so that the society consistently rises to higher levels of endeavor and achievement.

Conceptualization of right to health is the path for achieving the other basic rights, which are related to economic, social, cultural, livelihood, housing, food, hygiene, proper work condition, and exercise of various freedoms such as right to happiness, right to equality, right to education, right to protection, right to practice any religion and to form association, right to social security, right to faire and humane treatment, right to civilized treatment in custody and in prison, right to impartial and speedy justice and protection of human rights in every circumstances of the society.¹⁵ The health especially of the women is itself wealth of the society, thus conceptually health includes the wealth, because by good health one may capable, competent, ability, skill, power, talent and knowledge for the earning of different kind of wealth.¹⁶

Health care requires to be nurtured from the childhood, care to health is a determined factor to great extent by behaviors learned from the childhood and starting to appear throughout the world. Physical activities for the betterment and good health are also part of the conceptualization of the health. If the physical activities decreased in the adolescence, particularly in girls, and obesity has increased it is very dangerous for the good health. It is situation not only the Asia but at the same point of time it is the problem in Europe, and North America, but in China and Japan where populations are traditionally slender."

International Legal Instruments as on Right to Health of Women- The International rigorous of right to health is not in combined form as legal device for providing legal mandate to the nation states, nevertheless, it is in sacred form in the deferent legal international instruments such as Covenants, Declarations, Treaties, Conventions

¹⁵ The general meaning of conceptualization is to form an idea in mind. It means due to the good health of women new creative ideas may be formed for exercise of freedom of speech and expression, form associations and unions, to move freely without physical hindrance and obstacles and comfortably reside and settle in any place of the word subject to the legal provisions of the domestic legislation.

¹⁶ Wealth reflects the large amount of money, property, etc. and it also indicates to become rich, well educated, talent and great experience of the life and job.

and Agreements such as Universal Declaration of Human Rights, The International Covenant on Economic, Social and Cultural Rights, The International Covenant on Civil and Political Rights, The Convention on the Rights of the Child and Convention on the Elimination of all Forms of Racial Discrimination etc.¹⁸ Apart these source of right to health of women, other numerous, complementary approaches such as the formulation of health policies and implementation of health programme developed by the World Health Organization or adoption of legal enactments. The detail of the international legal provisions may be perpetuates as follows-

I Universal Declaration of Human Rights - First of all it is very apt to point out here the application of UDHR for the supporting of the arguments of health right of women in the international rigorous, in this context, General Assembly proclaimed on 10th December 1948 that "Universal Declaration of Human Rights as a common standard of achievement for all peoples and all Nations, to the end that every individual and every organ of the society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance both among the people of the territories

¹⁷ UN Chronicle, A Time for Renewal, Volume XLII Number1 March-May 2005 p-47. The title of the paper is "The Atlas of Heart Disease and Stroke, reported by Erika Reinhardt. This is the paper on the World Heart Day on 24th September 2004. Around 100 countries took part in the fifth annual world heart day in Geneva, with member societies organizing activities for everyone, including walks, runs, jump rope and fitness sessions, having a health check and learning about heart healthy life styles from public talks, scientific forums and exhibitions.

¹⁸ Women and Health: 02/05/1999 CEDAW General Recommendation. 24. (General Comments, Twentieth Session, 1999)

¹⁹ Though the Declaration of the General Assembly of the United States has no binding force on the member states of the UN, moreover, UDHR is the first international legal instruments on the human rights, after the II world war. Henceforth, all the member states of UN are morally and socially under pressure and completion to follow these principles of the development and progressive ideology of the General Assembly. It is also germane to high light here the member of United Nations, who are bound to follow these principles. The members of United Nations are near about 191. Thus, it is a clear moral mandate to the member states to follow the principles of Declaration of 1948 for promoting and protection of the human rights of the all human beings of the society. If the member states will not follow and observe the principles laid down by the General Assembly of the UN, it has the

under their jurisdiction.¹⁹ The rights declared by the United Nations in the instruments of 1948 does not provides special provisions for the female except Article 25 (2), however, these are the international legal directions applicable to all without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁰ It also provides the no bar on the basis of the political, jurisdictional or international status of the country of territory to which a person belongs, whether it is independent, trust, non-self-government or under any other limitation of sovereignty.²¹ This provision provides the liberal aspect of the applicability of the UDHR, without having the member of the United Nations, the state may apply the provisions of the said declaration, it means if any state is not the member of the United Nations, not a sovereign state, non self governing system, any kind of international status of the territory to which person belongs, he has claim to exercise all the rights, which has enumerated under the UDHR. Because, all these rights are for the better living standard of human being and maintaining dignity of human kind. In the support of the liberal aspect of the law it is germane to quote the philosophy of Johnson he said, "Law is a social institution. A society may be described as an association of people with a measure of permanence. A civic society is said to comprise (i) territory, (ii) perpetuity, (iii) a measure of independence, and (a culture as manifested in its art, philosophy, law, morality, religion, fashion and opinion"²². In the same way Lord Wright also said about the law that 'its purpose is regulating man's conduct in relation to external things and a person, not merely to ascertain and explain what happens in fact'²³:

Article 25 (1) categorically provides the right to health to all human

power to supervise under Art 15 (1) of the Charter of the United Nation that to receive and consider and special reports from the Security Council which invariable include an account of measures that the council has decided upon or taken to maintain international peace and security. Similarly it receives an annual report from the Secretary General on the work of United Nations. (Article 98). It also exercises effective control over the Economic and social Council.

²⁰ Universal Declaration of Human Rights 1948, Article 2.

²¹ Ibid, Second para.

²² Johnson, sociology, p9.

²³ Lord Wright, Precedents (1943) 8CLJ 124, Prof Goodhart: also described about the law as "In the physical Science we have .a description of conduct, while in the social science we have a prescription for conduct. (English law and the Moral law p.9).

race, it states that "Everyone has the right to standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Article 25 (2) is special provision for the well-being of the health of women, it provides that motherhood and childhood are entitled to special care and assistance. All children whether born and out of wedlock, shall enjoy the same social protection.

The aforesaid provision of the UDHR 1948 is a unique perpetual natural rigorous of the right to health of the human race, second part of the said provision clearly provides the health reproductive right of the women. The word "motherhood" reflects the protection of health right of women after the birth of the child and during the pregnancy; this is clearly reproductive right of women in the capacity of motherhood.

II Health Right of Women in International Covenant on Civil and Political Rights-The human freedoms and rights as provided by the Covenant are for all members of human family for the recognition of the inherent dignity, equality and inalienable rights. These are the foundation of justice and peace in the world. These rights derived from the inherent dignity of the human person as obligation of the states under the Charter of the United Nations to promote universal respect for, and observance of human rights and freedoms. At the same point of time Covenant also provides the duties of the individual to other individuals and to the community to which he belongs to promote and protect the rights and freedoms of all the members of the human family.²⁴ All the provisions of the Covenant are available to all human beings without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁵ It means all rights prescribed by the Covenant are for the betterment of human kind without any boundaries of any kind of discrimination. Thus, women are also entitled to exercise of these rights. This augment

²⁴ Preamble, International Covenant on Civil and Political Rights 1966, Covenant adopted and Opened for signature, ratification and accession by the United Nations General Assembly Resolution 2200 A (XXI) of 16th December, 1966 and entry into force: 23 March, 1976, in accordance with Article 49 Text: Annex to General assembly Resolution 2200 A (XXI)

²⁵ Part II, Article 2 (1) of the International Covenant on Civil and Political Rights.

can also supported by Article 3, it provides as "the state parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."

The aforesaid Covenant is not providing any direct provision for the health of any human being but the health is the component of life, thus Article 6 (1) provides the right to life, it states that "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Medical aid, health facilities, nutritious food, good environment and shelter all are essential for the life of human being. Thus provision as prescribed by Article 6 (1) includes right to health. Right to health and right to live in healthy and clean environment is the integral part of life.

III Scope for Right to Health of Women in International Covenant on Economic, Social and Cultural Rights- The preamble of the Covenant on Economic, Social and Cultural right is the same as provided by the Covenant on Civil and Political Rights, thus these rights are available to all members of human family.²⁶ The human rights as prescribed by the International Covenant on Economic, Social and Cultural Rights are for all equally to men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant.²⁷ Article 12 provides the health right of the all human kind including women; it provides that "The states parties to the present Covenant recognize the right of everyone to enjoyment of the highest attainable standard of physical and mental health."²⁸ The steps to be taken by the States parties to the present Covenant to achieve the full realization of this right shall include those necessary for²⁹ (a) the provision for the reduction of stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environment and industrial hygiene; (c) the prevention, treatment and control of epidemic, endemic, occupational

²⁶ Covenant adopted and Opened for signature, ratification and accession by the United Nations General Assembly Resolution 2200 A (XXI) of 16th December, 1966 and entry into force: 3 January, 1976, in accordance with Article 27 Text: Annex to General assembly Resolution 2200 A (XXI)

²⁷ Article 3 of the International Covenant on Economic, Social and Cultural Rights 1966.

²⁸ *ibid*, Article 12 (1)

²⁹ *ibid*, clause 2.

and other diseases: (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

The said provision of the Covenant indirectly includes the reproductive health of women because it provides the mandate to the state parties to reduce the birth rate and infant mortality for the healthy development of the child. It means it is a very fruitful provision for the protection of the health of the child and mother both. The protection of good health of mother is very necessary for the child it also proves that if birth rate will be reduced by the state, this will create a healthy environment for the protection and promoting of the health of the women.

IV Provision for the Health of Women under Convention on the Elimination of All Forms of Discrimination against Women- The CEDAW 1979 provides special international legal provisions for the protection and promotion of the women's human rights.³⁰ The preamble provides that the state parties to the present Convention, Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex, the state parties to the International Covenants on Human Rights have the obligations to ensure the equal right of men and women to enjoy all economic, social cultural, civil and political rights.³¹ In the same way, it has mentioned in the preamble that in the said Convention, it is considered the provisions of Charter of United Nations of equal rights of men and women, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women. The preamble also provides the abolition

³⁰ Adopted and opened to signature, ratification and accession by United Nations General Assembly Resolution 34/180 December 1979. Date of entry into force: 3 September, 1981 according to Art 27 of the Convention. Article 27 provides that "the present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification.

³¹ Preamble, Convention on the Elimination of All Forms of Discrimination against Women 1979.

of discrimination of men and women for the participation of women, on equal terms with men, in the political, social and cultural life of the countries. Convention further provides that these provisions are very essential for growth of the prosperity of the society and the entire obstacle pertaining to family shall be removed by this Convention. These provisions will be helpful for providing the food, health, education, training and opportunities for employment and other needs. Convention is also very fruitful instruments for eradicating apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women. It is the expectation of General Assembly of the United Nations that this Convention will promote and contribute full equality between men and women. The preamble also provides that these provisions of the Conventions are very essential for the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields. The Convention also realized the contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of birth parents in the family and in the upbringing of children, and aware that the role of women in protection should be basis for discrimination but that the upbringing of children requires of sharing of responsibility between men and women and society as a whole. This will create awareness to change the traditional role of men as well as the role of women in society and the family is needed to achieve full equality between men and women.³² Convention has 30 Articles pertaining to different aspects of the political, social, economic, health, employment, legal, and right to marriage of the women and mechanism for the implementation of the

³² Ibid.

³³ Articles 1 to 6 are related to the discrimination against women, embody the principle of the equality of men and women in the Constitution, opportunity to the women in all fields, in particular in the political, social, economic and cultural, family education, protection from the exploitation of prostitution, Article 7,8,& 9 provides to eliminate discrimination against women in the political and public life of country, equal right at international level, right of nationality, Article 10 to '14 provides educational right, employment right, right to health, right to family benefits, special rights of rural women, Article 15 & 16 describes the equality right before the law, right to marriage etc. and Article 17 to 30 provides the mechanism, implementation, other dispute settlement forums and language of the text of the Convention.

these rights.³³ Article 11 (1) (f) & Article 12 are directly related to the health of women. Article 11 (1) provides that "State parties shall take all appropriate measures to eliminate discrimination against Women in the field of employment in order to ensure, on a basis of equality of men and women,³⁴ the same right is also available under Article 11 (1) (f) of the Convention it, provides that "the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction." Article 11 (2) also describes the reproductive right of women, it states that "In order to prevent discrimination against women on the ground of marriage or maternity and to ensure their effective right to work, state parties shall take appropriate measures: (a) to prohibit, subject to the imposition of sanctions, dismissal on the ground of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status; (b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority of social allowances; (C) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a net work of child care facilities; (d) to provide the special protection to women during pregnancy in types of work proved to be harmful to them. Article 11 (3) states unique provisions for the review of legislative measures by the state party such as; protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended necessary.

V Reproductive Right of Women in Convention on the Elimination of all forms of Discrimination Against Women- The provision of

³⁴ Article 11 (1) (a) prescribes the right to work as an inalienable right of all human beings; (b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) the right of free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeship, advanced vocational training and recurrent training; (d) the right of equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave.

Article 11 (2) of CEDAW 1979 is related to the reproductive health right of working women, because, it provides the maternity benefits and child care leave for the benefit of children and mothers.³⁵ In the support of this argument to quote Knudsen Lara is apt and germane, he said about the reproductive right that "reproductive rights are legal rights and freedoms relating to reproduction and reproductive health."³⁶ The World Health Organization defines reproductive rights as: Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and the timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination coercion and violence.³⁷ Reproductive rights began to develop as a subset of human rights at the United Nations 1968 in International Conference on Human Rights.³⁸ The resulting non binding Proclamation of Teheran was the first international document to recognize one of these rights when it stated that "Parents have a basic human right to determine freely and responsibly the number and the spacing of their children."³⁹

VI Health Care of Women and Convention on Elimination of All Forms of Discrimination against Women- It is the internationally binding legal duty of the state parties that they shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care service, including those related to family planning.⁴⁰ Apart the aforesaid duty of the state party, state party shall ensure to women appropriate services in connection with pregnancy, confinement and

³⁵ Ibid.

³⁶ Knudsen, Lara (2006). *Reproductive Rights in a Global Context*. Vanderbilt University Press. Pp 7. ISBN 0826515282, 9780826515285. <http://books.google.com/?ickb3thCcdyScsC&dq=reproductive+rights>.

³⁷ United Nations, Report of the Fourth International Conference on population and development, Cario,5-13 September 1994.

³⁸ Freedman, Lynn P; Stephen L. Isaacs (Jan.-Feb. 1993). "Human Rights and Reproductive Choice.

³⁹ Proclamation of Teheran, International Conference on Human Rights 1968. <http://web.archive.org/web/20071017025912/http://www.unhchr.ch/htmlimenU3M/b>.

⁴⁰ Article 12 (1) of CEDAW 1979.

the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and the lactation.⁴¹ In the same way the special provision is for the protection of health of rural women. Article 14 (2) (b) states that state parties shall take all the access to adequate health care facilities, including information, counseling and services in family planning. This right of the rural women again comes into the ambit of reproductive right of female, because it is related to the information of family planning thus, it can not confined up to the care of Children, maternity leave and nutrition during the pregnancy, nevertheless, it is the right, who includes series of human rights of women such as- right to health, right to freedom from discrimination, right to privacy, and right not to be subjected torture or ill treatment.⁴² In this context, it is also relevant to include here the safe abortion and right to abortion on the medical ground within the ambit of the reproductive right because it is one of the most important rights of the women. Laura Knudsen, a pro-choice activist, has suggested "twenty percent all pregnancies worldwide end an abortion and nearly half of those abortions are unsafe and often illegal."⁴³ According to the WHO, more than 45 million (legal and illegal) abortions take place annually. At the same time 66,500 women died in the abortion per year. An article from the World health Organization calls safe, legal abortion a "fundamental right of women, irrespective of where they live" and unsafe abortion a "silent pandemic."⁴⁴ The unsafe abortion is very dangerous and injurious for the health of women, whereas, frequently excess safe abortion is also very dangerous to the health of women.

VII General Recommendations of the Committee on the Eliminations of Discrimination against Women in the Issue of Health Care of Women- Article 17 of the CEDAW provides for constituting committee consisting, at the time of entry into force of the Convention. This committee recommended the essential norms for the state party for care

⁴¹ 'bid, Article 12 (2).

⁴² Amnesty international USA (2007) "Stop Violence against Women: Reproductive rights." SVAW. Amnesty International, USA.

⁴³ Supra at note 34, p-1-2.

