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# 1

## Golden Hour Trauma Care - Salem City Model

*K. C. Mahali, IPS\**

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**Golden Hour is the First one hour after the occurrence of an accident / injury at that time the victim has to be given Pre-hospital Trauma Care and transported to the nearest medical facility to provide life saving treatment.**

**2. Golden Hour Treatment:** The concept of “Golden Hour” still holds good in present day situation. Whenever, any accident occurs on the road, the victim has to be provided immediate Pre-hospital Trauma Care (First Aid) and transported to the nearest medical facility within one hour to save his/her life. The delay caused in the process may cost his/her life. Moreover, it is the need of the hour that there has to be a system of transporting an accident victim immediately to provide life saving treatment. Time is the most important factor in case of road accident victims. As time increases, the possibility of survival decreases in case of critically injured victim. It has been observed that most of the mortality in road accident is due to profuse bleeding, crush injury, head injury or depletion of oxygen level. In such cases, it is very important to arrest the bleeding by providing Pre-hospital Trauma Care to the accident victims. Whoever, may be available on the road during the accident, it is the moral responsibility of the members of public to help the accident victims on humanitarian ground to give Pre-hospital Trauma Care and remove the injured by the ambulance or any available means of transportation to the nearest medical facility.

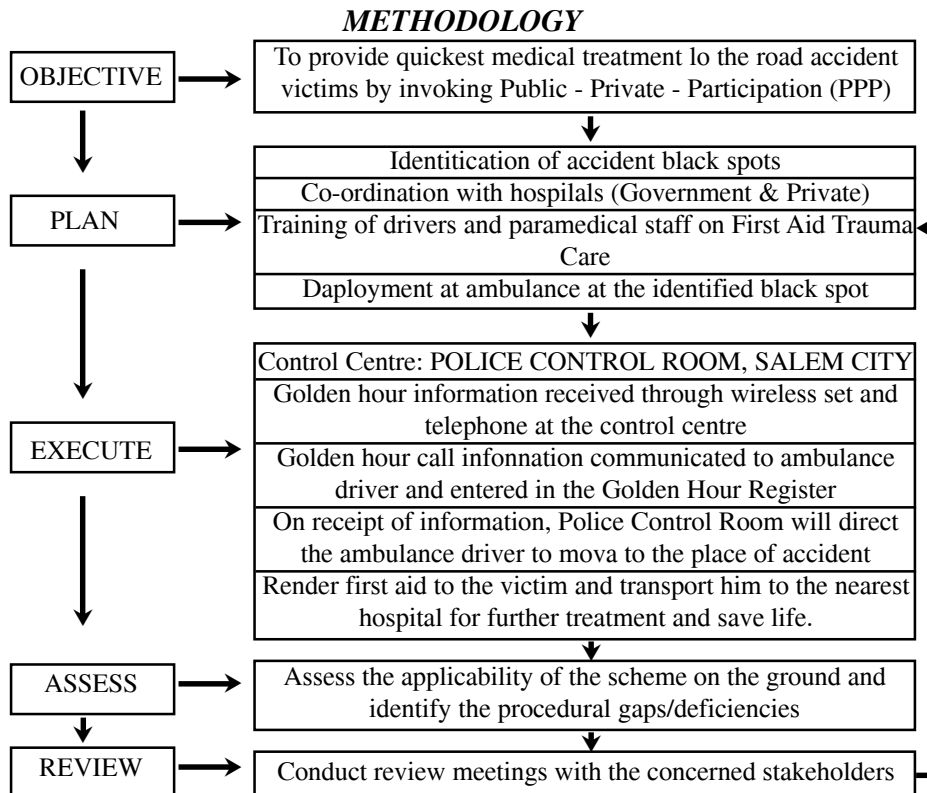
**3. Public - Private - Participation (PPP):** The emerging challenge of road accident has to be tackled by the active participation of members of public and the Government Authorities. Hence, considering the accident

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\* IGP Commissioner of Police, Salem City, TN.

scenario in the City, Golden Hour Trauma Care was launched in Salem City on 14th January, 2012. As many as, 12 heads of the Private Hospitals and Private Ambulance Owners voluntarily resolved to provide Golden Hour Trauma Care by engaging their ambulance to pick up the accident victims from the place of accident after giving Pre-hospital Trauma Care and transport the victim to nearest hospital free of cost for further treatment along with the Government EMRI-108-Ambulances. All their Ambulances have been integrated with Police Communication Network from Police Control Room for exchange of information so as to facilitate the Golden Hour Treatment.

**4. Methodology:** Highly Pragmatic, lucidly designed, people-friendly participatory methodology has been adopted for Golden Hour Trauma Care in Salem City. Well defined objective was meticulously planned, systematically organized and precisely executed on the ground. Periodically, practical difficulties in the system were assessed and critically reviewed. Lacunae in the system or any operational difficulties experienced by the stakeholders were thoroughly analyzed, remedial measures recommended and difficulties were rectified immediately.



**5. Golden Hour Register:** Golden Hour register is being maintained in the Police Control Room. When, an accident occurs on the road, the information is being communicated to the Police Control Room through VHF/ Wireless communication channel or through Police Control Room Phone No. 100 and Ph. 0427-2210002. The time of accident and place of accident is being recorded and nearest ambulance is directed to pick up the victim. The Police Control Room is maintaining the Phone numbers and Cell Phone numbers of Hospitals as well as Ambulance Drivers. Immediately, on receipt of information, Police Control Room will direct the Ambulance Driver to move to the place of accident and render Pre-hospital Trauma Care to the victim and transport him to the nearest hospital for further treatment and save life. When, immediately “Golden Hour” treatment is given to the road accident victim, there is every possibility of his/her survival.

**6. Mean Response Time:** When information on road accident is received in the Police Control Room either through VHF-set / Wireless-set or through the Police Control Room No. 100 or through Telephone that time is recorded in the “Golden Hour” Register. The Police Control Room staff will immediately direct the nearest Ambulance driver through his mobile phone to pick-up the accident victim. Hence, the response time is calculated from the time of information received in the Police Control Room till the Ambulance driver and Paramedical staff pick-up the accident victim. Later on, at the end of the month, Mean Response Time is calculated taking all response times into consideration.

In the year, 2012 the mean response time was 5 minutes 15 seconds, whereas in the year, 2013 mean response time has gone down to 5 minutes only. The reduction in mean response time is attributed to the increase in the number of ambulance and active participation by Auto Drivers, Public and Police.

**7. Golden Hour Review Meeting:** Golden Hour review meeting is being conducted every month in the City Police Office in which Heads of the Private hospitals or their representatives and Owners of Private Ambulances are invited to review the Mean Response Time (MRT) along with the Police and Govt. Hospital doctors. All problems faced by them are discussed, their suggestions are recorded and immediately action is initiated to improve the system.

**8. Pre-Hospital Trauma Care Training for Auto-Drivers:** Auto-drivers are the first Responders in the event of any accident besides the

bystanders. In Salem City, as many as 6,000 Auto-drivers are available, out of them, 900-Auto-drivers have been imparted Pre-hospital Trauma Care Training by Manipal Hospital, Salem in the year, 2012. Whenever, they come across any accident, they used to rescue the accident victims, give them Pre-hospital Trauma Care and admit them in the Government Hospital or nearest Private Hospital. The Auto-drivers have rescued as many as 118 accident victims out of 922 accident victims in the year, 2012 in Salem City. In the year, 2013 as many as 788 Auto drivers have been imparted Pre-hospital Trauma Care and they have rescued 349, accident victims out of 910 accident victims and admitted them in the nearest hospital.

**9. Pre-Hospital Trauma Care Training for Police Officers:** In the year, 2012 as many as 370 Police personnel were trained on the First Aid, whereas in the year, 2013 as many as 445 Police personnel were trained on First Aid. They have been assisting paramedical staff of Govt. EMRI-108 Ambulance, Private Ambulance and Auto-drivers for rescuing the Accident Victims.

**10. Experimentation:** In the year, 2012, Police Control Room has received 401 accident information through VHF-Set/Wireless-Set and Police Control Room Phone No. 100 and Ph.0427-2210002 and rescued 575-victims, of which the Government Ambulances have attended 366 accident victims, Private Ambulances have attended 93 road accident victims, Auto-drivers have attended 98-victims, and other vehicles have attended 18-victims and admitted them in various hospitals for treatment.

Besides the calls received through Police Control Room, Government Ambulance EMRI-108 and Private Ambulances have also received some calls directly from Public soon after witnessing the accidents. On the whole, 922-victims have been picked up, out of which, 516-victims by Govt-EMRI-108 Ambulance, 238-victims by Private Ambulances, 118 by Autos and 50-victims by private vehicles.

In the year 2013, as many as 910 accident victims have been picked up, out of which 340 victims by Govt.EMRI-108 Ambulance, 105 by Private Ambulances, 349 by Autos and 116 victims' private vehicles and admitted them in the various hospitals for treatment.

**11. Accident Mapping:** Accident mapping is one of the most important techniques which is being done to find out the accident prone zone. A map of the City/District has to be prepared, clearly indicating the major and

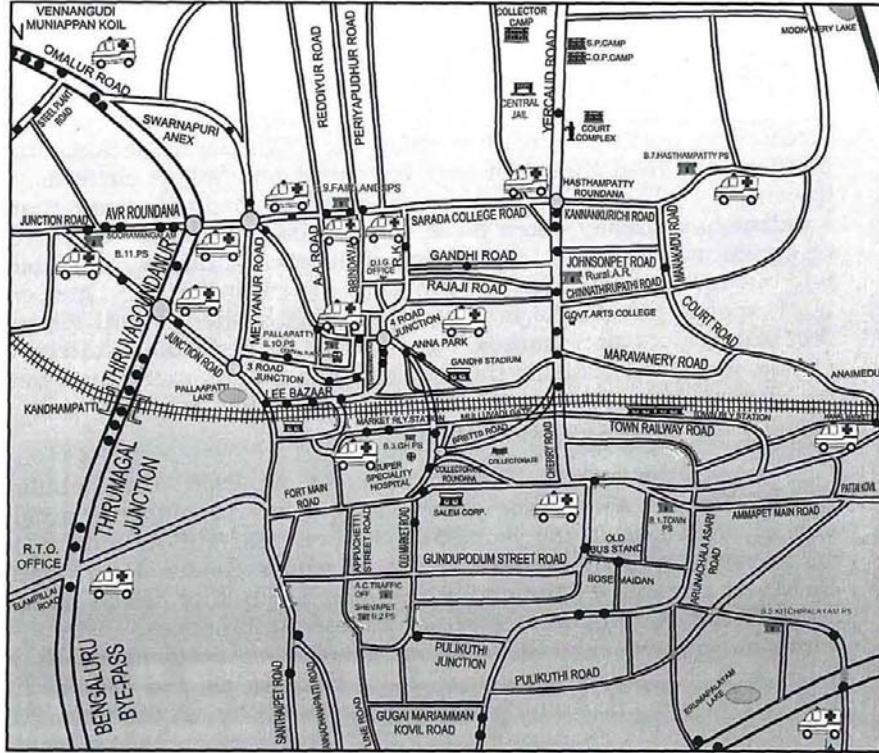
minor roads. One year fatality data may be taken from the City/District based on the case diary file. A thorough study has to be done on accident pattern, road condition, type of vehicle, time of occurrence, health condition of driver, mechanical worthiness of the vehicle etc. Whenever, accident takes place on the road that spot may be visited and yellow circle may be drawn. The yellow circle is drawn on the road to indicate that an accident has already taken place so that road users are cautioned to be careful while driving. Secondly, on the spot, study is conducted to find out remedial measures to prevent accident in future. Later on, a black spot is put on the map corresponding to the ground. Once all the black spots are marked on the map, a particular pattern will emerge which will indicate the accident prone zone. Ambulance has to be stationed at the stretch of accident prone zone so that the “Golden Hour” time can be reduced.

In the year, 2012 as many as 4 Govt. EMRI-108 Ambulance and 12 Private Ambulance were available for rescuing the accident victim. However, in the year 2013, 1 Govt.EMRI-108 Ambulance and 10 Private Ambulances have joined to render Golden Hour Trauma Care. As a result, by the end of the year, Salem City has as many as 5-EMRI-108 Ambulances, and 22 Private Ambulances. When, the numbers of Ambulances have increased, the accident death has decreased gradually. In the year, 2012, as many as, 145 persons have died due to road accident in Salem City. However, in the year, 2013, the death due to road accident was 140. Therefore, there is a decrease of 5 deaths due to the increase of Ambulance and expeditious Golden Hour Trauma Care service in Salem City.

In the year, 2012 the mean response time was 5 minutes and 15 seconds, whereas, in the year, 2013 mean response time has gone down to 5 minutes only. The reduction in mean response time was due to the availability of Ambulances in the accident prone zone. When the information on road accident was received by the Ambulance Drivers, they have immediately responded to the accident calls and rushed to the place of accident in the quickest time.

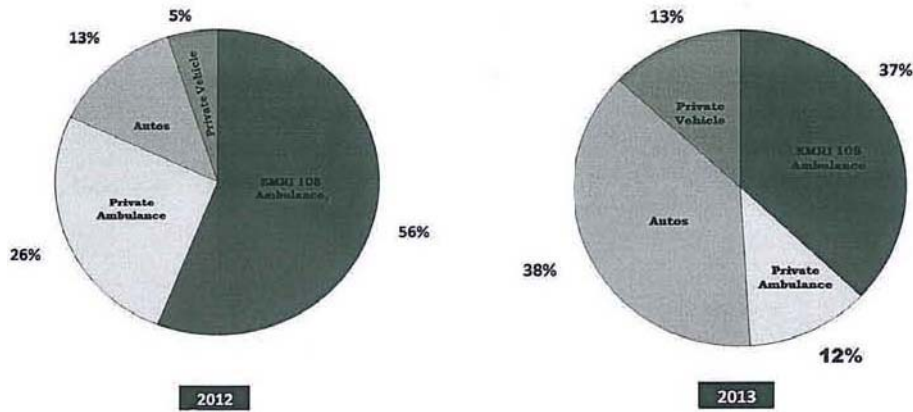


### ACCIDENT MAPPING

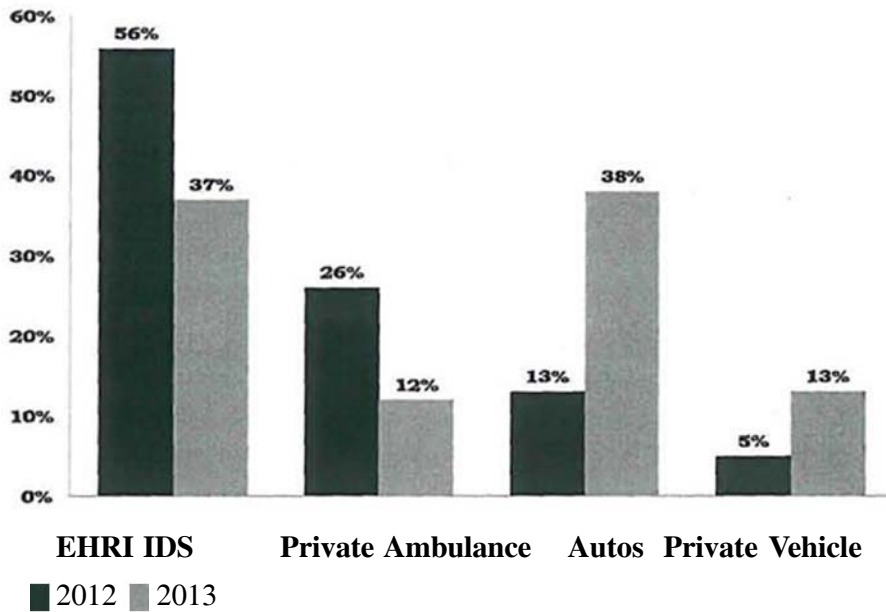


**12. Analysis:** While analyzing the percentage of accident victims picked-up by the various Ambulances in the year 2012, it is important to note that 56% of accident victims have been rescued by the Govt. EMRI-108 Ambulances, 26% rescued by the Private Ambulances, 13% victims have been rescued by the Auto-drivers and 5% by Private vehicles. Altogether, the percentage of participation of Private vehicles /Private Ambulances/Autos is 44%, whereas, the Government EMRI-108 Ambulance is 56%.

While analyzing the percentage of accident victims picked-up by the various Ambulances in the year 2013, it is important to note that 37% of accident victims have been rescued by the Govt. EMRI-108 Ambulances, 12% rescued by the Private Ambulances, 38% victims have been rescued by the Auto-drivers and 13% by Private vehicles. Altogether, the percentage of participation of Private vehicles/Private Ambulances/Autos is 63% while the Government Ambulance is 37%.



Kind of Vehicle	2012		2013	
	No. of Persons Rescued	Percentage	No. of Persons Rescued	Percentage
EMRI 108 Ambulance	516	56%	340	37%
Private Ambulance	238	26%	105	12%
Autos	118	13%	349	38%
Private Vehicle	50	5%	116	13%
Total	922	100%	910	100%



**Synopsis:** The “Golden Hour Trauma Care” has completed two-years in Salem City which has an area of 132sq.km with a population of 9 lakhs. People of Salem City have positively responded and actively participated in the Golden Hour Trauma Care. The Public-Private-Participation (PPP) has increased the number of ambulances and reduced the Mean Response Time. This has also built up the confidence among the public that in the event of any accident, there is a system which will take care of the accident victims. Moreover, it is a very good example of Capacity building exercise by associating the Public, Police, Private Ambulances and Auto-drivers along with the Government EMRI-108 Ambulances for Golden Hour treatment. Public-Private-Participation in providing the “Golden Hour” treatment to the road accident victims has created an environment of “Win-Win” situation for all. Therefore, the “Golden Hour Trauma Care” concept of “Salem City Model” may be implemented in any City/District in the State to save the life of the accident victims.

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# 2

## CONDUCTING AN ANTI - TERRORIST OPERATION

- Mukesh Singh, IPS\*  
-Viplav Kumar Choudhry, IPS\*

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1. There are different situations during a police operation in which the police is compelled to use lethal force in an anti-terrorist operation. For instance there can be a well-planned intelligence based cordon and search operation, a chance encounter with an armed terrorist, a suicide attack on a police establishment, an ambush on a police party, an anti-terrorist operation in an urban area, an operation in a rural area, an operation involving a religious place, an operation involving a hostage situation and a law and order problem during use of force in an operation.

2. In each of these situations there are a set of basic rules which have to be followed and another set of variables which have to be controlled, depending upon peculiarity of the police operation. In an intelligence based operation, time is the most crucial factor while planning the operation. The time available with the police for planning and execution of an operation usually varies from one hour to twenty four hours. In rare circumstances, the time period available for planning and execution can be more. Limited time available to the police leadership therefore, throws many challenges. Variables like terrain of the area, type of population, time of the day when the information came in, whether in an inhabited area or in an open area, reliability of the source, strength of the terrorists/insurgents criminals, strength of manpower available for the operation and availability of resources such as weaponry and vehicles have to be considered before any operation is launched.

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\* Viplav Kumar Choudhry, IPS DIG, NHRC New Delhi

3. In other cases, for example in case of an ambush situation also, police may be required to use lethal force but in this case, the only parameter which is in the control of the police party (if they have been ambushed) would be prior preparedness of the police party and their knowledge of the terrain. Other aspects of the response of the police party in an ambush situation would depend upon the variables such as site of the ambush, timing of the ambush, number of terrorists carrying out the ambush, type of weapons being used by the terrorists, and objective of the terrorists. On the other hand, in a police operation where an ambush has been laid by the police forces, almost all the parameters would be in control of the police party.

4. In all these different situations in a police operation in which the police may be forced to use lethal force, there is a need of taking care of certain basic rules and a need of controlling certain variables.

5. In order to explain the parameters to be taken care of in a police operation involving use of force, the entire situation may be divided into three parts: before launch of the operation, during the operation, and after the operation. While planning and during the subsequent execution of a police operation, these aspect need to be specially taken care of by the police officer leading the police party.

#### **Planning an operation**

6. The first thing which needs to be considered before deciding to launch an operation is to make a proper assessment of the intelligence available. Is it specific regarding a particular house or regarding presence of terrorists in a general area such as a village? Is it regarding a group of terrorists or regarding an individual terrorist? These are important parameters for deciding the strategy for launching an operation.

7. Reliability of the source providing the operation is of prime importance. If he has provided good information in the past then his reliability would definitely be high. On many occasions however, the source is an individual who has come to provide information about the terrorists for the first time. Truthfulness of such source can be assessed by his motive for giving information about the terrorists. Money is usually a prime consideration for majority of the sources. Reliability of a source, who has come to provide information due to some personal grudge against a particular terrorist, would however, normally be higher. Further, if a source is willing to accompany the police party during the operation then such source would definitely be more reliable. It is also possible to ascertain the reliability of a source from his expressions while narrating the information. For instance,

if he is looking scared or is shivering, likelihood of the information provided by him being true would be higher.

Proper assessment of reliability of the source is important as a source can even be a trap planted by the terrorists and can cause damages to the police party if an operation is planned based on his “tainted” intelligence. Terrorists can also take advantage of the situation if they get knowledge about a particular source working for the police. An assessment of such sources can be made based on certain facts, for instance, whether he is disclosing the entire information at one time or not. This may indicate a possibility of the source being in the captivity or under the influence of the terrorists and the police party being led into a trap.

8. Likewise, a new source that has never provided any information to the police needs to be always viewed with suspicion. In such a situation the information is either likely to be hundred percent true or it is equally likely to be a trap.

9. As mentioned earlier, one important aspect to be considered while analyzing the importance of a source is the motivation of the source in giving the information. A regular time tested source that provides information for monetary considerations takes a chance and may also provide general information based on hearsay which can be wrong. On the other hand, if the source has come to the police due to personal reasons, for instance, the terrorists troubling his family members, then the likelihood of the information being true is very high.

10. Protection of the ‘source’ who agrees to accompany the police party is very important because if his identity is disclosed - chances of which is more in case he accompanies the police party during the operation and gets opportunity to interact with the police personnel in the operation party - he would become a target of the terrorists. During the operation also, since he leads the police party to a place being used by the terrorists as their hideout, there is a great risk to the life of the source as he may come in the cross firing between the terrorists and the police party.

11. An important point is that while going for even a small operation in a militancy affected area, all the ‘routine’ precautions must be taken, else an operation planned in haste or without observing the basic rules can lead to serious damages to the operation party. For instance, any movement of the police party in a sensitive area should be in at least two vehicles which should maintain some distance between them during the movement and should move in such a manner that police personnel in one vehicle can

see the police party in the other vehicles. This helps in case the party is ambushed by the terrorists while moving. In such circumstances, in case of firing by the terrorists on one of the moving vehicles, police personnel in the other vehicle get opportunity to effectively retaliate the attack and give covering protection to the vehicle being fired upon.

12. While going for the operation the leader of the operation should properly plan and launch the operation with manpower and weaponry besides other resources, sufficient to take on the terrorists/insurgents/criminals. Situation can be different in a covert operation where the terrorist is taken by surprise and does not get the time to react. However, in a cordon and search type of operation police party should be of sufficient strength and equipped with adequate weaponry and other resources such as bullet proof jackets and night vision devices (in case the operation is launched during the night hours or in cases where the cordon is expected to be continued during the night time).

13. Before launching the operation the police party must be properly briefed. Important aspects of an operation like how and where the vehicles carrying the police party should stop, which police party should lay the outer cordon and which police party should conduct house search or should lay the inner cordon should be decided in advance and the police personnel taking part in the operation should be briefed accordingly. Maps can be of great help in briefing the police party for an operation in the urban area while sand models can be of help in case of an operation in a mountainous area.

14. The following are suggested while planning an operation:

- I. No intelligence input should be taken lightly. Casualties may happen in an operation if the input is taken casually.
- II. Before planning an operation on a sensitive occasion, for instance, on a day of important religious celebration, a proper risk/benefit analysis should be done. A terrorist may be arrested later also, but possible collateral damages during the course of an operation on a sensitive occasion may not be worth taking the risk.
- III. The contingent being sent for the operation should not be a mix of many different units/forces as during the operation it may lead to confusion. Preferably the contingent should consist of police personnel belonging to the same unit.

- IV. In an operation situation where police officers from different areas converge for the operation, there is a greater need for a proper briefing and division of duties.
- V. It is always better to involve the local police personnel in any operation since they have better knowledge of the area. However, in such a situation, the disclosure of the exact area of operation should be done only at the time of the movement of the police party for the operation.
- VI. The security forces deployed/present in the areas close to the place of operation should always be informed at appropriate time in order to avoid confusion and to effectively coordinate and seek their assistance in case of need
- VII. A map or a sand model should be used to plan the operation, especially in a hilly area. The requirement of troops for the operation can only be gauged after looking at the map and after taking into consideration the contours of the area.
- VIII. All men should be briefed before the operation. Details of the operation can be discussed with a core team who should not be allowed to communicate with anyone or to move outside the camp after being told about the operation. Giving the details of the information to the entire team well in advance can lead to the information being compromised, especially when a large number of police personnel are locals.
- IX. Proper briefing of the police party should be done particularly about carrying of the arms. The police personnel going for an operation need to keep their arms in loaded position but 'safety catch' should be in 'on' position, and in any case finger should not be on the trigger. Otherwise, a policeman may react in panic, causing avoidable damages to his own colleagues or to any other person, as could have happened in this case.
- X. Every sub-team should have a team leader who should be equipped with communication system. Also, a local guide should be kept with each team.
- XI. Sufficient night vision devices should be kept for the team if possible. This becomes necessary for all the operations which have to be conducted at night.



- XII. In case of possibility of continuation of operation during the night, generator sets, wires, holders, bulbs etc. should be kept ready to light up the area as it is easy for a terrorist holed up in a house to escape taking advantage of darkness.
- XIII. Bullet proof vehicles should be kept ready as far as possible. This is more important in urban areas for moving close to the target area and also for any emergency evacuation
- XIV. Before going for operations, advance planning and arrangements should be done to deal with situations such as a house catching fire during the operation. Fire-brigades should be kept ready for any lengthy operation in order to minimize collateral damages resulting from a possible fire in a house.
- XV. While operating in a sensitive area, where the terrorist/insurgents have good support base, before launching an operation, the police should also have a component with adequate riot gear to deal with law and order problems.
- XVI. When proceeding to an operational area, care should be taken to avoid stopping at any place other than the final destination. This can lead to leakage of information regarding movement of security forces.
- XVII. Vehicles should not be used for movement when threat is imminent. Movement on foot is a better option under such circumstances.
- XVIII. Sending dummy vehicles to areas away from the operational area can be useful to mislead the terrorists. Sometimes their sources keep them informed about the movement of security forces.
- XIX. While moving on foot, a safe distance between the police personnel should be maintained. This helps in minimizing casualties in case of an ambush.
- XX. While moving for an operation in a terrorist affected hilly area, culverts should be physically checked before crossing it, especially on a 'kuccha' track.
- XXI. During movement by vehicles, a reasonable gap between all the vehicles in the convoy should be maintained. This helps in effective retaliation in case of a terrorist attack on the convoy

during the movement. Further, the vehicles should not move with the lights on during any movement at night near the operation area.

XXII. In case of an ambush on a plain straight road, the practice should to speed away as far as possible. In case of an ambush on a hilly road and especially in a situation where there is a sharp uphill bend, one should leave the vehicle and take to the ground immediately when the vehicles get stuck in an ambush.

### **Conducting an operation**

15. Upon reaching the place where the terrorists are suspected to be hiding, vehicles should be stopped a little away from the suspected place. Moving on foot, the police party first of all should establish an outer cordon quickly so that the terrorists do not get any opportunity to escape in the first go itself upon noticing the presence of a police party. Signs of trouble in the operation area should always be carefully noticed. For instance, the shopkeepers normally pull down their shutters on the arrival of the police party in case the terrorists are present in the area, anticipating a possible encounter and subsequent damage to their properties.

16. Police personnel should invariably be deployed in 'buddy pairs' so that each could give protection to his 'buddy' in case of an attack by the hiding terrorists. 'Buddy pair' system of deployment also helps in maintaining more alertness in police personnel who are deployed in the cordon.

17. In an operation the police personnel who are deployed in the outer most cordons feel more relaxed as they are least likely to face firing from the terrorists. However, they need to be properly briefed before start of the operation and also kept in alert position. This is required for two reasons; one, that they should be able to take on a terrorist who would try to break out of the inner cordon while escaping; and secondly, there can be a possibility that the associates of the trapped terrorist, in order to divert attention of the inner cordon/search party and create confusion, may attack the police personnel deployed in the outer cordon and inflict damage on them if they are not fully alert.

18. House search is the most crucial part of any operation. Maximum casualties can be caused by the terrorists hiding in the house when the search party enters the house. This is primarily because the terrorists may be aware of the location and movements of the policemen entering in the

house but the policemen in the search party are not aware of the place where the terrorist might be hiding. For instance, there can be a situation that during the operation when the police party tries to enter in the suspected house, a policeman may be dragged inside the house by the terrorists and kept as hostage. The whole operation thereafter would have to be stopped because any action on the part of the police may potentially harm the policeman taken inside the house by the terrorists. Rescue of the trapped policeman becomes a great challenge under these circumstances. House search should therefore be done by the policemen who are highly trained in room intervention techniques.

19. The following are suggested while conducting searches in a house:

- I. A search operation for arrest of a terrorist hiding in a house should be very carefully planned. The police party going for the operation should be fully prepared to deal with the situation of a possible exchange of fire.
- II. Efforts should be made to ascertain the exact situation inside the target house before starting the house search. The number of terrorists, arms and ammunition with them, number of civilians inside etc. need to be ascertained. This can be done after interacting with the owner/other residents of the house.
- III. The police personnel entering in any building for search should be adequately armed and in buddy-pairs. They should wear proper protective gear.
- IV. Maximum care and caution should be exercised during the house search and room intervention. For instance, it may happen during a house search that the terrorist hiding inside the room can fire from inside on the police party through the closed wooden door when the police personnel try to open the door inflicting casualties to the police personnel.
- V. During house search, a locked door should be viewed with suspicion, especially when the owner makes an excuse to open the door. A clearance given by the house owner need not always mean that the terrorists are not hiding in the house. There can be a situation where the terrorists may take one of the members of the house as a hostage and force the house owner to give a clear signal to the search party.

20. Extreme care should be taken in case of an operation involving a religious place as in such a situation, any damage to the religious place may flare up religious sentiments which can lead to major law & order problem not only in that particular place but also across the entire area. Such operations should therefore be handled in a very tactful manner. Locals and the religious heads of the area should also be taken into confidence during such operations. Further, during the search operation in a village the terrorists may enter into a religious place. Steps should therefore be taken in advance in order to prevent entry of terrorists in the religious places. As a precautionary measure, for preventing the terrorists from entering in a religious place, a small police party should be deployed close to the religious place in the beginning of the operation, at the time of establishing of the cordon itself.

21. The strategy which should be adopted in a particular operation depends to a large extent on the place where the operation is to be carried out. In comparison to a rural area one needs to take more precautions in an urban area. The terrorists generally prefer to stay in a place where they have a support base in the local population. In such areas, during the operation, sympathizers of the terrorists may try to create law & order problems in order to distract the police engaged in the operation. A police party while operating in a thickly populated urban area should therefore, necessarily have a law & order component to deal with such eventualities. Secondly, the chance of collateral damages in case of an operation in a populated area is much more. Collateral damages during the operation such as damage to the houses of civilians or civilian casualties in the cross firing during the operation should be avoided as it not only results in adverse publicity against the police party for human rights violations, but may also result in law & order problems subsequently. The police officers conducting the operation should therefore be very careful and try to avoid collateral damages to the civilians and their properties. Policemen should be properly briefed in advance and also prior arrangement should be done for making available fire brigades on the spot in order to deal with a possible situation of fire which may occur during the operation.

22. Leadership in the operation is very important. The officer leading the operation should focus on all the aspects during the operation. In case of an operation in which more than one security forces are involved, a temporary joint-command centre should be established from where they can coordinate the operation jointly and can also discuss the situation and

take decisions accordingly. Leaders of all the sub-teams, who should normally be officers, should be briefed to stick to their assigned duties during the operation. For instance, under normal circumstances an officer made in-charge of the cordon party should not be detailed to carry out search operation without express orders of the officer leading the operation.

23. Further, during the operation the leader of the police party should focus more on directing and coordinating with his men. It is not very important for him to fire himself, but more important is to control firing by the police personnel under his command. Control of firing by the policemen should be given due importance as in case of an uncontrolled firing the chances of collateral damage can be more. Besides, there can be casualties to the operation party itself. Situation can be more complicated in case policemen from different units are involved in an operation who may not know each other. In such a situation a system should be devised before start of the operation so as to communicate with leaders of each of the police party. Most important aspect to be taken care of by the police officer leading the operation is to keep all the police men under his command alert and under proper control. Bravery is desired but not foolhardiness. A terrorist can be engaged later also, but losing men in an operation can greatly affect morale of the police party.

24. During a search operation, whether in a particular house or during a general search in all the suspected houses in a locality, after the house search is over, sympathizers of the terrorists may level false charges against the police party for having taken some valuables from the house or for having misbehaved with the ladies. In order to avoid such false accusations, local representatives or the village Headman should invariably be associated during the search operation by the police party, while ensuring his safety. Further, civilians should be treated with due courtesy while conducting searches. Women should be searched only by lady police personnel, or in absence of lady police, by a local lady. However, under no circumstances civilians should be used as a shield against the terrorists during the operation or while conducting search.

25. As far as possible, the local Executive Magistrate must be informed about the operation after the cordon has been established or a contact with the terrorists has been established. In case of non-availability of a Magistrate during the operation, efforts should be made for presence of the Magistrate at the site of the operation as soon as possible. The information provided to the Magistrate in this connection should be properly documented. If possible,

the local Magistrate should also be associated during the search operation after the cordon has been laid down.