⁴⁴ WHO: Unsafe Abortion-The Preventable Pandemic. http://www.who.int/reproductivehealth/publications/unsafeabortion/ua_paper/en/index.html. Retrieved 2010-01-16.

of the health of women. The gist of the recommendation No 24 is as follows.⁴⁵

The committee on the Elimination of Discrimination against Women, affirming that access to health care, including reproductive health, is a basic right under the Convention on the Elimination of all forms of Discrimination against the Women, decided at its twentieth session, pursuant to Article 21, to elaborate a general recommendation on Article 12 of the Convention. State parties with Article 12 of the Convention are central to the health and well being of women. It requires to States to eliminate discrimination against women in their access to health care services throughout the life cycle. The committee has also noted the work of the World Health Organization (WHO), the United Nations Population Fund (UNFPA) and other United Nations bodies. It has collaborated with a large number of nongovernmental organizations with a special expertise in women's health in preparing this general recommendation. The Committee notes the emphasis that other United Nations instruments place on the right to health and to the conditions that enable good health to be achieved. The committee refers also to its earlier general recommendations on female circumcision, human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS). Disabled women, violence against women and equality in family relations, all of which refer to issue that are integral to full compliance with all the recommendations. While biological differences between women and men may lead to differences in health status, there are societal factors that are determinative of the health status of women and men and can vary among women themselves. For that reason special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups, such as migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities. The Committee notes that the full realization of women's right to health can be achieved only when states parties fulfill their obligation to respect, protect and promote women's fundamental human rights to nutritional well-being throughout their lifespan by means of food supply that is safe, nutritious and adapted to local conditions. To

⁴⁵ Women and Health: 02/05/1999, CEDAW General Recommendation. 24. (General comments), these recommendations are based on Article 12 of the CEDAW. 19

this end the state parties should take steps to facilitate physical and economic access to productive resources, especially for rural women, and to otherwise ensure that the special nutritional needs of all women within their jurisdiction are met. State parties are encouraged to include in their reports information on diseases, health conditions and conditions hazardous to health that affect women or certain groups of women differently from men, as well as information on possible intervention in this regard. Measures to eliminate discrimination against women are considered to be inappropriate if a health-care system lacks services to prevent, detect and treat illness specific to women.⁴⁶

States parties should report on their understanding of how policies and measures on health care address the health rights of women from the perspective features and factors that differ for women in comparison to men, such as:⁴⁷

- Biological factors that differ for women in comparison with men.
- Socio-economic factor that vary for women in general and some groups of women in particular. For example, unequal power relationships between women and men in the home and workplace may negatively affect women's nutrition and health.
- Psychosocial factors that vary between women and men include depression in general and post-partum depression in particular as well as other psychological conditions, such as those that lead to eating disorders such as anorexia and bulimia.
- While lack of respect for the confidentiality of patients will affect both men and women, it may deter from seeking advice and treatment and thereby adversely affect their health and well-being.

The duty of state parties to ensure, on a basis of equality of men and women, access to health care services, information and education implies on obligation to respect, protect and fulfill women's right to health care. The obligation to respect rights requires states parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health care providers meet their duties to respect women's right to have access to health care. For example, states parties should not restrict women's access to health

⁴⁶ Ibid

⁴⁷ Id.

services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. Other barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women punish women who undergo those procedures.⁴⁸

The obligation to protect rights relating to women's health requires States parties, their agents and officials to take action to prevent and impose sanctions for violations of rights by private persons and organizations. Since gender-based violence is a critical health issue for women, States parties should ensure:

1. The enactment and effective enforcement of laws and the formulation of policies, including health-care protocols and hospital procedures to address violence against women and sexual abuse of girl children and the provision of appropriate health services;
2. Gender-sensitive training to enable health-care workers to detect and manage the health consequences of gender-based violence;
3. Fair and protective procedures for hearing complaints and imposing appropriate sanctions on health-care professionals guilty of sexual abuse of women patients;
4. The enactment and effective enforcement of laws that prohibit female genital mutilation and marriage of girl children.

States parties should ensure that adequate protection and health services, including trauma treatment and counseling, are provided for women in especially difficult circumstances, such as those trapped in situations of armed conflict and women refugees. The duty to fulfill rights places an obligation on State parties to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care. The issues of HIV/AIDS and other sexually transmitted diseases are central to the rights of women and adolescent girls to sexual health. In their reports, States parties should identify the test by which they assess whether women have access to health care on a

⁴⁸ *Id.*

⁴⁹ *Id.*

basis of equality of men and women in order to demonstrate compliance with Article 12. In applying these tests, States parties should bear in mind the provisions of Article 1 of the Convention. Reports should therefore include comments on the impact that health policies, procedures, laws and protocols have on women when compared with men. Women have the right to be fully informed, by properly trained personnel, of their options in agreeing to treatment or research, including likely benefits and potential adverse effects of proposed procedures and available alternatives. States parties should report on measures taken to eliminate barriers that women face in access to health-care services and what measures they have taken to ensure women timely and affordable access to such services. The Committee is concerned about the conditions of health-care services for older women, not only because women often live longer than men and are more likely than men to suffer from disabling and degenerative chronic diseases, such as osteoporosis and dementia, but because they often have the responsibility for their ageing spouses. Therefore, State parties should take appropriate measures to ensure their access of older women to health services that address the handicaps and disabilities associated with ageing. Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation. State parties should take appropriate measures to ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity.⁴⁹

Concluding Remark and Suggestions- Development of the society is totally based on the all round development of the women, this includes the sound health and mental wellbeing of the women. It requires controlling child marriages, pre-natal test of the pregnancy, proper medication and all form of care, which is related to the health of women. It has been observed that child marriages also affect the health of women. The child marriage totally should be banned and law should be amended for the purpose that marriages of underage shall be void. This has the legal lacuna in the developing countries. In India also this is the serious problem. Thus for the safety of the health of the women child

marriages should be declared void up initio. The crime against women should be controlled immediately, because, the crime against women is hindrance in the safeitrand protection of health of women. In the every country of the world there are huge figures of crime rape cases had gone up from 18,349 to 22000, cases of kidnapping from 15,000 to 26,000 dowry deaths from 6,000 to 9,000 molestation cases from 34,000 to 39,000 and those under section 498 A of the Domestic Violence Act shot up from 58,000 to 90,000.⁵⁰

It is also suggested that attention should be given to the special care of the health of sex worker, because there are more chances of the theses. Prof Prabha Desai of Sanmitra Trust, an organization working with sex workers in Mumbai, spoke of the link between child marriage and sex worker. She said there were specific castes spread across India, such as the Bedias and Nats in the north for instance who were engaged in sex work. Marriages among them became "an excuse to initiate a child into sex work." She called for a special component in women's policy and for an alternative means of earning for sex workers so that they in turn did not push their children into the same profession.⁵¹

Women with disabilities, of all ages, often have difficulty with physical access to health services. Women with mental disabilities are particularly vulnerable, while there is limited understanding, in general, of the broad range of risks to mental health to which women are disproportionately susceptible as a result of gender discrimination, violence, poverty, armed conflict, dislocation and other forms of social deprivation. Thus, special appropriate measures should be ensure that health services are sensitive to the needs of women with disabilities and are respectful of their human rights and dignity. Henceforth, it is the duty of state to provide special facilities to the differently physical challenged women in comparison to the men.

Nutritious food should be provided to the pregnant women for the safety of the health of infant and mother too, because the lack and not having sufficient nutritious food to the mother during the pregnancy cause unrecoverable loss to the child resulting into the premature birth to baby. It is very harmful to the baby and mother, Dr Pankaj Garg said the

⁵⁰ The Hindu, April 5, 2011 p 17.

⁵¹ Ibid.

arrival of a premature baby can be a traumatic experience, more so if the baby is unwell. Preterm babies are especially vulnerable to poor growth and developing various disorders since they are born with significantly insufficient nutrient stores. But nutritional intervention in preterm babies helps build their strength. Secondly if the blood pressure of the mother is high, it will also result the pre-mature delivery.⁵² When a baby is born too early his/her major organs are not fully developed and this may lead to various health problems. The condition becomes critical if the baby is born before 32 weeks. Since less time has been spent in uterus (inside less time), the nutritional status has been invariably compromised. Often premies are born with depleted stores of key nutrients; proteins, frk, iron, calcium, vitamin A, sugar and have no subcutaneous fat. A preterm baby grows faster in the weeks after birth and, therefore, needs higher amount of energy and protein to meet its nutritional requirements.⁴⁹ In this way, it is not outside the time to point out that if the health of the mother is not proper, it will affect the health of two human beings, whereas, if the health of men is not sound, it will affect the individual, nevertheless, the health of everyone should be very sound and this can be made by human creature by follow the general system of the nature. It is also suggested that women should not use the injurious and harm full food items, because all these are very dangerous to the human body, such as, if any human being is consuming alcohol and tobacco, it will increase the blood pressure, which will result heart problem. In this reference, it is necessary to take the support of the report published by the United Nations that over 100 risk factors have been associated with coronary heart disease and stroke and are now significant in all populations. In developed countries, at least one third of cardiovascular disease (CVD) is attributable to lesterol and obesity. In developing countries with low mortality like China, these risk factors are high on the top list. In developing countries with high mortality, such as in sub Saharan Africa, high blood pressure, high cholesterol and tobacco and alcohol use, as

⁵² The Hindu April 3, 2011 p 6. In the newspaper a problem was also illustrated by the writer as "Usha Sharma, who was nearing the 28th week of her second pregnancy, was shocked to be told she needed a caesarean section in less than a month as her blood pressure was high. The baby was delivered at 28 weeks. The Sharma had not expected their second baby to be premature and went through a lot of emotional stress over fears that the premature birth might put their baby at risk of developing mental and physical disabilities.

well as low vegetable and fruit intake, are among the top risk factors. Some major risks can be prevented, treated and controlled by stopping smoking, reducing cholesterol and blood pressure, eating a healthy diet and increasing physical activity.⁵³ It is also required physical exercise and proper dieting from the childhood, because risk factors, including dietary habits and smoking, are determined to a great extent by behaviors learned in childhood and are starting to appear earlier throughout the world. Physical activity decreases markedly in adolescence, particularly in girls, and obesity has increased substantially not only in Europe and North America but also in China and Japan where populations are traditionally slender. Due to these reasons, diabetes is increasing in adolescents in North America, Japan and Thailand.⁵⁴

World Health Organization suggested that the young should be encouraged as early as possible to lead a healthy lifestyle, including diet and exercise, before they can develop any serious problems.⁵⁵

In the work place, it requires the female workers to work with the energetic sound health. Henceforth, it is germane to suggest that special facilities should be provided to the women workers in the work place for their personality development. In India the basic amenities for the female workers are growing day by day on the basis of new ideology for the better health of the female and their babies. Thus, the dynamic ideology of farther of the Nation Mahatma Gandhi is apt to quote here; he said "I believe that independent India can only discharge her duty towards a groaning world by adopting a simple but ennobled life, by developing her thousands of cottages and living at peace with the world. All the graces of life are possible only when we learn the art of living nobly". Thus, life style of everyone is one of the most important factor to maintain proper and sound health, now people are becoming obese due to the availability of fatty foods, and decreased exercise. Industrialization, urbanization and mechanized transport have reduced physical activity, thus more than 60 percent of the global population is not sufficiently active. In China, there are 70 million overweight persons; South Pacific populations that used to be physically active and slim now have some of the highest rates of obesity.

⁵³ Ibid.

⁵⁴ Reported by Erika Reinhardt, *The Atlas of Heart Disease and stroke*, United Nations Volume XLII, Number 1, March-May 2005 p 46-48.

⁵⁵ Ibid.

⁵² Id.

Endurance Running: NSG Experience



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Keywords

Commando, Soldier, Physical Fitness, Endurance, NSG

Abstract

Physical Training (PT) Instructors at NSG Training Centre are top notch in their field. They assist in designing training programmes and impart scientific training to the probationers in consonance with basic principles of endurance training. They also follow a systematic approach to ensure that the probationers are optimally conditioned in their 90 days of training to complete the required endurance runs. prisoner and role of Judiciary in protecting the human rights of prisoner.

“The first virtue in a soldier is endurance of fatigue, courage is only the second virtue”

— **Napoleon Bonaparte**

Endurance Training in NSG

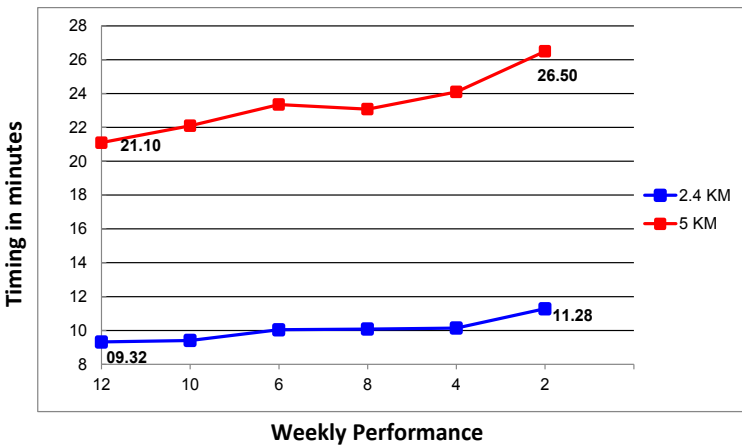
NSG training demands very high standards of physical fitness, which has to become a way of life as a Commando. Probationers during their conversion course undergo a systematic transition to enhance their endurance standards, which is one of the important parameters for intake of soldiers into NSG. Gradual build up of endurance is desired from middle distance to long distance running. In

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the beginning, a probationer is made to undergo progressive physical conditioning and strengthening exercises. He is assessed for middle distances i.e. 2.4 km and 5 km as part of PPT and BPET; respectively, after every three months. There is consistent improvement in standards of probationers as seen in Table 1 below.

Table No 1: PROGRESSIVE STANDARDS OF 144 TRAINEES OF CC (SRG)-100 IN MIDDLE DISTANCE RUNNING



Why is it Important?

For long distance running probationers are conditioned to run from 5 km to 10 km with backpack; increasing from 5 kg to 12 kg. At the end of seventh week, the probationers are validated for 16 km run and for 24 km at the end of 11th week, with 18 kg weight. The qualifying Timings for 16 km run are 2 hrs 08 min (@8 min per km) in winters and 2 hrs 24 min (@ 9 min per km) in summers, for probationers below 35 yrs of age. The qualifying timings for 24 Km is 3 hrs 12 min for winter season and 3 hrs 36 min for summer season. A probationer progressively improves his endurance to sustain an optimum speed for longer distances. Special Forces worldwide are trained and equipped to strike with precision and speed. Though their targets are well identified, yet the approaches they may have to adopt to strike at the target, may be of any possible dimension. Our memories are still fresh with 26/11 operation when



commandos had to endure hunger, thirst and sleeplessness for at least two nights. US SEAL commandoes had to fly for hours, again enduring muscle fatigue, mental duress, with cumbersome gear & equipment before striking at a hideout in Abbotabad, Pakistan. Such circumstances are analogous to the physiological requirements of one's body when a commando is competing in long distance endurance runs and underscores the importance of endurance trg for a Special Force Commando.

Analysis of Results

It is important for probationers who are being conditioned for endurance running to increase their calory intake which can be ensured by a selective diet. More important is that one needs to change his lifestyle and eating habits to sustain his physical fitness levels irrespective of employment. It is a proven fact that an unhealthy life style is detrimental to physical standards. A good example is that of young officers, who after having finished their pre commission training, are at the peak of their physical fitness and soon thereafter following a sedentary life style tend to underperform in physicals.

How to self-train in Endurance

Methodology of Training. Physical Training (PT) Instructors at NSG Training Centre are top notch in their field. They assist in designing training programmes and impart scientific training to the probationers in consonance with basic principles of endurance training. They also follow a systematic approach to ensure that the probationers are optimally conditioned in their 90 days of training to complete the required endurance runs. Fundamentally, endurance training is based on balanced combination

of aerobic and anaerobic running. Through aerobic running one learns how to run within one's capacity to use oxygen, called as the Aerobic Limit or Maximum Steady State (MSS). Regular and planned exercises assist in achieving the optimum level of aerobic running that helps in strengthening muscles, enhancing lung capacity and heart pumping rate. Erratic running or over exertion stretches a body beyond the MSS, and we begin running in an anaerobic state, which starts using the reserve oxygen level in the body causing accumulation of lactic acid and other wastes products that upsets the nutritive system, reduces nourishment from food and makes one fatigued and irritable, induces insomnia and low spirits. Under such circumstances, recovery from training is poor and subsequent training is more difficult. Aerobic exercise is 19 times more economical than anaerobic exercises. A suggested methodology to train for long distance endurance running is as given in Table No 2. This regime has been evolved for trained commando.

How to Sustain Levels of Endurance ?

Table No 2: Suggested Training Schedule for Endurance Running

DAY	TIME	ACTIVITY
1st Week		
Monday	0400-0700H	Slow continuous 15km run(90min)
Tuesday	0500-0630H	Repetition (five set x 4km=20km) (complete body recovery between two sets)
Wednesday	0500-0630H	Cross Training (Cycling)
Thursday	0500-0630H	Interval Training(3 set x 5km = 15km) (without complete recovery in between two sets)
Friday	0530-0630H	Cross Training (Swimming/Cycling)
Saturday	0400-0730H	Competition run 15km
2nd Week		
Monday	0400-0700H	Interval Training(7.5km x 3 = 22.5km)
Tuesday	0500-0700H	Cross Training (Cycling)
Wednesday	0330-0730H	Slow continuous 20km run(4hrs)

Thursday	0500-0630H	Hill Training
Friday	0530-0630H	Cross Training (Swimming)
Saturday	0330-0730H	Competition run 18km
3rd Week		
Monday	0330-0800H	Slow continuous 25km run(2.30hrs)
Tuesday	0400-0730H	Repetition trg (Three sets x 7.5km=22.5km)
Wednesday	0400-0700H	Cross Training (Cycling)
Thursday	0400-0600H	Alternative Run & Jog, time interval should increase in ascending order
Friday	0530-0730H	Cross Training (Swimming)
Saturday	0330-0800H	Competition run 25km
4th Week		
Monday	0300-0900h	Slow continuous 35km run(5hrs)
Tuesday	0530-0730h	Cross Training (Swimming)
Wednesday	0300-0900h	Interval training(12km x3 = 36km)
Thursday	0400-0730h	Repetition trg(12km X 2 = 24km)
Friday	0400-0700h	Cross Training (Cycling)
Saturday	0300-0900h	Competition run 40km
5th Week		
Monday	0500-0700H	15-17km run/stretching exercises
Tuesday	0500-0700H	10-12km run/ Stretching exercises
Wednesday	0500-0700H	08-10km run/Stretching exercises
Thursday	-	Marathon Competition

One must aim to have early meal and do some physical activity before retiring for the day. Oily food rich in fats should be avoided. In aerobic exercise energy comes from a ratio of about 48% carbohydrates, 48% fatty acids and 4% proteins. In anaerobic exercise the ratio is about 60% carbohydrates, 25% fatty acids & 15% proteins. There is, thus, an increase in the burning of carbohydrates in long distance endurance runs that calls for anaerobic efforts. There is a need for fatty acids and proteins, if they are not sufficient, the runner on the carbohydrate diet can suffer from dizziness and experience greater muscle soreness afterwards.

To maintain sugar level the best way is to eat more honey and glucose. These build the caloric intake to a high level easily without creating digestive problems. Suggested diet chart for an endurance runner is as given in Table No 3.

Table No 3: DIET CHART FOR ENDURANCE RUNNER

Day	Breakfast	Lunch	Dinner
Monday	Sprouts, Oats, Milk, Dry Fruits	Boiled Rice, Fish (Rohu/ Hilsa), Salad	Soya bean, Green Vegetables, Rice/ Chapati, Salad, Milk
Tuesday	Eggs, Brown Breads, Butter/ Chees Fruit Juice	Rice/Chapti, Curd , Spinach, Masur Dal Salad	Rice/Chapati, Moong Dal , Mixed Veg, Milk
Wednesday	Porridge (Dalia), Milk Seasonal Fruits, Dry Fruits	Rice/Chapati, Raita, Soyabeen, Salad	Fish (Rohu/Hilsa), Rice/Chapati, Salad
Thursday	Idli, Samber, Coconut Chatni, Banana	Rice/Chapti, Mutton, Salad, Green Veg	Rice/Chapati, Moong Dal, Green Veg, Milk
Friday	Sprouts, Oats, Milk, Seasonal Fruits, Dry Fruits	Any South Indian dish rich in carbohydrates, salad, Curd.	Rice/Chapati, Soyabeen, Green Veg, Milk
Saturday	Bananas, Porridge Milk	Rice/Chapati, Fish Salad	Rice/Chapati, Chicken
Sunday	Uttappam, Dry Fruits, Milk	Any Dish as per liking Curd	Rice/Chapati, Seasonal Green Veg, Masur Dal, Milk
Note	<ul style="list-style-type: none"> • Seasonal fruits and green vegetables should be preferred. • Fluid intake should be maximum. • Avoid sweets, fried food, and fast food. • Avoid non-vegetarian dishes on night before the run. • Avoid fruits & juice at night. • Take carbohydrate rich food on night before the run. • Protein rich diet should be preferred in day time. 		

Selection of Running Surface: The surface we choose to run on is important; better the traction from the surface better is the development of the circulatory and respiratory systems. Good traction allows more economical running, muscles tire less, which in turn allows greater speed for longer periods. In cross country the muscles tire faster because of the continued resistance of uphill and downhill running on slippery, wet or holding ground, where traction is bad. On metalled road, even when there are hills to run up and down, the runner has good traction and can run much more relaxed. Many athletes avoid training on roads. But if we use well made shoes with good rubber soles, the risk of injuries or leg problems is less than that involved in running with ordinary track shoes on hard cinder tracks. For endurance running, special care needs to be taken towards one's personal running gear and equipment.

Self Motivation: A probationer or any trained soldier needs to have a high level of self motivation to enhance & sustain one's physical standards. Trainees undergoing CC SRG -99 course could achieve accomplishment of completing Ultra Marathon (60 Km) while still undergoing endurance enhancement in their probation. This was achieved only with systematic training, correct diet and most of all, due to their self motivation.

Commando Challenge-2014 (60km Run): Trained NSG Commandos in Force units imbibe the culture of staying fit and continue to maintain high standards of physical fitness. This manifested when a strength of 1400 commandos participated in Ultra Marathon(60 km), Marathon and Half Marathon run as part of Commando Challenge, 2014. The terrain and route for the marathon included hilly terrain, and road running. It was a challenge for the commandos and 60 Km Ultra Marathon Challenge was completed by Cdo Rakesh Singh in 4 hrs 17 mins and 55 secs @ 4.3 mins per Km. Senior officers, including Shri J N Choudhury, IPS, Director General, NSG led by example participating and successfully completing the marathon event. The fervour for the event was unprecedented and ladies and children also participated in Run for Fun (8 km). The participants in hordes practiced with zeal and passion. The entire NSG campus could witness small groups of marathoners training for their respective events throughout the day and night. Each team had done considerable amount of research, preparing specific event oriented diet chart, matrices of training schedule, best equipment, etc.



Conclusion

The culture imbibed in NSG holds them in good stead and they carry forward this rich culture to their own units and homes, influencing and motivating their friends & families towards excellence. Every trainee is stretched to the limits of his physical endurance during the probationary training at NSG. Most commandos admit, that they never considered themselves capable of such physical endurance and feel extremely proud of their new found ability. For most of them this has become a way of life.

Personality Factors among Police Personnel of Rajasthan



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Keywords

Personality, Neo-Personality Inventory Revised (NEO-PI-R), Neuroticism, Extraversion, Openness, Agreeableness and Conscientiousness

Abstract

The objective of this research was to determine personality dimensions among police personnel. A cross-sectional survey design was used. The study population consisted of 68 police personnel. The NEO-Personality Inventory – Revised was used as measuring instrument. The results showed that more than 50% of the police personnel were low on Extraversion, Conscientiousness and Agreeableness whereas on Emotional Stability and Openness to Experience equal variance i.e. 50%-50% can be seen.

The five-factor model of personality dimensions was conceptualised by Costa and McCrae (1992). The five-factor model of personality represents a structure of traits, developed and elaborated over the last five decades. Factors are defined by groups of inter correlated traits, which are referred to as facets (McCrae & Costa, 1997). The five factor model of personality as measured by the Neo-Personality Inventory Revised (NEO-PI-R) includes Neuroticism, Extraversion, Openness, Agreeableness and Conscientiousness (McCrae & Costa, 1997). The reason for deciding on this conceptualisation is because the validity of broad personality dimensions is superior to narrowly defined dimensions. (Ashton, 1998).

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Introduction

Researchers agree that almost all personality measures could be categorised according to the five-factor model of personality (also referred to as the “big five” personality dimensions) (Goldberg, 1990; Hogan et al., 1996). The five personality dimensions seem to be relevant to different cultures (McCrae & Costa, 1997) and have been recovered consistently in factor analyses of peer- and self-ratings of trait descriptors involving diverse conditions, samples, and factor extraction and rotation methods (Costa & McCrae, 1988). Research also showed that the five personality factors have a genetic basis (Digman, 1989) and that they are probably inherited (Jang, Livesley & Vernon, 1996). The five dimensions of the five-factor model of personality are Neuroticism, Extraversion, Openness to Experience, Agreeableness and Conscientiousness.

Sample

The sample includes 68 police personnel of Promotion Cadre Course (PCC), (Sub Inspector to Inspector) from Rajasthan Police Academy, Jaipur. All police personnel have a minimum qualification of bachelor degree. The sample includes 47 (69.12%) belongs to age group of 36-40 years followed by 19 (27.94%) of age group 41-45 years, 1 (1.47%) from age group of 46-50 years and 1 (1.47%) from age group of 51-55. With reference to years of service in police 92.60% has a experience of 11 to 20 years, 2.90% of 21 to 30 years and 4.40 % data was not available.

Result & Discussion

Table 1 : Age Wise Distribution of Sample

S No.	Age	Frequency	Percentage
1	36-40	47	69.12%
2	41-45	19	27.94%
3	46-50	1	1.47%
4	51-55	1	1.47%

The above table 1 shows the age wise distribution of the sample taken for the present study. It can be seen from the above table that the maximum police personnel 47 (69.12%) belongs to age group of 36-40 years followed by 19 (27.94%) of age group 41-45 years, 1 (1.47%) from age group of 46-50 years and 1 (1.47%) from age group of 51-55.

Table 2 : Years of Service

S No.	Age	Frequency	Percentage
1	11-20	63	92.60%
2	21-30	2	2.90%
3	NA	3	4.40%
Total		68	100.00%

The above table 2 shows length of service in police organisation. As it can be seen that 63 (92.60%) police personnel has a experience of about 11-20 years followed by 2 (2.90%) personnel with 21-30 years.

Table 3 : All Dimensions

S No.	Response	E	%	A	%	C	%	N	%	O	%
1	High	33	49	32	47	30	44	34	50	34	50
2	Low	35	52	36	53	38	56	34	50	34	50
Total		68	100	68	100	68	100	68	100	68	100

E = Extraversion, A = Agreeableness, C = Conscientiousness, N = Neuroticism and O = Openness to Experience.

The above table shows analysis of scores on dimensions of personality i.e. extraversion, agreeableness, consciousness, neuroticism and openness to experience.

It can be seen from the above table that 49% police personnel are high on extraversion, while 52% are low. Extraversion includes traits such as sociability, assertiveness, activity and talkativeness. Extraverts are energetic and optimistic whereas introverts are reserved rather than unfriendly, independent rather than followers, even-paced rather than sluggish. Extraversion is characterised by positive feelings

and experiences and is "therefore, seen as a positive effect (Clark & Watson, 1991). Johnson (1997)" found a positive relationship between Extraversion and job performance of police personnel, and explained this relationship in terms of the high level of interaction in the police service.

The second dimension is agreeableness. It can be seen that 47% of the police personnel are high on agreeableness. An agreeable person is fundamentally altruistic, sympathetic to others and eager to help them, and in return believes that others will be equally helpful. On the other hand 53% are disagreeable or antagonistic. The disagreeable/antagonistic person is egocentric, sceptical of others' intentions, and competitive rather than co-operative. Agreeableness among police personnel should be high as they are bound to serve the country and their citizens without any expectations which is seen less among the group taken.

The third dimension is conscientiousness in the present study it can be seen that 44% of police personnel are high on conscientiousness and 56% are low. Conscientiousness refers to self-control and the active process of planning, organising and carrying out tasks (Barrick & Mount, 1993). The conscientious person is purposeful, strong-willed and determined. Conscientiousness is manifested in the achievement orientation (hardworking and persistent), dependability (responsible and careful) and orderliness (planful and organised). On the negative side, high conscientiousness may lead to annoying fastidiousness, compulsive neatness or workaholic behaviour. Low scorers may not necessarily lack moral principles, but they are less exacting in applying them. Borman, White, Pulakos and Oppler (1991) and Hough et al. (1990) found a correlation of 0, 80 between reliability (an aspect of Conscientiousness) and job performance.

The fourth dimension is neuroticism, it can be seen that 50% of the police personnel shows high neuroticism and 50% are low. Neuroticism is a dimension of normal personality indicating the general tendency to experience negative affects such as fear, sadness, embarrassment, anger, guilt and disgust. High scorers may be at risk of some kinds of psychiatric problems. A high Neuroticism score indicates that a person is prone to having irrational ideas, being less able to control impulses, and coping poorly with stress. A low Neuroticism score is indicative of emotional stability. These people are usually calm, even-tempered, relaxed and able to face stressful situations without becoming upset (Hough et al., 1990).

Hörmann and Maschke (1996) found that Neuroticism is a predictor of performance in various occupations. Dunn, Mount, Barrick and Ones (1995) showed that emotional stability (the opposite of Neuroticism) is the second most important characteristic that affects the employability of candidates.

The fifth dimension is openness to experience, it can be seen that 50% of the police personnel are high and 50% are low on openness to experience. Openness to Experience includes active imagination, aesthetic sensitivity, attentiveness to inner feelings, a preference for variety, intellectual curiosity and independence of judgement. People scoring low on Openness tend to be conventional in behaviour and conservative in outlook. They prefer the familiar to the novel, and their emotional responses are somewhat muted. People scoring high on Openness tend to be unconventional, willing to question authority and prepared to entertain new ethical, social and political ideas. Open individuals are curious about both inner and outer worlds, and their lives are experientially richer. They are willing to entertain novel ideas and unconventional values, and they experience both positive and negative emotions more keenly than do closed individuals. Research has shown that Openness to Experience is related to success in consulting (Hamilton, 1988), training (Barrick & Mount, 1991; Vinchur et al., 1998) and adapting to change (Horton, 1992; Raudsepp, 1990). In contrast, Johnson (1997) and Hayes, Roehm and Castellano (1994) found that successful employees (compared with unsuccessful employees) obtained significantly lower scores on Openness.

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Family Environment and Drug Abusers in Kashmiri Youth



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Keywords

Drug Addiction, Family Environment, Youth, Relationship

Abstract

The present study was conducted to see the differences between family environment dimensions of drug and non-Drug Abusers of Kashmiri Youth. The sample consisted of 60 male respondents; of these 30 were Drug Abusers and 30 Non-Drug Abusers. The results revealed that the two groups significantly differed on all dimensions of the Family Environment Scale namely, relationship, personal growth and systems maintenance dimensions. Thus, it is concluded that poor family relationships, harsh attitude and strange behaviour of family members provoke drug abuse and strategies be formulated to improve the family relationships through counselling. It is suggested that the clinicians must take an initiative to provide awareness programmes among masses and provide family therapy to drug addicts and their families which in turn will help the drug abusers to get cured from this hazardous problem and lead a normal life.

Introduction

Family factors including parental psychopathology, family conflict, relational distance, and parenting deficits are all strong predictors of drug use initiation and abuse (Tobler & Komro, 2010). The threat of becoming a drug abuser involves the link among the number and

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type of risk factors (e.g., deviant attitudes and behaviors) and protective factors (e.g., parental support) (Wills and McNamara et al. 1996). While risk and protective factors can affect people of all groups, these factors can have a different effect depending on a person's age, gender, ethnicity, culture, and environment (Beauvais et al. 1996; Moon et al. 1999). The majority of individuals reported that their drug use began in adolescence (von Sydow et al., 2001). Drug use interferes with normal cognitive, emotional and social development. Family conflict, least family bonding, and peer's antisocial behavior all are independent predictors of drug use in adolescence (Guo et al., 2002). Substance use is closely correlated with risky sexual behaviors, delinquency, chronic offending, depression, school failure and unemployment, troubled relationships with peers and family members, and low self-esteem during adolescence and adulthood periods (Stueve & O'Donnell, 2005). Children belonging to families which are non-interactive, or who are dissatisfied with parent relationships and who are less closely monitored, are more likely to be heavy substance users (Ledoux et al., 2002). The absence of cohesive family environment fails to provide independence, achievement, recreational and intellectual orientation to the drug addict. This leads addicts to being lonely and seeking outside support from drugs (Satneet et al., 2015). Those individuals who are succumbed to drugs showed higher levels of anxiety than non-addicts (Usha & Sheena 2010). The feelings of loneliness is very high in drug abusers and develops a sense of being different from community and increase the probability of taking high-risk behaviors and abusing drugs (Hosseinbor et al., 2014). In the single parent family there is higher probability of drug addiction (Lieb et al., 2002). Substance dependent clients showed lower scores on family functioning dimensions including; problem solving, communication, roles, affective responsiveness, affective involvement, behavioral control and overall family performance than non-addicted individuals (Hosseinbor et al., 2012). Parental substance abuse is highly disruptive to family functioning (Dawe et al., 2006). According to the UNODC, family skills training programs are considered to be the most effective measures to prevent substance abuse among youth (UNODC, 2009). Deprived parenting practices, aggressive marital relationship, limited social support, and economic disadvantages leads children at risk of drug addiction (Bancroft et al., 2004). Family factors and associations between relationship dysfunction and substance use appear to be reciprocal, and

stress in family relationships can contribute to drug use among adults (Fals-Stewart et al., 2009). The present scenario of drug trafficking in J & K is on the top and more people are getting involved in the drug smuggling due to high prices in the international market and underworld. Kashmiri drug peddlers use fruit trucks to carry the charas and opium from native place to other states of India. The Department of J&K Police is quite active in controlling the menace of drug smuggling throughout the Kashmir valley. The main objectives of Department of J&K police is to make Kashmir a drug free State and establish drug de-addiction and rehabilitation centers throughout the valley by providing counseling to the drug abusers and their family members. Looking into the importance of family environment dimensions in relation to drug abuse, the present study was conducted to assess the difference between family environment dimensions in drug and non-drug abusers of Kashmiri youth.