26. Continuation of the operation in the night may lead to complications. Efforts should be made to finish the operation before sunset in order to avoid confusion and collateral damage. In case of an operation at night if the terrorists are surrounded, it is always advisable to wait for the first light to finish off the operation. Night operations can only be continued in case arrangements can be made to continuously light up the area of operation. In case searchlights are used for watching the movement of terrorists in a dark area, the person using the searchlight should take adequate care as the hiding terrorists can spot him easily and can fire at him.

27. If the cordon continues even during the night, the cordon around the suspected area should be properly laid. Policemen deployed for the cordon should be rotated in case they have been performing duties for long hours. The area should also be secured by putting barbed/concertina wire. Further, the area should also be kept well lit by making temporary lighting arrangements. The time between 2 to 4 am is the most crucial period as the holed up terrorists try to escape during this period taking advantage of darkness and tiredness of the policemen.

28. When an operation takes place in a remote area which is highly terrorism affected, the route leading to the place of incident should also be properly secured. Securing of the route leading to the place of operation becomes more important in case the operation is likely to continue for a long time because under this situation, sometimes additional forces would be required to be brought to the operation site. Also, food and other logistics would also have to be brought to the operation site. Besides senior officers also often come to the site of the operation for whom there should be proper security arrangements.

29. During the operation, senior officers should not gather at one place. The holed-up terrorist may attempt to strike at such gathering in order to inflict maximum casualties.

30. There should always be an experienced officer to deal with the media in such a sensitive situation. Media persons should not be allowed to move very close to the operational area in any case. They should be kept at a safe distance.

31. In a hostage like situation it is very important to keep the terrorists engaged in order to buy time. For this, the most important thing is to

somehow establish contact with the terrorists. While talking to them, the negotiator should sound sympathetic to the terrorists, giving them the feeling that there are chances of them getting a safe passage.

32. The leader of the operation party should not declare any area as “clear” before he gets complete details about the operation site from all the team leaders. Premature celebrations by the police party may lead to casualties if any of the trapped terrorists remains alive.

#### **After the operation**

33. After the operation ends, there is a general tendency that the police personnel become relaxed and even a little casual. However even at this stage of the operation, there can be possibilities of damages being caused to the police party. The first aspect that needs to be taken care of after an operation ends is the handling of the dead body of the killed terrorist. Important point here is how to approach the ‘dead body’ of the presumably dead terrorist as the ‘dead’ terrorist may in fact be alive, pretending to be dead, waiting for the last opportunity to cause damages to the police party. In case the ‘dead’ terrorist is lying on the ground on his chest, it is always safer to approach him from his leg side as in this scenario, if he is approached from the head side, if alive, he can see the police personnel approaching him and can cause damages to them. But if he is approached from his leg side, he cannot see the police personnel approaching him. On the same logic, if the ‘dead’ terrorist is lying on his back with his face up, it is safer to approach him from his head side.

34. Careful handling of dead body of a killed terrorist is also important as a terrorist may be having an unexploded grenade in his hand which he could not have thrown at the last minute after removing its pin and the grenade remained in his fist, with its lever pressed, due to setting of the rigor mortis. It may also happen that during the operation, the terrorist might have taken out the pin of the grenade but could not throw it and the grenade remained unexploded as the lever of the grenade remain pressed due to body weight of the killed terrorist. In this case, the grenade may explode when during the process of removal of the dead body lever of the grenade becomes free.

35. The spot where the operation has taken place, and its surrounding areas, should be properly cleared before withdrawal of the police party from the place after the operation is over. This is necessary as there may be unexploded explosive materials such as hand grenades used during the

operation either by the police party or the terrorist. Such explosives, if not detected and if left at the spot after the operation, may cause damage to the civilians visiting the area later. Under such circumstances the police party may be held for criminal liability for negligence. Site of the operation should therefore be properly sanitized through the bomb disposal units, before the police party withdraws from the site of operation.

36. After any operation, withdrawal from the spot should be tactical. This assumes more significance in case an operation drags on for a longer time. This is because of the fact that after the police party goes to the operation area for carrying out an operation, the terrorists operating in the area come to know about their presence in that particular area. They also become aware that after end of the operation, the police party would be withdrawing from predictable routes and they may be on a look out to attack the police party at the time of withdrawal. Hence, the chances of an ambush while withdrawing from the operation site are more. The officer leading the police party should therefore be very careful at the time of withdrawal from the place of operation.

37. While returning the police party should necessarily choose a route other than the one used for going to the spot. In case there is only one approach to the spot, the timing of withdrawal after the operation should have a surprise element. Further, the route through which the police party is to be withdrawn after the operation, should be secured before starting withdrawal from the place of operation. If a proper ROP (Road Opening Party) cannot be deployed on the route to be taken while returning, the route can be made safe to some extent by conducting vehicle patrolling on the route using bullet proof vehicles. Preferably, the whole operation party should not move out together; instead they should move in small groups. The party securing the route should also tactfully withdraw after all the police personnel deployed in the operation are withdrawn.

37. In case of an attack, prior preparedness of the police party and strict adherence to the vehicular movement drill greatly enhances effectiveness of the response of the police party. While moving in vehicles, in case of an attack, damages to the police party would definitely be less if the police party move in two or three vehicles (instead of one), with some distance in between the vehicles, as the police personnel in the vehicle, not in the range of firing by the terrorists can effectively retaliate the firing by the terrorists.



38. Another aspect of the police operation, after the operation is over, is debriefing of the police personnel who took part in the operation. Very often this aspect is ignored due to the fatigue factor. All the police personnel are eager to get back to home and take rest after a long drawn operation. Debriefing session, to be conducted by the leader of the police party, is necessary as it gives the police personnel and opportunity to do introspection about their strength and shortcomings, and the way they conducted the operation. This exercise, conducted immediately after the operation, leaves a lasting impression in the minds of the force which helps them avoid repeating the mistakes if any, committed during the operation.

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# 3

## ETHICAL DIMENSION OF THE CONSTITUTION

*Paramjit Singh Bawa IPS (Retd)\**

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Like the Constitution of United States, the Indian Constitution too invokes 'We the People'. This not only provides core values that are necessary for formation of a good society, but also provides a lamp post for well-being of the individual as well as country as a whole, an invocation not of a religion, god, providence, but only the values that are moral in nature and, therefore, celestial as such.

There are two ways of reading any text. One, what the text denotes in language. Two, what the reader understands through the text. In other words, one aspect is the explicit meaning conveyed in words in the text; the other is the implicit one that the reader discovers. This involves deciphering of the meaning beyond what the words express. This is the process of construction. Vocabulary is different from the meaning inherent in the context. Barthes has elaborated in his *Writing Zero Degree* that there is no limit or circumspection on the significance of words discovered by the reader.<sup>1</sup>

Considering that the Constitution does not invoke God as such but acknowledging that there is more to text than is revealed on the surface, an attempt is made to penetrate into ethical aspects of the Constitution that do exist already but do not appear to be so in the open unless an in-depth interpretation of some of the articles and stipulations is made. The

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\* As DGP, Sikkim, 1964 Batch of UT Cadre, Chairman of Transparency International India from 2010 to 2013.

1. Barthes, Ronald; *Death of the Author in Writing Degree Zero*; Hill & Wang; New York; 2000

interpretation is, therefore, contextual and highlights the uncared for aspect of the document that is taken for granted. It is taken as a ritual when its literal use is made. It is taken on its face value, and sometimes ignored by those who are expected to uphold its dignity and treat it solemnly. It is a text that is revered as a celebration in the form of a holiday, not only for government offices, but by all, labor inclusive, when Indian republic on the basis of the Constitution was constituted. The day is used as a vacation, entertainment, a day for rest, and never for introspection. Those who are to 'work' it out deliver speeches that have no relevance to the text.

They take it as independence and echo the freedom struggle without realizing that the content, purpose, and reach of the Constitution is different. Independence was a goal and an end, the Constitution is a means to secure the fruits of independence so that independence makes it possible to secure the goals. Independence is a point of relaxation on reaching the destination; the Constitution is an activity, and a perpetual one. The words are often used in as a 'mechanical speech' without getting into contents and significance.

In fact, the Constitution is the completion of independence and its culmination as such. Mere independence has no meaning unless it imposes restrictions upon itself. All countries are independent, by and large, but its people are not free. Independence is 'from' the shackles of the other; freedom is 'of' many things. Mere independence from the British rule was not enough. More was desired. It was the freedom 'of' and 'for' a better life and a progressive society.

The burden of the argument is that contents, except those dealing with procedural aspect, have ethical overtones that are scattered in the preamble, the fundamental rights, directive principles of state policy, fundamental duties, and the oath of office. The intention behind the expressions is to be sought for. My quest is to discover what is hidden in '*what-goes-without-saying*,'<sup>2</sup> exploring the significance of the text in terms of ethics. Constitution is a collection of Articles in a prosaic form, what all texts normally are. But it is for us to discern its usage through a creative process by endowing the Constitution with significance, from '*Constitution-in-form*' to '*Constitution-in-action*'. The Constitution is a signifier (a vehicle, an object), but what is signified is important. The 'latent' meaning' or the 'second-order meaning is to be understood, as suggested by Barthes (135).

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2. Barthes, Roland; *Mythologies*; Vintage; London; 1993; p. 11

### 1. Preamble: Mission/Vision

Constitution is an exercise in actualizing a dream that is wholesome, unambiguous, and contains all that is expected of a progressive society. The preamble is part of the Constitution and finds resonance in decisions of the apex court and all else is an elaboration of the vision contained therein. It is not merely a collection of good words, but has an authenticity of a desire to achieve goals that are set therein. All expressions in the preamble are ethically loaded. These are foundations of a good society where justice prevails, people are equal and not placed in a hierarchical social order, and where there is freedom, and people live in brotherhood, where the dignity of the individual is assured, and they are free from invasion and anarchy thus maintaining the unity and integrity of the country. Though the expression 'fraternity' is not defined, yet it is expressed in negation of religious intolerance, against social injustice, and a derision of political oppression on the basis of discrimination of any form. The preamble is now part of the 'basic structure' of the Constitution<sup>3</sup> and cannot be amended. It is a document with a social construct, ethical dimension, and political reality.

The noble intentions in the preamble are verified and articulated by crystallization of all these ideas of freedom, equality, and fraternity in Chapter III on fundamental rights. In other words, the expressions are not exhortations in thin air. These are to be achieved. The means are spelled out in rights that are an elaboration of the preamble. All expressions have an ethical connotation.

### 2. Justice: Supremacy of law

Justice is prime need of an individual. In a civilized society, it is not permitted to be governed by the self through a system designed for personal ends. Any pursuit of justice without rules of game shall usher in a state of anarchy and injustice. It is an ethical value. If it is elusive, it creates restless in society. Its achievement appeases the troubled mind, a sort of a compensation for the loss suffered. The state stands behind the back of the dispossessed or the harmed. It is, therefore, an ideal to be achieved, an ethical norm that can keep the society in balance. Being the duty of the state, its acquisition is the goal of a good society. It is an ethical value that has to be pursued, both as a norm and as a right.

Justice is the primordial need since times immemorial as people sought divine justice till rules of the game were evolved and framed. Retribution

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3. *Keshwananda Bharti v. State of Kerala*, AIR 1973 SC 1461; *Indira Gandhi v. Raj narain*, AIR 1975 SC 2299; *Minerva Mills v. Union of India*, AIR 1980 SC 1789.

either by divine intervention or by directly settling scores in terms of revenge was sought. The rationale of law has been to resolve problems by decent means and consenting to a code of conduct that provides for permissions/prohibitions. That which is not permitted is prohibited and any act or omission thereof is punishable under law.

Injustice disturbs the spectators. That is why there is often a cry for justice. 'We want justice' is sought as a carnival. Justice is an act of healing that induces forgetting. Injustice accentuates the memory. It is a suffering that seeks redemption.

Law brings order out of chaos. Constitution is a supreme law as all laws flow out of it. It is a touchstone to determine the purity of law, to see whether law conforms to the basic principles and objectives. It is a measure to test the correctness of an idea, initiative or an activity of governance. It is thus an ethical loadstar to guide direction of action. That is how the Criminal Tribes Act that assumed criminality by birth lapsed after it could not meet the test of Articles 13, 14, 21, and 19. Labeling by birth is no longer permitted. Therefore, only those laws were acceptable that were in tune with the mission statement and the fundamental rights. All laws must conform to the constitutional intent.

The Constitution has captured the mandate of justice through simple expressions and principles.

- (a) All laws must accept the discipline of fundamental rights. Any law that violates any stipulation of rights is considered void. The Constitution is the supreme law. In the context of the US Constitution, Laurence H. Tribe mentions, "It is *fundamental* in the sense that it trumps all other sources of legal power and obligation and establishes the foundation on which those other sources must build. It is *ours* in the sense that, although we played no role in its original enactment, and though we may hold no office bearing an official responsibility for resolving disputes over constitutional construction, "We the People" have an open, standing invitation to become involved in debating and settling its interpretation. Hence, we all have a permanent stake in what it means"<sup>4</sup> (Italics in original)
- (b) Everyone is equal before law. The oft-quoted dictum 'Howsoever high one may be, the law is above him' confirms this. Equality

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4. Tribe Laurence H.; *America's Constitutional Narrative*; Daedalus, The Journal of the American Academy of Arts; 141 (1) Winter 2012; page 21

before law is the ethical pillar that does not discriminate between categories of people on any basis whatsoever and neutralizes extraneous pressures which people in power are capable of exerting.

- (c) Everyone must have an equal protection of law. That law shall not be partial in favor of one with resources, connections, or power asserts another fundamental of equal entitlement to protection provided by forces of order, i.e., the criminal justice system.
- (d) In the context of Article 13, the Constitution is the supreme law, the pivot of all activity, a touchstone to decide all impurities, and a measure to test correctness of an idea or initiative to activity of governance. It is thus an ethical loadstar to guide action.
- (e) Laws can be legislated to do away with inequalities and inequities that were generated by the social order because of its hierarchical, paternal, and feudal character. Article 15 (3).

Therefore, the Constitution is an instrument that has served to deal with issue of inequalities. It safeguards the interests of the weak, the dispossessed, and the vulnerable.

The Constitution has also created a Supreme Court that protects the rights of people. The ethical dimension of the Constitution thus lies in its structure to bring about justice. Justice is not only a value to be secured but something to be achieved practically. Law and justice are basic values. So is the expression 'law and order' meaning that order has to be secured by legal means and not in an arbitrary manner.

The principle of 'due process' ensures that justice is not whimsical, arbitrary, dependent upon emotional appeal or exhortation, but goes through a sieve of checks for the sake of purification. It is justice not on the basis of likes and dislikes, but in accordance with of rules of evidence that are reasonable and scientific. Hence the expression 'procedure established by law' has been construed to mean law and procedures that are 'just, fair, and reasonable' is honored.<sup>5</sup> This had neutralized the infamous decision in *ADM Jabalpur v. Shivkant Shukla*.<sup>6</sup>

### **3. Equality: Against discrimination**

The history is replete with instances of slavery and discrimination based upon color, language, religion, prejudice, sex, class, caste, belonging

5. *Maneka Gandhi v Bihar*; AIR 1978 SC 597.

6. AIR 1976 SC 1768.

to a region, etc. There have been two classes of the high and the low, the rich and the poor, the accepted and non-accepted. The Constitution has sought to do away with all types of discriminations that resulted in denials. For instance, some people could not draw water from a well, or go to places of worship, or pray to gods, or pass through a street reserved for the upper class people, or celebrate marriage as others, sit on the horse, etc. They were confined to certain professions that were derogatory, unhygienic, and inhuman.

The struggle for equality had been waged by many since times immemorial. There were moral exhortations of holy men, saints, and reformers. These voices were not heard in the cacophony of powers of the time. There was little impact of the teaching except that these were guides for good conduct. However, the Constitution, seeking inspiration from this tradition, has with one positive stroke done away with all avenues of discrimination and inequities. What the religions had preached for long and social reformers tried to influence people untiringly was achieved by a mandate that seeks equality by prohibiting discriminations on grounds of religion, race, caste, sex, or place of birth (Art 15). Equal opportunities are mandated (Art 16) as well as malignant practice of untouchability that had created a hierarchy of the sacred and the profane among human beings was abolished (Art 17). Caste hierarchies prevent mutual understanding, create animosities, and obstruct merger of communities on social level. This is not be any longer. The communities reeling under the pressure of social ostracism for no fault of theirs were given a status of equality. It is a challenge to the texts that had sanctified caste system that marginalized some communities and threw them out of social reckoning.

The removal of discrimination is a unifying principle of social relationship by demolishing the walls and silos of separateness. The principle of unity in diversity implies a common denominator of humanity that accepts external manifestations of difference. These measures are significant as people on the periphery are brought within the pale of acceptance, to the centre stage, an important step from exclusion to inclusion, a restoration of dignity that had been snatched away due to no fault of theirs. Thus breaking barriers of artificial discrimination is flight from superstition to enlightenment.

#### **4. Ethical statement of intent**

The intention of the Constitution is clear from the preamble that is not simply an expression in words but is further clarified in the fundamental rights for all. But there are other things, besides the rights, that ought to be

aimed at. Directive Principles of State Policy is a compendium of goals that guide action of all components of governance. It is a checklist of guidance and contains some of the desirable concerns that the governance must be interested in. These are aspects of a commitment to achieve a socialist pattern for a welfare state in the interest of the common good. All aspects of emphasis in Art 38 (2) like minimization of inequalities in income, elimination of inequalities in status, facilities, and opportunities are ethical constructs.

Part IV of the Constitution thus deals with well-being of people and indicates ends and means to achieve the desirables. Provision of legal aid ‘to ensure that opportunity for securing justice are not denied to any citizen by reason of economic or other disabilities’ (Art 39A), provision for just and human conditions of work and maternity relief (Art 42), securing living wage for workers (Art 43), raising the level of nutrition and striving for improvement in public health (Art 47), etc., are loaded with ethical intentions.

There is an element of human kindness and abhorrence for prohibiting traffic in human beings and forced labor (Art 23). It has the flavor of compassion. There is conscious acceptance of the fact that children should not be employed for work in a factory, mine, or hazardous employment (Art 24), the moot idea being to protect them from exploitation and enable them to enjoy the benefits of free education (Art 21A) and a normal childhood.

### **5. Taming power**

It is common knowledge that power has often been misused. There are a few attributes of power. It accumulates if not questioned; it is tyrannical if not contained; it corrupts; and it becomes oppressive. If there are no checks and balances, the end product is miserable. This was evident in pre-Second World War situation when it was blatantly used by Hitler by veiling it within the cover of democracy as all his laws that created mayhem were legislated. The nations of the world were conscious of the misuse of power that was designed to be controlled by the Universal Declaration of Human Rights, 1948.

With a view to reining in power, the Constitution has not only laid a principle of separation of power (Art 50), but has endeavored to achieve this objective by ensuring independence of the judiciary. Besides, the document has restrained police from being overbearing in its relations with people, especially those under detention. It prohibits confession by force,



in other words, the use of third degree methods to extract confession. Art 20 (3) states: 'No person accused of any offence shall be compelled to be witness against himself'. Though this stipulation is contained in the common law, i.e., the **Indian Penal Code, the Cr. PC, and the Indian Evidence Act**, yet its inclusion in the Constitution as a fundamental right is significant as it is justifiable, unlike other directions in the law that are often not resorted to for fear of being trampled over by the police. Secondly, there are strict directions to be followed when a person is arrested so that the hardship can be avoided and person gets the legal assistance that he deserves (Art. 22). Thirdly, the general rule that 'No person shall be deprived of his life or liberty except according to procedure established by law' (Art. 21) is the knight of the human rights and confirms the rule of law. The Constitution is, therefore, a shield for defense against tyranny of the state, authority of its executives, even the courts, as the system of appeal exists. There is also a limit on the power of parliament to amend the constitution (**Art. 348**) so that, like Hitler, all cannot be sanctified as a mandate of people, with leaders having ambitions of power. The basic structure of the Constitution is immutable.<sup>7</sup> The dispersal of power has also been sought by the Constitution. In tune with Art 40, delegation of power is sought in democratic institutions of panchayats and municipalities. (Part IX & IX-A and Eleventh & Twelfth Schedules)

### **6. Unity in diversity**

Though the state is not religious, yet it has provided space for various religions to co-exist, unlike theocracies that have a hierarchy of various denominations. The state has distanced itself from religion but ensures respect and equality for all, even assuring protection to the minorities. It thus ensures the flourishing of all faiths. Similarly, there is freedom for use of languages in official work. Many languages are given the status of acceptance (Eighth Schedule). Besides, one of the fundamental rights is that any section of citizens residing in any part of the country 'having a distinct language, script or culture of its own shall have the right to conserve the same' (Art 29). There is no tension between the state, religions, and people as religion is left untouched by the state. On the other hand, it is protected by the state through law. The Constitution is thus a major site for the accommodation of diverse religions. It ensures the blooming of various denominations as well as minorities of any shade. The State accords respect to all, being equally distant from them. This ensures diversity, dignity, and mutual consideration.

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7. *Keshwananda Bharti v. State of Kerala*; AIR 1973 SC 1461).

The bond that unites all is the unity and integrity of the country, one of the mission statements in the preamble to the Constitution. In a country with a multiplicity of religions and attachments of conscience to a pantheon of beliefs, it is necessary to have a unifying force. This can be found only in the Constitution. It is the binding force that has tried to weave the nation into one by doing away with conflict. Pluralism is about how to live with differences and not to smoothen these out for the sake of standardization.

### 7. Emphasis on duties

Citizens with rights have duties too. It is not enough to be content with rights only and feel safe in a cocoon. A citizen lives in a real society. Social order is an imperative for a good society. Hence the citizen's involvement in it has to be practical. Citizens cannot claim remoteness from obligations. It is in this context that the fundamental duties are important. These enable the state to capture the opportunity of propagating healthy attitudes of obedience to law, respect for human beings and gender, etc. Considering that rights alone are not enough, citizens too have a role to play. 'Rights and responsibilities are to be treated as two sides of the same coin.'<sup>8</sup> One without the other is incomplete. 'Every being is an integral part of the cosmic whole... There are other moral obligations which one has by virtue of the personal/social roles that one enters into throughout one's life.'<sup>9</sup> They must reciprocate the conferment of rights so that there is a balance between the two. Art 51A is a compendium of values expected of an individual. These are unexceptional. It informs of the need to regulate behavior by exhorting the person to respect the national ethos, heritage, noble ideals that inspired the freedom struggle, promotion of harmony, care for environment, etc.

An important duty is 'to develop scientific temper, humanism and sprit of enquiry and reform'. If taken seriously, its performance shall spare all of the sectarian and abdominal obscurantist notions of the sacred and the profane. This can lead the nation to greater heights if these values are consciously inculcated among the students at an early stage.

The third aspect of the duties is 'to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement'. If this aspect of the duty had been taken a serious note of by all, the delivery of services by

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8. Shashi Motilal; Quoted in Introduction from *A Universal Declaration of Human Responsibilities; Applied Ethics and Human Rights*; Anthem Press India; Delhi; 2011; page xxiii

9. Ibid. xxxix

public functionaries shall improve, the infrastructure would have improved a great deal by avoiding delays and taking care of the quality of construction and other works. This would lead to merit, virtue, and honest performance of one's tasks, in whatever field one is engaged. The Allahabad High Court has invoked this Article in a case when it experienced 'open mouthed astonishment' at the behavior of executive in hastening the acquisition of land on flimsy ground of 'urgency' under the Land Acquisition Act despite the Court granting relief to the petitioner by saying "The present Article 51A is in a positive form with a view to strive towards excellence. The least duties enjoin people not to conduct themselves in a blame-worthy manner. Excellence means surpassing merit, virtue, honest performance, dignity, and eminence. It is for the judge to ascertain the existence of a duty and its performance. Constitutional law givers have provided that citizens of this great country shall perform their duties in an excellent way that performing it half-heartedly. Now the performance of duty comes within the sphere of constitutional law which a court has to decide."<sup>10</sup> The noble intentions in the preamble are verified and articulated by crystallization of all these ideas of freedom, equality, and fraternity in Chapter III on fundamental rights. In other words, the expressions are not exhortations in thin air. These are to be achieved. The means are spelled out in rights that are an elaboration of the preamble. All expressions have an ethical connotation.

However, the tragedy is that none of these stipulations, guidance, directions, or obligations is ever stressed upon at any level, more so at the level of adult consciousness. May be these are repeated as a part of the curriculum, but never taken seriously. These are shared values that can enrich the life of all. In fact here is a direct correlation between these values and the quality of life, harmony in the nation, and good governance. These are commitments for a common destiny.

The duties relate to legacy formation and an investment in future generations. The fundamental duties are, therefore, a domain of applied ethics, expressed in a minimalist manner. "We must move away from the freedom of indifference to the *freedom of involvement*"<sup>11</sup> (Italics for emphasis). The duties are like a dharma for a balanced and a ethical life. These are logical and are couched in a universal language. 'Failing to do right thing in a given situation is on par with willfully doing the wrong thing. Therefore, complicity amounts to responsibility.'<sup>12</sup>

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10. *Ram Prashad vs. State of Uttar Pradesh*; AIR 1988

11. Note 7, xxii

12. *Ibid.*, xxiii

### Religion as metaphor: Secular religion

Constitution is what binds the nation. Robert Bellah said, 'The separation of the church and state has not denied the political realm a religious dimension.'<sup>13</sup> 'There are certain elements of religious orientation that the great majority of Americans share... The public religion dimension is expressed through a set of beliefs, symbols, and rituals that I am calling the American civil religion' (p.4)... 'with respect to sacred things institutionalized in a collectivity' (p.8). There is no formal creed, but 'this serves to mobilize support for that attainment of national goals'.

It is in this context that that Constitution of India can be treated as a secular religion. Like all religions, it has a text that I consider as sacred. It is a scripture of the secular religion. There are authors who have contributed to it, Dr. Ambedkar being the most prominent one whose birthday is celebrated with dignity, metaphorically in the precincts of the parliament. The Republic Day is a ritual celebration of the expression where 'We the People' predominate. It is a congregation of people who feel blessed by the document. It is different from the Independence Day that was the culmination of a goal achieved. As Bellah confirms, 'There is no formal creed with civil religion.'<sup>14</sup> Similarly, there are solemn rituals and symbols. The sacred events are conducted when the event is celebrated with pomp of a parade, illuminations, and concludes with a retreat as the next day is the martyrs' day when Mahatma Gandhi was assassinated. . The unity and integrity of the nation evokes the image of sacrifice that is manifest in the Gandhi Samadhi, India Gate, the Martyrs' Day, and the anti-terrorism day.

There is no tension between the state and religion on the one hand and people of different religions on the other, because the religion is left untouched. 'Civil religion serves to mobilize support for the attainment of national goals.'<sup>15</sup> There is no place for bigotry of the rulers and the arbitrary use of power. The god of civil religion is a god of law, order, freedom, justice, fraternity, dignity, etc. All religions provide a vision, a way to live a good life; so does the Constitution. Subsumed in the preamble, fundamental rights, directive principles of state policy, and the fundamental duties are values and virtues that address problems of individuals and concerns with social order. The Constitution has thus a deeper coherence and contextual imbrications. Ethics of the Constitution must, therefore, inspire, guide policy, discipline society, and create aspirations. Constitution has been a source of

13. Robert N. Bellah; *Civil Religion in America*; Daedalus, Winter 1967; Journal of the American Academy of Arts and Sciences; Boston, USA, p. 3

14. Ibid; p.15

15. Ibid; p. 13

laws that have empowered people, brought them relief, and provided them dignity.

In a country where moral education is not imparted as a caution for not disturbing the secular creed and implied distance from religion, ethics must fill up the gap. In fact, all children must adhere to some common norms. These are respect and dignity, uniformity in behavior, spirit of accommodation, etc. Secularism does not mean absence of moral inputs and a framework for ethical education. It does not mean negation of religion or a distance thereof, a cessation of a sensation of religion that every Indian has at the core of mind during happiness and despair. Gandhi had mentioned that 'Those who say that religion has nothing to do with education do not know what religion means'. Distancing from religion has provoked a certain hatred for the 'other', stereotyping of unreasonable prejudices, and hardening of stands. It is ignorance of the genesis of religion that has fueled the fires of communalism, created narrow-mindedness that believes that one's religion is the best, whereas all are on equal footing. So rather than enlarging the canvas, secularism has narrowed the boundaries of thinking. However, the Supreme Court finds no fault in training the children in spiritual values.<sup>16</sup>

And there is baptism in the form of an oath that reminds the legislators, the Constitutional authorities, and the executive of commitment to a holy cause, to remain faithful and sincere in following the mandates of the Constitution. Oath is not only a ritual. It is sacrosanct. It establishes the covenant between the taker and the people. It is thus imperative that oath is not taken for granted without understanding, appreciating, and following the contents. (See Third Schedule) The words used in the oath like 'faithfully', 'conscientiously discharge my duties' and 'I will do right to all manner of people in accordance with the Constitution and the law, without any fear or favor, affection or ill will' have an ethical flavor. This precludes the exercise of patronage, favoritism, nepotism, and partiality. All these are ethical commandments. Similarly, the oath of secrecy deals with the conflict of interest issues so that the inside information is not exploited by the unscrupulous members.

An effort has been made to discover the meaning of the document, the reason being that there is no anchor that binds the nation. The Constitution has an ethical matrix. Though on the surface the Constitution appears to a legalistic document, yet when scrapped one gets the ethical dimension prominently, layer under layer. One has to go beyond the boundaries of the sentences and their mundane meanings to explore the romance of ethics.

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16. *Aruna Roy v Union of India*; 2002 AIR 3176

‘Sentence is only a small cog in a normally much larger machine.’<sup>17</sup> Therefore, the sentences in the articles have to be taken in the context of whole, conceived and interpreted as such. This is an exercise of making explicit the implicit, the latter being more important but only discovered with the help of the former. It does not mean that the expressions are opaque. These are clear on the face of it. But a deeper meaning is hidden underneath that ought to be explored for better results. The sentences are stipulations carved on a rock, but their meaning would depend upon the one who reads and internalizes.

### **Conclusion**

Discourse on the Constitution has to be intensified so that all citizens, especially the police and the executive, including the judiciary take it seriously. Similarly, a conscious effort has to be made to bring about uniformity among all citizens who must adhere to its stipulations, directions, mandate, and present a uniformity of behavior to the extent possible. At the moment there are divergences in behavior that require to be rectified. If the values of the Constitution are imbibed, civil sense shall prevail automatically, conflicts shall be reduced, and progress happen. The Constitution is a basic code of conduct, especially contained in the fundamental duties. It is a covenant to be observed by all. It is basic code of conduct, especially in the fundamental duties.

The preamble is to be internalized, not as an abstraction, but as a seed that germinates rights, procedures, duties, and emerges as an astrolabe, standard, and measure of all administrative actions. The executive has to deliver on the promise of the preamble. Therefore, governance is imbued with the values of the sacred. If India is to be reckoned as a modern state, it is not enough to go by the ‘mistaken modernity’ (term used by Dipankar Gupta in his book by the same title; Harper Collins, New Delhi, 2000) that hinges on the commodity acquisition or conspicuous consumption by aping the affluent. It has to adhere to a commitment to universal norms and values that apply to all. It is here that the narrative of the Constitution can help forge a real modernity for which India must strive.

The noises of the Constitution are as conspicuous as its silences. The Constitution is loud and loquacious when it directs the abolition of untouchability and titles, and various prohibitions. It is equally silent to the core when it hides within its womb the unity of individuals. For instance, ‘fraternity’ is not defined anywhere. One can call it out of concerns in the preamble, rights, duties, and directive principles of state policy. If all are

17. Hoey, Michael; quoted by Mills Sara; *Discourse*; Routledge, London; 1997; p. 135

my kin, I must work hard and struggle for them. These are then ‘our struggles’. Our achievements are due to the Constitution. The inadequacies can be attributed to inefficiency of implementation and not genuine concerns of the Constitution.

Constitution is thus the most powerful discourse to shape the destiny of India. Its meaning is ‘embedded in the text already, waiting to be discovered.’<sup>18</sup> Interpretation of the Constitution is a creative activity that ascribes values to postulates. The Constitution as a discourse ‘is a set of sanctioned statements which have some institutionalized force, which means that they have a profound influence on the way that individuals act and think...Discourses are those groupings of statements which have similar force – that is they are grouped together because of some institutional pressure, because of a similarity of provenance or context, or because they act in similar way.’<sup>19</sup>

The Constitution not only ‘says’ but also ‘does’. It is the harbinger of change. The court as a craftsman chisels its interpretation harmoniously in a positive manner thus conferring rights upon people that would have been ignored. It must become part of the general discourse and vocabulary as it addresses us all the time. It is relevant to the executive, the legislature, and the judiciary who must get inspired by its mandates. Politics shall become more ethical if doctrines in the Constitution are adhered to. It would demean the Constitution if inequalities are permitted to continue.

The Constitution has conferred meaning to the polity and ethics of the country. “The Constitution organizes our most important conversations and furnishes the primary language and framework in terms of which we debate our nation’s history”, say Tribe in the context of the US Constitution.<sup>20</sup> He continues to say, “The Constitution provides the primary thread of continuity that integrates us as a people engaged in this trans-historical project and offers a framework within which we converse our commitments to the principle by which we feel bound—principles which themselves evolve with our changing selves.”<sup>21</sup> Similarly, “The power of the Constitution’s language—both its pure text and the constitutional vocabularies loosely grounded in the text—extends further than facilitating the organization and success of political causes. It shapes our national identity, our national conversation, and even our self-understanding.”<sup>22</sup> This is equally true of the Indian Constitution.

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18. Mills Sara; *Discourse*; Routledge, London; 1997; p. 68

19. Mills Sara; *ibid*; p. 62

20. Tribe, cited at 3a above; page 22

21. *Ibid.*, p. 24

22. *Ibid.*, p. 31.