Objectives of the Study

The primary objective of the research was to study the family environment dimensions in drug and non-drug abusers of Kashmiri youth.

Hypothesis

There will be significant difference between drug and non-drug abusers on family environment dimensions such as relationship, personal growth and systems maintenance dimensions in Kashmiri youth.

Method

Sample

The sample consisted of 60 respondents. Of these, 30 were Drug Abusers and the other 30 were non-drug abusers. The age of the respondents ranged between 21-30 years and the average age of the sample was ($M=23.73$). The drug abusers were selected from Drug De-addiction and Rehabilitation Center, Police Control Room, Srinagar, Kashmir, where as non-drug abusers were selected from Kashmir University Teaching Departments. Only male respondents participated in the study.

Tool used

Family Environment Scale: The family environment scale developed by Bhatia and Chadha (1993) was used to assess the family environment dimensions. It consists of 69 items based on 5- point Likert type scale. There are total eight factors that are broadly grouped into three dimensions (1) Relationship dimension (it is further divided in four factors: cohesion, expressiveness and conflict, acceptance and caring). (2) Personal growth dimension (it is further divided in two factors independence and active recreational orientation). (3) Systems maintenance dimension (it is further divided in two factors: organization and control). The test-retest reliability of the scale was 0.95.

Procedure

Each subject was tested individually. They were briefed about the purpose of the study in detail. They were assured about that all information would be kept confidential. Necessary explanation was provided to the respondents to make the questionnaire easier and understandable.

Result and Discussion

The t-test was applied to the obtained data to analyze the significance of differences between the two groups of subjects, the drug and non drug-abusers of Kashmiri youth on the family environment dimensions.

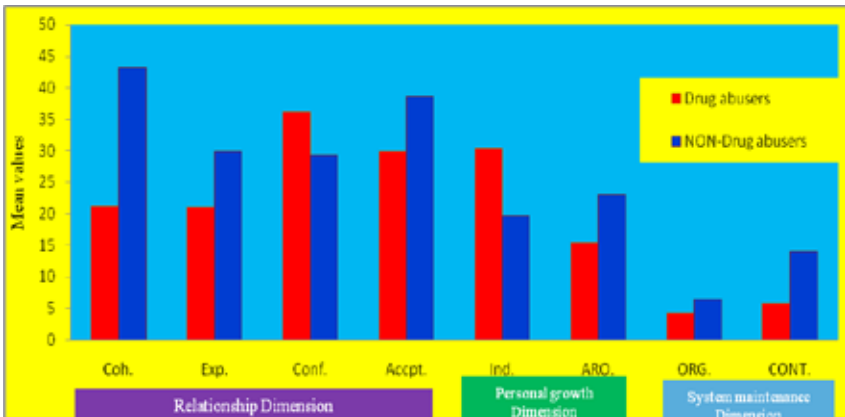
Table 1 Means, SDs and t-values of Drug and Non- Drug Abusers on FES- Scale.

<i>Family Environment Dimensions</i>	<i>Drug abusers</i>		<i>Non drug abusers</i>		<i>t-value</i>
	<i>Mean</i>	<i>SD</i>	<i>Mean</i>	<i>SD</i>	
<i>Relationship Dimensions</i>					
<i>Cohesion</i>	21.2	6.94	43.26	5.06	18.17**
<i>Expressiveness</i>	21.13	3.79	29.96	4.09	14.14**

<i>Conflict</i>	36.3	4.68	29.30	5.28	21.89**
<i>Acceptance and caring</i>	29.96	4.20	38.66	26.45	8.60**
Personal growth Dimensions					
<i>Independence</i>	30.4	2.94	19.6	3.70	13.3**
<i>Active recreational orientation</i>	15.43	3.70	23.1	2.04	9.83**
System maintenance Dimensions					
<i>Organization</i>	4.2	1.37	6.4	1.85	12.94**
<i>Control</i>	5.73	2.27	14.03	4.0	10.01**

($P < 0.01, 0.05$)

Graph 1 depicts Mean values of Drug and Non-Drug Abusers on FES-Scale.



The results showed that the two groups differed significantly on family environment dimensions such as relationship, personal growth, system maintenance and their related factors that are cohesion, expressiveness, conflict, acceptance and caring, independence, active-recreational orientation, organization and control.

In regard to relationship dimension, the non-drug abusers showed higher scores in context of cohesion (43.26), expressiveness (29.96) and acceptance and caring (38.66) factors, in comparison of drug abusers in cohesion (21.2), expressiveness (21.13) and acceptance and caring (29.96) factors. But in conflict factor the drug abusers showed higher scores (36.3) in comparison to the Non-drug abusers (29.30). These findings are in line with the earlier research of Gunthey & Jain (1998). Thus, it can be said that non-drug users are better than the drug users in terms of relationship dimension such as degree of commitment, help, and provides support to family members for one another. In context of expressiveness, the non-drug abusers are found to be better to act openly and express their feelings and thoughts directly in family members than their counterparts. But in the perspective of conflict factor it can be said that the drug users openly expressed aggression and discordance among family members in comparison to the non-drug abusers.

In respect of personal growth dimension, the non-drug abusers showed higher scores in context of active-recreational orientation factor (23.1) and showed lower scores in independence factors (19.6) than drug abusers in relation with respective factors such as, active-recreational orientation (15.43) and independence (30.4) factors. Jogsan's, (2012) study showed similar results except in the independence factor of personal growth dimension in relation to the present study. Thus, it can be said that drug abusers in term of personal growth dimensions are found to be more assertive and can take decisions independently, while non-drug abusers are found to be more participative in social and recreational activities.

In perspective of system maintenance dimension, the non-drug abusers showed higher mean score in organization (6.4) and control factors (14.03) in relation with drug users in respective factors such as, organization (4.2) and control (5.73). The present findings are in line with the research conducted by Satneet, Lakhminder & Narinder (2015). Thus, it is concluded that in system maintenance dimension the Non-drug abusers are found to be good in degree of importance of clear structure in planning family activities and responsibilities as compared with drug abusers.

As intervention techniques are linked to positive outcomes in drug using behavior in youth, it is necessary for professionals to implement strategies that are sound to cure drug addiction. The psychological based

therapies such as Multidimensional family therapy and Behavioral family therapy are being practiced in the West and can be applied in Indian settings. These strategies are effectual in reducing the drug use, maintenance of healthy family relations, helping runaway adolescents to reunite with families, dropping juvenile delinquency, restructure the youth's environment to reduce disruptive behaviors, and work actively in both the home and community to empower parents (Curtis et al., 2004; Slesnick & Prestopnik, 2005).

Conclusion

The study revealed significant differences in family environment dimensions and their related factors between drug users and non-users of Kashmiri youth. The degree of support and commitment from the family to the drug addicts is weak, and it lays more emphasis on highly controlled procedures which leads to conflicts among the family members. The negative family environment might contribute towards maladaptive behavior like drug addiction. Clinicians and counselors working at police stations of J & K region have to facilitate healthy interpersonal relationships between the family members and drug abusers and thus, providing interventional strategies for the prevention and treatment of substance abuse.

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Psychosocial Determinants Of Criminal Psyche: An Exploration

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Keywords

Psycho Social Determinants, Criminal Psyche

Abstract

The aim of the paper is to explore the psychosocial determinants of criminal psyche. The data were collected from four groups of participants (professionals, adult offenders, juvenile offenders, family members of offenders) from various districts of Kerala. Informations were collected through semi structured interviews. The collected data were analyzed using interpretive phenomenological analysis. The identified psychosocial determinants were clustered into six theme clusters.

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A 'crime' can be defined for legal purposes simply as an offence against the criminal law. In terms of practical interpretation, this definition evaluates behavior on the basis of intention, knowledge and freedom to act. (Maguire & Radosh, 1999). Criminal psyche here defined as the underlying psychological mechanisms that determines one's criminal behavior. The causes of criminality are often attributed to a wide variety of psychosocial factors. Apart from the biological causal factors, these psychosocial factors have gained considerable research attention within the current psychological frame work. Such psychosocial factors include family environment, school environment and neighborhood risk factors. Many theoretical orientations like Trait perspectives, Psychodynamic perspectives, Socio cultural perspectives, Radical behavioral perspectives, Humanistic and existential perspectives, and Social learning/cognitive behavioral/social cognition/ general personality perspectives explained criminality. This study is an attempt to explore these theoretically stated psychosocial factors and their role in the development of a criminal psyche.

Many researchers asserted that family related factors are very crucial in the development of criminal psyche. The important family related factors include family structure (Ika`heimo , Laukkanen , Hakko & Rasanen (2012); Cashwell & Vacc (1996); Loeber & Loeber (1986)), parenting style (Ishoy (2015); Mowen & Schroeder (2015)), poor parent- child relationship (Savage (2014); Ogilvie, Newman, Todd & Peck (2014)), lack of parental support and monitoring (Walters (2013)), childhood maltreatment (You & Lim (2015); Zakopoulou et al (2013); Saunders et al (2011)), parental criminality (Besemer (2014);), and parental psychopathology (Makia et al (2003); Huan, Ang & Lim (2010)). The findings from these researches concluded that, single parent family, neglectful parenting style, childhood victimization, parental criminality, especially that of mother and parental psychopathology are the important predictors of both juvenile and adult violent behaviours. Similarly, researchers also explored the role of various school related factors like deviant peer associations and gang affiliations (Katsiyannis, Thompson, Barrett, & Klingree (2013)), and neighborhood related factors like antisocial neighborhood and gang affiliations etc (Haynie, Silver & Teasdale (2006)) on the development criminality. In the light of large body of existing research on criminality, we are trying to explore the important psychosocial determinants of criminal psyche. Exploring such

psychosocial determinants will be helpful in understanding and preventing crime. Furthermore, this will be helpful to design a correctional setting which addresses the psychosocial issues of the offenders and prevents re offending.

Method

Aim

To explore the psychosocial determinants of criminal psyche.

Procedure

The present study entitled as ‘Psychosocial Determinants of Criminal Psyche’ was conducted in four phases and four groups of participants were involved.

Participants

Four groups of participants (N=16) were selected from various districts of kerala.

Group 1: The participants of this group include four professionals from various fields. (Two police officers, advocate and prison welfare officer)

Group 2: four adult offenders

Group 3: four juvenile delinquents

Group 4: family members of the participants of group 1 and 2.

Method of data collection

The primary method of data collection was the semi structured interview. The four groups of participants were interviewed for getting information on various dimensions of psychosocial causal factors of criminality.

Phase 1: four legal professionals (the group 1 participants) were interviewed in order to explore the psychosocial determinants of criminality.

Phase 2: four adult offenders were interviewed to gather information about the causes of their own offending behaviour

Phase 3: four juvenile offenders were interviewed to explore the causes of their deviant behaviour.

Phase 4: the family members of group 2 and 2 participants to explore the psychosocial determinants of criminality.

Analysis

Interpretive phenomenological analysis was used to analyze the collected information. The final themes extracted from the responses of participants and the interconnections of the themes are detailed below.

Phase I

During the first phase of the study, two police officers, an advocate and a prison welfare officer were interviewed. The interpretive phenomenological analysis of their responses revealed the following themes.

1. Antisocial family history
2. Parental substance abuse
3. Delinquent peer association
4. Substance abuse
5. Rejection at school
6. Broken family
7. Maternal moral issues
8. Inadequacy of the correctional system
9. Victimization

The themes reflects the psychosocial causal factors identified by experienced professionals of legal and correctional system.

Phase 2

The interpretive phenomenological analysis of the response of group 2 participants (adult offenders) revealed the following themes:

- Father’s alcoholism
- Financial crisis
- School failure
- Antisocial friends
- Workplace violence
- Labeling
- Legal unawareness
- Substance abuse
- Broken family
- Parental neglect
- Antisocial family member (parent/sibling)

The psychosocial factors are found to be common for the all the participants of this group. Their criminality is the result of the interaction of these factors. The pattern of development of criminal behavior can be illustrated in figure 3.1

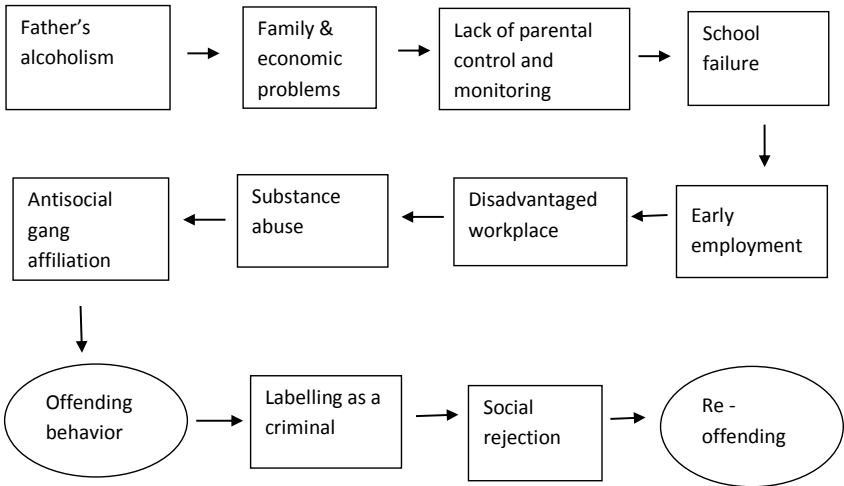


Figure 3.1

Phase 3

The final themes identified using interpretive phenomenological analysis of the responses of group 3 participants are as follows:

- School failure
- Substance abuse and alcoholism
- Emotional un stability
- Lack of parental control
- Impulsivity
- Antisocial gang affiliation
- Disadvantaged neighborhood
- Father's alcoholism
- Poor attachment with parents and siblings

The causal factors of juvenile offending is deep rooted in the family and school environment. The interaction of negative factors like family, school failure, lack of parental control and support increases the chances of antisocial gang affiliation. The antisocial peer association leads to substance abuse and this enhances the vulnerability of offending.

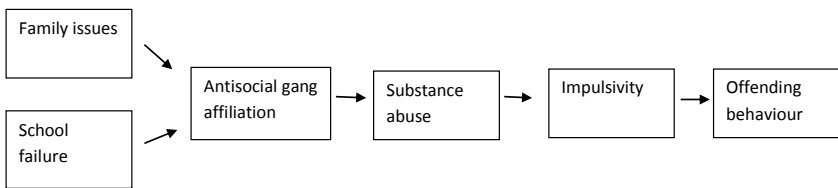


Figure 3.2

Phase 4

The final themes identified from the responses of group 4 participants were:

- Family issues
- Father's alcoholism
- Parental criminality
- Disadvantaged neighborhood
- Antisocial gang affiliation
- Aggression
- Impulsivity
- Poor attachment with parents
- Substance abuse

The final themes extracted from the responses reflects the role of familial, neighborhood, school related factors in the development of criminality.

Discussion

The themes identified using interpretive phenomenological from the responses of the sixteen participants were clustered together. The final theme clusters formulated are:

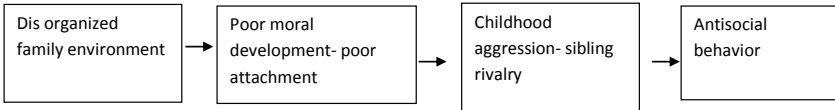
- Disadvantaged family environment
- Disadvantaged neighborhood
- Disadvantaged school environment
- Antisocial gang affiliation
- Childhood trauma
- Other social factors

Disadvantaged family environment

This cluster includes the factors like inappropriate parenting styles, antisocial history of parents and other family members, parental substance abuse, sibling rivalry, lack of attachment with family members, maternal risk factors like moral issues and criminal and substance abuse history, single headed family and broken family. Many researchers like Loeber and Loeber (1986), keep childhood aggression and lack of emotional attachment with family members

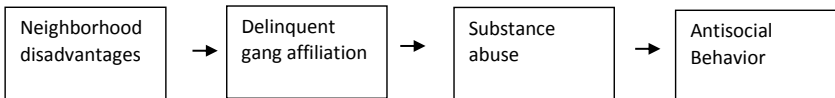
Lack of social bonds, antisocial gang affiliation (neighborhood), Substance abuse, antisocial behavior. Nagin , Pogarsky and Farrington (1997), and Walters (2013) pointed the importance of these factors on determining the development of criminal psyche. Researchers like Nijhof, Kemp, & Engels (2009) explored the links between parental criminality. All these prior literature helps to conclude that disadvantaged family environment as a cluster of factors, is very crucial in the development of criminal psyche. In general, the disadvantaged family environment adversely affect the development of self concept of the child. The conflicts in the parent child relationship will hinder the normal psycho social development, moral development and in turn lead to the development of inappropriate coping strategies towards frustration. All these factors along with certain social conditions lead to antisocial behavior.

The role of disadvantaged family environment in determining the development of criminal psyche can be diagrammed as follows:



Disadvantaged neighborhood

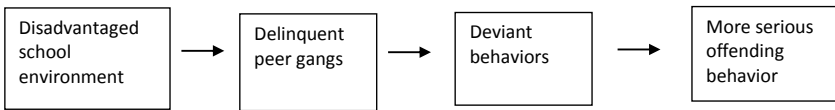
This cluster of themes includes neighborhood criminality, antisocial peer association, economic disadvantage of neighborhood etc. many researchers like Ingoldsby and Shaw (2002) concluded that neighborhood factors such as economic disadvantage, violence and danger, and exposure to deviant peer groups may actually “trigger,” or at least heighten the risk for the childhood onset of serious delinquency. Reed and Rountree (1997) stated that disadvantaged neighborhood is an important determinant of adolescent’s substance abuse. Disadvantaged neighborhood increases the chances of delinquent gang affiliation, and violent behavior. Economic disadvantage acts as the triggering factor in this relationship. Neighborhood disadvantage also foster the chances for substance abuse. The peer influences, and the substance abuse jointly contributes to the antisocial acts. The disadvantaged neighborhood can influence the development of criminal psyche in many ways. The potential risk factor associated with the disadvantaged neighborhood is the antisocial gang formation and affiliation to it. In many cases this antisocial gangs played a significant role in developing antisocial behavior. Often these gang affiliation lead to substance abuse and then to antisocial behavior.



Disadvantaged school environment

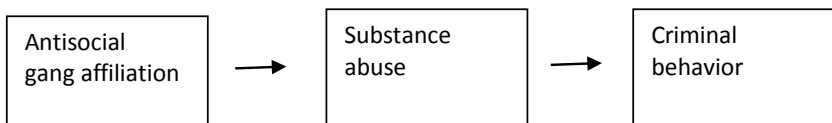
The third cluster of themes extracted from the responses of the participants of the study is the disadvantaged school environment. The themes of this cluster are rejection by teachers, peers, school dropout, academic failure etc. Katsiyannis, Thompson, Barrett, and Klingree (2013) examined the

school related predictors of violent criminality in adulthood and reported that school related problems like, poor academic performance; truancy, frequent suspensions, and grade repeating are significant in predicting violent behavior. They also stated that repeating a grade is the most significant factor in this. The disadvantaged school environment leads to the formation of delinquent peer gangs in the school with delinquent peers. This deviant behavior 'in turn' lead to more risky behaviors such as substance abuse and then lead to more serious offending behaviors. This delinquent peer associations then lead to more deviant behaviors like substance abuse, alcoholism, smoking, stealing etc and then to more antisocial behaviors.



Antisocial gang affiliation

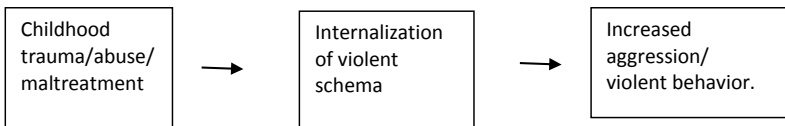
Antisocial gang affiliation is found to be as a significant determinant of criminal psyche. The analysis of the responses of participants revealed the strong link between antisocial gang affiliation, substance abuse and criminal behavior. Researchers like Reed and Rountree (1997) explored the link between peer pressure, substance abuse and antisocial acts. Similarly the works of Obrien, Daffern, Chu, and Thomas (2013) identified the link between antisocial gang affiliation and violent behavior.



Childhood trauma

This theme cluster includes the themes like victimization, physical and emotional abuse during childhood, separation from home/ biological parents and other childhood risk factors like childhood psychopathology and aggression. Analysis of the responses of the participants revealed

that childhood trauma is an important determinant of future delinquent behavior. This relationship is more evident in the case of sexual offending. Many of the case reports that are mentioned by the participants showed this relationship. Similarly, the research of Saunders, Rittner, Wieczorek, Hartinger, Nochajski, Rine and Welte (2011) explored the links of childhood victimization and future offending behavior. DeGue and Widom (2009) also reported the role of childhood maltreatment in determining future criminality. The research of Haapasalo and Pokela (1999) revealed that the problems associated with child rearing and child abuse are very critical in future violence. The analysis of responses of juvenile offenders and their family members revealed the role of childhood aggression in developing criminality. These factors along with disadvantaged family and neighborhood are the strong predictors of criminality. The childhood trauma, due to the physical/sexual abuse or any kind of maltreatment leads to the internalization of a violent schema. This internalization then leads to the belief that being aggressive or violent is the appropriate response to frustration. This kind of deviant behavior causes antisocial outcomes.



Other social factors

This theme cluster includes work place disadvantages, low socio economic status and social labeling. The phenomenological analysis of the responses by the participants suggested the role of these factors in developing criminal psyche. In many cases, the participants responded that the primary reason for their antisocial behavior is the low socio economic status. Similarly in some cases the workplace disadvantages like antisocial co-workers, work place disputes etc are the determinants of their antisocial behavior. Social labeling is another risk factor that determines the chances of re-offending. The most crucial determinant of repeating a criminal offending is the labeling by the society. As stated by the labeling theory, the labeling leads to the creation of a new identity. Then the person starts to accept the label on them and act according to

their new identity. This 'in turn' amplifies the criminal conduct. Another important social determinant of criminality is the legal unawareness. Another social factor which is more important in developing criminal behavior is the inadequacy of punishment. The crime is the result of perceiving the gains of the act as more beneficial than the consequences of the act. This inadequacy of punishment is also contributing to the development of criminal behavior. Inappropriate correctional procedures are also significant in increasing the chances of re-offending. The negative conditions in the jail such as association with more serious offenders, their help for release, etc. are very crucial.

Impressions

The impressions made on the basis of the phenomenological analysis are:

- The psychosocial determinants of criminal psyche belong to six clusters. The clusters are :
- All the six clusters contains interconnected psychosocial factors and in many cases criminality is the combined effect of all these psychosocial determinants
- Disadvantaged family environment characterized with insecure attachment, inadequate parenting, single parenthood, early separation of the child from biological parents etc are very important determinants of child's future criminality
- Substance abuse, that of parents and own; is also a strong determinant of criminality.
- Disadvantaged neighborhoods and schools with antisocial peers and rejection also very critical in developmeInt of criminality.
- Childhood aggression, sibling rivalry, problem behaviors in school and home are the early warning signs of future criminality
- Maternal risk factors such as maternal age and morality are found to be critical in determining the criminality of the offspring. Maternal moral issues are a key factor associated with intimate partner violence and sex offending.
- Lack of legal awareness, inadequacy of punishment and social labeling etc are also important determinants in the development of criminality.

Implications of the study

In the light of the interactions with offenders, their family members and the legal and mental health professionals, the following suggestions are made in order to reduce the crime rate:

- Legal education must be given as part of the formal education system.
- The punishment should be consistent with the intensity of the crime.
- The police officers must be trained or appropriate professionals should be appointed within the correctional system for providing adequate psychosocial care and guidance to the prison inmates.
- A separate correctional system should be implemented for the management of offenders who are remanded for the first time. This will help to reduce the chances of re-offending.
- In case of juvenile offenders, the reason for the criminal conduct should be identified and parents and teachers must be properly informed so as to avoid discrimination and rejection.
- Parents and teachers should take initiative to understand the issues of their child/student and should give proper attention
- Parents should get informed about how their family environment foster criminality in their children.

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Media Trial, Public Opinion and Human Rights



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Keywords

Media Trial, Human Rights, Public Opinion, Free Speech, Fair Trial, Open Justice

Abstract

The trial by media is a very serious thing. The media must raise public issues but it must not pass judgments or deliver verdicts. Accused must be judged as per law, not by emotions. The publications, which interfered or tend to interfere with the administration of justice, would amount to criminal contempt under the Contempt of Courts Act, 1971 and if in order to preclude such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid.

Introduction

The media is said to be an aggregation of all communication channels that use techniques of making a lot of direct personal communication between the communicator and the public. The role of media in the society is indispensable. The media is crucial to the exercise of freedom of expression because it is only meaningful if the right is exercised in public; what a person says privately is important, but to have greater effect it needs public expression where others can hear or

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read it.¹ The media acts as our voices by providing a vessel for information and ideas, a vessel through which we communicate with each other. In order to fulfil this function, media must guarantee its objectivity; the journalist should always be a neutral observer, unengaged with events but faithfully recording them.²

Free Press

A free press is not only a human right but it may be considered as a foundation stone of all democratic societies. A free pluralistic and independent press is an essential component of any democratic society. Independent media serves as conduits to good governance and participatory populations.³ It also strengthens foundations of the nation. The role of media as a free press requires responsibility of journalists to remain neutral and unbiased.

Interface between Media and Human Rights

The concept of human rights is a dynamic concept. Human rights are all those rights that every citizen of a state ought to have, without any deprivation. They are the inalienable rights of every individual, whether old or young, poor or rich, male or female. Human rights are not subject to withdrawal or to be held at the pleasure of anybody or granted when it pleases the giver.

The interaction between media and human rights has increased in our times because of electronic media, internet and social networking sites. The media increasingly creates awareness about human rights, and effectively reports the violations of human rights that are taking place all across the globe. This has evoked the attention of the international community and organizations, which have in response, created international pressure to put an end to the human rights violations. The

1 S. Sivakumar, "Fourth Estate: A Shield or Sword of Human Rights?" Human Rights and Good Governance Edited by Prof. Miznumar Rahman published by Empowerment through Law of the Common People, Dhaka (2004).

2 See, Freedom of the Expression and the Media (Booklet, March 2004).

3 Sreenivasulu N.S., Human Rights: Many Sides to a Coin 183 (Regal Publications, 2008).

concept of State sovereignty no longer holds good in today's times, and therefore, various concepts like humanitarian intervention, the principle of responsibility to protect etc. have been evolved, to effectively guard against the various human rights abuses.⁴

Media has been entrusted with the responsibility of guarding the rights of the people in a democratic political system. Since media are the eyes and ears of any democratic society, their non existence becomes detrimental to the sustenance of all democratic societies. Unless a society knows what is happening to it and its members, the question of protecting or promoting rights does not emerge. Hence, it is in fulfilling this function that media justifies its existence. No doubt in India, media especially the print, has played an important role in educating and informing citizens of their rights as well as the violations of such rights.

However, there is the other side of the coin as well. Privacy is an important human rights concern that has been affected by the proliferation of social media. There is a constant danger that lurks, where there is a fear that a social media company could release a user's private information to unfriendly governments.⁵ Privacy provisions have just worsened due to the recent rage of sting operations. Another important area of concern gradually coming up is the issue of distortions by media. The mass media decisively shape global perceptions about human rights, yet fail to reflect the realities of global violations. Situations of shocking abuse are often overshadowed by those which receive attention for reasons extraneous to any specific concern for human rights.

Media Trial

Both the United States and Australia have stringent provisions regulating media trials, and the 'solutions' that are envisaged to the damage caused to the right to a fair trial of the accused range from sequestering of the Judge/Jury for the duration of the trial, to transferring trials to more neutral jurisdictions, to declaring mistrials and acquitting accused persons, and

4 Khwaja A. Muntaqim, *Protection of Human Rights : National and International Perspectives* 304 (1st Edition, Law Publishers (India) Pvt. Ltd. 2004).

5 Sarah Joseph, *Social Media, Political Change and Human Rights*, 35. (1) *Boston College International and Comparative Law Review*, available at <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1667&context=iclr>

in extreme cases, even barring further criminal complaints against an accused whose character has been so tarnished by media scrutiny that it would be impossible for him to be given a fair trial.

In India, the Law Commission discussed the matter of media trial and how it affected the administration of justice. It has submitted 200th Report⁶ to the Government with recommendations to the Centre to enact a law to prevent the media from reporting anything prejudicial to the rights of the accused in criminal cases from the time of arrest, during investigation and trial. The report says: "Today there is a feeling that in view of the extensive use of the television and cable services, the whole pattern of publication of news has changed and several such publications are likely to have a prejudicial impact on the suspects, accused, witnesses and even judges and in general on the administration of justice"⁷. It further says: "According to our law, a suspect/accused is entitled to a fair procedure and is presumed to be innocent till proved guilty in a court of law. None can be allowed to prejudice or prejudice his case by the time it goes to trial."⁸

The trial by media is a very serious thing. The media must raise public issues but it must not pass judgments or deliver verdicts. Accused must be judged as per law, not by emotions. The publications, which interfered or tend to interfere with the administration of justice, would amount to criminal contempt under the Contempt of Courts Act, 1971 and if in order to preclude such interference, the provisions of that Act impose reasonable restrictions on freedom of speech, such restrictions would be valid. The report noted that at present, under Section 3 (2) of Act,⁹ such publications would be contempt only if a charge sheet had been filed in a criminal case. The Commission has suggested that the starting point of a criminal case should be from the time of arrest of an accused and not from the time of filing of the charge sheet. In the perception

6 200th Report of the Law Commission of India.

7 Ibid.

8 Ibid.

9 S. 3(2) of the Contempt of Courts Act, 1971 reads thus:

Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

of the Commission such an amendment would prevent the media from prejudging or prejudicing the case. Another recommendation suggested was to empower the High Court to direct a print or an electronic media to postpone publication or telecast pertaining to a criminal case and to restrain the media from resorting to such publication or telecast. The Commission said that such a practice was prevalent in many countries, including the U.K.

The report also said that publications with reference to character of the accused, previous convictions, confessions, judging the guilt or innocence of the accused or discrediting witnesses could be a criminal contempt. The report has also discussed the recent phenomenon of media interviewing potential witnesses, about publicity that was given by the police and about investigative journalism.

Free Speech and Fair Trial

It would be appropriate to note that the following point has to be followed to restore balance between free speech and fair trial:

- the competing public interests of ensuring the proper administration of justice and providing for freedom of speech, and in particular, freedom of the media to report, and comment on, the news;
- empirical studies of the effects of media trial reporting on public perceptions of the guilt or innocence of an accused;
- the effectiveness of devices designed to counteract potential prejudicial pre-trial publicity;
- approaches taken in other jurisdictions; and
- the implications for these issues of the increasing use of electronic communication.

There are particular risks of prejudice to a fair trial associated with the publication of certain kinds of material relating to accused persons and to criminal proceedings. High-risk publications include:

- i) Photograph of the accused where identity is likely to be an issue, as it will often be in criminal cases
- ii) Suggestions that the accused has previous criminal convictions, has been previously charged for committing an offence and/or previously acquitted, or has been involved in other criminal activity

- iii) Suggestions that the accused has confessed to committing the crime in question
- iv) Suggestions that the accused is guilty or innocent of the crime for which he or she is charged, or that the court should convict or acquit the accused
- v) Comments which engender sympathy or antipathy for the accused and/or which disparage the prosecution, or which make favourable or unfavourable references to the character or credibility of the accused or a witness.
- vi) Matters that create sensations and which tend to inflame passion and emotions.

The law has always had an ambivalent relationship with the media. On the one hand, the requirement of open trials would demand unrestricted access to the press. One of the non-negotiable issues of the justice delivery system is that justice must not only be done, but be seen to be done. Now the time has come for court proceedings to be televised so that the nation can judge our judges in the same way that they now judge our MPs. The sunlight of the press is in and of itself a mechanism of accountability much needed in the judiciary. It is in the public interest, therefore, that the press is given pride of place in reporting on judicial proceedings.¹⁰

Public Opinion and Open justice

There are, however, very vital restrictions on the rule, which are as much in the public interest as the need for open justice. The press cannot be allowed to sit in judgment over matters of life and death for those facing a trial. It is for this reason that the law allows reporting of judicial proceedings but without comment while the case is being tried. This rule balances the interest of the public in knowing the truth about pending cases and the interests of an accused in safeguarding his or her reputation. Problems begin when the press does not stop at reporting but goes on to build theories of guilt, all this when a trial is pending and the accused is

10 Indira Jaisingh., <http://www.nowpublic.com/world/media-trial-driven-sensationalism>, visited on 2nd December, 2013.

presumed innocent until proved guilty. There is a clear and well defined line between reporting facts and expressing opinions on them. This line has often been breached by the press. The rule therefore must be strictly observed in order to prevent any pre-judging of the issue. Indeed, so sacred is the right to a fair trial, that in the U.S. for example, where trial is by jury, in significant cases, jury members are not allowed to read the press or leave the court until the case is decided.¹¹

Thankfully, in India, we do not have jury trials, but judges are exposed to daily media coverage of pending cases in which the press has crossed the limits of its legitimate right to report. Judges may say they are brave hearts and not influenced by press reports, but these reports are intended to build up public opinion in a negative manner which by itself can influence the outcome of a case. An example of this is the SMS polls run by television channels on controversial issues. This is what happened in Afzal Guru's case. All television channels ran polls on whether Afzal Guru should be given the death penalty, a first in Indian legal history, when an SMS poll could decide the penalty by influencing public opinion. That public opinion, in any case something not measurable by any means, did influence the outcome of the case is evident from the fact that the judges who decided the case said that the "collective conscience of society" was outraged by the attack on parliament! In a manner of speaking the judiciary itself has lowered the bar for itself by relying on what it calls the "collective conscience" of society.¹²

In recent judgment of the Supreme Court, *Pravasi Bhalai Sangathan v. Union of India*¹³ Justice J. B.S Chuhan opined that while requesting the election commission to take cognizance, that Hate speech is an effort to marginalise individuals based on their membership in a group. Using expression that exposes the group to hatred, hate speech seeks to delegitimise group members in the eyes of the majority, reducing their social standing and acceptance within society.