# 4

## CYBER CRIME A STRATEGY FOR BATTLING THE MENACE

*Varun Kapoor, IPS\**

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The human race has undergone a number of changes and developments over the ages. These changes have all aided in the progress of the race as a whole into a more cohesive, collective & progressive unit of existence. The **Agricultural Revolution** which started 12,000 years ago, ushered in the first big leap in human development (not evolution). It leads to settled communities coming into being and the concept of village and community living, with all its advantages, coming into practice.

The next big leap came with the construction of the power looms and the setting up of large units of production in Manchester, England. This was the era of the **Industrial Revolution**. It started around 250 years ago. The concept of cities and urbanization came into vogue. Yes, there were some disadvantages in the springing up of urban conglomerates, but these were far outweighed by the numerous advantages that this brought in its wake.

Something momentous again happened around 50 years ago; this once again has enabled mankind to take a giant leap forward on the development index. This was the invention of the integrated circuit or the computer chip. These chips have revolutionized our lives, running our appliances, providing calculators, computers and other electronic devices to control our world. The era of the **Information Revolution** is here and we are living in it. Noted scientist Castellás (2000) has proposed an analysis “that highlights a networking logic as a distinctive characteristic of information societies”, the ones in which we exist today.

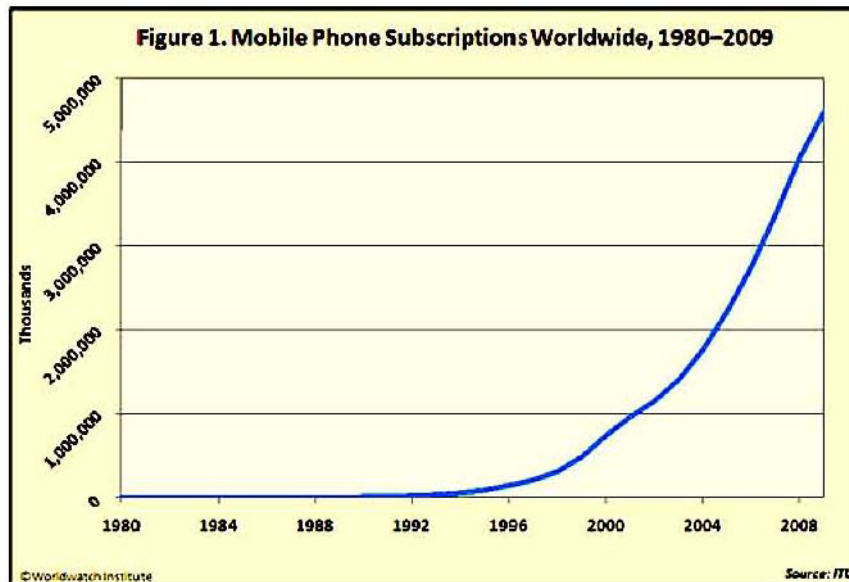
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\* IGP & Director PRTS & PITI, Indore (MP)



Today we are living in “Exponential Times”. The main factors that have contributed to this are as under:

1. **Cell Phone Revolution:** Cellular technology and its continuous up-gradation has ensured that the use of mobile communication devices has multiplied exponentially. Today there are 6.8 billion cell phone subscribers the world over. Out of this nearly 1 billion (905 million) are in India! Only China with 1.2 billion subscribers is ahead of India in usage.



This graphical representation clearly indicates how cell phone use has “taken off” since the mid-nineties. This has ensured that communication is possible today at lightning speed. What, Where, When, How of any situation is available with huge sections of the population within the “blink of an eyelid”. The community is now not only better informed but sometimes even “over-informed”. This is the information age society.

2. **Electronic Gadgetry:** This information explosion has been supported by a host of state-of-the-art gadgetry. These are also continuously being upgraded. Shelf life today of modern gadgets and gizmos is around 3 months. After that time the technology they use gets outdated and something better and newer is available. Off course this is driven by market compulsions of the

manufacturing agencies, but the fact remains that modern gadgets have changed the entire mindset of the population. Be it desk top computers; Lap top Computers; Palm Top devices; iPads; iPhones; iPods; Androids; Smart Phones; CCTV Cameras; Web cameras; Blue Tooth Devices; Spy Cams – the list of devices is endless and ever growing. The availability of these devices and there stepped up use have greatly contributed to the progression of this information revolution era.

- 3. Connectivity:** The next great contributor to this explosive growth of information and communication is the surge in the quantum and quality of connectivity available. The development of the fiber optic cable has greatly enhanced the quantum of data that can be pushed down a single strand of optical beam as well as the speed at which it can be transmitted. This capability was first demonstrated by Robert Maurer, Donald Keck and Peter Schultz in 1970.



Today more than 80% of the world's long distance communication traffic is carried over optical fiber cables, 25 million kilometers of the cable first demonstrated by Maurer, Keck & Schultz has been installed worldwide.

The speed of this connectivity and the quantum of data bearing capacity is also being continuously increased. The mobile communication connectivity has also rapidly

developed; 1G Technology – launched in Chicago in the year 1978 – was capable of transmitting voice data at high speed. This was soon followed by the 2G Technology. This was formally launched once again in Chicago in the year 1991. This technology ensured the transmission of text data along with voice transmission at high speed over long distances. In fact, the first SMS message was formally sent in the year 1992 at London, UK. It was in Japan in the year 2001 that the 3G Technology was unveiled. This technology entailed the transmission of the internet along with text and voice communication over long distances. Finally the 4G Technology was introduced in Scandinavia in the year 2009, which vastly enhanced the speed of connectivity. The “buffering time” (or downloading speed) is almost reduced to zero and live images can be obtained without any lag over mobile communication devices. Today a two hour feature film can be downloaded in 8 seconds using 4G Technology.

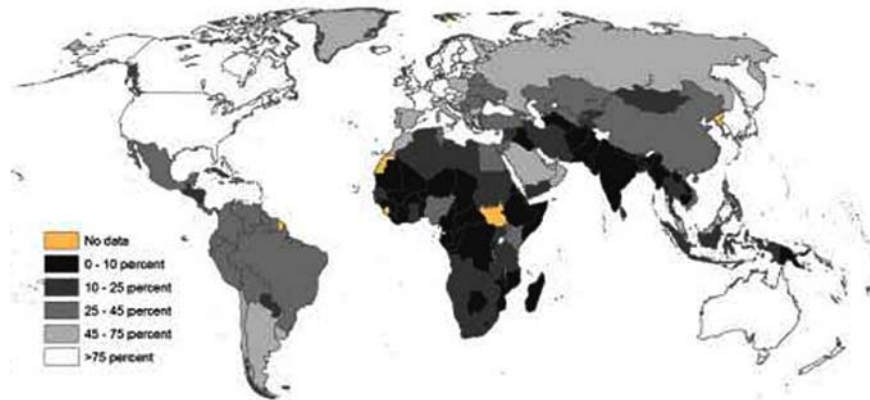
The Direct To Home (DTH) television connectivity has revolutionized the entire concept of information dissemination to the society at large. Even remote and rural areas are fitted with numerous DTH dishes. Live and happening information is available to the public irrespective of age, gender, caste, community & creed. This has changed the entire mind set of the people.

4. **Internet:** The internet today is the largest factor in the spread and growth of the information revolution to the remotest corners of the globe. The percentage users globally are given below<sup>1</sup>:

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1. Source: World Telecommunication ICT Indicators 2012.

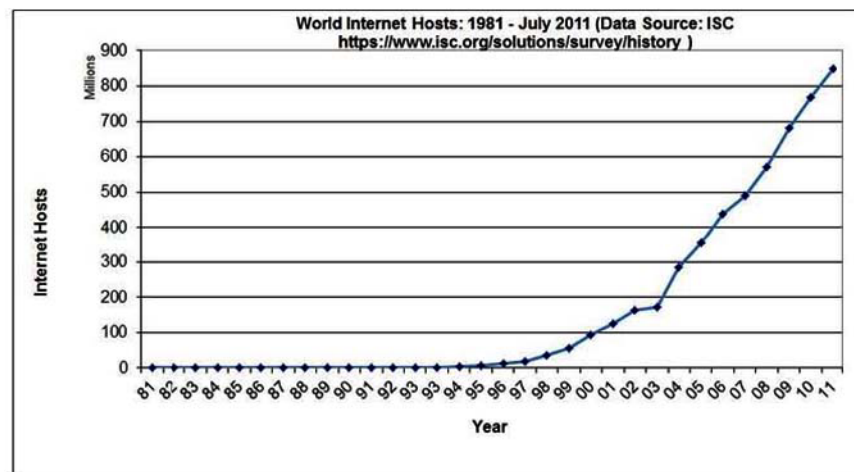
Figure 1.1: Percentage of internet users (2011)



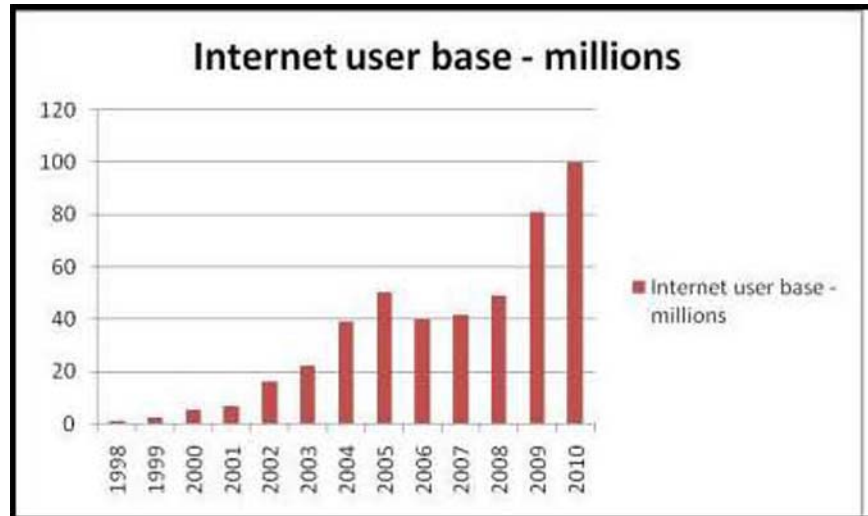
The internet is being primarily used for:

- Surfing
- Downloading
- Commercial Activities
- Social Networking

Global usage of the internet is growing explosively as the graphical representation given below clearly brings out:



In India the use of the internet is multiplying at an extremely rapid rate. This is borne out by the following graphical representation:



The internet has become such a huge medium of information dissemination that every aspect of human existence is being touched in major ways by this phenomenon. This fact can be readily cross checked by applying the “1 Minute Test”. In 60 seconds on the internet globally:

- 2.6 Million CD's or 1820 TB of data created.
- 1400 Discs are rented online (online movie rental service).
- 950+ purchases on e-Bay.
- \$219,000 payment on Pay Pal.
- 11 Million conversations on Instant Messengers.
- \$75,000 added to Google Revenues.
- 2,500 ink cartridges sold.
- 4,000 USB devices sold.
- 38 tons e-waste generated.
- 232 Computers infected with Malware.
- 12 websites got hacked – 416 attempts.
- 11,000+ hour's music streaming on Pandora.
- 12,000+ new ads posted on Craigslist.

- 370,000+ minutes calls on Skype.
- 98,000+ Tweets – 320+ New accounts.
- 100+ New LinkedIn Accounts.
- 695,000+ Face book Status Updates.
- 168 Million E-mails sent.
- 11,000+ iPhone applications download.
- 70+ Domains registered.
- 600+ New video uploaded on You Tube.<sup>2</sup>

These figures are indeed mind boggling. All these activities going on in cyber space courtesy the internet and that too in 60 seconds, defies all reasonable logic. It goes to amply & definitively prove that the internet has been the real engine that has driven the information revolution to the present day dizzying heights.

It is time now to analyze the effects that the information revolution has brought about on the society in general. There are manifold effects of this revolution but a few stand out like beacons and need to be explored in detail:

1. Global village concept has taken shape. This concept was first introduced by Marshall McLuhan of the Boston Consulting Group. Rapid advances in communication technology have ensured that distances today are no barriers to speedy and effective communication and contact. We feel as if we are living in a large “Global village”.
2. Greater than ever opportunities have emerged. Today there are opportunities in numerous fields be it IT, telecommunication, travel, tourism, financial markets, commercial activities, service industry etc. These are all fuelled and driven by the incessant march of the information revolution.
3. There has been a virtual information explosion. People are extremely well informed today and it is well nigh impossible to hide any facts or situations from public scrutiny. This new dimension has changed the entire thought process of the human race and molded it in the direction of “perfection at all cost” & “individualistic existence”. Today vast majority of the populace (especially the youth & urban dwellers), physically live in large

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2. All figures provided by Go-Globe.com

communities but exist individually. It appears that the circle of existence has come a full round as a result of this information revolution. The agricultural revolution broke down the individual existence and promoted community living whereas the information revolution is pushing the human race to move from community living back, into the folds of individual existence in the physical form, all over again.

4. Human networking in the virtual space is taking place as never before. Youth today may have only a couple of friends in the real world but they all will have a couple of hundred in the virtual world! This human networking is to an extent de-humanizing the race but at the same time is promoting the spread of information at lightning speed amongst large swathes of population in an instant. This is resulting in better cooperation & collaboration on issues of importance to the society.
5. The specter of the rapidly growing and uncontrolled cyber crime is an ever present threat. This has fast become a multi-dimensional & multi-national problem and it needs quick address so that it does not damage the entire fabric of the economy and the society.

#### **Definition of Cyber Crime:**

Cyber Crime as defined by the Information Technology Act, 2000 is:

- “Any crime committed using a computer.”<sup>3</sup>

The definition was modified and expanded under the IT (Amendment) Act, 2008. It now defines Cyber Crime as:

- “Any crime committed using an electronic devise.”<sup>4</sup>

A better and more comprehensive definition is as follows:

- “Any crime committed using the functionality of an electronic device.”

#### **Types of Cyber Crime:**

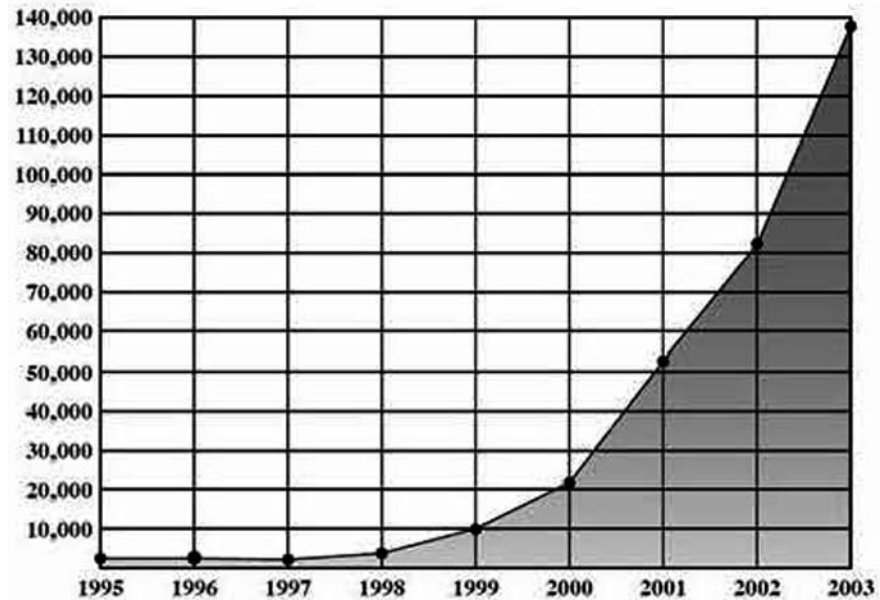
Cyber Crimes are of numerous types. In addition new types of cyber crime keep being added all the time and the modus operandi of existing crime keeps changing rather rapidly too. However, cyber crimes can be classified into two broad categories:<sup>5</sup>

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3. Information Technology Act, 2000.
  4. Information Technology (Amendment) Act, 2008.
  5. DSCI: Cyber Crime Investigation Manual.

SNo	Crimes targeting Computers	Crimes using computers as Tools
1	Hacking	Financial Frauds
2	Denial of Service/Distributive Denial of Service Attack	Data Modification
3	Spreading Virus & Malware	Identity Theft
4	Website Defacement	Cyber Bullying
5	Cyber Terrorism	Cyber Stalking
6	Spoofing	Data Theft
7	Skimming	Pornography
8	Pharming	Theft of trade secrets
9	Phishing	Intellectual property thefts
10	Vishing	Espionage on protected systems
11	Spamming	

#### Growth of Cyber Crime:

As stated before cyber crime is growing at an alarming rate the world over. A graphical representation of this exponential growth is given below.<sup>6</sup>

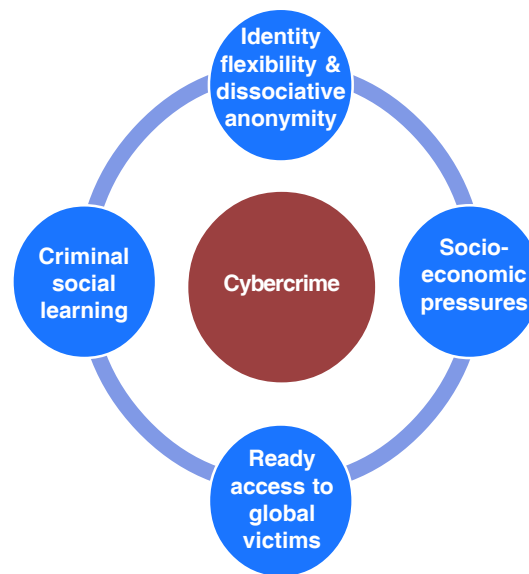


6. Figures supplied by Ohio Supercomputer Center.



The above graph clearly demonstrates that worldwide cyber crime reports grew by almost a whopping **7000%** over a period of **9 years!** This is an absolutely phenomenal increase and no other world crime is growing at this rate. Another definitive fact is that this pace of growth must have accelerated even more with the passage of time. It is really hard to imagine the volume of this crime today and the sheer magnitude of incidents occurring all over the globe. No wonder the world over, law enforcement agencies are overwhelmed by this crime and are struggling to let alone curb or control this crime but to hold its own against this hydra headed monster of a crime.

Globally cyber crime is showing strong trends of increasing at an alarming rate. One theory of the reason for this rapid increase is represented graphically below:



This brings out a fact very strongly; that due to identity flexibility & dissociative anonymity in the cyber world, citizens tend to behave in such manner and take such actions that they normally would not do in the physical world.<sup>7</sup>

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7. UNODC Comprehensive Study on Cyber Crime 2013.

India too is facing an accelerated growth rate in terms of occurrences of cyber crime. NCRB figures for the years 2005-2012 can be studied to clearly understand the extent and pace of the growth of cyber crime in India:

S.no	Year	Cyber Crime Cases	Persons Arrested
1	2005	179	192
2	2006	142	154
3	2007	217	154
4	2008	288	178
5	2009	420	288
6	2010	966	799
7	2011	1791	1184
8	2012	2876	1522

The growth of cyber crime between 2005-2008 was a moderate 61%. But in the period 2009-2012 it has increased at an unbelievable rate of nearly **900%!!**

#### **Norton Cyber Crime Report 2012:**

NORTON Anti-virus manufacturing company carried out a comprehensive study of the worldwide cyber crime scenario and brought out their findings in a report in 2012.



This report brought out some very pertinent facts, which are enumerated below:

- **TOTAL GLOBAL BILL FOR CYBER CRIME IS US \$ 388 Billion** or INR 21 Lakh Crores.
- Time Lost Cost is **US\$ 274 Billion**
- Cash Cost (money actually stolen + spent to repair cyber attacks) is **US\$ 114 Billion**.
- Total victims per year are an estimated **431 Million**.
- Daily victims are **+1 Million**.
- This means **14 victims/second**.
- **80%** of adults in emerging economies have been victims as compared to 64% in developed countries. Indicates greater vulnerability for Indian users.
- Second biggest crime in the world after global illicit drug trade,
- Virus and Malware attack is the biggest cyber crime in the world. It constitutes **54%** of all global annual cyber offences.
- In India annual Time Lost cost is **US\$ 3.68 Billion**.
- In India annual cash cost is **US\$ 4 Billion**.

This report further corroborates the fact that cyber crime is today a grave threat to individuals, economies and governments – the world over. Things have to be done and done fast, to keep the citizens, their property and governments safe and secure against this ever increasing and rapidly multiplying threat. With the increasing use of computerized systems and internet in all spheres of human activity, if things continue to move in this direction without effective check then the day is not far when the very existence of humanity will come under threat due to the scourge known as – “CYBER CRIME”.

The situation in developed markets countries with regard to cyber security measures is much better & advanced as compared to emerging market countries like India. In India as more and more citizens take to the use of mobile phones; increase in internet penetration; greater accessing of the internet using mobile devices & phenomenal growth in the reach of social networking the challenges facing the law enforcement agencies in dealing with the problem of exponential growth of cyber crime, are going

to be manifold in the times to come. This picture is absolutely clear and the writing is on the wall for Indian Police agencies regarding control, investigation and prevention of cyber crime – “**adapt and improve or be over-whelmed**”.

#### **Challenges Posed by Cyber Crime to Indian Police:**

The challenges faced by Indian Law Enforcement Agencies in battling cyber crime effectively arise due to the following factors:

1. Due to the huge amounts of illegal profits involved the number of offenders committing cyber crime is already of unmanageable proportions. Furthermore these numbers are forever increasing.
2. There are a large number of unsuspecting citizens, who due to lack of proper understanding of the existing legal provisions are offending by mistake. This number is also very large as is seen by the age group of offenders in the figures for 2012 released by NCRB. Out of a total of 1522 persons arrested under the IT Act provisions, 65 were below 18 years of age and 928 were between 18-30 years of age. Hence number of arrested persons who were students of Schools/Colleges was almost **65%**. It is then quite clear that most of these offenders are offending by mistake and not by design.
3. Again due to the large amount of money that this organized crime is liable to generate, there is a huge window for systemic corruption. This blunts the efforts at regulating and controlling cyber crime in an effective manner by the police agencies.
4. Cyber Crime by nature is a highly technology intensive sphere of functioning. Most of the police officials (experienced and fresh recruits) by nature are not oriented to work effectively or extensively in this kind of technologically advanced field.
5. The technology itself is forever changing and being upgraded. This presents further problems for an already technologically challenged department and its officials. The shelf life for cyber technology today has shrunk to **THREE** months. By the time the police officials are oriented towards a particular technology, it becomes outdated and is replaced by something new and more advanced.

6. Availability of reliable private resources to augment police officers in cyber security work is also fraught with dangers. Thus the idea of recruiting “ethical hackers” to supplant cyber security trained police professionals is a plan that will inevitably raise questions regarding secrecy, impartiality and commitment.
7. All over the country Cyber Cells have been established to tackle this problem. However these Cells are being inundated with a flood of complaints regarding violation of cyber law and are finding it increasingly difficult to cope up keeping in view the fact that they too are severely understaffed and underequipped.
8. Cyber Crime has mistakenly been considered as a specialized area of police operation like Anti-terrorist cell; Anti-naxalite unit or Anti-corruption bureau. On the contrary Cyber Crime is a whole field of policing and it deserves to be treated as such. Just like there is a police force to police the real world there should be an entirely different police force to police the virtual world.

**Prts Model for Battling Cyber Crime:**

Police Radio Training School at Indore has come with a new model using which cyber crime may be more effectively tackled and the challenges posed by it addressed. The theory of recruiting & employing a virtual army of ethical hackers to aid the police is an unreliable and impractical method for battling cyber crime. The PRTS has devised an almost ingenious method of battling this menace. This involves educating large swathes of police personnel in basic and advanced features of cyber security as well as generating awareness in the community (especially younger generation) to remain safe and secure while using cyber space.

This is thus a two pronged strategy. It was conceived and designed by the undersigned (**VARUN KAPOOR, IGPPRTS Indore**) and was formally launched in January 2012. Thus it has been in operation for more than two years and the results have been encouraging.

The first hub of this strategy is the-

**e-Investigator Development Project (e-IDP):**

As stated earlier this project was formally launched in January 2012 with the hosting of the first three day training module on e-Mail Tracing for officers of MP Police. This was based on the idea that field officers should be made tech savvy and provided with skills to combat the emerging threat of cyber crime. District Police officers of the cutting edge level (Sub Inspector – Additional SP) were selected, to be trained under this scheme. This scheme was launched totally with self motivation, self resources and self design. The training programs were designed in a manner that they were “**of short duration but high impact.**”

The idea which had humble beginnings has flowered into a full blown project which has been in operation for the last 2 years. **Forty Five** training programs and 5 seminars have been organized under its aegis. In these technologically loaded courses **1584 officers** have been successfully trained. These officers represent **20** different state police forces; **6** Central Para Military Forces; **Indian Army & MP Forest Department** Officers. Today the PRTS organizes cyber security training in **9** different type of training modules and police investigators from all over the country take part in it. The best cyber security experts from across the country provide training in these high quality courses.

This is the **only effort of its kind** in operation anywhere in the country. True, that various state police and central agencies carry out cyber security training for the police agencies, but these are just stop gap efforts whereas the e-IDT is definitely the longest running, continuous and sustained effort at providing pointed and all embracing cyber security training to police personnel.



Sno	Name of Course	Collaborator	No. of Courses	Officers Trained
1	e-Mail Tracing		8	153
2	GPS Handling		8	182
3	CDR Analysis		12	228
4	3D Modeling		1	21
5	Cyber Crime Scene Mgt	CERT-in	1	27
6	Cyber Crime Capsule		8	346
7	National Cyber Crime Training Program	BPR&D	4	108
8	Forensic Hypnosis		2	53
9	Advanced Cyber Security		1	20
10	Seminar – Bridging the Digital Divide	KPMG	1	274
11	Seminar – Wildlife Conservation	WWF-India	1	46
12	Seminar – e-Gender Sensitization	BPR&D	1	50
13	Seminar – Cyber Forensics	PwC	1	22
14	Seminar – Anti Human Trafficking (+Online)	BPR&D	1	54
	<b>TOTAL</b>		<b>50</b>	<b>1584</b>





The effect of this huge number of training programs has been that a large chunk of cutting edge level officers including special formations like ATS & STF have been made cyber security aware and equipped. These individual officers not only possess requisite skills to tackle cases relating to cyber crime but also have the necessary contacts with professional and reliable experts in the field of cyber security. These experts they can freely contact for assistance and guidance as and when required. Thus, these PRTS trained officers can truly deliver encouraging results in the field of cyber security and crime detection and prevention.

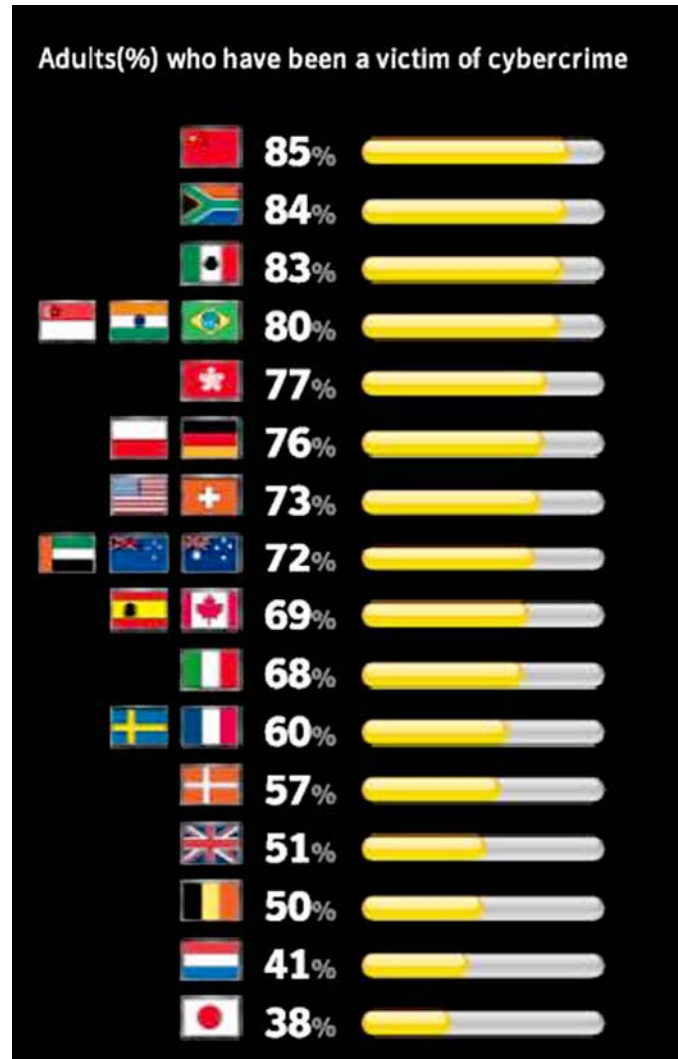
The second hub of this strategy is the –

**Blue Flame Initiative:**



The “Blue Flame Initiative” is designed to spread awareness in the community. This is another initiative taken totally by personal experience and desire to make a change in the way society uses the cyber world and the World Wide Web. The model presented by the USA in this regard is something to be studied and adopted as an excellent strategy at cyber crime prevention.

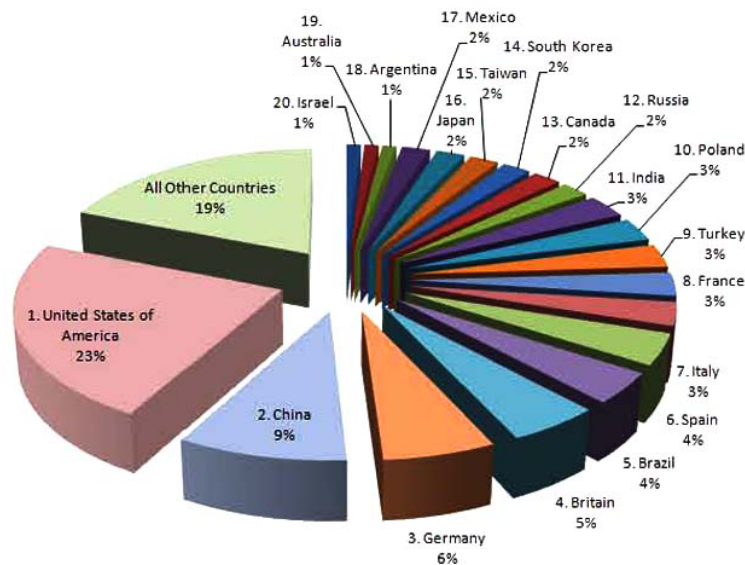
The following cyber crime incident Hotspots (% adults who have been victims of cyber crime) have been brought forward by the Norton Cyber Crime Report 2012:



It is interesting to note that the top country with highest incidents of cyber crime is china with a rate of 85%. India ranks fourth with cyber crime incidence of 80%. THE 24th ranked country Japan has a cyber crime incidence rate of 38%. In this rather exhaustive list the USA which has the second highest number of internet users, does not figure. That brings out clearly the fact that there is an important reason why the USA does not figure in this list. That reason is greater **AWARENESS** of the citizens in

matter of being safe and secure while using the cyber space. Students from 5th grade onwards have cyber security as a part of their curriculum. Thus they learn from an early age the “do’s & don’ts” of secure cyber use. It becomes part of their system as a result they do not accidentally become victims or offenders while using the cyber space. Security lessons are in a way internalized by them and become a way of life. This results in the remarkable fact that the incidents of cyber crime are very small as compared to the other major user nations.

The second remarkable statistic with regard to the USA is that even though the incidents of crime are low, whatever crime does occur is fully reported to the concerned authorities.



**Cybercrime: Top 20 Countries**

This pie chart clearly shows that 23% of all registered cyber crime is in the USA. This is again a result of greater **awareness** in the citizenry regarding the secure web use. High incident reporting ensures more and better investigation. This ultimately results in greater detection and arrest of offenders and that reduces the incidents further. Thus we can say awareness of the citizens **is the key** to reduce and control the menace of cyber crime.

Emulating this experience of the USA in raising cyber security awareness, the PRTS started its “BLUE FLAME INITIATIVE” – the second hub of its two pronged strategy of battling cyber crime.

On 28th November 2013, the PRTS organized the first workshop for making students of Emerald Heights International School, cyber security aware. Almost 100 students and faculty were invited to PRTS center called PRAGITI, for a 3 hour duration workshop in which a number of facts, figures, procedures, laws, tips, films and instructions were given regarding safe and secure use of the cyber space.

This initial effort has developed into a full blown campaign, which has three distinct strategies:

**1. SANDESH:** For School students. Till date 12 workshops have been held under this Campaign.



**2. SANKALP:** For College students. Till date 9 workshops have been held under this Campaign.



3. **SAMADHAN:** For community members and institutions. Till date 4 workshops have been organized under this Campaign.



In a short duration of 3 months 25 workshops have been successfully organized and a huge number of citizens and students have been made cyber security aware. The total number of such individuals exceeds 3500 already. Large numbers of requests are coming in from all corners to organize these workshops for them too. Lack of time is hampering faster spread of this strategy. But efforts are on at war footing to satisfy all demands and spread the net of awareness as far and wide as possible. The DGP of MP has been requested to grant permission to the special PRTS team to travel to different parts of the state to organize such workshops.

This BLUE FLAME INITIATIVE is delivering its purpose is clear from the response of the participants. The questions and responses are so many that it demonstrates the advantage and information that people are obtaining from this effort. This will go a long way in making their internet experience safe and secure and protect them from becoming accidental victims or offenders by mistake or ignorance.

Thus we can say that this two-pronged strategy initiated by the PRTS is the way to go in tackling the ever growing specter of Cyber Crime. The “**BLUE FLAME INITIATIVE**” will bring about the necessary awareness amongst the citizens to remain safe and secure while using the cyber space. Whatever crimes which do occur even after this awareness will be promptly reported and police investigators trained under the “**e-Investigator Development Project**” will be equipped well enough to register, investigate and detect such offences.