Media Trial v. Right to Fair Trial

The advocates of media publicity hold the view that (i) media publicity

11 Ibid.

12 Ibid.

13 WP (C) No. 157 OF 2013 SC decided on 12th March, 2014.

will induce people to come forward with information that they have regarding the reported incident, (ii) reduces crime through the public expression of disapproval for crime and (iii) promotes the public discussion. However, people seldom realize the fact that fair trial is equally valuable. European Court of Human Rights observes that “[i]t cannot be excluded that the public becoming accustomed to the regular spectacle of pseudo trials in the news media might in the long run have nefarious consequences for the acceptance of the courts as the proper forum for the settlement of legal disputes.¹⁴

Media trial affects the right of free and fair trial. The freedom of the press also envisages the right of the public in a democracy to be involved on the issues of the day, which affect them. Investigative and campaign journalism are vested on this principle. However, right to have a fair trial uninfluenced by extraneous pressures is recognized as a basic human right which is guaranteed in India under several constitutional and statutory provisions.¹⁵ Provisions aimed at safeguarding this right are contained under the Contempt of Courts Act, 1971 and under Articles 129 and 215 of the Constitution of India. There are restrictions, as stated above, imposed on the discussion or publication of matters relating to the merits of a case pending before a Court. A journalist may thus be liable for contempt of Court if he publishes anything which might prejudice a ‘fair trial’ or anything which impairs the impartiality of the Court to decide a cause on its merits, whether the proceedings before the Court be a criminal or civil proceeding.

U.S Supreme Court decisions also confirm this. In the case of *Billie Sol Estes*,¹⁶ the U.S. Supreme Court set aside the conviction of a Texas financier for denial of his constitutional rights of due process of law as during the pre-trial hearing extensive and obtrusive television coverage took place. The court laid down a rule that televising of notorious criminal trials is indeed prohibited by the “due process of law” clause. In the case of *Dr. Samuel H. Sheppard*, the Court held that prejudicial publicity had denied him a fair trial. In England the House of Lords in

14 ECHR, 26.4.1979, *Sunday Times v. UK* No 1, 64. Documents of the Council of Europe and the European Court of Human Rights are available through a special link in the website www.coe.int.

15 S. Sivakumar “Media and Human Rights” A.I.R. 2001 Junl. 323.

16 *Billie Sol ESTES v. State of Texas*, 381 U.S. 532.

*Attorney General v. British Broadcasting Corporation*¹⁷ has agreed that media trials affect the judges despite the claim of judicial superiority over human frailty and it was observed that a man may not be able to put that which he has seen, heard or read entirely out of his mind and that he may be subconsciously affected by it. Media's trial is just like awarding sentence before giving the verdict at the first instance. The court held that it is important to understand that any other authority cannot usurp the functions of the courts in a civilized society.

In *State of Maharashtra v. Rajendra Jawanmal Gandhi*,¹⁸ the Supreme Court said that "trial by press, electronic media or public agitation is very antithesis of rule of law. It can well lead to miscarriage of justice. A judge has to guard himself against any such pressure and is to be guided strictly by rules of law. The Delhi High Court in *Bofors case and Kartongen Kemi Och Forvaltning A. B. v. State through CBI*¹⁹ upheld the right of the accused to have fair trial while calculating the role of media in streamlining the criminal justice system. The Supreme Court in the case of *Rajendra Sail v. Madhya Pradesh High Court Bar Association*,²⁰ observed that for rule of law and orderly society, a free responsible press and an independent judiciary are both indispensable and both have to be, therefore, protected. Now, when the public is becoming more and more aware, the only way of functioning orderly is to maintain the delicate balance between the two.

Conclusion

It is well settled that press requires freedom and if press freedom is attacked, it will result in jeopardizing human rights because press reports human right violations of authorities and powerful sections of society. On the other hand, 'free press' does not mean that State shall not intervene in its functioning. It shall intervene when situation warrants.²¹ But this

17 [2007] EWCA Civ 280

18 1997 (8) SCC 386.

19 2004 (1) JCC 218.

20 (2005) 6 SCC 109.

21 Supra note 1.

intervention should be only in the interest of the public at large.²² At the same time in the name of legal intervention the State shall not impede the free flow of information which is necessary in promoting human rights. Legal interventions should not amount to suppressing the voice of the people.²³ And more importantly, the media must uphold its duty and responsibility towards the society by recognizing that trial by media is itself injustice to the accused and a serious threat to the administration of the justice.

22 See also, James C. Goodale, Abraham Abramovsky and et. al., "Impact of the Media on Fair Trial Rights: Panel on Media Access" 3 (2) *Fordham Intellectual Property, Media and Entertainment Law Journal* (1993) and Hima Lawrence, *Has The Time Come To Review Press Freedom?* Available at http://www.legalserviceindia.com/articles/press_freedom.htm. Accessed on 12.12.2013.

23 In 2007 itself the 'Press Freedom Barometer' signals the danger. Throughout the world 16 Journalists killed, 5 Media assistants killed, 136 journalists imprisoned, 4 Media assistants imprisoned and 60 Cyber dissidents imprisoned. See, http://www.rsf.org/rubrique.php?id_rubrique=20 accessed on 6/23/2013

Motor Vehicles Act, 1988 – An Analysis from Practitioner’s point of view



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Abstract

The proposed Amendment Bill, however, still does not address inadequacies in certain provisions of the Act due to which their enforcement becomes difficult. In this paper an attempt has been made to analyze such provisions of the Act from Traffic Police point of view which has the mandate of enforcement of the provisions contained in the Act.

Introduction

The Motor Vehicles (Amendment) Bill, 2016 was introduced in the Lok Sabha on August 9, 2016 seeking amendment to the Motor Vehicles Act, 1988. In order to address the issue of road safety, the Bill, inter-alia, proposes stricter provisions for various traffic related offences, which it is hoped, will act as deterrence against traffic violations, particularly relating to driving of vehicles by a juvenile, drunken driving, driving without licence, dangerous driving, over-speeding, overloading etc. The proposed amendments in various penalties contemplated in the

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Motor Vehicles (Amendment) Bill, 2016 is summarised as under:¹

Section		Old Provision / Penalty	New Proposed Provision / Minimum Penalties
177	General	Rs 100	Rs 500
New 177A	Rules of road regulation violation	Rs 100	Rs 500
178	Travel without ticket	Rs 200	Rs 500
179	Disobedience of orders of authorities	Rs 500	Rs 2000
180	Unauthorized use of vehicles without licence	Rs 1000	Rs 5000
181	Driving without licence	Rs 500	Rs 5000
182	Driving despite disqualification	Rs 500	Rs 10,000
182 B	Oversize vehicles	New	Rs 5000
183	Over speeding	Rs 400	Rs 1000 for LMV Rs 2000 for Medium passenger vehicle
184	Dangerous driving penalty	Rs 1000	Up to Rs 5000
185	Drunken driving	Rs 2000	Rs 10,000
189	Speeding / Racing	Rs 500	Rs 5,000
192 A	Vehicle without permit	up to Rs 5000	Up to Rs 10,000
193	Aggregators (violations of licencing conditions)	New	Rs 25,000 to Rs 1,00,000
194	Overloading	Rs 2000 and Rs 1000 per extra tonne	Rs 20,000 and Rs 2000 per extra tonne
194 A	Overloading of passengers		Rs. 1000 per extra passenger
194 B	Seat belt	Rs. 100	Rs. 1000
194 C	Overloading of two wheelers	Rs. 100	Rs. 2000, Disqualification for 3 months for licence

1 Press release dated August 03, 2016 of the Press Information Bureau, Government of India, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=148308> (last accessed on 29/09/2016)

194 D	Helmets	Rs. 100	Rs. 1000, Disqualification for 3 months for licence
194 E	Not providing way for emergency vehicles	New	Rs. 10,000
196	Driving Without Insurance	Rs. 1000	Rs. 2000
199	Offences by Juveniles	New	Guardian / owner shall be deemed to be guilty. Rs. 25,000 with 3 yrs. imprisonment. Juvenile to be tried under JJ Act. Registration of Motor Vehicle to be cancelled
206	Power of Officers to impound documents		Suspension of driving licenses u/s 183, 184, 185, 189, 190, 194C, 194D, 194E
210 B	Offences committed by enforcing authorities		Twice the penalty under the relevant section

The proposed Amendment Bill however, still does not address inadequacies in certain provisions of the Act due to which their enforcement becomes difficult. In this paper an attempt has been made to analyze such provisions of the Act from Traffic Police point of view which has the mandate of enforcement of the provisions contained in the Act.

Action for Overloading

Provisions regarding limits of weight to be carried by a goods transport vehicle is contained in section 113 of the Motor Vehicles Act, sub-section 3 of which provides that “No person shall drive or cause or allow to be driven in any public place any motor vehicle or trailer the unladen weight of which exceeds the unladen weight specified in the certificate of registration of the vehicle, or the laden weight of which exceeds the gross vehicle weight specified in the certificate of registration”. Punishment for driving a goods vehicle exceeding permissible weight is contained in sub-section (1) of section 194 of the M. V. Act which, inter-alia, provides that a person driving a motor vehicle in contravention of the provisions of section 113 of the Act would be punishable with a minimum fine of

two thousand rupees and an additional amount of one thousand rupees per tonne of excess load, together with the liability to pay charges for off-loading of the excess load.

Section 200 of the Motor Vehicles Act relating to composition of offences, inter-alia, provides that an offence punishable under section 194 of the Act may be compounded by such officers or authorities and for such amount as the State Government may by notification in the Official Gazette specify. In reference to the aforementioned provisions of Section 200 of the Act, the State Governments have invariably given authority to the Police officers of certain ranks to compound offences mentioned in section 200 of the Act including the offence under section 194 of the Act.²

The proposition that emerges from the above discussion, therefore, is that a Police officer can take action against an offender who drives a vehicle in contravention of the provisions contained in section 113 of the Act pertaining to overloading in goods transport vehicles.

For taking action in case of an offence pertaining to overloading of a goods transport vehicle, it is imperative that the vehicle be weighed so as to ascertain whether the laden weight of the vehicle exceeds the weight specified in the Certificate of Registration of the vehicle and is in contravention of the provisions contained in section 113 of the Act or not. For this purpose the Police officers are required to be given power to have a goods vehicle weighed. The Motor Vehicles Act, however, does not give this power to a Police officer. Relevant provisions contained section 114 of the Act with regard to weighing of vehicles gives the power to have a goods vehicle weighed only to an officer of the Motor Vehicle Department.³ In the absence of the power to have a goods vehicle

2 For instance Government of J&K vide notification dated 20th December 1991 issued under endstt. No.TR-26/85/DGT dated: 20-12-91 has authorized officers of the Traffic Police of the rank of Assistant Sub-Inspector and above to compound offences punishable under section 177, 178, 179, 180, 181, 182, sub-sections (1) and (2) of section 183, 184, 186, 189, 191, 192, 194, 196 and 198 of the Motor Vehicles Act.

3 Section 114 (1) of the Motor Vehicles Act, 1988 provides that "any officer of the Motor Vehicles Department authorised in this behalf by the State Government shall, if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 113, require the driver to convey the vehicle to a weighting device, if any, within a distance of ten kilometers from any point on the forward route or within a distance of twenty kilometers from the destination of the vehicle for weighing".

weighed in order to ascertain whether the weighment of the vehicle contravenes the provisions of section 113 of the Act regarding weight, a Police officer in practical terms cannot take action against an offender u/s 113 of the Act, though the Motor Vehicles Act gives him the power to do so.

The matter regarding the power to a Police officer to take action against an offender for overloading u/s 113 of the Act came up for considerations before the Karnataka High Court in the case *Bhalachandra Transport Company vs. State of Karnataka*.⁴ The Court observed that before the Amendment (to Section 114 of the Motor Vehicles Act by the Motor Vehicles (Amendment) Act, 1994)⁵, any person authorized by the Government, be it a police or an officer of the Motor Vehicle Department were empowered to book a case for violation of Section 113 of the Act. Section 35 of the Amendment Act introduced the words “any officer of the Motor Vehicles Department authorized in this behalf by the State Government”. “This clearly meant that the police are beyond the purview of interference. In other words, this means that only the officers of the Motor Vehicle Department are authorized to book a case for contravention of Section 113 of the Act.”

The Court also referred to a notification wherein the authorized persons for booking cases for violation of Section 113 read with Section 194 of the Motor Vehicles Act, were the officers of and above the rank of Inspector of Motor Vehicles of Motor Vehicles Department. In view of the above the Court held that only the officers of the Motor Vehicles Department are authorized or empowered by the State Government to proceed against such persons who contravene Section 113 of the Motor Vehicles Act; in other words, the police officers are not authorized to book cases for overloading.

It is, however, submitted that the aforementioned conclusion of the Karnataka High Court that the police officers are not authorized to book cases for overloading, was based more on the Notification authorizing only the officers of the Motor Vehicles Department to book cases for contravention of provisions relating to overloading. In the absence of such express exclusions of police officers, as is the case of State of

4 AIR 1998 Kant 213

5 By Act 54 of 1994, Section 35 (w.e.f. 14-11-1994)

Jammu & Kashmir, a police officer would be well authorized to book a case for violation of the provisions contained in Section 113 of the Act. But without powers to have the vehicle weighed in view of the provisions contained in Section 114, it will be practically very difficult for a police officer to book any offender for the offence of overloading. Also, not authorizing police officers for taking action for overloading would not be a good proposition as in that case despite being a witness to the commission of the offence of overloading they will not be able to take timely action against the offender.

Exemptions to Sikh Women from the Helmet laws

Section 129 of the Motor Vehicles Act provides that every person driving or riding a motor cycle while in a public place is required to wear a protective gear (helmet). Proviso to the aforementioned section of the Act, however, creates exception to this rule for the persons belonging to the Sikh religion. This proviso of section 129 read as under:-

“Provided that the provisions of this section shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle, in a public place, wearing a turban”.

The aforesaid proviso therefore, provides that a person, who is a Sikh and is wearing a turban, is not required to wear a helmet while driving or riding on a motor cycle in a public place. “Person” is a gender-neutral word which includes both males and females; therefore, the proviso should be applicable to all the persons belonging to Sikh religion, whether a male or a female. However, confusion arises with regard to applicability of exemption from wearing of helmet to a Sikh women in view of the wordings of the aforementioned proviso to section 129 of the Act which reads that helmet law, as contained in section 129 “shall not apply to a person who is a Sikh, if he is, while driving or riding on the motor cycle in a public place wearing a turban”. Presence of the word “he” in the proviso to section 129 indicates that exemption from helmet law to a person belonging to the Sikh religion would be applicable only to a male, as indicated by the word “he”, and will not be applicable in case of a Sikh women since the word “he” referring to Sikh persons is not a gender-neutral word and indicates only a male person.

Drunken Driving : A Cognizable Offence?

Section 185 of the Motor Vehicles Act makes ‘drunken driving’ i.e. driving a motor vehicle under the influence of alcohol under certain circumstances a punishable offence.⁶ Section 202 of the Motor Vehicles Act contains provision relating to arrest of an offender who commits an offence punishable under section 185 of the Act. Sub-section (1) of Section 202 provides that a police officer in uniform may arrest without warrant any person who in his presence commits an offence punishable under Section 185. Proviso to sub-section (1) of section 202 of the Act says that “any person so arrested in connection with an offence punishable under Section 185 shall, within two hours of his arrest, be subjected to a medical examination referred to in Sections 203 and 204 (of the Motor Vehicles Act) by a registered medical practitioner failing which he shall be released from custody”.

Cognizable offence has been defined in clause (c) of Section 2 of the Criminal Procedure Code, 1973 (Cr.P.C.) which provides that "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 (of the Cr.P.C.) or under any other law for the time being in force, arrest without warrant. Going by this definition of the cognizable offence, the offence under Section 185 of the Motor Vehicles Act, popularly known as ‘drunken driving’, should be a cognizable offence as section 202 of the Motor Vehicles Act gives power to a police officer to arrest without warrant a person who commits an offence under section 185 of the Act. Confusion, however, arises as to whether ‘drunken driving’ is cognizable offence or not, due to limited power of arrest for this offence given by the Motor Vehicles Act.

6 Section 185 of M. V. Act provides that “Whoever, while driving, or attempting to drive a motor vehicle has, in his blood, alcohol exceeding 30 mg. Per 100 ml. of blood detected in a test by a breath analyser, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both; and for a second or subsequent offence, if committed within three years of the commission of the previous similar offence, with imprisonment for a term which may extend to two year, or with fine which may extend to three thousand rupees, or with both.

7 2013 (2) K.L.T. (S.N.) 50 (Bom.)