# ABSTRACT

**Theme: Hiring Professional Hackers & Beyond**

**TITLE:**

**CYBER CRIME**

**A Strategy for Battling the Menace**

Cyber crime is an ever growing threat to modern day society which relies so heavily on use of technology for all day to day activities. The explosion in the information era has been brought about by the explosive growth in the following sectors:

- Cell Phone use
- Connectivity
- Modern gadgetry
- Internet

This explosive growth has ensured that we now live in “exponential times”. These times have brought many advantages in tow, like:

- Global village concept has become a reality.
- Huge opportunities for growth and development.
- Information explosion.
- Human networking like never before

However with these advantages has come a major challenge that threatens to unravel all these advantages – this is the specter of ever increasing and multiplying CYBER CRIME.

The world over this is a major challenge and this is a fact clearly illustrated by the fact that global cyber crime incidents increased by 9000% over a period of 1995-2003. Even in India NCRB data indicates that registered cases of cyber crime increased by nearly 900% between 2009-12. Thus this is a big challenge and conventional policing is not going to be able to deal with this threat. Out of the box ideas like hiring ethical hackers to aid police in battling this menace will not work due to their inherent unreliability. The problem will have to be solved from within and efforts will have to be made by the Police Department itself.

In this regard the Police Radio Training School (PRTS) at Indore, MP has put in place a two pronged strategy to deal with the menace of cyber crime.

# 5

## PHENOMENON OF RAPE FROM REAL RAPISTS ACCOUNT AND CUE FOR PREVENTION

*K Giridhari Nayak, IPS\**

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“Violence against women must never be accepted, never be excused and never be tolerated. Every girl and woman has the right to be respected, valued and protected” - these profound words of Mr. Ban Ki Moon echo around the globe. Everybody feels that sexual violence is un-contentiously unacceptable. However, threat of rape is becoming persistent and pervasive in many parts of the world. An eminent social scientist Dworkin commented, ‘Due to the threat of rape all women live in constant jeopardy, in a virtual stage of siege’.

### **Impact of rape:**

Rape is a serious, atrocious and inhuman crime. It violates the basic human rights and the right to life. It is the barbarism of the worst order. Rape is sexually assaultive, abusive or coercive behavior. Rape is a form of torture, causes great psychological harm. The psychological reactions of victims vary shame, confusion, fear and rage. It also causes sleeping and eating disorder. Rape constitutes severe trauma. The trauma due to rape shatters the victim’s psyche about herself and her security. The trauma disrupts continuity of the self. It has profound effects on memory, emotion and psyche of the person. Rape is a crime which confronts its victims with death and torture much after the perpetration of the crime. Perpetual

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\* DGP Prisons /Home Guard Chhatisgarh,Raipur.

defilement, an overwhelming sense of vulnerability and paralyzing feelings of lack of control over their lives torment the victims. Many times it compounds the harm. Beyond those intrinsic to the rape itself. The victim is continuously. Victimized by the social outlook. Sometimes, the wrong social orientations of some people put the stigma of a damaged good on the victim. The victim feels the destruction of her sense of self and worth. She feels the ultimate violation of her persona. She feels the invasion of her inner and most private space. Rape is not only denial of sexual autonomy but also sexually invasive de-humanization. Rape is an abhorrent act and repugnant to the natural sense of pride of the victim.

Rapists attack and damage something crucial to the personhood of a woman. Rape denies to a woman the fact that she exist as a person. The crime is not only demeaning, dehumanizing, it inflicts the soul murder of a person.

### **Rape trend**

Prevalence and incidence of rape varies with different countries. However, the rape Statistics of few countries in 2010(France-10108, India-22172, Mexico-14993, South Africa-66196 U.K.-16390 and U.S. ...84767) shows a different picture. In 2010, US had 27, Mexico-13.2, India-1.8, France-17.3, UK-28.8, South Africa 132.4 women rape victim per 100,000 women. In many countries rape has taken epidemic form. Some people speak about rape culture; a documentary 'Rape culture' was produced in Hollywood. in 1975 which won many awards in the same year. According to the American,, Medical Association (1995) Sexual violence and rape in particular is considered the most underreported violent crime. A 2007 report of British Government says 'Estimates from research suggest that between 75 to 95 percent of rape crimes are never reported to the police.' The statistics of rape of US and UK shows that those countries with various legal and social interventions are able to reduce rape rates' by few thousands. But, unfortunately as per NCRB report since 1971 there has been 873% increase in rape-crime in India; in 1971-2013 cases were registered and in 2012-(24923) cases were registered. In 80s Mathura rape case caused much socio-political tremors which were surpassed in 2012 by Nirbhaya case. Nirbhaya's case can be categorized as the worst crime of the century.



### **Study of convicted rapists**

Rape as a crime is a global phenomenon which needs to be prevented; prosecuted locally and the women have to be protected and respected locally. Therefore, it is essential to analysis the motives and intentionality of actions of real rapists. Correct knowledge of the causes and motivations of rapists is necessary to develop effective preventive measures. Greater understanding of the causes and context of rape may help to prevent its occurrence. A new approach to the examination and understanding of a serious problem like rape is required. It is essential to know - 'who is the rapist? Why he does it? Feminists, psychologists, sociologists and criminologists have different views about rape; But, in India very few studies were done on this subject. 'Why men rape women' - people would like to know. This study is a small empirical effort to unpack the contingent and particular conditions of actions and events of rape and also to explore different perspectives about rape. Ultimately it will try to dispel some myths about the, crime and make people aware of the ghastly crime.

The best place to get data from real rapists is the Jail. Those convicted of the crime of rape represent the real rapists. The convicted rapists are the exact group who can throw light and provide many insights about the causes and motivations for rape It is essential to study the psychology of men who have raped and convicted. With these view 996 convicts and under trial prisoners of rape. Under judicial custody in the jails of Chhattisgarh was interviewed; and they responded to questionnaire circulated on some parameters. The accounts of convicted and accused rapists have been meticulously analysed and summarised. The parameters include their education, age, occupation, criminal background, use of violence, motivations for raping, number of times they followed the victim, their visit of the scene of offence before committing the offence and the method of physical violence etc.

### **Who are the rapists:**

People by and large from news reporting get some picture about who-are the- rapists. But, the systematic, empirical study reveals many unknown and unidentified facets about the rapists. The educational and age profile of the real rapists, their profession, and their modus operandi, their place of

stay, their criminal background and their psychological motivations portray the clear image of the rapists. Information gleaned from jail records shows that 9% of the real rapists were previously arrested for committing crimes and about 3% of the real rapists were recidivists. They had earlier committed sexual violence and rape. It shows that some of the criminals exhibit the tendency of potential rapists.

#### **Educational profile of real rapist**

The statistics shows that 12 % of real rapists are illiterates, 23% have studied less than fifth standard, 35% have studied less than eight standards, 14% are matriculates, 10% have passed twelve class, 4% are graduates and 2% are post graduates.

#### **Age profile of real rapists:**

In last decade 765 children of the age group of 12 to 17 were arrested and 269 had been convicted in rape cases. The number of children rapists of Chhattisgarh are equivalent to 6% of the total convicted rapists of the state. Juveniles of the age group of 18 to 21 constitute 30% of the real rapists, 46% are from the of 21 to 30 years of age group, 14% are from 31 to 40 years of age group, 7% are from the age group of 41 to 50 years, 2% are from the age group of 51 to 60 years. Two old men of 80 years and seven old men of seventy years had been convicted of rape.

#### **Professional profile of rapist**

Efforts have been made to find out the occupation of convicted rapists. There are startling revelations; the real rapists come from all walks of life. But, major chunks come from some particular groups. Daily wage labour constitute 31%, farmers constitute 23%, drivers constitute 7%, petty traders constitute 6% petty government officials constitute 6%, mason constitute 5%, students constitute 4%, teachers constitute 1%, transporters constitute 1%, painters constitute 1% tailors, carpenter, priests, sweepers, security guard constitute. 5% each; there are also rapists from miscellaneous occupations. One .MBBS doctor and two advocates were also convicted of rape. Considerable heterogeneity exists among the group of profession of the rapists.

### **Why men raped women:**

Who-did and why-did are two sets of questions highly interlinked. Therefore, the explanations and narrations are also in many cases mixed. The psychological motivations of rapists are more complex than it is presupposed. For an **example**, in the cases of forcible rape three components are present, power, anger and sexuality. It may include the desire to punish, to gain revenge and to prove sexual power. However, the perpetrators of rape can be broadly divided into following groups: psychopaths, sociopaths, revenge, partners and opportunist rapists.

The psychopathic rapists use violence and sex to act out his hostilities and frustration on a non-consenting woman. In all rape crimes committed by psychopathic rapists, extrinsic violence invariably occur. The psychopathic rapists extremely brutalized women. In few cases the criminals murdered the poor victims. The psychopathic rapists behave like wild beasts.

The sociopath rapists are the rapists with criminal background. They use aggression to subdue the women. They use degrading and obscene language to disorient and subdue the woman. Some of them slap, punch and throw the woman. Some of them intimidate the woman with weapon. The rapists created **threatening** circumstances to frighten the victim into passive silence and surrender. The sociopath rapists inflict psychological and physical distress of varying degrees of magnitude to the victims. Real rapists (5%) confessed that they had consumed alcohol before committing rape. Most of the gang rape convicts confessed that they had decided to rape the women during their drinking bout. Similarly eleven convicted rapists - 1% of real rapists mentioned that they had viewed pornographic film before raping; in few of these cases pornographic film had acted as stimulus. However, alcohol is a non- motivational cause; it reduces the inhibitions of the potential rapists. The loss of inhibitions encourages the men to violate the women and use violence. Violence is based on a mechanism of self entertainment. In many cases the perpetrators commit the crime for the sake of enjoyment.

Revenge, humiliate and subjugate are the main motivations of some of the rapists. The culprit considers rape as the ultimate offence he can commit against the women or the girl. In 3% cases the rapists revealed that

they had some enmity against the victim and 28% had enmity against the family members of the victim. Rape rather than being primarily an expression of sexual desire is in fact the use of sexuality to express power and anger. It shows that the rape psychology includes interrelated attitude structure that includes acceptance of interpersonal violence against women. Some of the rapists mentioned that the victim initially said no; but, after aggression became speechless with fear and almost become paralyzed. She became frightened and sick. Utter helplessness of a rape victim cannot be imagined. Some also mentioned that some of the women have yelled, fought back and escaped unhurt; but many frozen with fear suffered the crime.

The real rapists preselect the victim by peeping or stalking. They also try to evaluate the victim and circumstances. In specific environmental circumstances men rape women. Some of the convict rapists revealed that they used to ambush love birds near canal or ponds where the lovers used to frequent. They used to threaten the women and demand sex- from the women as if their entitlement and simultaneously they used to manhandle the men and women; then they raped the women. Most of the rapists confessed that they take less risks to rape .Men are more likely to rape when the costs are low. Most of the rapists try to exploit the potential victims' vulnerability. Here, it is pertinent to discuss the vulnerable spaces for women from rape viewpoint. The study reveals that 52% of incidents had occurred in the house of either the victim or the culprits.19% rape occurred in secluded areas, 14% in open field, 2% near ponds and river, 7% in jungle, 2% in schools and hostels, 1% in hotels and dhabas, 1% in religious places, 1% in workplaces. It shows that secluded space is dangerous for women and also neighborhoods are also not safe. Rape is also a crime of neighborhood. The rapist may also be a person from house next door.

Two things mark the cases of partner and opportunist rapists (1) the belief that rape may not be reported by the girls or women, (2) exploit the vulnerability of the women or girls. About 4% real rapists mentioned they had wrongly interpreted the intentions and friendship of the women. 23 % real rapists mentioned that they thought their crime will not be reported to police. 0% real rapists mentioned that they perpetrated the crime due to the instigations of the peer group. 53% rapists had victimized girls of 16 to 25

years age group. 13% rapists targeted women of 25 to 35 years age group. 7% targeted women of age group from 35 to 45. 2% targeted women from the age group between 45-60 years.

6% of real rapists had targeted girl children of the age group of 3 to 10. 25% of rapists had targeted victims of 10 to 16 years of age group. 31% of rapists had targeted minor girls. The highest risk age group between 16 to 30 years however child rape is not uncommon and few elderly rape had also occurred.

Opportunist rapists are in search of an opportunity to get women alone. All predators stalk the victim. 50% of convicted and under trial rapists had confessed that they stalked the victims. 24% real rapists mentioned that they followed the rapists once before committing rape. 3% real rapists mentioned that they followed the victim three four times before committing rape. 23% of convicted rapists revealed that they had visited scene of offence and followed the victim many times before committing rape. 60% real rapists mentioned they raped the stranger. It implies that more than 50% of the real rapists had planned to commit the offence. As per the recommendation of Justice Verma Committee stalking of women has been made an offence.

### **Rape myths**

Myths abound rape. Myths about masculinity, male entitlement, women psychology and consent act as motivators for potential rapists. Some of the real and potential rapists have wrong concept of masculinity. He has to prove himself a man, prove his masculinity. Some rapists believe they have the power and can do anything with women. Some of the real and the potential rapists have the myth that the woman's appearance, attire, location, prior sexual history, or relationship to the man in question function as stand-in for consent; some criminals have the myth that some of the women are asking for it. Rape myth is about the notions of male entitlement and female contributory fault. Some of the rapists believe that the victims desire and enjoy such victimization. Unfortunately, many rapists and their friends who have not committed rapes consider rape as an innocuous act. Some of the rapists regarded rape as minor wrongs. This is because many people believe in rape myths and myths about women psychology. Some people think that the 'no' of women means 'yes' or subsequently it can turn 'yes';

they believe in the myth of forcible sexual initiation. It can be pointed out that men are systematically not conditioned to notice what women want. Men routinely interpret women's behavior in more sexual terms than women mean or intend. The notion of consent 'is typically at the base of both social and legal understandings of rape. Consent alters the structure of rights and obligation between two parties. Rape occurs where consent is lacking. The rapists assume or simply ignore the question of consent while committing the offence; but during prosecution he vigorously tries to defend himself with the theory of consent. Here, it is pertinent to mention that in the past women's sexual consent had in many old legal cases been understood quite expansively, as simply the absence of refusal, or resistance. Law has been amended; now the men must understand that 'no always means no' and in many cases they must recognize that 'yes also means no'.

#### **Strategy for prevention of rape:**

People act on beliefs. The perception of rape myths largely contribute to the perpetration of sexual violence or rape. A sizeable percentage of real rapists also thought it will not be reported. They felt assured while committing the crime that they would not get caught. Perception of meaning and consequences of rape to the perpetrators can influence men's perception of their own likely behavior. Perpetrators of violence against women sometimes continue to enjoy impunity. Failure to end impunity encourages others to perpetrate crime. Ensuring that perpetrators are brought to justice is more important for reducing the crime rate of rape. It is not exaggerated to say that rape is less a crime of passion more a crime of malice, crime of exploitation and crime of calculation.

Rape is the result of violent behavior that is socially constructed and determined. by cultural and environmental conditions .Cultural spillover of violence against women has also to be prevented. Laws have been changed; but, social attitudes have not been. Sustained involvement of socialising institutions at the community level is required for preventing sexual violence.

Education and crime has a direct co-relation. Education socializes people. Educative impact can deter crime by shaping individual behavior, social norms and mores. To reduce the incidence of rape, the criminal-

laws' behavior-shaping ability must be harnessed to change both the preferences of potential rapists and societal norms. Although real rapists are motivated to rape by anger, hatred, power and control, many potential rapists may reject rape and sexual violence as behavior option if they know that they would be held responsible for their actions. Therefore, the rape crimes must be thoroughly investigated and that offenders are held accountable for their crimes.

The risk group and the risk area must be identified and special drive to curb the menace of rape must be started. Physical environments for women must be made safer. Efforts must be made to identify unsafe areas and to improve the safety of public transports, educational places, work places and secluded places. Women who are more empowered educationally, economically and socially are more protected. Therefore, more women empowerment should be done. The school girls must be taught unarmed combat. Drunken behavior also increases the risk of sexual violence; appropriate legal action against drunken behavior must be taken.

**Conclusion:**

Women's fear of violent crime is society's fear of violent crime. Rape is not only the problem of the victim, women's problem; it is also society's problem and problem of the mankind. This is a leading social and political concern. Society attaches high value to a woman's preference for bodily security and integrity. The fundamental underlying causes for most rapes are rooted in the belief that they can get away with crime and also traditional sex roles and misogynous forces within society. If the society is serious to stop rapists' behavior, it should reach out to the potential rapists and those most likely to encourage the raping activity. Primary preventive intervention should focus on reducing the scope for rapists to commit sexual violence.

I must confess before conclude that it would be almost impossible to find all the causes and factors of prevention of rape by questioning about few hundred rapists. There can be many situations and many more possible conscious, unconscious and mixed motives. However, this study in a limited manner may enable us to elucidate the criminals' motive-plan -preparation, psychological, social and situational factors that cause rape and that in turn might help to find ways for reducing the crime rate of rape. Actions

have meaning and consequences; so also crime. The serious consequences for coercive sexuality can deter the potential rapists from indulging in committing the crime. Certainty of penalties sends messages to society and to potential rapists to refrain; these messages also exert a moral influence to inculcate social norms. Rape is prohibited, must be effectively prohibited and protected against. Best solution is to enforce the law vigorously, ensure public safety extensively, finish impunity of criminals, empower the women, educate the people about the strong legal sanctions against rape and start prevention program by the help of media and social group.

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# 6

## POLICE ENGAGEMENT PRACTICES AMONG SUB- INSPECTORS: AN EMPIRICAL STUDY

*\*K . Sreekanth \*\*Dr. A.R. Aryasri*

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### **Abstract**

**Purpose:** The objectives of this study include

- a) To identify the employee engagement practices among sub-inspectors in Hyderabad Police
- b) To investigate and analyze the prominent factors causing employee engagement and
- c) To identify issues related to engagement in Hyderabad Police commissionerate in Andhra Pradesh.

**Approach:** Data was collected from 102 Sub inspectors based on convenience and snow ball sampling from five zones of Hyderabad police located in Hyderabad police commissionerate. The hypotheses have been formulated and tested using SPSS software and the results have been arrived at.

**Findings:** The results from this empirical study indicate that fair treatment, salary and benefits, personal achievement, awareness of departmental police and internal communication respectively are the factors that have been identified from the study that are believed to instil employee engagement in police sub inspectors irrespective of the experience.

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**Practical implications:** It enables one to understand employee engagement practices in police department. Other Police Commissionerates which intend to introduce or improve employee engagement in the organization can consider these practices and thereby improve organizational culture.

**Originality/value:** Since the literature available on this topic is very scanty, this study has significant value and authenticity. Hence this study may serve as a point of reference for future studies in this area of concern.

**Key words:** Employee engagement, police, organization, practice and commissionerate.

### **Introduction**

In India, the state of Andhra Pradesh enforces the law through the Andhra Pradesh Police. The Hyderabad city police is the local law enforcement agency for the city of Hyderabad, Andhra Pradesh and is headed by the city police commissioner or the Kotwal. Government of Andhra Pradesh controls the police through Department of Home Affairs. Hyderabad police commissionerate is bounded by its commitment to provide law enforcement in the Hyderabad city through its officers and men. It is also committed for building community partnerships, preventing crime, and protecting every residents of the city.

The Hyderabad police are committed to provide quality, productive, effective, and efficient policing. This includes developing stronger police-citizen relationships to foster stronger relations and develop community feeling to reduce crime. The department will continue to provide for the safety and enhancement of the quality of community life. The welfare of the community will always be on the foremost priority of the police. The department will ensure that proper the rights of citizens are not compromised and that it continues to function in friendly manner. The transparency of the department will always be maintained in its entire affair.

### **History (1847-1948)**

*The Nizam of Hyderabad used to appoint the Commissioners of Police who were officers of the Hyderabad Civil Service and they used to function during his pleasure. They were answerable to the Nizam directly on various matters of policing in Hyderabad city. However as far as administrative matters were concerned the Commissioner of Police used to correspond with the Home Department directly. The commissioner of Police was popularly called as “KOTW AL” and was responsible for maintenance of law and order, prevention and detection of crime etc.*

**Reorganization**

Due to rapid increase in population, there has been a steady increase in crime. In view of the above in 1981 the City Police was re-organized; vide G.O.Ms. No.341, Home (Pol.D) Department, dated: in 1981-05-30. The following structure was instituted further:

- The disciplinary and administrative control of the force is held by the Commissioner of Police, having powers and functions of Additional District.
- The city was divided into five zones: Hyderabad Central, Hyderabad South, Hyderabad East, and Hyderabad West & Hyderabad North. Each Zone is under the in charge of a Deputy Commissioner of Police (D.C.P.) of the rank of Superintendent of Police for maintenance of Law and Order, Criminal Investigation and keeping up the morale of the force.
- Each Division is under the in charge of an Assistant Commissioner of Police (ACP) of the rank of Deputy Superintendent of Police, who works under the control of DCP. He is responsible for prevention and detection of crimes, maintenance of L&O and discipline of the force.
- Each Police station is under the in charge of inspector of Police who is the Station House Officer (S.H.O) and performs all the duties and exercises all the powers of the S.H.O.
- The city crimes station was renamed as “Detective Department” which works under the D.C.P., assisted by ACPs and Inspectors.
- In 1992, the Government of Andhra Pradesh sanctioned 3 Joint Commissioner of Police posts in the rank of Deputy Inspector General (D.I.G.) to assist the Commissioner of Police for effective functioning and better administration of City Police each in-charge of Co-ordination, Crimes and Security.
- One Sub-Inspector of Police was to be placed in charge of Law and Order duties and another for Crime duties for each Police Station. A Divisional Detective inspector for each Division was provided for. In order to achieve this functional division it was proposed in the scheme to increase the number of posts of Sub-inspectors and Head Constables and decrease the (number of posts of Police Constables.

The main objective of this paper to, provide an insight into the Police department at Hyderabad and Police sub inspectors were invited to provide their feedback on a host of key organisation and workplace attributes such as its vision, leadership, communication, teamwork, the job itself, as well as respect and integrity within the organisation.

### **Employee Engagement defined**

*Employee engagement* refers to the level of connectedness an employee feels towards his or her organization and the willingness to maximize his or her performance and discretionary effort as result of that connectedness.

Engaged employees are vital to an organisation's success. Employers need employees who will go beyond just 'doing the job' - rather they need people, who seek to solve problems,

Take the initiative, and help colleagues and customers when and where needed. Indeed, a considerable amount of research shows that engaged employees have a strong impact on important organisational outcomes like stakeholder and citizen satisfaction. Not surprisingly, engaging employees in the workplace has become a strategic priority for a great number of organisations.

### **Literature Review**

Employee engagement is derived from studies of morale or a group's willingness to accomplish organizational objectives which began in the 1920s. The value of morale to organizations was matured by US Army researchers during WWII to predict unity of effort and attitudinal battle-readiness before combat. In the post-war mass production society that required unity of effort in execution, (group) morale scores were used as predictors of speed, quality and militancy. With the advent of the knowledge worker and emphasis on individual talent management (stars), a term was needed to describe an individual's emotional attachment to the organization, fellow associates and the job. Thus, the birth of the term "employee engagement" which is an individual emotional phenomenon whereas morale is group emotional phenomenon of similar characteristics. In other words, employee engagement is the raw material of morale\composed of 15 intrinsic and extrinsic attitudinal drivers (E.g. Scarlett Surveys 2001).

Kahn (1990:694) defines employee engagement as "the harnessing of organization members' selves to their work roles; in engagement, people employ and express themselves physically, cognitively, and emotionally during role performances". The cognitive aspect of employee engagement concerns employees' beliefs about the organisation, its leaders and working

conditions. The emotional aspect concerns how employees feel about each of those three factors and whether they have positive or negative attitudes toward the organisation and its leaders. The physical aspect of employee engagement concerns the physical energies exerted by individuals to accomplish their roles. Thus, according to Kahn (1990), engagement means to be psychologically as well as physically present when occupying and performing an organisational role.

Most often employee engagement has been defined as emotional and intellectual commitment to the organisation (Baumruk 2004, Richman 2006 and Shaw 2005) or the amount of discretionary effort exhibited by employees in their job (Frank et al 2004). Although it is acknowledged and accepted that employee engagement is a multi-faceted construct, as previously suggested by Kahn (1990), Truss et al (2006) define employee engagement simply as ‘passion for work’, a psychological state which is seen to encompass the three dimensions of engagement discussed by Kahn (1990), and captures the common theme running through all these definitions.

Employee engagement has three related components: a cognitive, an emotional, and a behavioral aspect. The cognitive aspect of employee engagement concerns employee’ beliefs about the organization, its leader, and working conditions. The emotional aspect concerns how employees feel about each of those three factors and whether they have positive or negative attitudes towards the organizations and its leaders. The behavioral aspect of employee engagement it the value-added component for the organization a consists of the discretionary effort engaged employee bring their work in the form of extra time; bring power and energy devoted to the task and the firm.

### **Research Design**

#### **Objectives of the study**

- To study the employee engagement practices in police department with reference to Hyderabad police.
- To identify and analyze the factors which influence employee engagement practices in Hyderabad police.
- To identify and analyse specific employee engagement issues in Hyderabad police.
- To suggest certain measures to improve employee engagement to make Hyderabad city police a great place to work.

**Hypotheses**

Ho: There is no significant association between experience and opinions about

- a) fair treatment of superiors towards them
- b) superior behavior at workplace
- c) salary and benefits paid to police
- d) degree of awareness of department policies.
- e) Team support
- f) learning and career opportunities
- g) performing challenging job.
- h) Informing about police activities regularly
- i) feedback in police department
- j) Contribution towards police department and
- k) existing compensation system.

**Sources of the Data**

As this is investigative study, the data comprises of both primary and secondary sources. The Primary data was collected through a structured questionnaire by distributing to Sub inspectors who are having three and more years experience working in different police stations which comes under Hyderabad. The secondary data was collected from journals, magazines, books and websites.

**Sampling method used**

Data was collected from 102 sub inspectors of Hyderabad police commissionerate, Andhra Pradesh based on convenience and snow ball sampling.

**Statistical tools used**

The hypotheses have been formulated and tested using SPSS software and the results have been arrived at.

**Limitations of the study**

- The study is limited to Hyderabad police commissionerate only.

- The sub inspectors who are having more than 3 and above years of experience in police department are only considered for relevant data collection.

**Statistical analysis**

To test the reliability of data, the data collected was subjected to Cronbach 's Alpha test. The results were

**Reliability**

**Reliability Statistics**

Cronbach's Alpha	N of Items
.599	36

**Scale Statistics**

Mean	Variance	Std. Deviation	N of Items
108.27	34.300	5.857	36

**Inference:** Cronbach's alpha has been run for to check their reliability. The overall alpha for the all items is 0.599, which is very high and indicates strong internal consistency among the given items.

**Factor Analysis**

**KMO and Bartlett's Test**

Kaiser-Meyer-Olkin Measure of Sampling Adequacy.		.503
Bartlett's Test of Sphericity	Approx. Chi-Square	961.218
	df	630
	Sig.	.000

Factor Analysis is a data reduction technique. Before proceed for factor analysis first the researcher tested the eligibility of the data by checking KMO- Bartlett's test which is a measure of sampling adequacy (KMO test also tests for multivariate normality among the variables). The KMO value is .503 >0.5 indicates multivariate normality among variables





Component	Initial Eigenvalues		Extraction Sums of Squared Loadings		Rotation Sums of Squared Loadings	
	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %
19	.776	2.156	30.204			
20	.760	2.083	82.287			
21	.664	1.843	84.131			
22	.647	1.798	85.323			
23	.590	1.638	87.566			
24	.569	1.580	89.146			
25	.533	1.482	90.528			
26	.436	1.350	91.978			
27	.445	1.235	93.213			
28	.401	1.113	94.326			
29	.372	1.032	95.358			
30	.343	.951	96.310			
31	.309	.859	97.169			
32	.283	.785	97.953			
33	.264	.734	98.688			
34	.212	.590	99.277			
35	.187	.519	99.796			
36	.073	.204	100.000			
Extraction Method: Principal Component Analysis						

**Factor:** The initial no. of factors is the same as the no. of variables used in the factors analysis however not all 36 factors will be retained, in this example only the first 14 factors will be retained since their Eigen value is greater than I.

Component Matrix <sup>a</sup>														
	Component													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Vision	.051	-.033	.252	-.535	.227	-.045	-.102	-.051	-.009	-.071	-.050	-.477	.206	.150
Direction	.060	-.236	-.192	.098	.206	.516	.020	-.243	.114	-.201	.309	-.145	.125	-.136
purpose	.229	.277	-.192	-.360	.318	-.056	.003	.075	-.231	.176	.377	-.155	.208	-.161
open commn	.195	-.288	.598	-.055	.168	.233	.544	.018	-.324	.032	.079	.125	-.005	.056
informed	.152	.071	.059	.383	.336	.213	-.254	.159	-.091	-.092	.324	.027	-.143	-.034
objectives	-.291	-.473	-.020	.259	-.039	.163	.354	.197	.182	.270	.061	-.039	.009	-.240
feedback	.061	-.024	-.130	.349	.423	-.096	-.035	.190	-.336	.015	.174	.099	.030	.125
superior behaviour	.645	-.402	.087	-.082	-.284	-.194	.200	.074	.160	.027	.109	-.214	-.074	.091
treatment	.716	-.293	.134	-.071	-.309	-.150	.235	.100	.067	.012	.118	-.197	-.111	.117
encouragement	.672	-.231	.061	-.149	-.044	-.020	.136	-.139	-.109	.067	-.077	.046	-.011	.098
team support	.395	.290	.007	-.115	.062	.180	-.105	.120	-.172	.207	-.170	.151	-.469	-.116
job role	-.023	.473	-.148	-.220	-.343	.184	.167	-.142	.215	.102	-.078	.206	.220	.052
Personal achievement	.429	.430	.309	-.366	-.070	.184	.017	-.072	-.003	-.097	-.207	.165	.167	.101
awareness	-.417	.251	.288	.080	.229	.010	.294	-.054	-.005	.207	.298	-.091	-.072	.404
workstress	-.038	.192	.269	-.326	-.199	-.210	.164	.376	.053	-.132	.017	.157	-.060	-.262
Balance	.188	.097	.293	.148	-.040	.276	-.367	.313	.067	.070	.200	.151	.329	.253
physical work environment	.348	.168	.172	-.202	.039	.279	-.173	-.246	.230	.103	.140	.235	-.277	-.035
Report	-.073	.249	.105	.010	.591	-.057	.009	-.174	.149	.225	-.088	.085	-.180	-.015
Tools	.183	.418	.096	.524	-.116	-.029	.128	-.036	-.200	-.068	-.185	-.254	-.050	.194
Knowledge	-.225	.338	.467	.065	-.002	.145	.460	.094	.085	-.069	.066	-.040	-.109	.088
encouragement	.428	.500	-.176	.168	-.014	.257	-.027	.260	-.060	.153	.232	-.049	-.059	-.114
learning oppur	.001	.121	.271	.143	.103	-.101	-.414	.463	.203	.044	-.307	-.375	.041	-.042
Training	.470	.299	-.140	.238	-.101	-.060	.039	-.097	.324	-.083	.120	-.075	.005	-.135
special rewards	.239	.278	.107	.455	.104	.089	-.025	.288	.123	.276	.101	-.116	.107	.118
understand	-.007	.289	-.312	-.026	-.025	-.245	.234	.136	-.468	-.110	.263	.110	.039	-.043
fair assessment	.445	.006	-.235	.097	-.067	.397	.083	.027	-.296	.058	-.194	.032	.426	-.098
Performance feedback	.457	.135	.284	.040	.249	-.010	.096	-.232	.191	.366	.001	-.210	-.090	-.220
identification	.225	-.432	.040	.031	.252	-.407	.000	.050	.041	.097	.142	.303	.051	.293
success	.180	-.286	.063	-.017	.285	.463	-.111	.207	-.093	.109	.090	-.109	-.219	-.131
contribution	.254	-.163	.358	.157	.179	-.223	.053	.109	.145	.269	.051	.244	.297	-.272
Salary & . benefits	.418	.011	-.367	.193	.261	-.214	.059	-.282	.213	.008	-.129	-.025	.043	-.077

*Police Engagement Practices*

**Art.6]** *Among Sub-inspectors: An Empirical Study*

Compensation system	.204	-.063	-.012	.178	.206	.286	.561	.280	.087	-.130	-.327	.114	.033	.031
Reward system	.209	-.186	.341	.284	-.081	-.216	-.266	-.217	-.054	-.336	-.065	.265	-.010	-.011
challenging	-.011	.161	.099	.057	.338	-.045	.046	.251	.351	-.575	.231	.143	.098	.002
public	.100	-.123	-.581	-.101	.045	.230	.043	.176	.035	-.274	.046	.049	-.179	.338
loyalty	.453	.041	-.401	-.153	.177	.004	.059	.314	.267	.130	.061	.069	-.028	.230

Extraction Method: Principal Component Analysis.

a 14 components extracted.

Rotated Component Matrix<sup>a</sup>

	Component													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Vision	.197	-.224	.334	.094	-.467	-.065	.195	.158	-.044	-.205	-.132	.126	.384	.012
Direction	-.028	.097	-.097	-.070	.052	-.076	.768	.006	-.089	.068	-.045	.081	-.147	.110
purpose	.020	.056	.155	-.018	-.167	-.001	.162	.785	.076	-.112	.093	-.017	.002	.020
open comnn	.236	-.462	.193	.188	.073	.269	.233	-.087	.337	.105	.206	.222	-.022	-.030
informed	.069	.020	-.047	-.028	.755	-.047	.065	-.016	-.057	-.084	.084	.060	.031	.009
objectives	.037	-.148	-.680	.085	.006	-.101	.189	-.143	.237	.266	-.123	-.174	-.032	-.064
feedback	-.183	.080	-.032	-.034	.024	.628	-.049	.115	-.024	.276	.003	.045	.081	-.032
superior behaviour	.908	.092	-.060	-.103	.032	-.026	.002	.032	.053	.002	-.016	-.003	.033	.000
teatment	.923	.082	.023	.046	.113	-.026	-.041	.026	.029	.061	.049	.059	.017	-.018
encouragement	.610	.069	.250	-.167	-.084	.138	.064	.008	.088	.130	.178	.066	-.151	-.152
team support	.052	.046	.136	-.082	.089	.017	-.165	.142	-.083	.129	.732	.067	.055	-.138
job rule	-.149	.163	.351	.054	.010	-.545	-.150	.041	-.034	.136	-.025	-.267	-.234	-.086
Personal achievement	.133	.003	.747	.021	-.050	-.244	-.098	.040	.105	.187	.236	.076	.014	.049
awareness	-.185	-.067	-.033	.836	-.067	.074	.010	.068	.010	-.092	-.072	.072	-.051	-.011
workstress	.082	-.281	.010	-.010	-.003	-.318	-.445	.158	.171	.047	.092	.068	.048	.359
Balance	.009	-.099	.389	.087	.486	.106	.194	.004	.245	.023	.003	-.320	.279	.111
physical work environment	.110	.129	.288	.033	.050	-.181	.194	-.111	.092	.178	.585	-.044	-.135	.074
Report	-.301	.256	.016	.280	-.376	.194	.028	.006	.166	-.049	.361	.009	.052	.054
Tools	-.005	.375	.147	.291	.327	.111	-.215	-.019	-.144	.253	-.094	.337	.170	-.241
Knowledge	-.072	-.106	.022	.656	.045	-.252	-.128	-.061	.082	.240	.032	.192	.008	.179
encouragement	.117	.443	.042	.003	.302	.029	.286	.538	.041	-.001	.189	-.008	.112	.048
learning oppur	.072	.035	.004	.039	.067	.049	-.145	-.076	.099	-.006	.019	-.009	.860	.071
Training	.153	.654	.072	.037	.105	-.082	.075	.115	.052	.053	.125	.083	.034	.197
special rewards	.035	.504	.142	.271	.307	-.040	.119	.073	.192	-.025	-.008	.015	.030	-.305
understand	-.086	-.009	-.015	.002	.129	.121	-.284	.581	-.168	.068	-.132	.114	-.330	.047
fair assessment	.083	.081	.283	-.346	.171	.004	.264	.222	.062	-.534	-.058	.005	-.062	-.311
Performance feedback	.210	.182	.234	.002	.053	.092	.145	.102	.066	.075	.158	.688	.035	.147

identification	.335	.001	.001	.021	-.149	.594	-.041	-.065	.224	-.162	.063	-.210	-.235	.097
success	.104	-.226	-.173	-.052	.065	.140	.468	.067	.003	.147	.414	.017	.198	-.012
contribution	.159	.084	-.040	-.053	-.013	.151	-.029	.016	.756	.082	.023	.065	.048	.110
Salary & benefits	.133	.657	-.007	-.240	-.231	.180	.078	.017	.003	.071	.022	.031	-.098	.001
compensation system	.127	.056	-.062	.102	-.104	.061	.045	-.102	-.008	.805	.068	-.002	-.021	.167
Reward system	.105	.042	.197	-.199	.244	.301	-.089	-.417	.225	-.168	-.046	.313	-.093	.157
challenging	-.107	.126	.095	.105	.031	.061	.083	.013	.000	.086	-.094	.040	.070	.822
Public	.083	.023	-.005	-.186	.041	.149	.180	.046	-.654	.133	.055	-.308	-.115	.179
loyally	.269	.284	.118	-.182	-.105	.130	.002	.194	-.199	.171	.241	-.493	.144	.137

Extraction Method, Principal Component Analysis.

Rotation Method: Varimax with Kaiser Normalization.

a. Rotation converged in 19 iterations

The first factor in the ROTATED COMPONENT MATRIX is heavily loaded with treatment. (Factor loading Value of 0.923 which is the highest for the first factor) the first factor represents treatment. The second factor is heavily loaded with Salary & benefits (0.657) hence factor 2 represents Salary & benefits and thus the subsequent factors can be interpreted based on their Eigenvalue. The final list of 14 factors which collectively account for 68 % of the variance in the data is shown below

**Hypotheses**

**1. Treatment**

Ho: There is no significant association between experience and their opinions on fair treatment of superiors towards them.

<b>Crosstab</b>							
			treatment				Total
			Strongly Disagree	Disagree	agree	Strongly agree	
Experience	below 5 yrs	Count	1	13	9	14	37
		% within Experience	2.7%	35.1%	24.3%	37.8%	100.0%
	5-10 yrs	Count	0	18	14	9	41
		% within Experience	0.0%	43.9%	34.1%	22.0%	100.0%
	above 10 yrs	Count	0	6	12	6	24
		% within Experience	0.0%	25.0%	50.0%	25.0%	100.0%
Total		Count	1	37	35	29	102
		% within Experience	1.0%	36.3%	34.3%	28.4%	100.0%

<b>Chi-Square Tests</b>			
	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	7.922a	6	.244
Likelihood Ratio	8.111	6	.230
Linear-by-Linear Association	.002	1	.966
N of Valid Cases	102		
a 3 cells (25.0%) have expected count less than 5. The minimum expected count is .24.			

From the above table chi square is not significant (sig. value is greater than 0.05), no evidence to reject null hypothesis. It means there is no significant association between experience and their opinions on superior treats employees fairly.

**2. Superior behavior**

Ho There is no significant association between experience and their opinions on at workplace.

	Value	df	Asymp. Sig. (2- sided)
Pearson Chi-Square	5.315 <sup>a</sup>	6	.504
Likelihood Ratio	5.564	6	.474
Linear-by-Linear Association	.264	1	.607
N of Valid Cases	102		

a. 3 cells (25.0%) have expected count less than 5. The minimum expected count is .24.

From the above table chi square is not significant (sig. value is greater than 0.05), no evidence to reject null hypothesis. It means there is no significant association between experience and their opinions on superior behavior

**3. Salary & benefits**

Ho: There is no significant association between experience and salary and benefits paid to police personnel as per qualification.

Crosstab						
			31. Salary & benefits			Total
			Disagree	agree	Strongly agree	
Experience	below 5 yrs	Count	2	10	25	37
		% within Experience	5.4%	27.0%	67.6%	100.0%
	5-10 yrs	Count	3	15	17	41
		% within Experience	22.0%	36.6%	41.5%	100.0%
	above 10 yrs	Count	7	6	11	24
		% within Experience	29.2%	25.0%	45.8%	100.0%
Total		Count	18	31	53	102
		% within Experience	17.6%	30.4%	52.0%	100.0%

Chi-Square Tests			
	Value	df	Asymp, Sig (2-sided)
Pearson Chi-Square	9.039 <sup>a</sup>	4	.060
Likelihood Ratio	9.802	4	.044
Linear- by- Linear Association	6.099		
N of Valid Cases	102	1	.014
a. 1 cells (11.1%) have expected count less than 5. The minimum expected count is 4.24			

From the above table chi square is not significant (sig. value is greater than 0.05), no evidence to reject null hypothesis. It means there is no significant association between experience and their opinions on salary and benefits are paid as per qualification.

#### 4. Awareness

Ho: There is no significant association between experience and their opinions on awareness of department policies.

<b>Crosstab</b>						
			14. awareness			Total
			Disagree	agree	Strongly agree	
Experience	below 5 yrs	Count	4	29	4	37
		% within Experience	10.8%	78.4%	10.8%	100.0%
	5-10 yrs	Count	4	29	8	41
		%within Experience	9.8%	70.7%	19.5%	100.0%
	above 10 yrs	Count	5	15	4	24
		% within Experience	20.8%	62.5%	16.7%	100.0%
Total		Count	13	73	18	102
		% within Experience	12.7%	71.6%	15.7%	100.0%

**Chi-Square Tests**

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	3.105 <sup>a</sup>	4	.540
Likelihood Ratio	2.983	4	.561
Linear-by-Linear Association	.022	1	.881
N of Valid Cases	102		

a. 3 cells (33.3%) have expected count less than 5. The minimum expected count is 3.06

From the above table chi square is not significant (sig. value is greater than 0.05), no evidence to reject null hypothesis. It means there is no significant association between experience and their opinions on awareness of department Policies.

**5. Team support**

Ho: There is no significant association between experience and their opinions on team support.

<b>Crosstab</b>						
			11. team support			Total
			Disagree	agree	Strongly agree	
Experience	below 5 yrs	Count	8	23	6	37
		% within Experience	21.6%	62.2%	16.2%	100.0%
	5-10 yrs	Count	13	14	14	41
		% within Experience	31.7%	34.1%	34.1%	100.0%
	above 10 yrs	Count	3	17	4	24
		% within Experience	12.5%	70.8%	16.7%	100.0%
Total		Count	24	54	24	102
		% within Experience	23.5%	52.9%	23.5%	100.0%

#### Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi -Square	10.530 <sup>a</sup>	4	.032
Likelihood Ratio	10.816	4	.029
Linear-by-bnear Association	.319	1	.572
N of Valid Cases	102		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 5.65.

From the above table chi square is significant (sig. value is less than 0.05), reject null hypothesis. It means there is a significant association between experience and their opinions on team Support.

#### **6. Learning opportunities**

Ho: There is no significant association between experience and their opinions on learning and career opportunities.



Crosstab						
			22-learning oppur			Total
			Disagree	agree	Strongly agree	
Experience	below 5 yrs	Count	18	18	1	37
		% within Experience	48.6%	48.6%	2.7%	100.0%
	5-10 yrs	Count	24	16	1	41
		% within Experience	58.5%	39.0%	2.4%	100.0%
	above 10 yrs	Count	10	14	0	24
		% within Experience	41.7%	58.3%	0.0%	100.0%
Total		Count	52	48	2	102
		% within Experience	51.0%	47.1%	2.0%	100.0%

Chi-Square Tests

	Value	df	Asymp Sig (2-sided )
Pearson Chi-Square	2760 <sup>a</sup>	4	.599
Likelihood Ratio	3.211	4	.523
Linear-by-Linear Association	.023	1	.880
N of Valid Cases	102		

a. 3 cells (33.3%) have expected count less than 5. The minimum expected count is .47.

From the above table chi square is not significant (sig. value is greater than 0.05), no evidence to reject null hypothesis. It means there is no significant association between experience and their opinions on learning and career opportunities.

**7. Challenging Job**

Ho: There is no significant association between experience and their opinions on feeling happy to perform challenging job.

<b>Crosstab</b>						
			34. challenging			Total
			Disagree	agree	Strongly agree	
Experience	below 5 yrs	Count	8	15	14	37
		% within Experience	21.6%	40.5%	37.8%	100.0%
	5-10 yrs	Count	7	10	24	41
		% within Experience	17.1%	24.4%	58.5%	100.0%
	above 10 yrs	Count	1	10	13	24
		% within Experience	4.2%	41.7%	54.2%	100.0%
Total		Count	16	35	51	102
		% within Experience	15.7%	34.3%	50.0%	100.0%

#### Chi-Square Tests

	Value	df	Asymp. Sig. 12-sided)
Pearson Chi-Square	6.660 <sup>a</sup>	4	.155
Likelihood Ratio	7.571	4	.109
Linear-by-Linear Association	3.387	1	.066
N of Valid Cases	102		

a. 1 cells (11.1%) have expected count less than 5. The minimum expected count is 3.76.

From the above table chi square is not significant (sig. value is greater than 0.05), no evidence to reject null hypothesis. It means there is no significant association between experience and their opinions on feeling happy to perform challenging Job.

#### **8. Informing activities**

Ho: There is no significant association between experience and their opinions on informing about police activities regularly.

<b>Crosstab</b>						
			5. in formed			Total
			Disagree	agree	Strongly agree	
Experience	below 5 yrs	Count	14	16	7	37
		% within Experience	37.8%	43.2%	18.9%	100.0%
	5-10 yrs	Count	15	21	5	41
		% within Experience	36.6%	51.2%	12.2%	100.0%
	above 10 yrs	Count	10	7	7	24
		% within Experience	41.7%	29.2%	29.2%	100.0%
Total		Count	39	44	19	102
		% within Experience	38.2%	43.1%	18.6%	100.0%

**Chi-Square Tests**

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	4.155 <sup>a</sup>	4	.385
Likelihood Ratio	4.174	4	.383
Linear-by- Linear Association	.066	1	.797
N of Valid Cases	102		

a. 1 cells (11.1%) have expected count less than 5. The minimum expected count is 4.47.

From the above table chi square is not significant (sig. value is greater than 0.05), no evidence to reject null hypothesis. It means there is no significant association between experience and their opinions on fell informed about police activities regularly.

**9. Feedback**

Ho: There is no significant association between experience and their opinions on police department encourages feedback.

<b>Crosstab</b>							
			7. feedback				Total
			Strongly Disagree	Disagree	agree	Strongly agree	
Experience	below 5 yrs	Count	1	18	14	4	37
		% within Experience	2.7%	48.6%	37.8%	10.8%	100.0%
	5-10 yrs	Count	0	22	17	2	41
		% within Experience	0.0%	53.7%	41.5%	4.9%	100.0%
	above 10 yrs	Count	0	11	13	0	24
		% within Experience	0.0%	45.8%	54.2%	0.0%	100.0%
Total		Count	1	51	44	6	102
		% within Experience	1.0%	50.0%	43.1%	5.9%	100.0%

#### Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	5.918 <sup>a</sup>	6	.432
Likelihood Ratio	7.258	6	.298
Linear-by-Linear Association	.042	1	.837
N of Valid Cases	102		

a. 6 cells (50.0%) have expected count less than 5. The minimum expected count is .24.

From the above table chi square is not significant (sig. value is greater than 0.05), no evidence to reject null hypothesis. It means there is no significant association between experience and their opinions on police department encourages feedback.

#### 10. Contribution

Ho: There is no significant association between experience and their contribution towards police department is valued.

<b>Crosstab</b>							
			30. contribution				Total
			Strongly Disagree	Disagree	agree	Strongly agree	
Experience	below 5 yrs	Count	0	21	14	2	37
		% within Experience	0.0%	56.8%	37.8%	5.4%	100.0%
	5-10 yrs	Count	0	28	12	1	41
		% within Experience	00%	68.3%	29.3%	2.4%	100.0%
	above 10 yrs	Count	2	12	10	0	24
		% within Experience	8.3%	50.0%	41.7%	0.0%	100.0%
Total		Count	2	61	36	3	102
		% within Experience	2.0%	59.8%	35.3%	2.9%	100.0%

**Chi-Square Tests**

	Value	df	Asymp sig. (2-sided)
Pearson Chi-Square	9.708 <sup>a</sup>	6	.138
Likelihood Hood Ratio	9.562	6	.144
Unear-by-Linear Association	1.192	1	.275
N of Valid Cases	102		

a. 6 cells (50.0%) have expected count less than 5. The minimum expected count is .47.

From the above table chi square is not significant (sig. Value is greater than 0.05), no evidence to reject **null** hypothesis. There is no significant association between experience and their contribution towards police department is value.

**11. Compensation system**

Ho: There is no significant association between experience and their opinions on existing compensation system.

<b>Crosstab</b>							
			32. Compensation system				Total
			Strongly Disagree	Disagree	agree	Strongly agree	
Experience	below 5 yrs	Count	3	19	11	4	37
		% within Experience	8.1%	51.4%	29.7%	10.8%	100.0%
	5-10 yrs	Count	4	17	16	4	41
		% within Experience	9.8%	41.5%	39.0%	9.8%	100.0%
	above 10 yrs	Count	3	16	5	0	24
		% within Experience	12.5%	66.7%	20.8%	0.0%	100.0%
Total		Count	10	52	32	8	102
		% within Experience	9.8%	51.0%	31.4%	7.8%	100.0%

#### Chi-Square Tests

	Value	df	Asymp.Sig.(2-sided)
Pearson Chi-Square	6.310 <sup>a</sup>	6	.389
Likelihood Ratio	8.134	6	.228
Linear-by-Linear Association	2.385	1	.123
N of Valid Cases	102		

a. 6 cells (50.0%) have expected count less than 5. The minimum expected count is 1.88.

From the above table chi square is not significant (sig. value is greater than 0.05), no evidence to reject null hypothesis. It means there is no significant association between experience and their opinions on present compensation System

#### Conclusion

Through the empirical study conducted on sub-inspectors of Hyderabad police, it was observed that the factors which influence engagement are of fair treatment, salary and benefits, personal achievement, awareness of departmental policies and communication respectively.

The police can emerge as high performing organisation if it can focus on

- a) Training its personnel on extending fair treatment to their superiors and subordinates

- b) Revise salary and perquisites more periodically to match the current inflation levels.
- c) Recognise the personal achievements of the staff, motivate them for further achievements, and reward them wherever possible with financial and non-financial benefits.
- d) Conduct more training programs to enhance the awareness of the departmental policies and procedures through appropriate documentation and creating systems in place
- e) Create an environment for involvement, openness, contemplation and reflection

The results of this comprehensive feedback exercise provide Hyderabad Police with a valuable opportunity to determine the types of actions needed to further engage their people and improve organisational functioning more generally.

**References**

1. Ms.Avanthika & Dr.A.K.Saxena, “A Study of Career Drivers of IPS Officer- Trainees” *The Indian Police Journal*, April - June 2012.
2. Andhra Pradesh Special Police Manual-1986, Andhra Pradesh Police Academy, Hyderabad.
3. Bates, S. (2004), “Getting engaged”, *HR Magazine*, Vol. 49 No.2, pp.44-51.
4. K.SampathKumar, Asst.Director, APPA, *Police interface with Public -A Behavioural approach*, Andhra Pradesh Police Academy, Hyderabad.
5. Kahn, W.A. (1990), “Psychological Conditions of Personal Engagement and Disengagement at Work”, *Academy of Management Journal*, Vol. 33pp.692-724
6. May, D.R., Gilson, R.L., Harter, L.M. (2004), “The Psychological Conditions of Meaningfulness, Safety and Availability and the Engagement of the Human Spirit at Work”, *Journal of Occupational & Organizational Psychology*, Vol. 77 pp.11-37.
7. Perryman Robinson and Hay day, *The Drivers of Employee engagement*, IES report 408, 2004.

8. Rao purna Chandra, “Role of HRIS in improving Modern HR Operations”, Vol2 (12), Advances in management, December 2009.
9. Richman, A. (2006), “Everyone wants an Engaged Workforce how you can create it?” Workspan, Vol. 49 pp.36-9.
10. Robinson, D., Perryman, S., Hayday, S. (2004), The Drivers of Employee Engagement, Institute for Employment Studies, Brighton.
11. Saks, A. (2006) ‘Antecedents and Consequences of Engagement’ Journal of Managerial Psychology 21 (7) 600-19.
12. Schaufeli, W.B., Salanova, M., Gonzalez-Roma, V., Bakker, A.B. (2002), “The Measurement of Engagement and Burnout: a Two Sample Confirmatory Factor Analytic Approach”, Journal of Happiness Studies, Vol. 3 pp.71-92.
13. Shaw, K. (2005), “An Engagement Strategy Process for Communicators”, Strategic Communication Management, Vol. 9 No.3, pp.26-9.
14. Sharma Baldev.R and Raina Anupama, “Determinants of Employee Engagement in a Private Sector Organization” Vol2-3, Advances in Management, Oct 2010.
15. Hyderabad Police History and Structure, [www.hyderabadpolice.gov.in](http://www.hyderabadpolice.gov.in)

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# 7

## RED ALERT: THE WAY AHEAD FOR EFFECTIVELY TACKLING THE NAXAL MENACE

*Mahender Singh Poonia IPS\**

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*“A civil war like situation has gripped the southern districts of Bastar, Dantewara and Bijapur in Chhattisgarh. The contestants are the armed squads of tribal men and women of the erstwhile People’s War Group now known as the Communist Party of India (Maoist) on the one side and the armed tribal. Fighters of the Salva Judum created and encouraged by the government and supported with the firepower and organization of the central police forces.*

*This open declared war will go down as the biggest land grab ever, if it plays out as per the script. The drama is being scripted by Tata Steel and Essar Steel who wanted 7 villages or thereabouts, each to mine the richest lode of iron ore available in India. Behind them are the traders, contractors and miners waiting for a successful result of their strategy. The first financiers of the Salva Judum were Tata and the Essar in the quest for ‘peace’”.*

*.. .. 640 villages as per official statistics were laid bare, burnt to the ground and emptied with the force of the gun and the blessings of the state. 350,000 tribals, half the total population of Dantewada district are displaced, their womenfolk raped, their daughters killed, and their youth maimed. Those who could not escape into the jungle were herded together into refugee camps run and managed by the Salva Judum. Others continue to hide in the forest or have migrated to the nearby tribal tracts in Maharashtra, Andhra Pradesh and Orissa.*

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\* Special IGP & DIGP (P&W) West Bengal.

.... 640 villages are empty. Villages sitting on tons of iron ore are effectively de-peopled and available for the highest bidder. The latest information that is being circulated is that both Essar Steel and Tata Steel are willing to take over the empty landscape and manage the mines."<sup>1</sup>

Reading this extra-ordinary long quote, one may get the impression that one is reading a passage from a propaganda material of any hard core Naxal group. But ironically, this is taken from Draft Report Volume I of Committee on State Agrarian Relations and Unfinished Task of Land Reforms appointed by Ministry of Rural Development, Government of India.

Let us try to examine the problem deeply otherwise we shall also be recommending superficial and cosmetic remedies for a deep-rooted malaise of Indian society, economy and polity, like increasing some battalions of paramilitary forces or purchasing some high-tech security devices from any multinational corporation. It will be like dressing the wounds caused by blood- poisoning either keeping on further poisoning the blood or not addressing it. In such a situation, we may take the dresser who is simultaneously poisoning our blood, as our messiah and benevolent friend. So, remedy suggested should be such that it can solve not only the problem of Naxalism but most of the ills of India society.

Let us be honest enough to admit on the onset itself that Indian society is a lethal mix of feudalism and colonialism on the one side and savage capitalism and ignorance and Superstitions on the other. There is nothing strange in it. Rather these elements are natural corollaries of each other. Feudalism, colonialism and savage capitalism feed on the diet of ignorance and superstitions. And to keep the masses submerged in reality, they often indulge in putting one group of people against other.

Then, let us accept that violence, either by state or by - non state actors can not solve any problem; rather it creates new and complicated problems. **But if violence has to be condemned, we cannot be selective.** We must condemn every type of violence, be it in the name of establishing 'law and order' or in the name of noble cause of establishing an 'oppression-free egalitarian society'. But when our mainstream media, arm- chair intellectuals and burgeoning middle and indifferent upper class are very efficient in spitting venom against any act of violence by deprived groups when state and extra-state actors like rabid majority communal groups, caste panchayats, big corporations like Union Carbide continuously commit

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1. [www.rd.ap.gov.in/IKPLand/MRD](http://www.rd.ap.gov.in/IKPLand/MRD) Committee Report v 01 Mar 09.PDF p.253-254

acts of brutal violence on helpless masses either with the active support or passivity of state, there is no such hue and cry. Rather, opposite to it, those who raise the voices against this type of violence are labeled traitors, anti-nationals, anti -people or a black spot on Indian culture. In India, in year 2002, 2.3 million children under the age of 5, died due to avoidable diseases.<sup>2</sup> **This comes to 6301 deaths per day, 263 deaths per hour and 4.37 deaths per minute.**

According to Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, **77% of India's population live below an expenditure of Rs.20 per day per person.**<sup>3</sup> The Commission on Labour Standards set up by the Government of India in 1995, found the number of child labourers at 25 million (1993) and growing at the rate of 4 per cent per year.<sup>4</sup> 1.5lakh farmers have committed suicide between 1997 and 2005 after introduction of neo-liberal policies.<sup>5</sup> A crime is committed against a Dalit every 18 minutes, 13 Dalits are murdered every week , 5 Dalits' homes or possessions are burnt every week 6 Dalits are kidnapped or abducted every week , 3 Dalit women are raped every day.<sup>6</sup>

And nobody considers it as violence. Even there is not even a trace of it in all media vulgarity of "India Shining."

Neo-rich, western educated middle class which is getting most benefited by this predatory growth shrug its shoulders and says "We are not killing them." But what can be more false than that. Jean Paul Sartre had put fingers' in our eyes long ago and had told **"You know well enough that we exploiters...with us to be an accomplice of colonialism; since all of us without exception have profited by colonial exploitation."**<sup>7</sup>

Do not think that he was talking only of classical occupying colonialism by foreign powers.

It shows the utter denial mode of the ruling group and this itself poses the biggest danger to nation and its symbolic democracy. The minimum condition for a minimum democracy to survive, what of prospering, is that no one should be so rich that he can purchase someone and no one must be so poor that he has to sell himself. **Secondly**, terrorism and naxlaim has

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2. <http://www.who.int/whr/2003/chapter1/en/index2.html> P.10.  
3. [http://nceus.gov.in/Condition of workers sep 2007.pdf](http://nceus.gov.in/Condition%20of%20workers%20sep%202007.pdf) P.5.  
4. <http://www.icftu.org/www/pdf/corelabourstandardsindia.pdf> P.9.  
5. <http://www.rediff.com/news/2007/nov/22sldl.htm> P.1.  
6. [http://www.nhrc.nic.in/Pu blications/reportKBSaxena.pdf](http://www.nhrc.nic.in/Pu%20blications/reportKBSaxena.pdf) P .34.  
7. Freire, Paulo, Pedagogy of the Oppressed p.31.

become such a big industry that big business is thriving on it. Naomi Klein calls it ‘Disaster Capitalism.’<sup>8</sup> There are weird proposal of making bomb-proof roads and bridges and putting mine sweeper vehicles on train engines. There is no wonder if these are accepted.

**Now let us see how and why this happens—**

When there is oppression and resultant gross inequalities inherent in the system and structure of any society or nation, it necessarily begets violence because oppression cannot happen without violence and to maintain vulgar and exploitive inequalities more violence is needed. Thus an oppressive act is a necessarily a violent act. According to Paulo Freire “*A situation in which A objectively exploits B or hinders his pursuit of self-affirmation as responsible person , is an act of oppression . Such a situation in itself constitutes violence... because it interferes with the individual’s ontological and historical vocation to be more fully humane.*”<sup>9</sup>

According to him oppression dehumanise both oppressor and oppressed and thus, is a big hurdle in realisation of ontological vocation of human-beings that is to become a full human-being.

It is true that oppression cannot rest long on the basis of violence or power alone. So, various finer and cunning instruments of internalisation of oppression are devised. They use various institutions of discipline like religion, education, hospitals, courts and jails to create and maintain oppression and inequality whereas the same institution may also be used for just the opposite purpose especially, the education, as Paulo Freire has forcefully shown not only in theory but in practice also. Michel Foucault has brilliantly and finely captured these devices in following words “*Prison is one part of a vast network, including schools, military institutions, hospitals, and factories, which build a panoptic society for its members. This system creates “disciplinary careers”*”<sup>10</sup> Irony of the situation is this that often these practices are coated in the ideals ,language and discourses of high -sounding moral and ethical principles like ‘ Dharma,’ ‘ Equality’ ‘Democracy’ and so on. We have to take shelter of Foucault again –

*“Historically, the process by which the bourgeoisie became in the course of the eighteenth century the politically dominant class was masked by the establishment of an explicit, coded and formally egalitarian juridical framework, made possible by the organization of a parliamentary,*

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8. Foucault, Michel, Discipline and Punish, P.300.

9. Foucault, Michel, Discipline an Punish, p.222.

10. Guevara, Che, Guerilla Warfare, p.51.

*representative require:*” Elaborating this further legendary and as much loved as hated, Che Guevara<sup>11</sup> writes” *When the forces of oppression maintain themselves in power against laws established by themselves , peace is considered already broken*<sup>12</sup>

But this vicious circle of oppression cannot be broken unless fundamental changes are brought in our social, political and economic system. To make these external changes permanent and to get internalise these by masses, there is need for basic and revolutionary changes in our present education system, which Paulo Freire calls, “Banking Concept”<sup>13</sup> of education and in which the oppressed internalise the oppressor and want to become like him. Thus the only change, if at all, present education brings that some of the oppressed of yesterday become oppressors tomorrow.

But however effective these instruments of oppression and brain-washing may be, as basic nature of human-being is freedom and to resist oppression, there is always passive as well as active, individual as well as collective resistance to this. Naxal ideology or no Naxal ideology, this revolt of freedom -loving and respecting tribal is inherent in present development paradigm to which Amit Bhaduri calls “Developmental Terrorism.”<sup>14</sup> This proposition is supported by the fact that even before the birth of communism and Naxalism, there were numerous revolts of oppressed people in India as well as abroad raging from Spartacus, Maccabees, Red Indians, Maoris to Santhals under the leadership of Siddhu and Kanhu and Mundas under the leadership of Birsa Munda.

There is a lot of hullabaloo about population-explosion and scarcity of resource. While it is true that natural resources are finite, we have to take care of these and that of population growth but if we consider in the words of Gandhiji that need and not the greed of every person has to be fulfilled, there are enough resources on this earth for this purpose. By this parameter, we have no reason to disagree with George Orwell that even at the beginning of twentieth century human equality had become technically possible but by the new group capturing the power it was seen as a danger rather than an ideal to be achieved because problem with feudalism and colonialism is this that these are not only contagious but addictive also. Any feudal and/or colonial and thus hierarchical society necessarily thrive

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11. Foucault, Michel, Discipline and Punish, P.222  
12. Guevara, Che, Guerilla Warfare, P.51  
13. Freire, Paulo, Pedagogy of the OPrressed P.46  
14. Bhaduri, Amit Face You Were Afraid to see, P.13

on the doses of exploitation and oppression which further requires hatred among various groups often leading to bloody clashes and wars, poverty and utter ignorance of the masses to be ruled. If we see in Indian context, this is exactly what is happening, whether it is by design or otherwise, is a matter of big debate. But no genuine democracy is possible under these circumstances because **“Ignorance is an evil weed which dictators may cultivate among their dupes but which no democracy can afford among its citizens.”**<sup>15</sup>

Present crisis is the result of Neo- Liberal economic policies under the garb of globalisation and liberalization and free market. How far this globalisation is free and fair is clear from a quote of Thomas Friedman, a major American think tank and Deputy Editor of New York Times, a newspaper having vital influence on American policy making **“For globalism to work, America can’t be afraid to act like the almighty superpower that it is....The hidden hand of the market will never work without a hidden fist-McDonald’s cannot flourish without McDonnell Douglas, the designer of the F-15.And the hidden fist that keeps the world safe for Silicon Valley’s technologies is called the United States Army, Air Force, Navy and Marine Corps.”**<sup>16</sup>

Karl Polanyi had mentioned in clear terms in 1944 that though the market asks for freedom from government interference yet the market itself is the result of a conscious and often violent intervention of the government.<sup>17</sup> So, more often than not the State is inferring violently in the favour of big business and multinational corporations. Noted Economist Professor Amit Bhaduri has put this in following words *“In our democracy, terrorism is practised increasingly with the sole purpose of enriching big business, but under the guise of industrialising and modernising the economy. And what is worse, it happens with the support of media and the middle class.”*<sup>18</sup>

These policies ruined Latin American economies, killed so called Asian Tigers, destroyed Russia, failed the dreams of blacks of South Africa, erased Iraq and ultimately brought greatest recession after Great Depression of 1930’s in USA. Even once supporters and initiators of these policies like Joseph Stiglitz, former Chief Economist and Senior Vice President of World Bank, Chairman of President Bill Clinton’s Council of Economic Adviser

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15. Beveridge, W.H, Full Employment in a Free Society, P.256.

16. Friedman, Thoms, What the World Need Now, New York Times, March 28, 1999 quoted in [http://www. Counterpunch.org/ whitney05132005html](http://www.Counterpunch.org/whitney05132005html)

17. Polanyi, Kari, The Great Transformation P.173.

18. Bhaduri, Amit, The Face You Were Afraid to see,p.13

and recipient of Nobel Prize for Economics(2001) and Jeffrey Sachs , Former Advisor of IMF, have severely criticised these policies. Stiglitz calls it “curious blend of ideology and bad economics,” and argues that the IMF itself is responsible for worsening-in some cases, for actually creating-the problems it claims to be fighting. He further observes that stabilization is on the agenda; job creation is off. Taxation, and its adverse effects are on the agenda; land reform is off. There is money to bail out banks but not to pay for improved education and health services, let alone to bail out workers who are thrown out of their jobs as a result of the IMF’s macroeconomic mismanagement.<sup>19</sup>

Even after utter failure of these policies world over and its originator and staunch pusher world - over, USA, after the recession, saying adieu to these policies and resorting back to Keynesian economic policies, in India Milton Friedman and his ‘voodoo science’ still rules and runs the show.

Supporters of this model of development often label its critics as ‘Anti-development’ and in turn ‘Anti-national’ and often aggressively ask whether you want to go back to stone age or support centralised and totalitarian model of development and state. But this is the language of ‘Either with us or against us’ and pre-supposes, rather forces us, to choose between two evils. Then they aggressively ask “What is the alternative?”According to Naomi Klein this is done because for savage capitalism democratic socialism is greater enemy than totalitarian communism. But rejecting savage capitalism does not mean choosing totalitarian communism.<sup>20</sup>

So, let us make it pretty clear that there are a lot of alternatives under the umbrella of Democratic Socialism from which every nation and society may choose according to its, environment, circumstances, needs and capabilities. Gandhiji had given one such model 100 years ago in ‘Hind Swaraj’, E.F. Schumacher presented another in ‘Small is Beautiful’. In her book ‘Naming the Enemy’ Amory Starr has written about various alternative models of development .These models are working in villages like Ralegaon Sidhi and Bilgaon. Democracy at grass root is at function in the jungles of Lacadon , Mendha Lekha, in Modragon cooperatives in Basque and in the fields adopted by Navdanya.

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19. Friedman B.M. Globalization. Stieglitz’s Case New York Review of Books Volume 49, Number 13. August 15, 2002.

20. Klein, Naomi, The Shock Doctrine, p.451.

These are working successfully in Scandinavian countries since long and it seems that after the economic shock even USA wants to give this model a chance.