The question whether the offence punishable under Section 185 of the Motor Vehicles Act is a cognizable offence, or a non-cognizable offence, came up for considerations in the case *Shri Sandeep Indravadan Sagar Vs. State of Maharashtra and others*⁷. Referring to Section 2 (c) of the Cr.P.C. the Bombay High Court in this case observed that if any law provides that a police officer may arrest without a warrant for any offence, then that offence would be a cognizable offence. The Court, however, observed that the power to arrest conferred on a police officer under Section 202 of the Motor Vehicles Act, for an offence punishable under section 185 of the M.V. Act is not an unqualified power. It can be exercised only if two conditions are fulfilled viz. (i) the offence must have been committed in the presence of the police officer, and (ii) such police officer must be in uniform at that time. However, if the offence under section 185 of the Motor Vehicles Act is to be treated as cognizable on the basis of such limited and circumscribed power to arrest for such offence, then it would result into anomalous situations. It would mean that when the offence takes place in the presence of a police officer in uniform, it becomes cognizable and in other cases, it remains non-cognizable.

The Court further observed:

“It would not be possible to accept that the same offence can be 'cognizable' in certain circumstances and 'non-cognizable' in certain circumstances. It is because the procedure for dealing with a cognizable offence, and the procedure for dealing with a non-cognizable offence would be entirely different. If a view that the offence u/s.185 of the M.V. Act is cognizable is taken, then it should be possible for anyone to go to a police station and lodge a report in respect of commission of such an offence which the police officer concerned would be required to record as per the provisions of section 154 of the Code and commence investigation as laid down in the subsequent sections in Chapter XII of the Code. Even if the power to arrest with respect to a certain offence is given, or is limited to any particular category of police officers, still such offence has been held to be cognizable.”

The Court also referred to the decision of the Supreme Court of India in *State of Gujarat Vs. Lal Singh (AIR 1981 S.C 368)* wherein it was

held that whether an offence was cognizable or non-cognizable would not depend on which police officer could arrest the accused; rather it would depend on the circumstances and conditions in which the arrest can be effected. Concurring with the views of the Kerala High Court in *Mehaboob Vs. The State, Represented by the City Traffic*⁸ that a limited power to arrest without a warrant given to a police officer in uniform did not make the offences punishable under section 185 of the Motor Vehicles Act cognizable, the Court held that the offence punishable under section 185 of the Motor Vehicles Act is 'non-cognizable'.

Pillion Rider on a Motor Cycle Driven by a Learner

Provisions relating to driving of a motor cycle by a person having a Learner’s licence is contained in Rule 3 of the Central Motor Vehicles Rules, 1989 (CMVR). Sub-section (b) of Rule 3 of the CMVR provides that while driving a motor vehicle the person having a Learner’s licence is required to be accompanied by an instructor to drive a vehicle. Further, the instructor is required to be sitting in such a position as to control or stop the vehicle. Plain reading of the aforementioned provision of Rule 3(b) of the CMVR indicates that a person having a Learner’s licence while riding on a motor cycle is also required to be accompanied, all the times, by a pillion rider having an effective Driving licence to drive that motor cycle. Therefore, a person having a Learner’s licence can ride on a motor cycle with a pillion rider holding an effective Driving license to drive the motor cycle.

Question, however, arises whether a person with Learner’s licence can ride on a motor cycle in a public place alone without a pillion rider having an effective valid Driving Licence to drive the motor cycle or not. This is in view of the provisions contained in the proviso to Rule 3 of the CMVR which reads as under:-

Provided that a person, while receiving instructions or gaining experience in driving a motor cycle (with or without a side-car attached), shall not carry any other person on the motor cycle except for the purpose and in the manner referred to in clause (b).

The word 'shall' appearing in aforementioned proviso of Rule 3 of CMVR is directory in nature and indicates that a person having Learner's licence can drive a motor cycle without a pillion rider also, but if he decides to ride on the motor cycle with a pillion rider then that pillion rider has to be a person having an effective Driving Licence to drive that motor cycle. This position emerges from the established fact of law that the proviso creates exception to the rule contained in the main section. In this case while clause (b) of Rule 3 expressly provides that a person having a Learner's licence while driving a motor vehicle (which includes motor cycle) is to be necessarily accompanied by another person having an effective Driving Licence to drive that motor vehicle but the proviso to Rule 3 creates an exception to this rule in case of certain class of motor vehicle, i.e. in case of the motor cycle. Reading in this context, the proviso of Rule 3(b), that a person having a Learner's licence while driving a motor cycle shall not carry any other person on the motor cycle except for the purpose and in the manner referred to in clause (b) of Rule 3, indicates that a person with a Learner's licence while riding on a motor cycle can also ride on the motor cycle alone, without being accompanied by a pillion rider having an effective Driving Licence to ride on the motor cycle, but if he wants to ride on a motor cycle with a pillion rider, that pillion rider has to be a person having an effective Driving Licence to drive that motor cycle.

Driving a Motor Vehicle Without Insurance

Sub-section 1 of section 146 of the Motor Vehicles Act containing the provisions for necessity of insurance of a motor vehicle against third party risk provides as under:-

"No person shall use, except as a passenger, or cause or allow any other person to use, a motor vehicle in a public place, unless there is in force in relation to the use of the vehicle by that person or that other person, as the case may be, a policy of insurance complying with the requirements of this Chapter."

Language of sub-section 1 of section 146 of the Act thus, makes it mandatory for the owner/driver of a motor vehicle to have a policy of insurance against third party risks before using the motor vehicle in a public place. Section 196 of the Motor Vehicles Act makes driving an

uninsured motor vehicle a punishable offence. Section 200 of the Act further makes an offence under section 196 of the Act a compoundable offence, thereby giving powers to the officers or authorities (including Police officers) as the State Government may specify, to compound the offence of driving an uninsured vehicle. Hence, a person driving a motor vehicle without having a policy of insurance against third party is liable to be booked by a Police officer under section 196 of the Act.

Provisions regarding seizure of motor vehicles is contained in Section 207 of the Act which provides that a motor vehicle, under certain circumstances, can be seized by a Police officer for contravention of certain provisions of the Act, for not having certain mandatory documents. Power to seize a motor vehicle under certain circumstances as contained in section 207 of the Act, however, does not provide for seizure of a motor vehicle for being driven in a public place without a policy of insurance against third party risk. Thus, the driver of a motor vehicle being driven in a public place without a policy of insurance against third party risks can be booked under section 196 of the Act but the uninsured vehicle cannot be seized. Hence, after being booked for the offence under section 196 for not having the insurance the vehicle is required to be allowed to move further. This, in effect, amounts to condoning of the subsequent offence under section 196 of the Act immediately thereafter, and permission for continuance of the offence under section 196.

A question also arises that after being booked once under section 196, as the vehicle is allowed to move further, when the driver of the vehicle can be again booked under section 196, i.e. after how much time since commission of the offence under section 196 of the Act he can be booked again for the same offence. The Motor Vehicles Act does not provide clear answer to this.

Similarly, there is a requirement of having ‘Pollution under Control Certificate’ for all the vehicles. Rule 115 (7) of the Central Motor Vehicles Rules, 1989 (CMVR) provides that “after expiry of one year from the date on which a motor vehicle was first registered every such vehicle shall carry a valid ‘Pollution Under Control Certificate’ issued by an agency authorized for this purpose by the State Government”. Violation of the aforementioned provision attracts penalty under section 190 (2) of the Motor Vehicles Act, 1988. Language of the Rule 115 (7) of the CMVR thus makes it mandatory for all the motor vehicles to have a valid ‘Pollution Under Control Certificate’ after one year of its registration.

However, the Motor Vehicles Act does not contain any provision that a vehicle not possessing a 'Pollution Under Control Certificate' should be seized and not be allowed to move further till it contains the mandatory 'Pollution Under Control Certificate'. Also, question again arises whether after booking a driver under section 190 (2) of the Act for not having a "Pollution Under Control Certificate" after how much time he can be booked again for the offence of driving the vehicle without a 'Pollution Under Control Certificate'.

Further, the Motor Vehicles Act makes using vehicle in unsafe conditions a punishable offence. Sub-section 1 of section 190 of the Act provides for punishment for driving of a motor vehicle in a public place in unsafe condition which can be a source of danger to the people. Sub-section 3 of section 190 of the Act further provides for punishment for driving of a motor vehicle in a public place violating the provisions of the Act or rules made thereunder relating to the carriage of goods which are dangerous or hazardous in nature to human life. The Act however, does not contain any provision for seizure of a motor vehicle which is being used in unsafe condition or is carrying goods which are dangerous or hazardous in nature to the human life. This would imply that if such a motor vehicle is noticed and intercepted by the Police then the Police officer after booking the driver for the offence under section 190 of the Act, despite knowing that the vehicle is being used in unsafe condition or is carrying dangerous or hazardous goods in contravention of the laid down provisions and thereby causing danger to the public, cannot detain that vehicle in order to prevent any subsequent danger to the public from further movement of that vehicle. Question also arises that after booking a driver under section 190(1) or section 190 (3) of the Act for how long he can be allowed to commit these offences and be booked again under the aforementioned sections.

It may be pertinent to mention here that similar nature of continuing offence can be seen in case of overloading in good vehicle which is prohibited under section 113(3) of the Act, and punishable under section 194 of the Act which is also a compoundable offence as provided under Section 200 of the Act, and for which also the vehicle cannot be seized. Dealing with issue, whether after booking an offender for overloading the

vehicle can be permitted to move with the excess load, the Supreme Court in the case *Paramjit Bhasin & Ors vs. Union of India & Ors.*⁹ observed that “the power of compounding vests with the State Government, but the notification issued in that regard cannot authorize continuation of the offence which is permitted to be compounded by payment of the amounts fixed. If permitted to be continued, it would amount to fresh commission of the offence for which the compounding was done.” The Court held that “Section 200 of the Act does not in any way authorize the State Government to permit the excess weight to be carried when on various inspection/detection it is noticed that there is carriage of load beyond permissible limit. It (section 200) only gives an opportunity of compounding so that instead of the amount fixed, lesser amounts can be accepted by the authorized officers. After compounding the excess load cannot be permitted to be carried in the concerned vehicle. Such carriage would amount to infraction of Section 113 of the Act”.

On the analogy of not permitting a vehicle to move with excess load and letting it move only after off-loading the excess load as was held by the Supreme Court in *Paramjit Bhasin & Ors vs. Union of India & Ors.*,¹⁰ a vehicle without a valid insurance, or ‘Pollution Under Control Certificate’ or being used in unsafe conditions should be seized and should not be allowed to move further after booking, thereby preventing continuation of these offences. As discussed above, the Motor Vehicles Act however, does not contain provisions for seizure of a motor vehicle for the aforementioned offences.

The issue regarding booking of the driver of the vehicle again for these offences under the existing provisions of the Motor Vehicles Act can, however, be resolved to a reasonable extent by taking the position that if a driver has been booked for the offences relating to driving a vehicle without a valid insurance or ‘Pollution Under Control Certificate’, or for using a vehicle in unsafe conditions, then he should not be booked for these offences again within a reasonable period of time on the day he was booked, thereby giving him reasonable opportunity to remove the vehicle from public place and rectify the shortcomings before taking out the vehicle again to a public place.

¹⁰ Ibid.

Production of Documents

Sub-section 1 of section 130 of the Motor Vehicles Act provides that the driver of a motor vehicle in any public place on demand by any Police officer in uniform is required to produce his Licence for examination by the Police officer. Sub-section 1 of section 158 provides that the driver of a motor vehicle being driven in a public place on being demanded by a Police officer in uniform is required to produce the Certificate of Insurance, Certificate of Registration, Driving Licence and in the case of a Transport vehicle also the Certificate of Fitness and the Permit, relating to the use of the vehicle.

In view of the these provisions of the Act, during the course of vehicle checking if a driver does not produce the aforementioned documents before a Police Officer then it should have been presumed that the driver of the vehicle is driving the motor vehicle without actually possessing those documents and should have been accordingly booked then and there for the offences under the relevant provisions of the Act. Rule 139 of the Central Motor Vehicles Rules, 1989 (CMVR), which is relevant to such a situation, however, provides the following:-

The driver or conductor of a motor vehicle shall produce certificate of registration, insurance, fitness and permit, the driving licence and any other relevant documents on demand by any police officer in uniform or any other officer authorized by the State Government in this behalf, and if any or all of the documents are not in his possession, he shall produce in person an extract or extracts of the documents duly attested by any police officer or by any other officer or send it to the officer who demanded the documents by registered post within 15 days from the date of demand.

In view of the provisions contained in Rule 139 of the CMVR an offender not possessing these documents at the time of checking of the vehicle may take the plea that though he does not possess the same at the time of vehicle checking, but he actually has these documents. Taking recourse of the provisions contained in Rule 139 of the CMVR he, therefore, may seek 15 days' time to produce these documents before the Police officer. Such a construction of the provisions contained in Rule 139 of CMVR, however, creates practical difficulties, primarily, as to how to secure presence of the offender subsequently for production of documents

before the Police officer concerned. In the absence of any provision to ensure presence of the offender before the Police officer within 15 days it becomes difficult for the Police officer to take any action against the offender.

The above ambiguity created by Rule 139 of the CMVR, however, can be resolved by taking a position that if an offender at the time of checking of documents is not carrying any of the mandatory documents but claims that though the required documents are not in his possession at the time of checking, he has kept them at some place and can produce them later on, then the violator should be treated as without having that particular document, but should be given a Court Challan only even for a compoundable offence, for not possessing that particular document.

Compounding of Offences

Section 200 of the Act provides that an offence punishable under section 177, section 178, section 179, section 180, section 181, section 182, sub-section (1) or sub-section (2) of section 183, section 184, section 186, section 189, sub-section (2) of section 190, section 191, section 192, section 194, section 196, or section 198, may either before or after the institution of the prosecution, be compounded by such officers or authorities and for such amount as the State Government may, by notification in the Official Gazette, specify in this behalf. This provision of the Act, therefore, gives power even to a Police officer (if authorized by a notification to this effect by the State Government which is usually the case) to compound the offences mentioned in the aforementioned section of the Act. It shall, however, be interesting to note that some of the offences which have been declared as compoundable offences by virtue of the provisions contained in section 200 of the Act provides for punishment of imprisonment also. For instance section 181 provides for punishment of imprisonment for a term extending to three months for driving a vehicle in contravention of section 3 of the Act relating to necessity for Driving Licence. Similarly, section 184 relating to the offence of driving dangerously, and section 196 relating to driving an uninsured vehicle also provides for the punishment of imprisonment. Offences under sections 181, 184 and 196 of the Act are compoundable

offences by virtue of the provisions contained in section 200 of the Act. The Act, therefore, by implication, gives a Police officer the power to compound the offences (relating to driving without a Driving Licence, driving dangerously and driving an uninsured vehicle) which are considered so grave that the Act provides for imprisonment as a punishment for these offences. The Act does not provide as to under what circumstances discretion is to be used by a Police Officer to compound the offence and only impose fine on the offender, and when to send the case to the Court seeking the imposition of the sentence of imprisonment on the offender.

Validity of Driving Licence

Section 3 of the Motor Vehicle Act provides that in order to drive a motor vehicle in any public place, the driver should hold an “effective Driving Licence” issued to him, authorizing him to drive that particular vehicle. As provided by Section 3 of the Motor Vehicle Act, holding of an effective Driving Licence is a primary requirement for driving a motor vehicle in a public place by any person. Proviso to Section 14(2) of the Act provides that every driving licence shall, notwithstanding its expiry, continue to be effective for a period of thirty days from such expiry. Provisions regarding renewal of a driving licence contained in sub-section (1) of section 15 of the Act provide that any licensing authority may, on application made to it, renew a driving licence issued under the provisions of the Act with effect from the date of its expiry. Proviso to sub-section (1) of section 15 provides that in any case where the application for the renewal of a licence is made more than thirty days after the date of its expiry, the driving licence shall be renewed with effect from the date of its renewal.

In view of the aforementioned provisions of the Act, question arises that if the validity period of the Driving Licence of a person has expired and he has made an application for renewal of the Licence within thirty days of its expiry but his licence has not been renewed, then whether he would be considered as having an effective Driving Licence after thirty days of expiry of the Driving Licence till the date of renewal of the licence.

The issue, whether in case of non-renewal of driving licence a person would be treated as not “duly licenced” under section 149 of the Act¹¹ came up for considerations before the Jammu & Kashmir High Court in the case *New India Assurance Company Ltd. Vs. Sughra Bibi*.¹² Referring to Section 15 of the Motor Vehicles Act which contains provisions relating to the renewal of Driving Licences, the Court observed that it is only the fourth proviso appended to the Section 15, which prescribed that if the application for the renewal of driving licence is made more than five years after the driving licence has ceased to be effective, the licensing authority may refuse to renew the driving licence, unless the applicant undergoes and passes to its satisfaction the test of competence to drive referred to in sub-section (3) of Section 9 of the Act. Except this, there is no other disabling provision, which debar a licensing authority to renew the expired driving licence on any prescribed condition of testing the capability of the person to drive a motor vehicle.

The Court therefore, held:

“A person, once found entitled to the issuance of a driving licence, would, thus, continue to be a person able to drive a motor vehicle regardless of the renewal of his driving licence unless five years have elapsed from the date when his existing driving licence has ceased to be effective. In this view of the matter, we find that the non-renewal of licence, within a period of five years from the date of issue or renewal thereof, would not bring such licence in the definition of 'Not a duly licensed person.'”