It has been proved beyond reasonable doubt that violence in a society is proportionate to oppression and inequality present in it. It is crystal clear in comparison of societies like Sweden and Denmark on the one end of continuum and that of USA and India on the other. The more egalitarian and just the society, the less violent and more peaceful it would be. Secondly, the dream of an egalitarian society is so popular that till there are unwanted and violently maintained inequalities, someone or else will keep on fighting for it; moreover it is difficult rather almost impossible to defeat these fighter in fair play,<sup>21</sup>

Everyone who is raising a voice against suppression of common people trying to save their home and hearth is being labelled as Naxal and anti-national. Battle lines are so sharply drawn that supporters of this predatory, unsustainable and exclusionary development model are crying at the top of their voice **“Either support us or you are a Naxal, anti-development and thus an anti-national.”**This is clear in choicest of abuses hurled at likes of Arundhati Roy, Medha Patkar, Swami Agniwesh and Gautam Navlakaha, not only in cyber space but in open meetings and conferences also. Things do not stop here. Such voices of sanity are being suppressed in more brutal ways. Cases are being slapped against them; they are being arrested and tortured. Demolition of Vanvasi Chetna Ashram run by noted Gandhian Himanshu Kumar, cases of treason and waging war against the state against Dr. Binayak Sen and lodging FIR against Arundhati Roy for treason are some of the apt example of this. All this reminds one, words of late P. C. Joshi that it is like shooting the weatherman who predicts a storm by judging all the symptoms, making him responsible for bringing the storm.

But supporters of iron-fist policy forget that when peaceful democratic resistance is either crushed or goes unheeded, way for violent agitation is paved; when voices of sanity are not heard insanity prevails. The more the repression, the more popular support these voices of insanity will get. That is why Sudeep Chakravarti calls armed fight against the naxal ‘India at war with itself<sup>22</sup> and concludes

**“Maoism is not our greatest internal security threat. Poverty, non-governance, bad justice and corruption are. Maoist presence in a third**

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21. Klein, Naomi, *The Shock Doctrine*, p.451.

22. Chakravarti, Sudeep, *Red Sun*, P.1.



**of India merely mirrors our failures as a nation. The Maoist people comprises people treated poorly, denied livelihood, justice and all other ideals enshrined in the Constitution”,<sup>23</sup>**

There is little use and even hardly any, even symbolical effect of welfare or development programmes which do not touch the basic structure maintaining the oppression and inequalities. Freire calls them acts of “False Generosity”. In this way there is hardly any difference between a Shylock feeding the beggar in front of a temple and National Rural Employment Guarantee Programme. (NREGA) Until and unless oppressive structure are altered and in their place structures that empower the people, make them their own owners, no substantial result can be achieved. But the problem is this that all the good concepts like ‘Participation’ ‘Empowerment’ ‘Grass Root Democracy’ etc. are immediately adopted by the people whose short term interests were to be affected adversely due to these and then they use these for the purpose just opposite for which these concepts were devised.

So, there is need of deep structural changes in society which first destroy myths created and sustained by old oppressive order and then develop an alternative social, political and above all an economics system which is based on egalitarian ethos. This type of system will help not only in reducing violence and suo motu eradication of violent movements like Naxalism, religious fundamentalism and organised criminal gangs but will also make possible to realise every human-being his or her full potentials and capabilities. Opponents may claim that purpose of Naxalism is not end of exploitation of tribal but over-throwing government established by law; so they are to continue their protracted struggle even if there is no exploitation but in that case from where will they get the support? Moreover, in that case, will revolution dreamt by Naxals not become redundant? Security is there in the minds and hearts of people, in the environment, in the air and not in body-search of every men and women striping them naked and thorough biometric profiling even of 100 years old tribal women living in Lahual Spiti. It is not safety and security but panic and hysteria of ruling elites; a Panopticon of Jeremy Bentham in making, precursor to omnipresent albatross regime mentioned by George Orwell in ‘1984.’ Naomi Klein calls it society of ‘ubiquitous surveillance and marginal or no services’.<sup>24</sup> She also mentions about ‘Gated Communities’ and ‘Green Zones’ made for superrich and elites, protected by commandos and ultra modern surveillance

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23. Klein, Naomi *The Shock Doctrine*, P.420.

devices. Fear of the poor and exploited storming these safe heavens is so great that machineguns are mounted at their entrances. Even the panic of poor killing rich individually is so strong that servants are kept after police verification, not allowed to stay in , body-searched during entry and exit and police is called at small sign of protest like not cleaning the floor at given time. In some cases the panic is so strong that she mentions about a lady living in such gated community that she hides all the knives of kitchen from her servants. Israel is not a model to be followed but a stark warning.<sup>24</sup>

My father often nostalgically mentions about our first Prime Minister Jawahar Lal Nehru who came to a kasba named Sangria by train in second class and walked about two kilometres mixing in crowd, shaking hands with them and accepting flowers with skeleton police force just looking on with no role to play. He also mentions about all the candidates contesting against Nehru losing their deposits. That was the security in the air and confidence of a leader and statesman of an ancient nation like India.

Opponents may say there may still be some maniacs and criminals even if the society is fully just and egalitarian. But a handful of maniacs and criminals are never strong and sufficient enough to make us surrender our cherished freedom and self-respect. They can never threaten a society stood on pillars of egalitarianism and sanity.

There is urgent need of making a bomb-proof society, not bomb - proof roads and bridges.

(3508 Words Without References, 4081 words 'With References)

### **References**

#### **Books**

*Bhaduri, Amit (2009) The Face You were Afraid to See , Penguin Books (India).Pvt. Ltd New Delhi*

*Chakravarti, Sudeep(2009), Red Sun, Penguin Books (India) Pvt. Ltd, New Delhi*

*Gandhi, MK(Org. 1908,2006) Hind Swaraj, .Navjivan Publishing House, Ahmedabad*

*Fanon, Frantz (Org.1962, 2001),The Wretched of the Earth, Penguin Books (India) Pvt. Ltd, New Delhi*

*Foucault, Michel (1975) Discipline and Punish, Vintage Books, New York*

---

24. Klein, Naomi The Shock Doctrine, P.420.

*Freire, Paulo(1972) Pedagogy of the Oppressed, Penguin Books Ltd Middlesex, England Fromm, Erich (Org. 1944, 1955) Fear of Freedom, Routledge and Kegan Paul Ltd, London Guevara Che, (Org.1960, 2009) Guerrilla Warfare, LeftWord Books, New Delhi*

*Jamreson, Fredrick, & Miyoshi.Masao/ Eds.1998)The Cultures of Globalisation, Duke University Press, Durham*

*Klein,Naomi(2005)No Logo, Harper Perennial, Hammersmith ,LondonW68JB*

*Klein, Naomi (2007), The Shock Doctrine, Penguin Books (India) Pvt. Ltd, New Delhi*

*Mills, C. Wright (1959) The Sociological Imagination, Penguin Books Ltd., Middlesex, England Nader.Ralph (2002) Crashing the Party: Taking on the Corporate Government in the Age of Surrender, Thomas Dunn Books, New York*

*Patnaik, Utsa, (2007)The Republic of Hunger and other Essays, Three Essays Collectives, New Delhi*

*Orwell, George (Org.1949, 2009)1984,Maple Press (India), New Delhi*

*Polanyi, Karl (Original, 1944, 1996)The Great Transformation, Beacon Press, Boston Rajagopalan, R, (2008), Environmental Studies, Oxford University Press, New Delhi Sachs, Wolfgang (Ed1997.)The Development Dictionary, Orient Longman, New Delhi Schumacher, E.F. (1973) Small is Beautiful, Harper & Row, New York*

*Starr, Amory(2001) Naming the Enemy, Zed Books Ltd., London*

*Stiglitz, Joseph E. (2003) Globalisation and Its' Discontents, W.W. Norton Company, New York*

#### **Journals/Magazines/Reports**

*McMichael, Philip, The impact of Globalisation, Free trade and Technology on Food and Nutrition in the New Millennium ; Proceedings of Nutrition Society (2001), 60: 215-220*

*Cambridge University Press.*

*Friedman B.M Globalization: Stiglitz 's Case, New York Review of Books Volume 49, Number 13·August 15, 2002*

*Vidal John, 100 million to go hungry to drive Europe's cars, Hindustan Times February17,2010*

**Internet Sources**

<http://www.globalpolicy.org/component/content/article/220/47362.html> Sharma, Devinder Bhagwati, globalisation and hunger

[www.rd.ap.gov.in/IKPLand/MRD Committee Report VOJ Mar 09.pdf](http://www.rd.ap.gov.in/IKPLand/MRD%20Committee%20Report%20VOJ%20Mar%2009.pdf)  
[http://nceus.gov.in/Condition of .workers sep 2007.pdf](http://nceus.gov.in/Condition%20of%20workers%20sep%202007.pdf) [http://www.ic\(tu.org/www/pdf/corelabourstandardsindiapc/f](http://www.ic(tu.org/www/pdf/corelabourstandardsindiapc/f) <http://www.rediff.com/news/2007/nov/22sldl.htm> <http://www.nhrc.nic.in/Publications/reportKBSaxena.pdf>  
<http://www.who.int/whr/2003/chapter11en/index2.html>

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# 8

## WHISTLEBLOW PROTECTION LAW OF INDIA

*Ms. Rekha Rani\**

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Whistleblower protection refers to laws and policies meant to protect anyone who exposes alleged wrongdoing. The wrongdoing might take the form of fraud, corruption or mismanagement. Ideas about whistle blowing vary widely. Whistleblowers are sometimes seen as selfless martyrs for public interest and organizational accountability other view them as ‘traitors’ or ‘defectors’ solely pursuing personal glory and fame.<sup>1</sup>.

The law that a government enact to protect such person who expose corruption is called a whistleblower protection law. Several countries have already put in place laws to protect whistleblowers or are in the process of doing so. However, the level of protection and the way in which the law operates differs from country to country. For instance the US was one of the earliest to have the Whistleblower Protection Act, 1989, while UK has Public Interest Disclosure Act of 1998 and Norway has a similar law in place since January, 2007.<sup>2</sup> At present India does not have any law to protect whistle blowers? But the Public Interest Disclosure and Protection to Person Making the Disclosure<sup>3</sup> Act, 2010 was approved by the Cabinet if India as part of a drive to eliminate corruption in the country’s bureaucracy and passed by Lok Sabha.

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1. <http://en.wikipedia.org/wiki/whistleblowers>

2. <http://article.timesofindia.com/2010-03-29/India/2813566>

3. <http://www.prsindia.org>

**Definition:**

The term whistle-blower comes from the whistle a reference users to indicate an illegal or foul play.<sup>4,5</sup> US Civic activist Ralph Nader coined the phrase in the early 1970's to avoid the negative connotations found in the other words such as "informer" and "snitches:"

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**Internal Whistleblower:**

Most whistleblowers are internal whistleblowers, who report misconduct on a fellow employee or superior within their company. One of the most interesting questions with respect to internal whistleblower is why and under what circumstances people will either act on the spot to stop illegal and otherwise unacceptable behaviour or report it. There are some reasons to believe that people are more likely to take action with respect to unacceptable behaviour within an organization, if there are complaint systems that offer not just options dictated by the planning and control organization, but a choice of options for absolute confidentiality.<sup>6</sup>

**External Whistleblower:**

External whistleblower, however report misconduct to outside persons or entities. In their cases, depending on the information's severity and nature, whistle blowers may report the misconduct to the media, lawyers, law enforcement or watch dog agencies, or other local, State or federal agencies. In some cases, external whistle blowing is encouraged by offering monetary reward.

**Definition of Whistleblower:**

A whistleblower is defined as someone who exposes wrongdoing, fraud, corruption or mismanagement. In many cases, this could be a person who works for the government who would report misconduct within the

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4. Etymonline.com ([http://www.etymonline.com/index.php?Search=whistleblower + searchmode =none etymonline.com](http://www.etymonline.com/index.php?Search=whistleblower&searchmode=none)  
"wordorigins.org" (<http://www.wordorigins.org/index.php/site/whistleblower>)  
wordorigins.org  
Nader, Petkas and Blackwell, whistleblowing (1972)
  5. Mary Powe, "Option and choice for conflict resolution in the workplace" in Negotiations: Strategies for Mutual Gain, by Lavinia Hall (ed), Sage Publications, Inc, 1993, PP 105-119.
  6. Dealing with or reporting "unacceptable" behavior (with additional thoughts about the bystander effect) Mary Rowe MIT, Linda Wilcox HMS, Howard Gadlin NIH (2009), Journal of the International Ombudsmen Association 2(1) online at [omnudsassociation.org](http://www.ombudsassociation.org/publication/journal/) (<http://www.ombudsassociation.org/publication/journal/>)

government or it could be an employee of a private company who reports corrupt practice with the company.<sup>7</sup> Generally the misconduct is a violation of law, rule, regulation and or a direct threat to public in trust, such as fraud, health and safety violations, and corruption.<sup>8</sup>

The law that a government enacts to protect such persons who help expose corruption is called a whistleblower protection law.

#### **Whistleblowers Protection in India:**

The Government of India has been considering adopting a whistleblower protection law for several years. In 2003, the Law Commission of India recommended that in order to eliminate corruption, a law to protect whistleblowers was essential and the adoption of the Public Interest.<sup>9</sup> Disclosure (Protection of informers) Act, 2002.

An Engineer, Satyendra Dubey was murdered in November 2003. Dubey had blown the whistle in a corruption case in the National Highways Authority of India's Quadrilateral project.<sup>10</sup> He was killed after he wrote a letter to the office of then P.M. A.RVajpayee detailing corruption of highways.

In the letter, he had asked specifically that the identity be kept secret. Instead the letter was forwarded to various concerned departments without making Dubey's identity. Dubey's murder led to public outcry at the failure to protect him. As a result, in April 2004, the Supreme Court of India pressed the government into Public Interest Disclosures and Protection of Informer Resolution, 2004 designating CVC as the nodal agency to handle complaints on corruption.<sup>11</sup>

Right to Information Act was notified in October, 2005. In 2006, the Public Service Bill, 2006 (Draft) stated that the government must put into place mechanisms to provide protection to whistleblowers. In August, 2010 the Public Interest Disclosure and Protection of Person Making the Disclosures Bill, 2010 was introduced into the Lok Sabha, lower house of the Parliament of India. The Bill was approved by the Cabinet in June,

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7. The Times of India March 29, 2010.

8. Yahoo Education (<http://education.yahoo.com/reference/dictionary/ent1y/whistleblower>)

9. Public 'Interest Discloser Bill' <http://law.commissionofndia.nic.in/reports/179rdtp2.pdf>

10. "Truth Silenced" pages on Stayendra Dubey Murder Case (<http://www.rediff.com/news/dubey.htm>).rediff.com

11. (<http://article.timesofindia.indiatime.com>)

2011. This Bill was renamed as the Whistleblowers Protection Bill, 2011 by the standing committee on Personnel, Public Grievances, law and justice.<sup>12</sup> The Bill is however currently pending in the upper house of Parliament, Rajya Sabha for discussion and further passage.

The Bill was introduced in Rajya Sabha on 29 March, 2012 by V. Narayanasamy, Minister of State for Parliament Affairs.<sup>13</sup>

**Need of Legislation:**

There have been multiple instances of threatening, harassment and even murder of various whistleblowers.

An Engineer Satyendra Dubey was murdered in November, 2003. He had blown the whistle in a corruption case in the NHAI.

Two years later, an Indian Oil Corporation Officer, Shammughan Manjunath was murdered for sealing a petrol pump that was selling adulterated fuel.<sup>14</sup>

A Karnataka official S.P. Mahantesh said to be a whistleblower in controversial land allotment by societies was murdered in May, 2012. Mahesh was working a Deputy Director of the audit wing in the States Cooperative department and had reported irregularities in different societies involving some officials and political figures.

A senior police officer alleged that Mayawati's government was corrupt and had embezzled large amount of money. Shortly thereafter, he was sent to a psychiatric hospital.<sup>15</sup>

A social activist involved in exposing alleged irregularities in implanting MANREGA schemes was beaten to death at Jeruwa village in Latehas's Manika police station.

A whistleblower, who has been working to uncover the alleged fraud in BEML's Tatra truck deals and defence and engineering related contracts over the past 10 years and the illegal site allotment by BEML Employees Co-operative Society to bigwigs of PSU, has come under attack from unidentified persons thrice-once in 2005 and twice in 2009. The former BEML

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12. "Whistleblowers Bill passed" (<http://www.thehindu.com/news/national/article2.752946e.html>)

13. <http://en.wikipedia.org/wiki/whistleblower> retrieved 31-12-2013.

14. Manjunath murder: "Death Penalty commuted to life term" (<http://zeenews.india.com/news/states/manjunath-murder-death-penalty-commuted-to-life>).

15. [http://en.wikipedia.org/wiki/whistleblower\\_protection\\_in\\_India](http://en.wikipedia.org/wiki/whistleblower_protection_in_India).



employee first raised the tatra issue in 2005 and was immediately transferred to Kapururthala in Punjab.

In October, 2012 a decision which may to be big moral booster for upright All India Services (IAS, IPS and Indian forest Service) officers across the country, the center has quashed the Haryana Government's departmental charge sheet against the whistleblower Sanjiv Chaturvedi, who had to face the wrath of B.S. Hooda government for blowing the lid of many forest scams in the state. The state government had charged chaturvedi-2002 batch India Forest Service officer of Haryana cadre and wanted his termination from service of the basis of fabricated charges against him.

Whistleblower Haryana teacher Anand Kumar, who was claimed to have paid Rs. 5 Lacs to chief parliamentary secretary Ram Kishan Fauji for securing a junior basic teacher's (JBT) job, has now alleged that he was tortured by police for raising the issue.

The government may have snubbed Edward Snowden's asylum appeal, but public support for the U.S. whistleblower is gaining ground in India. On July 6, 2013 demonstrators plan to gather at India Gate around 4 P.M. to express solidarity with Snowden and voice their demand to provide him political asylum in India. Snowden has leaked exposes data theft and unethical activities on the part of the U.S. government. It impacts India as well. And yet, our government has denied him political asylum and has also not opposed the U.S. on the surveillance issue "says Ravi Nitesh, founder member of Mission Bhartiya the group that is organizing the protest.<sup>16</sup>

Activists are seeking a quick passage of the whistleblower Protection Bill in Parliament. The demands are that law should be framed to protect whistleblowers, facilitate the disclosure of information and uncover corruption in governmental organizations.<sup>17</sup>

Over 16 activist killed and thousands under attack or threatened, RTI activists have demanded a stronger whistleblower law, including provisions for accountability and compensation for the victim.

### **Some Features of Whistleblowers Protection Bill**

The Public Interest Disclosure Bill, 2009 prepared by the department of personnel and training. As per the draft law, any person can make a complaint of corruption or disclosure against any central government

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16. <http://articles.timesofindia.com/keywords/whistleblowers>

17. [http://en.wikipedia.org/wiki/whistleblower-protection\\_in\\_India](http://en.wikipedia.org/wiki/whistleblower-protection_in_India)

employee or central government backed institution to the CVC. The CVC which would be designated as the competent authority for complaints, would have the powers of civil court, including powers to summon anybody, order police investigation and provide security to the whistleblower.

The whistleblowers Protection Bill has been passed by the Union Cabinet on August 9, 2010. The bill is officially known as the Public Interest Disclosure Bill, 2010. The proposed law to protect whistleblowers will help in detecting corruption and ensure better flow of information but reality is that people in India fear to fight corruption because of fear of harassment and intimidation by criminals with powerful connections.

The CVC would not reveal the identity of the complainant but would have the authority to ignore complaints of vexatious or frivolous nature. It would also not be able to investigate complaints pertaining to matter which are sub-judice, prejudice to national security, international relations, proceeding of the Union Cabinet or those beyond the limitation period of five years.<sup>18</sup>

The bill has 30 sections divided in to 7 chapters. It will protect the whistleblowers from any discrimination or victimization in their work place. It provides for concealing the identity of a citizen who discloses information about misuse of power and money. Those who reveal the identity of the whistleblowers will be liable and penalized by the Central Vigilance Commission (CVC).

The offender will be liable for imprisonment up to 3 years and fine up to Rs. 50,000/-.

There will be penalization for official who tried to mislead the CVC.

The bill provides for addressing complaints against public sector employees of the central and the State Government.

The bill also ensure the honest government officials are not in any way but those individual who file false complaints and charges will be liable for imprisonment up to Rs. 30,000/-.<sup>19</sup>

#### **Major Shortcoming of the Bill:**

According to Indian law reports, the bill has faced considerable criticism because its jurisdiction is restricted to the government sector and

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18. [http://articles.timesofindia.com/2010-3-29/India\\_2813566\\_relined\\_on\\_12-31-2013](http://articles.timesofindia.com/2010-3-29/India_2813566_relined_on_12-31-2013).

19. The whistleblowers protection bill cleared by the Cabinet <http://www.lawisgreek.com/indian-law-whistleblowers-protection-bill>

encompasses only those who are working for the Government of India or any of its agencies. It does not cover the employees of the State Government. The draft Bill aimed at protecting whistleblowers is a welcomed more given the fact that this bill, if it becomes law is a very important legislation, the lack of public debate and consultation on the bill seem to indicate the danger of it becoming another paper tiger. Typically, ministries proposing draft legislation in value a process of public consultation to give the public on opportunity to carefully critique its provisions.<sup>20</sup>

The proposed law has neither provisions to encourage whistle blowing (financial incentive) not deals with corporate whistle blowers; it does not extend its jurisdiction to the private sector. The Directorate of Income Tax Intelligence and Criminal Investigation is one of the only agencies empowered for whistleblower protection.

The bill aims to balance the need to protect honest officials from harassment with protecting persons making a public interest disclosure. It outlines sanctions for false complaints. However, it does not provide a penalty for attacking a complainant.

The Central Vigilance Commission (CVC) was designated in 2004 to receive public - interest disclosures through government resolution there have been a few hundred complaints every year. The provisions of the bill are similar to that of the resolution. Therefore, it is unlikely that the number of complaints will differ significantly. The power of the CVC is limited to making recommendation.<sup>21</sup>

The bill has a limited definition of disclosure, and does not define victimisation. Other countries (such as United State, United Kingdom and Canada) define disclosure more widely and define victimization. It differs in many issues with the proposed bill of the Law Commission and the Second Administrative Reform Commission's report. These include no-admission of anonymous complaints and lack of penalties for officials who victimize whistleblowers.

If enacted, the law to protect whistleblowers will assist in detection corruption, ensuring better information flow and paving the way for successful prosecution for corruption individuals through clear and protected

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20. The whistleblowers Protection Bill cleared by the Cabinet ([http://www.law\\_in\\_greek.com](http://www.law_in_greek.com) I

Indian.law.whistleblowers - protection bill cleared cabinet)

21. Security I law/ strategic affairs [http://www.prsindia.org/bill\\_track/](http://www.prsindia.org/bill_track/) the public interest disclosure -and protect of person making the disclosure bill -2010.

process.<sup>22</sup> However, the public in India have poor level of confidence in fighting corruption because they fear retaliation and intimidation against those who dare to make complaints. Another worry pertains to the delay in disposing of these cases.

**Conclusion:**

In India there have been multiple instances of threatening, harassment and even murder of various whistleblowers. Many RTI activists have been attacking whistleblowers become a marked man and if his target is a powerful entity, he put his life, limb and liberty on the stake when he chooses to speak up.

There have been many cases where punishment for whistle blowing has occurred, such as termination, suspension, demotion, wage garnishment and/or harsh mistreatment by other employees. Whistleblowers frequently face reprisal, sometimes at the hand of the organization or group which they have accused, sometimes from related organizations, and sometimes under law.

Activists are seeking a quick passage of the Whistleblowers Protection Bill in Parliament. The demands are that a law should be framed to protect whistleblowers, facilitate the disclosure of information and uncover corruption in government organization. The proposed whistleblower protection bill will assist to detect corruption, ensure better information flow and pave the way for successful prosecution of corrupt individuals through clear and protected processes. But without public debate on the provision of this proposed law, it is clear that there is no way for people to measure its effectiveness when the draft bill comes into force and law. The Parliament of India could be the first step to enact the law and prevent the abuse of whistleblowers.

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22. [http://en-wikipedia.org/wiki/whistleblowers\\_protection\\_in\\_India](http://en-wikipedia.org/wiki/whistleblowers_protection_in_India)

# 9

## PRIDE AND HONOUR FOR POLICE

*Akash Budhrani\**

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Police is one of the most significant organization of nation and its society, which have been constituted with a purpose to ensure security, judgment to the entire populace of a nation and its society. So as to make a country or society full of constitution at freedom, fearlessness, dutiful, justice loving etc. Also we cannot deny the fact that a healthy and jubilant society cannot” be imagined without having such institutions as police.

On one hand, SF are considered to be specially constituted for the nation and on the other hand police is considered to be made for society of the nation. In the other words security force aim at providing security to the nation from terrorists-militant and thus securing the freedom of the country with security from indigenous culprits and criminals.

It is taken for granted that police plays an important role of ensuring security and peace and in establishing law and order inside the country but it is often seen and heard that police is not completely capable in doing so, due to many reasons.

Discipline, dutifulness, integrity, and unselfishness are some of the virtues, which should be assimilated by policeman and woman. So as to control over criminality inside the country. If one is true to his duty, he will certainly win the hearts of the people. Respect is not the thing to be begged for but is, as spontaneously from truth and honesty, we must always remember that;

**“Honour and shame from no condition rise  
Act your parts; there all the honour lies.”**

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\* Captain Coy Cdr 1(LH) Bn Assam Rifles.

Police have to maintain a commendable attitude towards the common people of the society. They should earn their name for their high sense of duty and readiness for self- sacrifice. They must always remember that their characters are priceless possession, they should therefore. Keep it untarnished. They ought to be truthful in all things and consider to everybody, fair to their rivals, kind to all weak and suffering in the society and they must not afraid to have the courage to stand up for is good, pure and noble. An ideal policeman is a man of clean and healthy habits who loves man of society, believes in co- operation and values and respects the rights of others, he always respect the law of the constitutions of India and never takes the laws into own hands. If time demands, he is always ready to sacrifice his own interest in the wide interest of his motherlands, he act be believing in activity, venture and struggle, he finds his work and plots on through thick and thin, carry for no material rewards, heart within and God over head.

Idleness is said to be crime, we should root our idleness. As an ideal policeman one should discard selfishness, laziness and narrowness of outlook, we should not forget that work is wealthy and service is happiness.

Like a good policeman, one should care for many people but money-making should not be one's main object because this leads to corrupt practices. One should care more for his work then his fee or pay. A good policeman should be more interested in his work and less in what he gets from his professions. He should always remember;

**“No gold but only man can make a nation great and strong, Men who for truth and honour's sake stand fast and suffer long.”**

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## AN ANALYSIS OF THE SATYAM COMPUTERS FRAUD AND WHETHER IT COULD HAVE BEEN PREVENTED

*Hanif Qureshi, IPS\**

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### **Introduction**

This paper describes the accounting fraud, which happened over a period of eight years in India's fourth largest software company, Satyam Computer Systems Limited. The top management, including the CEO of the company, perpetrated the fraud. The nature of fraud and its subsequent investigation has important lessons for the prevention of such offences in future. The role of external auditors and how far they can be expected to go in uncovering frauds of this nature is examined. The omissions on the part of the regulatory agencies, which ignored the early warnings emanating from Satyam, are also highlighted. The often-overlapping role and multiplicity of investigating agencies is highlighted. It is important to enact suitable legislation and increase the awareness about such frauds. Finally, the role of whistleblowers is examined as an important means of detection of crimes of this nature.

### **White collar crimes in India**

Edwin Sutherland defined white-collar crime as "crimes committed by a person of respectability and high social status into the course of his occupation." Prior to Sutherland, scholars like W. A. Bonger (1916), EA Ross (1907), Sinclair (1906) and Steffens (1903) have written about misdeeds by businesspersons and elites. Edwin C. Hill had mentioned criminal behavior of the elites in the American Congress in 1872 in his paper

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‘Criminal Capitalists’. Prof. Hugh Barlow proposed that in addition to Sutherland’s “high status” offenders, the people of lower strata also committed white-collar crime.

If there is an industry in which India has surpassed the developed west then it is the field of white-collar crimes. White-collar crimes in India are not entirely based on the theory propounded by Sutherland but more on the concept by Prof. Hugh Barlow as “crimes committed by the people of lower strata in their occupational status.”

In India, white collar crime mostly includes manipulation of funds or in stock exchanges or misrepresentation in advertising or in financial statements of a corporation or violations of labor laws, copyright, patent laws etc., which often occur during the course of one’s occupation. Some examples, which come to mind easily, are adulteration of milk by the milkman, selling adulterated food by the shopkeeper, selling expired medicine, taking out few pounds of gas from the cylinder and so on. The Indian Monopolies Inquiry Commission has this to say about essential commodities:

*“There is hardly anybody in India who has not been a victim of the practice of hoarding, cornering and profiteering. Whenever there is a slight shortage — even temporary — in any consumer goods for which the demand is urgent and inelastic, almost every trader — it is perhaps unnecessary to use the qualification ‘almost’ — conceals his stock and blindly tells the customers that he has not got the commodity in stock...”*

Article 39(c) of the Constitution of India states:

“The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common goods; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.”

This provision has resulted in the following enactments geared towards controlling white- collar crimes:

1. Essential Commodities Act, 1955,
2. Industries (Development and Regulation) Act, 1951,
3. Import and Export (Control) Act, 1947,
4. Companies Act, 1956,
5. Foreign Exchange (Regulation) Act, 1973,
6. Central Excises and Salt Act, 1944,



7. Income-tax Act, 1961,
8. Customs Act, 1962,
9. The Conservation of Foreign Exchange and Prevention of Smuggling Activities and Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

The first major committee set up by the Government of India on white-collar crimes was the Santhanam committee. It gave a graphic account of the misdeeds of businesspersons and industrialists in the following words:

*“Corruption can exist only if there is someone -willing to corrupt and capable of corrupting. We regret to say that both these willingness and capacity to corrupt is found in a large measure in the industrial and the commercial classes...”*

Santhanam committee found that during 1958-1962; nearly 700 firms wrongfully utilized licenses valued at millions of rupees through misrepresentation, forgery or through other violations of the Export/Import control regulations. This led to enactment and/or amendment of the following legislations:

1. Anti-Corruption Laws (Amendment) Act, 1964;
2. Foreign Exchange (Amendment) Act, 1964;
3. Prevention of Food Adulteration Act, 1954,
4. Wealth Tax (Amendment) Act, 1964

These Acts provide for more powers to the investigating officers and Magistrates for conducting the proceedings of the summary trials and to better investigate and try white-collar crimes.

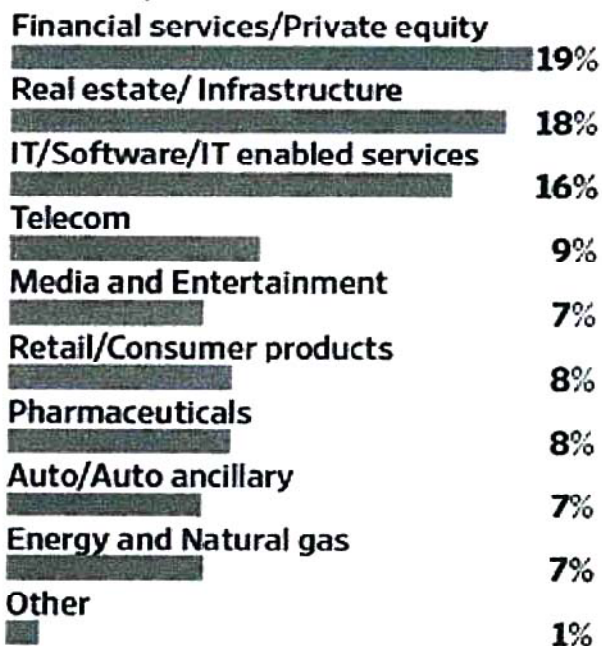
However, the seventh biennial fraud survey, conducted by audit and consulting firm KPMG India in 2008, reveals that 60% of the companies in India experienced fraud, while 42% experienced fraud committed by top management officials such as board members, directors and even managing directors. The findings of the report suggest that the inherent responsibilities and trust associated with senior positions and their ability to access classified company information create the risk of fraudulent acts. The number of white-collar crimes has risen dramatically, as per the report of KPMG. The last survey, carried out in 2006, had found 39% of firms complaining on this count. The survey, carried out by KPMG’s forensic wing in India, covered leading Indian firms from the public and private sectors. The respondents included chief executive officers, chief financial officers, internal auditors, chief

compliance officers and other senior management officials.

Indian companies, according to the study, remain highly vulnerable to fraud in the absence of “effective internal control mechanism” that can identify and deal with such crimes. The report suggests that 75% cases of fraud remain undetected and that more than 60% of Indian firms have inadequate anti-fraud measures. The frauds covered in the survey also include anti-bribery compliance. Almost 84% of the companies strongly believed that businesses in India pay bribes to facilitate work. India scores poorly on corruption and bribe payments in the list of organizations such as Transparency International, which ranks countries based on corruption and propensity to demand bribe. India’s corruption perception index score was 3.5 in 2007 on a scale of 0-10, and the bribe-payers index score was the lowest.

## FRAUD METER

Sectors perceived to be most at risk.



The:

Source: KPMG India

B. Ramalinga Raju and his brother-in-law D.V.S. Raju established Satyam Computer Services Limited (SCSL) in 1987 and it was incorporated as a public

limited company in 1991. It became a global consulting IT company in a few years and became India's fourth largest IT firm in India after Infosys, TCS and Wipro. Among its large number of subsidiary companies, Satyam Info Way (Sify) became the first Indian internet company to be listed on the NASDAQ. With a presence in 55 countries Satyam expanded rapidly in the 1990's acquiring many businesses like Singapore based Knowledge dynamics and London based Citisoft Pic. It had strategic partnerships with leading international players like Microsoft, Emirates, TRW, i2 technologies and Ford. At its peak, Satyam served 44 Fortune 500 companies and over 390 multinational corporations.

Satyam served as the back office for some of the largest banks, manufacturers, health care and media companies in the world, handling everything from computer systems to customer service. Clients have included General Electric, General Motors, Nestle, World Bank and the United States government. In some cases, Satyam was even responsible for clients' finances and accounting. Satyam had a significant corporate social responsibility (CSR) initiative in the Satyam Foundation and Emergency Management and Research Institute (EMRI). The foundation provided Service Initiative, which saved thousands of lives through its emergency ambulance services in eight Indian States. Satyam gave \$ 10 million in cash and \$ 20 million worth of property for these two programs. Satyam had about 300,000 shareholders, over 53,000 employees and 650 clients in over 60 countries. In September 2008, the World Council for Corporate Governance awarded Satyam with the "Global Peacock Award" for global excellence in corporate accountability. In 2007, Ernst & Young awarded Mr. Raju with the Entrepreneur of the Year award. Ramalinga Raju was the Dataquest IT Man of the Year in 2000, and the winner of CNBC's Asian Business Leader - Corporate Citizen of the Year award in 2002.

#### **The nature of the fraud**

According to investigation reports, the falsification of the company's accounts started in 2001, after an informal meeting between Ramalinga Raju and his brother Rama Raju. The scope of falsification was \$47 million in 2002, \$1 billion in 2007 and \$1.47 billion by the end of September 2008. After unearthing several hidden records, the Central Bureau of Investigations (CBI) has put the figure at about \$2.9 billion, in the additional charge sheet.

The company essentially showed inflated sales by creating false invoices. The CBI, using cyber forensics found 7,561 invoices worth \$ 1.04 billion hidden in the Invoice Management System (IMS). The CBI analyzed the computer logs relating to both IMS and the computer network

of SCSL. This study was matched with the company’s “access control swipe card” data. The individuals who generated and hid these invoices were identified. The computer server where these incriminating records were stored was identified and records retrieved.

Raju and his associates also forged board resolutions and obtained unauthorized loans and advances to the tune of \$247 million, as per the CBI report. The company books did not show any entries relating to these loans and advances. Another \$249 million has been shown to be infused into SCSL by promoters of 37 front companies floated by Raju. No records of this were found in the respective account books. Raju also inflated prices pertaining to the acquisition of shares of Nipuna Services Ltd., the Information Technology Enabled Services (ITeS) arm of Satyam. A sum of \$47 million was generated as dividends from the inflated profits of Nipuna services. Apart from the above Raju and the company’s global head of internal audit used some more techniques to perpetrate the fraud. Using his personal computer Raju created numerous bank statements to inflate the balance sheets with profits, which did not exist. He also created about 6,000 fake salary accounts over past several years and appropriated the salary after the company deposited it. The money raised through American Depository Receipts (ADR’s) apparently never made it to the balance sheets.

**Where did the money go**

Raju initially claimed that he did not divert the money to his personal accounts. He was simply inflating the profits to keep up with expectations. However, in later interrogations he revealed that he diverted the money to other firms that he and his relatives owned. He was doing this since 2004, or about 4 years until he was caught. The charge sheet filed by the CBI revealed that Raju siphoned off around \$ 253 Million dollars at the rate of \$4 million every month for several years. About \$70 million out of the funds, which were siphoned out by Raju, were poured in buying land in and around Hyderabad as per the following table.

Land Purchased	6000 acres
Housing Plots	40,000 sq. yds.
Built up area	900,000 sq. feet
No. of land deals	1065
<b>Satyam scandal as a ‘control fraud’</b>	
The fraud perpetrated by the persons who control the company such as the promoter(s), CEO and top management has been called “control	

fraud” (Black, 2005). Control frauds consist of rational choices by the offenders. They are most prominent in case of failing firms. The CEO typically will inflate profits and hide losses. This allows the CEO to delay the ultimate failure and loot the firm in the interim. This becomes easier if the firm has no assets with readily ascertainable market value, such as real estate or software. If the firm can get the auditors to “bless it”, it can declare seemingly legitimate dividends year after year. The savings and loans debacle has been described as a wave of control frauds (Black, 2005).

Control frauds that loot use accounting fraud as their weapon of choice (Akerlof & Romer, 1993). This process produces fake profits and thus attracts investors who naturally want to invest in profitable ventures. The CEO diverts this money outside of the firm, to be collected later. The CEO uses normal corporate mechanisms (stock options, dividend, growth in value of the stock) to convert creditors funds to his personal use.

Control frauds use one of the two ways to commit the crime. In the first, they deceive customers. They sell substandard goods to the customers who know little about the quality of the product. The seller exploits this information advantage to misrepresent the quality of goods. George Akerlof has shown that this can produce short term supra normal profits for the firm. Enron engaged in this kind of fraud for some time. It took off electrical generating capacity offline during periods of high demand. This created capacity overloads in the electric transmission. The fraud caused extraordinary increases in electrical energy costs in California, bankrupted two major utilities and caused several blackouts (FERC, 2003). The second kind of control fraud comes from CEO’s who misuse their dominant position to loot the firm, its shareholders and creditors. They create artificial profits by faking accounts, even though the firm is actually making losses.

The offender uses the firm as both a weapon and victim of the fraud. Diamond (1997) calls the super predators as pathogens, in the context of zoology. They infect their victims and use them as a weapon to spread the disease. Wheeler and Rothman (1982) have also referred to the corporation as a weapon and shield in case of white-collar crimes. The chairman of Satyam used the company as a weapon to earn illegitimate profits. He used the audit mechanism as a shield to hide the accounting fraud. For many, the idea that the CEO himself would loot the company looks silly. However, this modus operandi is certainly possible. The former savings and loan commissioner of California, William Crawford, explained: “The best way to rob a bank is to own one” (U.S. Congress, 1988: 34).

Several companies have engaged in control frauds. The failure of

Vernon savings has also been described as a control fraud. Vernon carefully manipulated its accounting process to escape the recognition of the regulatory mechanism to hide its fraud and losses (Mayer 1990; Black 1998; O'Shea 1991). The Harshad Mehta Share scam in 1992, in India, was a massive such fraud, which eventually led the government to create the Securities and Exchange Board of India (SEBI). Harshad used many fraudulent methods, one of which was to inflate profits of Apollo Tires Ltd. When the stock price reached dizzy heights, he sold off his holdings in one go. This led to a collapse of the stock market. Investigations showed he had indulged in an amazing variety of fraudulent practices, which were not monitored, due to the weak regulatory and monitoring environment in India.

#### **How was the Satyam fraud detected?**

The fraud at Satyam continued for nearly seven years. The internal controls, regulatory agencies and law were all there, but could not or did not want to detect the fraud. A whistle blower finally blew the lid off. An analysis of the 14,000-page report of the Serious Fraud Investigation Office (SFIO) reveals that a person by the name of Jose Abraham had sent a mail on December 18, 2008, to Krishna G Palepu, one of the company's directors that Satyam did not have any liquid assets. This fact could be verified from the banks. Palepu circulated this mail to other board members and to S Gopalakrishna of PWC, Satyam's statutory auditor. This mail was also forwarded to Ramalinga Raju, who failed to respond to it. The SFIO report says that Raju discussed this issue with the company's CFO and vice president between 25 December 2008 and 7 January 2009 in order to discuss ways to hide the colossal fraud. The board members and other senior officials were constantly approaching Raju for answers. When Raju could no longer hide, he was left with no alternative but to admit the fraud.

The role of whistle blowers has come further under the spotlight in another recent case. The murder of Mahender Kumar Sharma on February 16, 2012, in Lakhimpur, India, raises questions about the role and security of whistleblowers in the \$1.14 billion health care fraud in Uttar Pradesh (UP), the most populous state of India. Perhaps if there were sufficient protection to whistle blowers many of the frauds would not have reached the massive proportions that they did. Sharma worked as a clerk in the Mitauli primary health centre of Lakhimpur, UP, when he reportedly tried to expose graft in the department about the National Rural Health Mission (NRHM). The department transferred him thrice in quick succession and then blocked his salary. The Lakhimpur health department has figured among the top 10 districts where NRHM funds were misused in a big way. Ever

since, the department has been under the scanner of the Central Bureau of Investigations (CBI). In India, the legal protection to whistleblowers has only recently caught the attention of lawmakers. The Parliament recently passed the Public Interest Disclosure and Protection of Persons Making the Disclosures Act, 2010. The protection it provides is far from adequate as it addresses only institutional retaliation (termination or delayed promotion etc.). It is important to expand the protection to include confidentiality and make it more broad based.

In the United States, the Sarbanes-Oxley Act, 2002, promotes whistle blowing and employees are encouraged to file complaints anonymously. Several laws, for example, Safe Drinking Water Act (1974), Resource Conservation and Recovery Act (1976), Toxic Substances Control Act of 1976 and Energy Reorganization Act of 1974 include employee protection provisions. The Office of Whistle blower Protection Program investigates any retaliation against the whistleblower. Federal employees also benefit from the Whistle blower Protection Act. There is also a No FEAR Act, which makes individual agencies responsible for the economic sanctions of retaliation.

#### **Whether it was failure of Audit**

Auditing is the process by which a competent independent person objectively evaluates evidence regarding assertions of an economic activity. The audit process enables an auditor to express an opinion on financial statements that are prepared within a framework of recognized accounting policies and practice. An auditor is a representative of the shareholders, forming a link between the government agencies, stockholders, investors and creditors. In India, companies have to send the annual report to shareholders, stock exchanges, DCA (Department of Company Affairs) and ROC (Registrar of Companies). The content of the annual report is monitored by law and the quality of financial disclosure is judged by DCA, SEBI and ICAI (Institute of Chartered Accountants of India). In India, non-compliance towards Corporate Governance practices, if observed, by any director or manager, has to be revealed to the Chairman, BOD or the audit Committee (Confederation of Indian Industries, 1998). Insider trading and self-dealing of abusive nature is prohibited by the Corporate Governance code and is regulated by the Prohibition of Insider Trading Regulations, 1992. An insider here is described as someone possessing information, which is price sensitive, not in public domain and uses this information to trade stock of the company (cited in World Bank, 2004).

There is a famous 19th century English case, which defines the approach of auditors. An auditor is seen as a watchdog and not a bloodhound. In that case, the judge held, 'He is justified in believing the tried servants of the company in whom confidence is placed by the company.' This approach holds true even today. The excess amount of cash without being used in any investment should have been a concern for the auditors and should have raised an alarm for further verification. Many accounting professionals believe that companies or their management, who keep enormous cash funds, have suspect strategies. Keeping excessive cash reserves destroys the fund value (Basu, 2003). Not only did PWC not verify the cash statements independently from the banks, but was unable to identify the reason of these non-existent reserves. Satyam paid twice the amount to its auditors as compared to other similar firms like Wipro, TCS and other large IT companies (Gopalan and Mishra, 2009). It seems that some of the figures were customized and auditors were involved with the Company in perpetrating the scam. The United States has established the Public Company Accounting Oversight Board, which monitors annually, the standards and procedures of auditing of public companies falling under securities law. The Board guards investors' and well as public interest. The board checks the audit work papers of last 7 years and verifies the auditor's extent of checking internal systems of control. Further the board identifies the firm's adherence to standards of quality control while issuance of audit papers. The firm stands a risk of getting the registration suspended, in case of non-cooperation with the investigations. Quarterly and annual financial reports have to include disclosures of "all material off-balance sheet transactions" and other provisions or commitments that might have an impact on the firm's financial condition.

#### **Victims of fraud**

Employees of Satyam faced non-payments of salaries, layoffs, project cancellations and bleak prospects of outside employment. Its clients lost trust and caused many to cancel their contracts and preferred to go with other competitors. Cisco, Telstra and World Bank cancelled contracts with Satyam. The shareholders saw the stock go down from \$29 to \$ 1.5 after the scam left the shareholders burnt. The investors lost \$2.82 billion in Satyam. The bankers were concerned about recovery of loans and no financial exposure and recalled facilities. The fraud could affect the FDI inflows into India. The image of corporate India has been mauled by the scandal. Its regulatory agencies failed to detect the fraud in time. A major rethink into what went wrong and why the regulatory framework could not detect it would be required.

#### **Corporate Governance**



Corporate Governance is the concept, which fosters honesty and visibility in corporations (Martin, 2009). Its norms offer guidelines to organizations to not only set up but also implement ethical goals. When corporate governance is adhered to, it leads to higher economic growth not only at the organizational but also at the national level (Millstein, 2005). It received heightened attention all over the world after scandals at Enron Corporation (USA), the BCCI Bank (UK) and the Harshad Mehta Share Scam (India). The lack of ensuring appropriate corporate governance norms probably led to the turmoil at Lehman Brothers, Morgan Stanley, Goldman Sachs, etc.

The recognition of companies following best corporate governance practices by national and international bodies has come under shadow after the Satyam scandal. There is no doubt that Satyam is a classic case of failure of corporate governance. It is noteworthy that Ramalinga Raju, the then Chairman of SCSL was awarded the “Entrepreneur of the year” in 2007 by Ernst and Young. He was awarded for “Excellence in Corporate Governance and Accounting Practices”. The world council, based in London honored him with the Golden Peacock Award for best practices in Corporate Governance, which was later withdrawn after Raju resigned from Satyam and accepted falsification charges.

In USA, Sarbanes- Oxley Act, 2002 lays down guidelines for transparent financial reporting, efficient internal controls and corporate governance. It emphasizes strong boards, strong rights of shareholders and disclosures being crystal clear (McKinsey and Co, 2002). The nomination of shareholders in the Board of Directors is based on the shareholders huge holdings (Gedajlovic and Shapiro, 1998). The Public Company Accounting Board has been established in the USA, which monitors the standards and procedures of auditing of public companies falling under securities law. The board acts, as a guardian of the interest of investors’ as well as the public. A firm that does not cooperate in investigations stands a risk of getting its registration suspended. Falsification of documents with the intention of manipulating any investigation can lead to 20 years imprisonment.

The Harshad Mehta share scam in 1992, and other causes led to the establishment of Securities and Exchange Board of India (SEBI). The chief aim of SEBI is to regulate the stock market and to protect the interests of investors. SEBI has played an important role in placing systems and conduct for the corporate in India. It has powers of a civil court and can inspect journals, registers and other related credentials, if required (Fernando, 2010).

SEBI requires compliance of all mandatory regulations, including a report on corporate governance.

Confederation of Indian Industries (CII) took the first notable initiative in 1998 by establishing a code for corporate governance. The code has a list of recommendations for the Board of Directors, highlighting the importance of disclosure of information, creditors' rights, and capital market issues. The Ministry of Finance and Company Affairs appointed the Naresh Chandra committee to suggest changes in the code of corporate governance. The Narayana Murthy committee was set up by SEBI in 2005 to review Clause 49 of the Listing Agreement of the Stock Exchange and it proposed actions to improve corporate governance principles including risk management, auditing standards, compensation of directors and auditing standards.

The annual reports of companies have to be sent to shareholders, stock exchanges, Department of company affairs (DCA) and Registrar of Companies (ROC). The content of the annual report is examined by DCA, SEBI and ICAI (Institute of Chartered Accountants of India). Though the corporate governance principles in developed countries like the USA and emergent economies like India are similar, the difference lies in enforcement (Berglof and Classens, 2004, cited in Chakrabarty, 2005). Many Indian companies are family owned businesses. This leads to minimal representation of independent directors and lack of transparency in decision-making.

#### **The Role of Independent Directors**

The role of independent directors has been much emphasized in all corporate governance codes. In case of Satyam, the company did have the required number of independent directors as required by the Companies Act, 1956 as well as SEBI guidelines. However, the independent directors failed to do their duty. Let us analyze why this happened.

As per former chairman SEBI, M. Damodaran, independent directors "must be competent, knowledgeable and bring fresh perspective and business acumen". There are no clear requirements for selection and appointment of independent directors in the present SEBI Act. Moreover, the management and promoters control the process of appointment. The Board of directors of Satyam consisted of five independent directors out of nine as required by law. One of the independent directors in case of Satyam was Krishna Palepu, the Ross Graham Walker Professor of Business Administration and Senior Associate Dean for International Development, at the Harvard Business School. He is a specialist in corporate governance and an advocate of tougher auditing. Another independent director was Rommohan Rao,

the Dean of Indian School of Business, Hyderabad, a top league B school of India. Vinod Dham, the co inventor of the Pentium processor was also on the Board of Satyam.

The Board first came under fire when it approved Satyam's purchase of real estate companies Maytas Infra, in which Mr. Raju owned a huge stake. After a revolt by the shareholders, the Board was forced to rescind its approval. Palepu, Rammohan Rao and Vinod Dham all resigned from the Board within two days of the failed Maytas deal. The Board also did not catch any red flag all the years the scam was brewing. Raju systematically decreased his holding from 15.67% in 2005 to 2.3% in 2009. Strangely, this fact also escaped notice of the independent directors. In fact, the independent director of Satyam, were independent only in name. They were given stock options at ridiculously low prices. In addition, they also received huge commissions in various forms. For example, Harvard Professor Palepu accepted more than \$200,000 compensation for conducting training of Satyam's employees on corporate governance principles and their compliance.

Thus, mere compliance of SEBI's rule of the minimum number of independent directors does not guarantee ethical practices. The concept of independent directors was suggested in 1940s in the USA to protect mutual fund investors does not seem to have achieved its aim. Instances, such as Enron, which had 80 per cent of its Board consisting of independent directors, Tyco, with 65 per cent and WorldCom with 45 per cent suggest that there is no relationship between the number of independent directors and the board independence and financial performance of companies. In fact, Palepu and Rammohan pleaded that the lawsuits in the USA be dismissed since there was no specific allegation against them and they fail to allege intent to defraud as required by the US securities law. Companies listed on the Bombay Stock Exchange have to submit reports required by Clause 49 of the Listing Agreement, including corporate governance information on their boards' composition, audit committees, CEO/CFO certification of accounts, and related-party transactions and subsidiary companies. It seems that BSE has not paid adequate attention to its enforcement. Only 1,228 companies out of the listed 4995 have submitted the required reports.

### **Insider Trading**

Investigations by Andhra Pradesh police and Central agencies have confirmed that the promoters indulged in insider trading of the company's funds for purchasing land. The funds thus obtained were used to buy land

in the names of 330 companies and about 30 individuals. The inflated profits meant higher share prices. The top management sold their shares and invested the proceeds in land or elsewhere. They were offloading shares in the weeks and months preceding the surfacing of the scam. Most senior officials including the chief information officer were selling shares during later part of 2008. Several institutional investors dumped Satyam shares up to two days before Ramalinga Raju confessed his misdeeds. Most sales seem to have taken place after the failed bid to acquire Maytas Infra and Maytas Properties. It is widely suspected that the top management knew that the 'end' was near and that is why they resorted to selling the artificially high priced shares.

### **Red Flags**

The confession by Raju was not the first sign of the rot in Satyam. There were warning signs as early as 2002-3. The relevant authorities overlooked these indicators. Ramdas Athale, a Member of Parliament (MP) filed a complaint against Satyam with SEBI in 2003. Political pressure could have been the reason why no action was taken on that.

Ramesh Gelli, the Chairman of Global Trust Bank (GTB) was a close friend of Raju. He had a dubious relationship with scamster Ketan Parekh and was banned by SEBI on the charge of price rigging in 2002. Both GTB and SCSL had the same auditor: PWC. When GTB failed, the role of PWC was under a scanner. This should have been a cause for concern. The Securities and Exchange Commission (SEC) of the US had placed fines to the tune of \$ 770 million in the last five years after it found PWC guilty on several counts. Hiring of an auditor with this record of accomplishment and not monitoring it by the board of directors proved to be a costly mistake.

### **Regulatory Structure in India**

The Directorate of Enforcement (DOE) functions under the Ministry of Finance, Government of India. It develops intelligence and is responsible for enforcing the provisions of the Foreign Exchange Management Act, 1999 and Prevention of Money Laundering Act, 2002. It can conduct searches, imposes and realizes penalties and prosecutes persons involved in money laundering.

The Central Bureau of Investigations (CBI) is an important national agency to investigate criminal cases involving national or inter-state ramifications. It derives its statutory powers from the Delhi Special Police Establishment Act, 1946. It investigates cases involving corruption in high places, serious fraud,

cheating and embezzlement and social crime, particularly of hoarding, black-marketing and profiteering in essential commodities. The Government of India set up an independent office, Serious Fraud Investigating Office (SFIO) under the Department of Company Affairs in 2003. The SFIO can investigate cases when the Government of India, under section 235 of the Company's Act, 1956, authorizes it. The SFIO submits the report to the government, which can then take up prosecution as per the report of SFIO. The SFIO is a multi disciplinary organization consisting of experts in the fields of accountancy, forensic auditing, law, information technology, investigation, company law, capital market and taxation for detecting and prosecuting or recommending for prosecution of white-collar crimes/ frauds. The SFIO will normally take up for investigation only such cases, which are characterized by complexity and having inter-departmental and multi-disciplinary ramifications. It has powers to search and seize any documents, financial papers of group companies and entities related to thereto. A money laundering case was registered against the founder Chairman, B Ramalinga Raju by the Enforcement Directorate (ED) of the Income Tax Department. The ED has found evidence confirming the violation of the Prevention of Money Laundering Act. The CBI has also filed a charge sheet under various sections of the Indian Penal Code (IPC). These include section 120-B (criminal conspiracy), 420 (Cheating), 419 (Cheating by impersonation), 467 (forgery of valuable security), 471 (forgery for the purpose of cheating), 477-A (using a forged document as genuine) and 201 (destruction of evidence). The CBI charge sheet confirms money laundering by Raju and his cohorts. They diverted the funds obtained by manipulating accounts to tax havens abroad and later brought them back to India through front companies to buy lands.

#### **Regulators and Credit Rating Agencies**

There was no immediate probe or action taken by SEBI, regarding the World Bank declaring Satyam ineligible to receive any direct contracts for eight years. The reasons stated by the World Bank, for their decision was improper benefits to staff, improper documentation and malicious attacks on Bank's information system. The reasons were quite indicative of the allegations of poor corporate governance (Ribeiro, 2008). Post the scandal, the Insurance Regulatory Development Authority, IRDA's chairman Mr. J. Harinarayan, raised a finger on the authenticity of the rating agencies and questioned the reason to have the audited balance sheet as the only criteria for corporate. It is evident that there has to be a diligent process to toughen methodologies and standards of quality/transparency assurance as rating agencies gave Satyam Computers a Triple A (AAA) rating (Economic Times,

2009). Ratings need to be, hence, evaluated more deeply and apart from the balance sheet other parameters like market information, external auditors etc. should also be considered.

### **Conclusion**

Though Satyam was not the first large scale fraud of corporate India, its enormity and nature is an eye-opener for those fighting white-collar crime. The perpetrators of the fraud merrily carried on with illegal activities for about seven years. There must have looked with disdain at the vast army of professional managers, internal auditors, “independent-directors dominated” board of directors, the market regulator SEBI, the Company Law Board, the Department of Corporate Affairs, BSE, ICAI and other regulating and monitoring agencies. Why these agencies chose not to respond to the red flags appearing regularly needs to be investigated.

Specific legislations, such as those protecting whistle blowers, are required to be enacted in India. The enforcement of current laws and regulations needs to be monitored strictly by the concerned regulating agencies. Internal control mechanism is required to be strengthened to prevent such frauds in the future. Stricter norms for auditors and independent directors are required. Market regulators such as SEBI and BSE have to formulate regulations which address these concerns. The ICAI also needs to look up its audit management process in the country and bring it in line with international practices.

The penalties for offences of this category are too lenient in India. For example, if an auditor fails to comply with mandatory requirements, he faces a fine of \$200 and a maximum imprisonment of two years. The Sarbanes-Oxley Act, of the USA, prescribes imprisonment of 20 years for similar offences. In case of India, the penalties prescribed for offences under which Satyam was prosecuted are in the region of two to seven years. The US law offers incentives to whistle blowers and provides protection to them. This has improved fraud detection. India could learn from this experience not to trust CEOs and Board of Directors blindly. Finally, awareness at all levels has to be generated against such frauds. An informed society is the best prevention for white-collar crimes of this nature.

### **References**

Aggarwal, R.,2010. Independent directors: Time to introspect, suspect, respect - an Indian perspective. *Journal of Indian Business Research*, 2(2), 123-132.

Angur, M., 2009. Are we ignoring the early warning signs in our

corporate governance system? *Journal of Indian Business Research*, 7(1), 66-70.

Anonymous., 2009. Satyam scam: So, who is to blame? *India Abroad*, pp. A21-A21.

Anonymous.,2009. What action can be taken against Raju? *India Abroad*, pp. A22-A22.

Black, W., 2005. Control fraud as an explanation for white-collar crime waves: The case of the savings and loan debacle. *Crime, Law and Social Change*, 43( 1), 1-29.

Bukhvalov, A., & Bukhvalova, B., 2011. The principal role of the board of directors: The duty to say “no”. *Corporate Governance*, 11(5), 629-640.

Chen, S., 2010. The role of ethical leadership versus institutional constraints: A simulation study of financial misreporting by CEOs. *Journal of Business Ethics*, 93(01674544), 33-52.

Feltman, P.,2011. *SEC sanctions Indian auditors*. New York, United States, New York: CCH Incorporated: Health & Human Resources.

Free, C., Macintosh, N., & Stein, M., 2007. Management controls: the organizational fraud triangle of leadership, culture and control in Enron. *Ivey Business Journal Online*, N\_A- N\_A.

Hoover, J. N., & McGee, M. K., 2009. Indian IT upheaval. *InformationWeek*, (1217), 22-22, 24, 26.

Huber, N., 2009. “India’s Enron” reawakens fraud spectre. *Accountancy Age*, (00014672), 7-7.

Kaur, G., & Mishra, R., 2010. Corporate governance failure in India: A study of academician’s perception. *IUP Journal of Corporate Governance*, 9(1/2), 99-112.

Levinsohn, A., 2003. Bankers’ complicity in Enron’s fraud. *Strategic Finance*, 55(4), 63-64.

Li, L., & Lasko, Alan D, CPA, CIRA, CFF.,2010. Detecting fraud in financial statements. *Debt* 3, 25(2), 12-13.

Meyer, R., 2009. Satyam sets Indian governance on re-examination. *Compliance Week*, 6(62), 64-65.

Mulrenan, S., 2009. Satyam scandal could increase disclosure obligations-<sup>^s/ow</sup>, (10220267), n/a-n/a.

Pattanayak, M., 2010. Does ‘insider’ dominance destroy firm value? Study

of an emerging market economy. *The Asia Pacific Journal of Economics & Business*, 14( 1), 37-54,72.

Rishi, M., & Singh, A., 2011. Corporate governance and international best practices: the case of Satyam. *Journal of Services Research*, 7/(1), 121-142.

Singh, J. P., Kumar, N., & Uzma, S., 2010. Satyam fiasco: Corporate governance failure and lessons therefrom. *IUP Journal of Corporate Governance*, 9(4), 30-39.

Stirbu, D., Moraru, M., Farcane, N., Blidisel, R., & Popa, A., 2009. Fraud and error, Auditors' responsibility \eve\s *Annales Universitatis Apulensis: Series Oeconomica*, 77(1), 54-64.

Tripathi, S., 2009. Restoring faith in 'brand India'. *Far Eastern Economic Review*, 772(2), 21-24.

Whitehouse, T., 2009. Satyam fraud raises vendor worry. *Compliance Week*, 6(62), 1-41.

#### **Abstract**

This paper describes the \$2.9 billion fraud in Satyam Computer Systems Limited, a large Indian software company. The top management, including the CEO, perpetrated this 'control fraud'. The actions of a whistleblower forced the CEO to admit the colossal fraud. Suitable legislation like the Sarbanes Oxley Act in the US coupled with strong internal control mechanism and not mere presence of independent directors can create a force against such frauds. PWC, the auditors and the regulatory agencies ignored the early warnings. The often-overlapping role and multiplicity of investigating agencies is highlighted. The role of whistleblowers is examined as a means of detection of crimes of this nature.

#### **Key words**

Satyam Computers, control fraud, corporate governance, whistleblower, independent directors.

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# 11

## POWER OF INDEPENDENCE, COURAGE AND COMMITMENT “IN PURSUIT OF TRUTH”

*D.R. Kaarthekeyan, IPS(Retd)\**

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**“Some of the episodes mentioned in the article are not published earlier as they are very personal. Because the Director CBI Mr. Ranjt Sinha requested me repeatedly that I should write an article for the Golden Jubilee Issue of the CBI Bulletin, I ventured to narrate some of the instances in my official life. To start with, I was hesitant to say all that, because it might be mistaken as blowing my own trumpet. I told the Director he can delete any portion, but I found that he has chosen to reproduce the entire article without changing even a comma or full stop.”**

WHEN I JOINED the Indian Police Service in 1964, I had taken a vow that I shall not seek any personal favour from anyone. I was allotted Karnataka State.

But when after my practical training, I was about to be posted to a Subdivision as ASP, my father was hospitalized with a heart attack and my parents living at Coimbatore desired my presence at least in Southern Karnataka, closer to Coimbatore.

So, I made a request to Shri S.N. Hosali, the IG of Police, then Head of the Police Department in Karnataka to give me a posting in Southern part of Karnataka, to assure my parents in Coimbatore that I can reach them in a few hours in case of any emergency. But I was posted to the

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\* Advisor: Law – Human Rights –Corporate Affairs and former Director CBI, DG NHRC and Special DG CRPF.

farthermost Subdivision of Shabhad in Gulbarga District. With the result, I could reach home only several hours after my father passed away.

Then I reinforced my decision not to seek any favour from any individual for my own personal posting. I neither asked for a place or a job, nor did I avoid any place or job. But I made it a point to consult those working under me regarding their postings and accommodated their requests to the extent possible without compromising on the requirements of efficient functioning of the organization.

When I was Superintendent of Police in the troubled border District of Belgaum in Karnataka, I was asked officially to go to Bangalore and call on a very Senior Intelligence Officer from Delhi - Shri Sankaran Nair. He told me about the creation of the new organization – R&AW for external intelligence and said I was one of the first few carefully chosen to be part of the organization and explained to me the advantages and challenges and how it would be good for me and the organization, if I join.

I told him if the Government issues the order I will join. But he said while the IG was willing, the Governor Shri Dharma Vira (then the State was under President's Rule) was not willing to relieve me as I had enjoyed the confidence of both Marathi and Kannada sections of the population, then at conflict with each other. So, he said that as the Governor spoke high of me, he would relieve me if I make a personal request to the Governor. I told him very politely that I want to stick to my principle of not seeking a personal favour from anyone for my posting. He reminded me a couple of times over a few months, but I declined to make any request to the Governor to relieve me to join R & AW.

A few months later, it so happened that I was called for an interview at the Ministry of External Affairs and was posted to Moscow as First Secretary (Consular) and then also as Head of Chancery. Two other colleagues, who were also called for the same interview, were posted to London and Washington. I refused to make a request to post me to the more glamorous mission in London or Washington.

When I was about to conclude my assignment in the Embassy in Moscow, then USSR, I was invited to join CBI, by the then Director and I agreed. But my State of Karnataka wanted me to return to the State to join as DCP (Law and Order) - a post which was kept vacant for more than a month. Happily, I accepted that order and joined the post.

When I was about to complete my assignment in Australia, I was invited by Shri P.G. Halarnkar, the DG, CRPF to join CRPF as IG, Southern Sector at Hyderabad. I had agreed. Soon after I was offered by Shri M.K. Narayanan,

Director, IB to join as JD, IB (South) at Chennai. Shri S.R. Bommai, The Chief Minister of Karnataka (who was opposition leader when I was SP in his District of Dharwar) invited me to Bangalore on my return to India and requested me to come back to the State and join as Commissioner of Police, Bangalore.

I told the Chief Minister very politely that I had already agreed to join the CRPF, which will give me wider exposure to problem areas in the Nation and that will help in my functioning when I revert back to the State later. I thanked him for his invitation to join the prestigious post of Commissioner of Police at Bangalore, but I will have to honour my earlier commitment made to the DG, CRPF. I gave the same polite response to the Director, IB also.

It was on 22nd May, 1991 around 9 a.m. in the morning, when I was in my official residence at Hyderabad; I got a call from Shri K.P.S. Gill, DG, and CRPF. It was after the tragic assassination of former Prime Minister Rajiv Gandhi the previous night. He told me that the Government wanted me to lead the investigation of Rajiv Gandhi Assassination Case and while he had told the Government that he had no objection, but I should also continue to remain as IG, CRPF, Southern Sector, as we had taken up number of projects to expand the CRPF, particularly in the Southern part of the country. He wanted me to call the Director, CBI. I did not do so as I was still in a state of mourning.

A little later, I got a call from Shri Vijay Karan, Director, and CBI from Delhi. To put it short, he conveyed the request of the Government that I should head the Special Investigation Team to be formed as part of the CBI to investigate the dastardly assassination of former Prime Minister Rajiv Gandhi the previous night at Sriperumbudur during an election campaign.

He mentioned that while both the IB and the R&AW had no clue as to who could have been behind the assassination and the case may end up without clear finding, like Kennedy assassination, however the Government wanted all efforts to be made to get the case detected.

He also told me that while investigation of Mahatma Gandhi and Indira Gandhi assassinations were easier to handle in view of the fact that the assassins were apprehended on the spot, Rajiv Gandhi assassination is a blind case. I told him that if the case is going to be so tough and as I am not part of the CBI, it will be better to entrust the case to a more senior officer.

The Director, CBI responded by telling that at all levels in the Government, I was unanimously considered as the most suitable officer to lead the investigation and that he was given the responsibility to contact me and get my consent.

I responded by telling that I have been an admirer of Rajiv Gandhi as a leader and while the Nation failed to protect the life of such a leader, all efforts will be made by me to find out and prosecute all those responsible for the dastardly assassination.