It is however submitted that requirements for driving a motor vehicle in a public place, as stipulated in section 3 of the Motor Vehicles Act is that the driver should have an “effective driving licence”. As held by the Supreme Court in *National Insurance Company Ltd. Vs. Swaran Singh and others*¹³, “the words 'Effective Licence' used in Section 3 cannot be imported in words 'Duly Licensed' occurring in Section 149 (2) of the

11 Section 149 of the Motor Vehicles Act relates to the duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks.

12 2005 Legal Eagle(J&K) 375, 2006 (1) SriLJ 46

13 (2004) 3 SCC 297

Motor Vehicles Act". Therefore, in case of non-renewal of the driving license, a person though may not be treated as "Not Duly Licensed" under Section 149 of the Motor Vehicles Act, but he may be treated as not having an "effective driving licence" under section 149 of the Motor Vehicles Act. The Act thus, does not provide a clear answer to the question whether a driving licence thirty days after its expiry and before its date of renewal would be treated as an "effective driving licence" under section 3 of the Act or not.

Conclusion

The Motor Vehicles Act, 1988 contains a number of provisions for regulating vehicular movements, with road safety as the primary objective. Analysis made in this paper however, indicates that certain provisions of the Motor Vehicles Act, which are of considerable importance in the context of road safety, contain ambiguities due to which their enforcement becomes difficult. The proposed Motor Vehicles (Amendment) Bill, 2016, which is stated to be primarily focusing on the road safety, also ironically does not address the ambiguities in the provisions of the Act discussed in this paper. These ambiguities have hardly been discussed even by the higher judiciary as the cases under the Motor Vehicles Act are generally not contested by the offenders since the penalty prescribed in the Act for most of the traffic violations is quite meager. The proposed Motor Vehicles (Amendment) Bill, 2016, however, provides for much higher penalties. It is hoped that due to harsher penalties, cases would be contested and the Courts will have opportunities to discuss the ambiguities in the existing Motor Vehicles Act brought out in this paper.

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The Daubert Standards and Evidentiary Value of Forensic Handwriting Reports In Indian Judiciary: A Review



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Abstract

In Indian judicial system due to lack of certain acceptable rules and regulations related to acceptability and authenticity of handwriting evidence in the court of law, the handwriting evidence is not considered as a reliable one. The expert evidence as to handwriting being opinion evidence can rarely take the place of substantive evidence in the courts and before acting on such evidence, the courts always consider whether it can be corroborated either by clear direct evidence (DNA Profiling, Fingerprints etc.) or by circumstantial evidence. So in this scenario, we must look for some standard set of rules or regulations which may guide the courts in India to safely place their opinion on handwriting evidence without worrying about their credibility, acceptability, and authenticity. This review paper deliberates over the use of Daubert standards in Indian scenario, especially for the use of handwriting evidence in the court of law keeping in mind the fragile nature of the same.

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Introduction

Forensic handwriting examination has been broadly implemented in the criminal investigation and court of law all over the world. Handwriting, like the other physical act performed by the adults, is characteristics of the individual writer. It can, therefore, be used for positive identification of the writer through comparison of questioned sample with known ones. In Indian scenario, the forensic handwriting examination of disputed documents are done very frequently in the forensic laboratories of states and center, rather at an average, the seventy percent work handled by an average investigating officer in India is related to forged documents (Sharma, 2006) a majority of which usually requires examination of handwriting or signatures in one or the other forms. India is a multi-lingual, multi-script country, where twenty-two official languages are constitutionally accepted and there are several hundred other regional languages spoken and used all over the India. The criminal justice system in India is based on the accusatorial model, in which the accused is presumed to be innocent until proven guilty and hence weighed down in favour of accused and is less sensitive towards the victim.

The police and prosecution including forensic experts have to prove that the accused is guilty i.e. the burden of proof lies on the police and prosecution. The accused need not prove his innocence. The judges in general, grant the benefit of doubt in favor of accused as they hold fast to the aphorism – *“Let a thousand criminals go unpunished, no innocent should be punished”*. Here the defense counsels lavishly take advantages of this weakness in the system and they attempt to graft out various ploys of court skills to create some disbelief in the minds of judges in order to get the benefit of the doubt. The prosecution has an arduous job of substantiating the culpability further than all the realistic reservations in order to prove that, the accused is guilty. And thus, in the presence of this model of Criminal Justice System in India, the handwriting evidence in a court of law given by forensic handwriting examiner always involve the vast scope of further possible lawsuit. It is quite challenging for a forensic expert, especially for a handwriting expert, to prove his opinion or findings in the court of law in the absence of specific set of rules such as the Daubert Standard, as forensic handwriting examination is mistakenly not considered as a perfect science by most of the courts in

India. The Daubert standards which are common features in most courts of USA for evaluating scientific evidence reliability and acceptability are used as a spotlight for the same purpose of reliability and acceptability in Indian courts..

The Frye and Daubart Standards

The Frye standard is one of the first legal rules, as to the merit of acceptability of scientific evidence into a court of law. It originates from the legal case of "*Frye v. the United States, 293 F. 1013, 1014 (D.C. Cir. 1923)*", which was a murder case in 1923. The inclusion of a polygraph test as evidence was the issue at hand. Under the Frye standard, courts, "*in admitting expert testimony deduced from a well-recognized scientific principle or discovery,*" and must ensure that "*the things from which the deduction is made [is] sufficiently established to have gained general acceptance in the particular field in which it belongs*", in other words, that "*any scientific method or practice must be generally accepted by the scientific community at large.*" This standard widely became known as the "*general acceptance*", under which expert testimony, relying on scientific processes or techniques or theory, was subject to a standard of review that questioned whether the technique are generally accepted in the scientific community or not. The Frye standard has largely been superseded by the Daubert standard or the Federal Rules of Evidence in most states in the USA when The United States Supreme Court passed a judgment in the case of "*Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)*". This case set the standard commonly came to be known as "*Daubert Standards*", and enormously changed the face of scientific evidence not only in the USA but in the world possibly. These are the standards or set of certain rules used to determine the admissibility or acceptability of scientific evidence, provided by scientific experts on the basis of some scientific theory or technique or processes in a court of law. An expert opinion based on a certain scientific theory or technique or processes is admissible in a court of law only where the applicable technique is generally accepted as reliable in the relevant scientific community. The Daubert Standards, define the new standards for courts to use in determining the admissibility of scientific evidence under "*Rule 702 of the Federal Rules of Evidence.*" The Daubert Standards replaced the Frye rule in 1993 by stating that scientific evidence must pass four

tests before it can be admitted into evidence for a trial. The four tests determine whether:

- The theory or technique used has been tested;
- Whether it has been peer reviewed;
- Its known or potential error rate and, the existence and maintenance of standards controlling its operation, and;
- Whether it has been accepted within a relevant scientific community.

The above mentioned Daubert Standards for admissibility of scientific evidence in the USA courts were further strengthened by the cases; “*General Electric Co. v Joiner*. 1997 and *Kumho Tire Co. v Carmichael*. 1999”; In *Joiner case*, the court declared that judges may ignore the proof of experts if it might confuse jurors by being inadequately applicable to the issues related to case in the hand. In *Kumho*, the court again declared that a judge may debar an expert from appearing as scientific expert if he or she used unfamiliar norms for inferring data or events. During the *Kumho* case, the language of the *Daubert* judgment came into interrogation. *Daubert* is narrowed to the scientific related part of expert testimony in a courtroom when determining the relevance of admissibility. *Kumho* took to question that all the evidences given by experts are not based on scientific theories or methods only; instead, it can be non-scientific technical evidence. It was determined that the version of the *Daubert* standards when defining dependability and relevancy can be “flexible” based on the occupation of the expert witness.

Recent Trends of Frauds in India

It is a common mistaken belief that the identification of handwriting is not a perfect science and thus the identification of handwriting, by comparison, is not a dependable one and that courts should, therefore, act cautiously before placing their reliance exclusively on the handwriting evidence. There are cases of handwriting in Indian courts where the judges concluded that the handwriting evidence cannot be completely relied on (*Pandit Ram Narain v. State of U.P.*, 1957 AIR 18, 1956 SCR 664; *Bhagwan Kaur v. Maharaj Krishan Sharma*, 1973 AIR 1346, 1973 SCR (2) 702; *Kanan & Ors. v. State of Kerala*, 1979 AIR 3, SCC 319)⁴. Further

⁴ All the related cases taken from: <https://indiankanoon.org/> (accessed on 29.06.2016)

due to lack of some acceptable rules for admissibility of reports given by the handwriting experts, it is found that in most of the cases, usually experts are engaged on the both sides of the parties offering entirely opposing opinions, and this further creates doubts about the credibility of the handwriting evidence in court of law. It is thus absolutely essential to devise some mechanism or set of rules for the methods used in the examination of handwriting evidence, opinion and acceptability thereon for the handwriting reports given by forensic handwriting experts to legal matters especially in the Indian context where there is a steady increase of cases related to criminal breach of trust (CBT) [including Section 405, 406, 407, 408, 409 IPC] and cheating/forgery [including sections 420, 463, 464, 465, 466, 468, 469, 471, 474, 476, 477A IPC] which has been reported by National Crime Record Bureau (Table. 1) during the years 2011-2014. All these sections of Indian Penal Code (IPC), involves for the majority of the time the examination of handwriting or signatures.

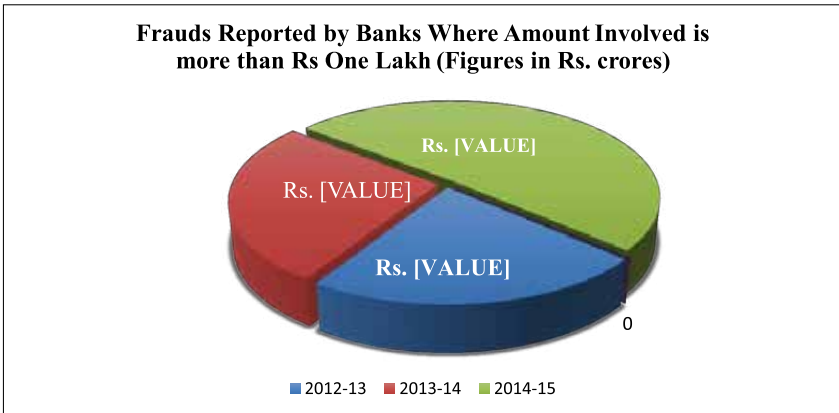
TABLE.1- Major Frauds reported during 2011-2014

Sr. No.	Value of property lost/ defrauded (in Rs. Crore)	2011		2012		2013		2014	
		CBT	Cheating	CBT	Cheating	CBT	Cheating	CBT	Cheating
1	1-10	112	308	103	332	103	445	279	757
2	10-25	6	27	14	64	11	68	17	20
3	25-50	4	13	7	31	5	39	6	11
4	50-100	3	5	0	15	3	14	3	4
5	Above 100	0	3	8	15	1	13	0	5
	TOTAL	125	356	132	457	123	579	305	979

(SOURCE: CRIME IN INDIA REPORT 2014- NATIONAL CRIME RECORD BUREAU, MHA, GOI)

The Indian banking sector has practiced significant progress and modifications since the liberalization of the economy in 1991 but post liberalization along with progress, the incidences, complications and cost of banking frauds have also increased manifold resulting in a very grave reason for unease for watchdogs, such as the Reserve Bank of India (RBI). In the last three years (2013-2015), Public Sector Undertaking Banks (PSUBs) in India have lost a total of Rs.22, 743 Crores, on

account of various banking frauds (Singh; 2016). In all the 26 Public Sector Undertaking Banks under Government of India, all those frauds that were greater than Rs.1 lakh were scrutinized and investigated for the 9 month period from April to December 2014⁵. As a result, in May 2015, the Reserve Bank of India (RBI) set up a Central Fraud Registry to check



growing bank fraud.

FIGURE: 1-Showing Increasing Trend of Frauds in Indian Banks⁶

Handwriting Experts in Indian Court of Law

Now a days, in most of the criminal investigation cases, the investigating authorities have to rely on the opinion of forensic experts. The forensic expert's first task is to assist the court in deciding whether or not a particular person has been involved in the crime. The function of handwriting expert in the court like other expert witnesses is very important. As already discussed Forensic Document Examiners (FDEs) are asked to depose before a court of law for the majority of time in the cases related to forgery/cheating, which usually involves the determination of the authenticity of a questioned handwriting or signatures and on such determination may depend clearance of significant properties or a large amount of money,

5 Source: <http://trak.in/tags/business/2015/03/23/psu-bank-frauds-india/> (accessed on 29.06.2016)

6 Source: Right To Information Query With Reserve Bank of India (accessed through web page <http://scroll.in/article/769907/a-different-growth-story-bank-frauds-double-in-india-in-a-year> on 30.06.2016)

etc. This can be done satisfactorily only by a skilful and experienced expert and it is his evidence that should be of significant support to courts. But the handwriting experts and the report given by them in the court of law, as have already discussed, is considered as a corroborative evidence in most of cases which can further be explained by considering the famous case of *Jyoti Murder*⁷ i.e. *MLA Ram Kumar Chaudhary v. State of Haryana (2013)*, in which the questioned handwriting samples were fixed by forensic handwriting expert to the admitted/specimen handwriting samples of accused but as the other forensic report pertaining to samples of hairs, which were recovered from the deceased body was not found to be conclusive, the report on handwriting was not at all considered or relied upon by the court for conviction and as a result the accused was later acquitted despite being fixed for handwriting/signatures by forensic handwriting expert on an important document (The Medical Termination of Pregnancy Report of the deceased, which was allegedly filled and signed by the accused) related to the murder. This is mainly due to the fact that handwriting examination lack expert integrities and thus, many a times the handwriting experts from both the parties produce opposing reports as a result, the courts are forced to overlook these differing opinions and have to decide the case on the basis of other evidence or other circumstances related to the matter.

Qualification for Handwriting Expert Under Indian Law

Under section 45 of Indian Evidence Act, 1872 – “*When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting], [or finger impressions] are relevant facts. Such persons are called experts*” (The Indian Evidence Act, 1872: 25). Thus, an expert is the person who has special knowledge and skill in the particular calling to which the enquiry relates. Thus, the term “*EXPERT*” in law, as applied to a witness has a special significance

7 The Chandigarh Tribune; Dated 25.12.2013:
<http://www.tribuneindia.com/2013/20131225/ctl1.htm> accessed on 30.06.2016

and no witness is permitted to express his opinion unless he is an expert within the term of the section: “*Ram Dass vs. Secretary of State: 1930 A.I.R. Allahabad 587.*” The section does not refer to any particular degree or standard of study or experience that would qualify a person to depose as an expert. Accordingly, any person who has made it his business to study a particular subject thoroughly is an expert within the meaning of section and is, therefore, qualified as an expert to depose before the court of law. (cf. Mehta; 1961).

Further, under Section 293 of the Code of Criminal Procedure, 1973–The reports of certain government scientific experts are admissible in court of law in India, the relevant sub-sections, and clauses to handwriting experts includes:

“*Section 293, sub-section (1) - Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code. Section 293 sub-section (4) sub clause (e) deals with the reports of the Director, Deputy Director or Assistant Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory; and sub clause (g) relates to any other Government Scientific Expert specified, by notification, by Central Government for this purpose*” (The Code of Criminal Procedure, 1972). The reports of handwriting experts are also accepted under this Section 293 and its sub-sections and clauses; but they are the one group of experts which are most frequently summoned by the courts for cross-examination due to imperfect nature of evidence, as it is considered by the court of law in India and also all over the world.

Conclusion

As it is clear from above discussion that, the reports of handwriting experts in Indian court of law are considered as a secondary evidence (or corroborative) as the courts tends to rely as much as possible on other sound evidences reports (like DNA Profiling, Fingerprints etc.) which has attained near - perfection than to that of the handwriting evidence reports, which seemingly are more subjective in nature as it is considered by most of the courts in India. Thus, the demands that before acting on

such reports the Court should be fully satisfied with the acceptability, authenticity, and authority of these handwriting reports, can be fulfilled only by framing some set of rules for acceptance and authentication of these reports in court of law. Only the general acceptance of admissibility of scientific evidence and expert's opinion in Indian Courts without any special law with respect to this, till now and Section 45 of the Indian Evidence Act and Section 293 of Code of Criminal Procedure are insufficient in this regard (Kantak. et al; 2004). It is strongly suggestive that the Forensic Regulatory & Development Authority of India Bill, 2011 (FRDA)⁸ should consider incorporating the Daubert standards or similar set of rules and regulation keeping in the mind peculiarity of Indian judiciary system and its demands. If the Daubert standards can be followed and a federal agency is appointed and maintained (like FRDA) as a watchdog for the implementation of the practices, control and for elucidation of consequences related to the handwriting evidence and reports, the handwriting evidence can be of much force and can be helpful in providing valuable evidence to the courts in many cases in near future.

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8 Source: <http://iafmonline.in/data/circular-notifications/FDRA-Bill-2011.pdf> (Accessed on 01.07.2016).

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