But I instinctively and spontaneously laid down three conditions to my acceptance of that responsibility of heading the Special Investigation Team to be formed as part of the CBI:

- (a) The first condition was that I will not allow any political or any other external interference in the investigation, as being the highest profile case, attempts are bound to be made by interested persons - parties to derail the investigation to throw mud at their opponents in opposition parties or rivals in their own parties to drive maximum political mileage.
- (b) Secondly, I stated that I have never believed in extra-legal methods in policing, and I will go strictly by evidence going from crime to the criminal; I will not allow any third degree to be used, whether the case is detected or not.
- (c) Thirdly, I wanted to continue to hold the Office of Inspector- General of Police, Southern Sector, and Hyderabad in CRPF for logistic support, as the CBI at that point of time had neither adequate staff nor even vehicles to take up such a challenging assignment. CRPF had sufficient manpower and vehicles and I had full faith in the competence and dependability of the CRPF. Also, I did not want to shift my family from Hyderabad, where my children had joined the schools only a year earlier.

The Director, CBI promised to get back to me after consulting the authorities at the highest levels in the Government of India.

Accordingly, he got back to me after sometime and said that all my conditions are acceptable to him and to the Government and asked me when I could leave for Chennai. I told him that as required by DGP, Tamil Nadu, a company of CRPF was being flown to Chennai same evening and I will go to Chennai by the same aircraft.

Accordingly, I reached Chennai late in the evening by the diverted Indian Airlines flight.

On my arrival at Chennai, I was met by the CBI Officers of Chennai Branch and I drove straight to the Office of Director-General of Police, Tamil Nadu. I met the top officers at night and then visited the Government Hospital, where I spoke to the lady Sub-Inspector Anusuya, who was the

closest to the scene of offence and who had sustained serious injuries in the bomb blast.

Though she had lost three fingers and had pellets all over the body, she described vividly what happened just before the blast.

Though the case was blind to start with and the involvement of various terrorist groups from all parts of the country were suspected, within a few days, I could decipher clear evidence of involvement of the LTTE, the most dreaded, determined, ruthless terrorist group in the world at that time.

It was then when my colleagues in the CBI at Delhi told me how when the matter was discussed at the CBI on 22nd May (the very next morning after the assassination) none of the Joint Directors came forward to take up responsibility for the investigation. They said they declined at that point of time as it was a totally blind case without any clue, and also if the investigation failed, they would be condemned as incompetent; and in the unlikely event of the case being detected, the terrorist group found responsible would kill them and their families.

When I clearly established the hand of the LTTE in the assassination, some senior officers in the CBI, advised me to withdraw from the investigation as LTTE would target me, my family and the large number of my relatives, who lived in Tamil Nadu.

I responded by telling that I will continue to do my duty to the Nation and everyone who is born will have to die one day or the other, and I was only performing my duty truthfully.

Even later despite many threats, I continued to discharge my duties without any fear at any point of time, as I was only doing my duty to the Nation and based only on truth as established by evidence and strictly as per law.

There was a momentary setback and criticism when an arrested accused Shanmugam escaped from SIT custody and committed suicide at Kodiakkarai. I firmly refused to suspend any member of the team incharge of that operation, as they were on duty around the clock for over two days without food and sleep.

I told the visiting Home Minister of India Shri S.B. Chavan that I take full responsibility for my team as they were working around the clock taking enormous risk, just because of loyalty to me and seeing me working around the clock, seven days a week throughout the year. Normally, CBI Officers are trained to collect evidence and place the charge-sheet, very often even without arresting the accused. In this case, my team had to collect the

intelligence, do the tracking and also undertake the risky operations against the members of the deadly LTTE, who was not only willing to kill anyone, but also willing to commit suicide to escape being caught alive.

I believed in transparency in my functioning from the time I joined IPS, after practicing law for a few years. So, during the investigation of the assassination case, I had to share with the Media maximum information that can be shared, without anyway undermining my operations. The Media were also running parallel investigations because of the heightened interest in the case, both within India and outside. There was no way I could have kept Media in the dark, as that would have resulted in unfounded and misleading stories confusing the public, on whose total faith and cooperation my investigation depended.

That being so, I got a letter from the Director, CBI, expressing the displeasure of the Government, at the Media coming to know the progress of the investigation immediately. I wrote a very polite letter that in a case of that magnitude and public interest, I had no other way except keeping the Media informed to create credibility in my investigation and to mobilize the public at large to cooperate with me in my search for evidence and also to locate the wanted accused. I also pointed out that I did not seek the job, but accepted that challenging responsibility as a duty to the Nation, on being requested and persuaded by the Government. I very politely offered to quit my position as SIT Chief, as I have no other way of functioning effectively.

I did not give scope for any external influence or interference, political or otherwise. I could do so, because I did not ask for the job. I had never sought favour from anyone at any stage for my job or place of posting. I had also determined never to approach anyone for advancement of my personal or official career.

So, I could stand firm like a rock and never allowed direct or indirect attempts to influence me. Some of those episodes are not worth being recorded as they will damage the reputation of many, some of whom are no more.

Years later, I had to stand firm before one Commission of Enquiry, which demanded certain case documents (already property of the Trial Court at Chennai) to be produced before the Commission. I declined to do so as that would have disrupted and damaged the prosecution case in the ongoing trial at Chennai. Many editorials have been written supporting the stand I took throughout the trial and the proceedings of the Commission.

Though hundreds, including high functionaries like the President and Defence Minister of Sri Lanka and top Military and Police Officers were killed in terrorist attacks, no case was registered nor investigated in Sri Lanka against the LTTE, strongly suspected to have been responsible for such attacks. That was the fear for the organization.

Yet, in Rajiv Gandhi Assassination Case, we proceeded strictly on evidence, collection of which was not easy as the LTTE hailed from a no man's land in Sri Lanka, over which even Sri Lankan Government had, in fact, no jurisdiction. We had to be mindful of the security of those arrested, as well as the evidence collected. We had to save the integrity of the investigation and trial, fighting against manipulations of many political “bigwigs”, for whom temporary political advantages are more important than the outcome of the successful investigation and conduct of the most important trial of the century.

Withstanding all these challenges was not easy. My wife was worried that I may be killed, like many others, who came in the way of LTTE were killed. In spite of my telling repeatedly that I did not seek the job; I had to respond to the call of the Nation; I was only doing my duty to the Nation strictly based on facts, evidence and the law; and life and death are not in our hands etc., she got worried as the children were young. With the result, she suffered a massive heart attack. Though part of the heart was damaged permanently, she survived for some more years.

At some point during the trial at Chennai and Commissions of Enquiry at Delhi, I ran into Dr. P.C. Alexander, former Governor of Tamil Nadu and at that time, Governor of Maharashtra that time, Governor of Maharashtra. I had known him for long.

Dr. Alexander exclaimed that I must be the most harassed senior officer in the entire governmental set-up at that time, overseeing the investigation and trial at the TADA Court at Chennai; handling Justice J.C. Verma and Justice M.C. Jain Commissions of Enquiry at Delhi; the very often ill-informed criticism of some members of Parliament; and facing threat to life from the deadliest terrorist duping the world.

He asked me how in spite of all those challenges and tension, I looked relaxed and calm. I told him I only was doing my duty to the Nation and that too without any fear or favour. I added that even the LTTE will know that I was prosecuting them based on truth and solid evidence and I have no personal antagonism towards anyone.

For that Dr. Alexander responded telling that the LTTE have no such

considerations and they have targeted and killed anyone, who came in their way of achieving their objectives.

I told him about my philosophy, which he may feel as superstition. I believe in destiny; birth and death are preordained; everyone born has to die one day; even the so-called Mahatmas had to leave the body ultimately; so, why bother about something that is going to happen one day; and till that time, nobody can take my life and when that time comes, nobody can keep me alive; normally, the death comes due to old age, heart attack, accident etc.; by accepting the request of the Nation to investigate the case, I had exposed myself to be killed by an explosive; and how does it matter how one dies; and even if that happens one goes with the honour of having done one's duty to the Nation.

Dr. P.C. Alexander responded by appreciating my philosophy as that gave me enormous strength, courage and determination to carry on the challenging assignment without the fear of life and not giving any scope for political manipulations.

My tenure as Director, CBI was short as my predecessor was given extension in service and a month after my retirement, the age of retirement was raised by two years. I am mentioning this to show that neither of the Governments was keen on keeping me long as Director; nor would I make any request to the powers-that-be.

A day before my relinquishing charge of the Office of Director, CBI, Shri Brajesh Mishra, the National Security Advisor and Principal Secretary to Prime Minister Shri Atal Bihari Vajpayee told me that the Government highly appreciated my dedication and performance in the successful investigation of the assassination of the former Prime Minister Rajiv Gandhi, though he was the Congress leader. He said that in appreciation of that commendable job done, which raised the prestige and security of the Nation, the NDA Government had decided to post me as Ambassador to a major country. He also added that the file, already being processed, is awaiting the formal approval of the Prime Minister. So, he said that I should not commit myself to any other assignment.

I did not even ask him to which country I was being sent as Head of the Mission. I told that I only did my duty to the Nation.

The very next day, before I handed over charge to my successor, I got a call from Chief justice Shri M.N. Venkatachaliah, Charman of the National Human Rights Commission. He invited me for a cup of coffee at his residence. After handing over charge, I went to his official residence. As



always, he received me with lot of grace and offered coffee.

He invited me to join the NHRC, as Director-General) I also told him about the offer made by Shri Brajesh Mishra, who asked me to await the formal orders posting me as Head of a Mission abroad. Justice M.N. Venkatachaliah told me about the importance of promoting and protecting Human Rights, as a noble task, which is far more important and satisfying than becoming an Ambassador. He said that as I have performed all my important positions in the police, respecting Human Rights, I would bring credibility to the task in the NHRC.

I told him that I was not keen on staying on in Delhi, a city of bureaucracy and hierarchy. As he persisted affectionately, I told him that I need some time to consider his suggestion.

I went to the south. The Secretary- General, NHRC kept calling me to say that the Chairman has been asking him to contact me to obtain my consent to join NHRC. There was also an occasion when Chief Justice J.S. Verma also told me to join NHRC, as Justice M.N. Venkatachaliah was so keen. One day, the Secretary-General called me when I was in Pune and persuaded me to give my consent. I gave my consent respecting the wishes of two eminent Jurists.

A few clays later, I got a call from Shri B.P. Singh, the Union Home Secretary, who was also my batchmate. He told me that proposal has been received from NHRC proposing my name to be posted as Director General and the Chairman had got my consent.

He asked me if I had given my consent, particularly as the file proposing to send me as an Ambassador was in the final stage of approval. He suggested to me that I should rather go as Ambassador.

While thanking him for his goodwill and concern, I told him that I had given my consent to join NHRC respecting the wishes of Chief Justice M.N. Venkatachaliah, Chairman, NHRC and Chief Justice J.S. Verma, Chief Justice of India. I also told him my presence in Delhi will be useful to the Government, when the appeal in Rajiv Gandhi assassination comes up for hearing in the Supreme Court of India.

Though the Home Secretary still advised me to go as Ambassador, he agreed to further process the proposal sent by NHRC.

When the appeal came up before three senior eminent Judges of the Supreme Court, I was requested by the Government to assist the Government Lawyers. The request was made by the MHA through the Chairman, NHRC,

who said I can get involved in the matter, provided the work in the NHRC is not affected.

For the next three months when the appeal was being heard, I had to brief the CBI Officers and the Government Lawyer handling the appeal, almost on a day-to-day basis, at the same time attending to my responsibilities in NHRC late in the evenings.

Ultimately, when the verdict came, the Apex Court upheld my investigation and placed on record their appreciation of the investigation of my team and my leadership in particular by name.

But the court said it is not an act of terrorism, as defined in TADA. That disappointed me and many others.

So, I thought the Government would file a Review Petition in the Supreme Court. But a day before the last date for filing Review Petition, I was told by the Home Secretary, review was not being filed as the CBI, Law Advisor to CBI and the Attorney-General have opined there is no case made out for filing such a Review Petition.

I got in touch with the Attorney- General Shri Soli Sorabjee, who was then in London. I argued with him that the Government should not accept that killing of Rajiv Gandhi was not an act of terrorism, though we are not keen on the quantum / severity of punishments.

The AG was kind enough to ask his office to send me the file. After perusing the file, I called him again at London and spoke to him at length. On being convinced of the strength in my argument, he said he was revising his opinion and accordingly, sent a fax message to me, in the NHRC.

I sent the same message to the Home Minister, Home Secretary and the Director, CBI. On that basis, a hurried Review Petition was prepared and filed in the Supreme Court.

I called on the Home Minister and the Home Secretary and ensured that only the AG appeared in the matter. I spent considerable time with him to discuss the issues involved.

In spite of spirited arguments by the AG, the Review Petition was summarily rejected, without giving any reasons.

My only satisfaction is to ensure on record that the Government of India, while respecting the verdict, has not accepted that the assassination is not an act of terrorism.

At a seminar later convened by Justice Shri Jeevan Reddy, Chairman, Law Commission of India, I had accompanied Chief Justice J.S. Verma, who had by then become the Chairman of NHRC.

*Justice Shri Jeevan Reddy insisting on my comments, I said, “if a ruthless and cunning assassination at an election meeting in the most treacherous manner, of a former Prime Minister, for what he did in the interests of the Nation, and in which 17 others, including nine policemen were killed; by the terrorists from abroad; as a consequence, the elections were postponed and the entire history of India changed” is not an act of terrorism, what other act will qualify to be termed as terrorism?*

So, I said certainly the law has to be amended to leave no ambiguity about what constitutes terrorism.

After assuming the high office of President of India, Dr. A.P.J. Abdul Kalam told me at Rashtrapati Bhawan that I had rendered yeoman service to the Nation’s prestige, integrity and sovereignty by successfully investigating and prosecuting the Rajiv Gandhi Assassination Case, without yielding to any threat or pressure; my wife suffered heart attack due to the tension; the Nation owes a lot to my selfless and courageous service; and so, he wanted to know what he, as President, can do to me by way of appreciation.

I thanked him for his consideration and told him I was only doing my duty to the Nation, I do not have any request to make for myself. He asked me to consult my wife also.

When I asked my dear wife Kala, she too said that what we deserve is given by the Divine; that I had never asked anyone throughout my service for a personal favour by way of posting to a particular place or job; nothing is worth asking for and getting; and while thanking the President for his thoughtful gesture, we should request him to take care of his health by regular walking in the morning.

Accordingly, I conveyed to Dr. Kalam the same response. I also told him that even if I want something he had to speak to the Prime Minister and I did not want him to be obliged to anyone for my sake.

While we did meet often, I never thought of making any request to him for myself.

Many eminent personalities, including Judges of Supreme Court have been telling me from time to time that when I had made such a singular service to the Nation at enormous risk, the Government should be

approached to utilize my services appropriately. I have been telling them that it was I myself, who refuse to lobby for any position and the Government is not at fault.

It was in 2010, I was conferred with Padmashri Award. I was at Bangalore in the midst of a meeting, when I was informed that a senior official of the Ministry of Home Affairs from Delhi, wanted to speak to me immediately. When I went out I answered the call, the MHA Officer told me that the President of India was pleased to award Padmashri to me and my consent was needed to inform the Media about my acceptance.

I responded instantly that I had not asked for the award; no one asked for my CV / Bio-data; I had not spoken to anybody nor anybody spoke to me on the subject; even the most deserving had to request / lobby for such an award, and I was totally surprised. For that the MHA Officer told me that the Government on their own considered that it was high time to recognize my services to the Nation.

When this fact of Padmashri Award being granted to me came on the TV, many well-wishers called and congratulated me. One senior eminent Judge of the Supreme Court called me to say:

*“Heartiest Congratulations, but you should decline the award as it was too little and too late for the commendable service rendered by you to the Nation.”*

I responded:

*“Thank you for your good wishes and also your sentiments. There are many, who have sacrificed their lives in defending the interests of the Nation. There are many, who have done much greater service. Many of them have gone unrecognized and unnoticed. When a national recognition comes at any stage, and that too without my asking, how can I decline such a honour?”*

He appeared to agree with me.

When the Award function took place at Rashtrapati Bhawan, Prime Minister Dr. Manmohan Singh gracefully congratulated me. While thanking him I told him that I was totally surprised that the recognition came when I thought I have been totally forgotten. The Prime Minister responded by telling me, “How can the Nation forget you, when you have done such a great job.”

While having tea after the Award ceremony at Rashtrapati Bhawan, I asked Shri G.K. Pillai, the Home Secretary:

“To my understanding, lot of lobbying goes on even for the most deserving

to get the Padmashri Award. In my case, no one asked for my CV/Bio-data; I did not talk to anybody nor did anyone speak to me on the subject. Then how did the award come to me?”

The Home Secretary said, that everyone in the Government thought that it was high time to recognize my services by grant of a Padmashri Award.

Like the above episodes, there are many more episodes to be shared, but they are not very relevant at this point of time.

**Extracts from the judgement of the Trial Court at Chennai on 28th  
January, 1998**

“Shri D.R. Kaarthikeyan, Chief of the Special Investigation Team (Rajiv Gandhi Assassination Case), who guided and supervised the investigation, deserves special appreciation for his dedication, hard work, efficiency and sincerity. He and his team of Investigating Officers conducted a thorough investigation in a scientific and systematic way. His unbiased and fair investigation has brought to book the real accused who are involved in this case by committing this heinous crime. He has taken meticulous care to place all necessary material in a neat and compiled manner for the appreciation of the court.

I appreciate the Chief Investigating Officer, other Investigating Officers and other officials and staff belonging to the CBI, SIT (Rajiv Gandhi Assassination Case) for their efficiency and hard work.

Before parting with the case, I would like to place on record my sincere and grateful appreciation to the learned Public Prosecutor and Special Public Prosecutors and Defence Counsel.”

**Extracts from the Judgement of the Supreme Court of India on 5th  
May, 1999**

The Hon’ble Supreme Court of India thought it fit to place on record of its appreciation “for the Special Investigation Team, constituted by Central Bureau of Investigation to investigate the case. Under the stewardship of Shri D R. Kaarthikeyan, the SIT did assiduous work and was able to solve the crime within a short time.”

The Apex Court further noted:

“The investigation was meticulous; hose ends tied to bring out a clear picture of conspiracy and the part played by each of the conspirators.”

*The raid yielded nothing! He is an honest officer and lives within the known sources of his income. However, we must investigate!*

*Courtesy. R.K Laxman*



## DELHI'S CRAWL TOWARDS THE COMMISSIONER OF POLICE SYSTEM

*J.N. Chaturvedi, IPS(Retd)\**

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If I remember right, the Delhi Police went en masse, on strike early in 1966. As always, it ended with the Govt. conceding some demands immediately and for the rest, appointed a commission under a distinguished Jurist and former Chief Justice of the Punjab High Court, G.D. Khosla.

The Commission went about its job in right earnest and produced an excellent report a few months later. One of its major recommendations was the introduction of the Commissioner of Police System in Delhi, like it existed in the country's three metropolises of Bombay, Calcutta and Madras and a few other major cities.

I was then in the C.B.I. as a Superintendent of Police. Some of us young officers tried to persuade the senior IPS officers, also holding positions in the Central IPS Association, to go about pressing for the acceptance of that recommendation by the MHA. We vainly hoped that they would be enthusiastic about it. Possibly concerned with their own career advancement, they thought it imprudent to antagonise the IAS bosses. Their apprehensions were not without basis. The MHA ensured that this chapter of the report did not see the light of day and was consigned to the record room. Before reverting to UP in 1968, I managed to obtain a copy of that report.

N.S. Saksena, the last I.P. officer of UP cadre was the Director Vigilance UP. Possibly, he had me posted as a S.P. under him on my return. We had always been in touch with each other since our Delhi days. A few months later, he was transferred to the PTC and in June '69, I was posted as SSP Kanpur (the district was one at that time). In Jan '70, as a result of political

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\* 1951 UP Cadre, 211 Indra Nagar, Dehradun-248006.

changes, Charan Singh became the CM. His fondness for N.S.Saksena was known. As expected, the latter was appointed as IGP, UP and on his suggestion, I was promoted as Director Vigilance (in the rank of DIG) on 1st April, 1970. That gave me frequent opportunities of interacting with Charan Singh. I have reason to believe that his fondness for me almost equaled his regard for N.S.Saksena. I feel that I did not disappoint him. My detractors thereafter branded me as Charan Singh's man. I carried that stamp throughout the rest of my service.

On 12th June 1975 the Allahabad High Court, deciding an election petition, unseated Indira Gandhi as Member Lok Sabha. She retaliated by declaring Emergency on 25th June '75. All those opposed to Indira Gandhi (including Charan Singh) were detained under the MISA. An unfortunate development was that even officers got classified as "we" and "they". I had every reason to act cautiously. Nevertheless, as DIG Lucknow Range, at a meeting of the district SSPs, I advised them to ensure that policemen did not go berserk and, as far as possible, must continue to act legally. SP Hardoi reported the case of two policemen who planted anti emergency leaflets on a truck owner and his driver who refused them a free ride. The SP got a case registered against the constables and had them prosecuted. I suspect, this was noted against me.

I could experience, in not too subtle ways that my own conduct was under watch. Two instances bear recalling. The first related to what I thought were routine annual transfers of Inspectors and SIs. Within less than 24 hrs of the orders, the Chief Secretary, B.D.Sanwal, summoned me. Almost panic stricken, he asked me why I had ordered so many transfers of SIs. "The Chief Minister (H.N.Bahuguna)", he told me, "is very upset." The CM felt, "you will torpedo the Emergency." I was taken aback, but mustered courage to explain that those were routine annual transfers as required under Govt. orders. "All Govt. orders don't have to be followed mechanically." It shocked me no end, but my courage did not desert me. I replied, "Sir, I am learning for the first time that there are certain orders which need not be obeyed." He asked me to cancel the transfers but I expressed inability to do so, lest motives might be imputed to me. "Sir, I don't see how transfers of SIs could torpedo the Emergency. If you desire, I might explain the position to the CM." He kept insisting that I cancel the transfers. Although, he did not want me to meet the CM, I sought an appointment, met the CM in the afternoon and explained the position. When I told him that such transfers were taking place all over the State, he called Sanwal on phone and ordered cancellation of all such orders. That made things easy for me. Later, the SSP Lucknow told me that all the hullabaloo was over the transfer of one SI



of Lucknow who was particularly close to the DM, himself a CM favourite. He had painted the transfers as a deliberate act, recalling my association with Charan Singh.

The second incident was related to the winter inspection of Unnao distt. As usual, the SP arranged a village defence society function and asked the Block Pramukh to preside over it. A day after I returned to Lucknow, IGP Govind Chandra summoned me and anxiously asked for the details. Although I thought that was a routine, it assumed importance as the block pramukh belonged to the B.K.D., Charan Singh's party. The news of even this nonevent reached the CM, who asked the IG to enquire about it. I was at pains to explain to the IG that neither the SP nor I knew of the block pramukh's political links. The IG advised me to avoid even such routine practices. For all his caution, Govind Chandra had himself to lose the post merely because he declined to be at the Lucknow airport when Sanjay Gandhi arrived on one of his visits. Such was the suffocating atmosphere in which we were functioning.

It soon became a routine for the District Magistrates and even junior magistrates to summon Station Officers, arming them with arrest warrants, sometimes even blank ones, for the arrest of whoever was perceived as a "threat" to the Emergency. Unscrupulous officers of the police too used the opportunity to settle personal scores. I was reminded of a quote in Justice Khosla's report that, "according to psychologists, a pat on the back produces a pleasant sensation. Most of us would like to experience it and tailor our priorities accordingly." This is precisely what the magistracy, as well as many police officers had done, trying to out-do each other. The normal chain of command stood totally disrupted. All rules of the game were given a go by.

Despite Bahuguna's display of loyalty, he had to lose the Chief Minister's job for an "unpardonable" indiscretion. A circular from the Chief Secretary to all districts directing that security arrangements during the CM's visits enroute, as well as during public meetings should be of the same scale as for the PM, because "he has been attracting as big crowds as the latter," proved his undoing. Everyone was surprised when, one morning, Bahuguna resigned followed by a spell of President's rule. To make things worse, the Governor was Chenna Reddy, a known boor. Mercifully, the spell was short. In Jan '76, Narayan Dutt Tewari was made the CM. Whatever might be his shortcomings, he had always been polite and considerate towards officers. Yet, the overall climate appeared to replicate Churchill's war time diktat - "Those who are not with us, are against us."

Following their landslide victory in the Lok Sabha elections, the Janata Party govt. assumed office in March '77 and Charan Singh became the Union Home Minister. He asked for N.S.Saksena, who was then DG CRP, to be appointed as Special Secretary in the MHA. The IAS lobby, especially UP officers who were familiar with Saksena's method of working and his nearness to the HM, went about scuttling the move. Possibly they fed Kuldip Nayyar, a respected journalist, with a copy of a circular N.S.Saksena had issued as DG CRP to his officers, some portions of which appeared to support the imposition of Emergency. The circular was flashed on the front page of the Indian Express. The vilification went on for several days. Saksena, close to superannuation, was instead, appointed as a member of the UPSC. Unruffled, N.S.Saksena sent to me a book "Hundred Days of Roosevelt" with a short letter which said, "Opportunities could come unannounced. We should prepare ourselves in advance. Preparations for war have to be made during peacetime. Read this book. It will inspire you. No knowledge goes waste."

All through the dark days of the Emergency, I was deeply stung by the ease with which even senior police officers wilted into helpless witnesses to the remorseless battering the rule of law had been subjected to, with the active collusion of the magistracy, touted as the shield against "police excesses." Instinctively, I fell back on the Khosla Commission's report, for an answer. The need, I concluded, was to replace the Indian Police Act of 1861. With lots of complaints of the Emergency excesses, the occasion appeared ripe.

Soon after being sworn in as HM, Charan Singh visited Lucknow to a tumultuous welcome. As DIG Lucknow Range, I was at the Railway Station to receive him. Although he saw me after six years, he did not take time to recognise me.

I met Lal Singh Verma, then President of the UP branch of the IPS Association and suggested that a deputation should call on the HM. A couple of other officers were consulted, but Verma wanted me to draft a note and do the talking. Largely drawing on the Khosla Commission report, my note suggested that (a) Since Delhi was the Union Govt's direct charge, its policing should be switched to the Commissioner of Police system and (b) Since the only Police Commission at the Central Government's level was the one in 1901 by Lord Curzon, one was overdue. Such a national commission, the note added, ought to have been appointed about the same time as the framing of the Constitution. One should be appointed now.

We met Charan Singh and submitted the note. He was not familiar with the Commissioner of Police system. But having learnt scores of stories of how the magistracy misused the police and his known aversion to the IAS, supported by the tales of their boorish behaviour even towards known respectable persons, narrated during election tours, strengthened these views. That made our task easier. I explained the rationale of that system, already in place in three metros and some other cities.

On return to Delhi, he raised the issue in a Union Cabinet meeting. The PM Morarji Desai, with his experience as the CM of Bombay State (Gujarat was created later), did not need convincing. When the Parliament met in May '77, the Govt. announced the twin decisions - switching over to the Commissioner of Police System in Delhi and appointment of a National Police Commission with comprehensive terms of reference.

In the note handed over to the HM, I had also added a quote from the statement of the first home member in the Governor General's Council, Sir Bartle Frere, while introducing the Indian Police Bill (passed as Indian Police Act 1861) that, "ON PRINCIPLE THE POLICE SHOULD BE INDEPENDENT OF THE MAGISTRATE" and his hope that in future it would be possible to do so. I had also briefly explained the circumstances of 1859 in which the Act was passed. The British rulers' main concern was that the kind of organised challenge to their rule of the kind of 1857-58 did not recur. The Act reflected that concern. Later, an aide of the HM told me that his statement in the Parliament was, almost wholly, based on the note that we submitted at Lucknow.

The news of our meeting with the HM travelled, as it was bound to, to the State Secretariat and, almost immediately, to Delhi where B.N. Tandon, a UP cadre IAS officer and known to me since our university days, had managed to take over as Delhi Chief Secretary. Tandon had earlier managed to be a Joint Secretary in Mrs. Gandhi's office when she was PM and now, as easily, curried favour with the Janata leaders.

Tandon's close friend, Sreenivasvardhan, was the new Union Home Secretary. It did not take them time to anticipate that the HM might want me at Delhi, especially with N.S. Saksena, a victim of their machinations, no longer available. The internal bickering of the Janata Party, never a cohesive formation despite Jai Prakash Narayan's efforts, provided a favourable field for such an operation. Morarji Desai had no love lost for Charan Singh or even for Jagjivan Ram or Bahuguna or Chandra Shekhar. He owed his elevation as PM to his standing in the national politics and

pronounced opposition to Indira Gandhi. That was an ideal setting for Tandon and the coterie to operate. Morarji's choice of his Secretary fell on V.Shanker, an old I.C.S., now retired who was Sardar Patel's Secretary too. This coterie possibly cultivated him. Thus, N.K. Mukherji was the new Cabinet Secretary and D.R. Kohli, Delhi's L.G., apart from Vardhan and B.N. Tandon already mentioned. Therefore, despite Charan Singh's preference, instead of me, my batchmate, M.C. Mishra of the MP cadre, who was with the BSF, was chosen to be the I.G. Delhi.

When Charan Singh expressed his wish to have an IPS officer as his Special Assistant, Vijay Karan, an Andhra cadre officer from the IB, was foisted. Charan Singh's major handicap was his total unfamiliarity with the ways of Delhi. The coterie, I learnt later, cultivated his two sons-in-law, Dr. J.P.Singh, perhaps a Dy M.S. in the Willingdon Hospital (now Ram Manohar Lohia Hospital) and S.K.Singh, an IPS officer of the Maharashtra cadre. In the meantime, a canard was spread that I had already been promoted as Addl. IG in UP and was not interested in a deputation to the Centre.

I was therefore, surprised when Lal Singh Verma, the new IGP UP congratulated me around the 20<sup>th</sup> Sept, 1977 that I had been chosen to be the first Police Commissioner of Delhi. The A.I.R. too carried the news in its successive bulletins.

I took over on 1st Oct. 1977, as IG Delhi. My joy at being imparted the honour was, however, tinged with embarrassment.

Mishra had been a friend and for me to replace him, a mere twelve weeks after he had assumed charge, was bound to leave an impression of manipulation. I called on Charan Singh before assuming charge and shared my embarrassment with him. He, however, brushed it away.

My first encounter with the Home Secretary and other officers of the MHA took place rather unexpectedly within three days of assuming charge. I attended a meeting in the MHA presided over by the HM and attended by a couple of ministers and senior officers to discuss PM's suggestion for introducing prohibition in the Union Territory of Delhi. As we left the meeting room, HM asked me to discuss the mechanics of bringing about the proposed change in the Police set up with the Home Secretary. I went with the latter. In the room, apart from the Home Secretary, were Chief Secretary B.N.Tandon and two other senior officers of the MHA. Vardhan pompously asked me to "State my Case". I cut in by reminding him "Sir, it is NOT MY CASE. We are required to discuss only the mechanics of implementing Govt. of India's decision announced in the Parliament five months ago." Then I went on, explaining the rationale behind the

Government's decision. For emphasis, I added the views of late Prime Minister Jawaharlal Nehru and Lal Bahadur Shastri and of Y.B.Chavhan as Chief Minister Bombay state. Vardhan accepted that, "the logic of your case is unassailable." I again interrupted, "Sir, the logic of Government's decision." Then I asked, should not the government run on principles of logic? His cryptic reply was "Not always".

Officers of the Delhi Police had, in the meantime got prepared the draft of a bill, broadly based on the Bombay Police Act, but also drawing on the Karnataka Police Act and the Madras Police Act. I introduced two additions viz. the enforcement of sections 107/116 Cr.PC, 109 and 110 Cr.PC and the powers of externment.

The MHA agreed to treat that as the basis for all our discussions. K.M.L. Chhabra, a TN Cadre IAS officer and Jt. Secretary in charge U.T. Delhi was nominated by them to be the nodal point for this purpose. From our side, the initial discussions were joined by two DIGs, but primarily the Legal Advisor. Later I decided, it was too crucial a matter to be left to any of them and made that my primary responsibility. Things proceeded smoothly until we reached the stage of deciding about the various enactments, which should form part of the all-important schedule of laws, the administration of which should be transferred from the DM to the Commissioner. On that would depend whether the DM should still have a finger in the pie. After prolonged deliberations, the MHA gave in, except the enactments relating to the licensing of (1) Places of entertainment, (2) Hotels etc., (3) Eating places and (4) Registration of printing presses. A stage was reached when I had to tell the MHA "I am not here to foist on the Delhi Police a toothless wonder- an imbecile commissioner." Since the MHA were not willing to yield, I insisted that the matter should be referred to the HM. Charan Singh, by then laid up with a cardiac problem, was convalescing at the neighbouring Surajkund resort. We went to him. Chhabra joined me in my car. On the way, he saw wisdom and agreed to include the first three Acts in the Schedule but stuck to the MHA's ground on the Press and Registration of Books Act. Home Secretary Vardhan travelled separately. When the HM asked him about the issue, his only argument was that Registration hardly has any law and order angle, then HM turned to me. I explained that the DM deals with many types of registrations. The only reason we insisted on the transfer of the law relating to printing presses and the material printed there was that the press could be used for subverting the rule of law by bringing out subversive literature. Presses could release material, which could inflame communal and sectarian feelings, as well as,

subvert the economy by printing counterfeit currency. The HM took less than a minute to decide the issue in favour of the Commissioner.

With the draft of the bill ready, the next stage, strewn with thorns, was to get the OK of the Delhi Metropolitan Council - the equivalent of a state legislature. Its large majority of members were erstwhile Jan Sangh loyalists, some almost hostile to Charan Singh. We had been informed that apart from their own opposition to the introduction of the new system, the bureaucracy too had sharpened their hostility. It would have been naive to expect support from Congress members. Delhi Police officers' enthusiasm was too lukewarm to counter the challenge. When I received the call to appear before the Council's Select Committee, there were only two others who had volunteered to support the case - one was Dr. Bharadwaj, a member of the Council and the other A.R. Wig, the editor of the Hindustan Times' evening, 'The Evening News'. The Council's OK was not mandatory but its opposition was bound to be played up by the detractors. When I mentioned this to N.S. Saksena, he assured me "your knowledge will be your 'Amogh Astra'."

When I appeared before the committee, Mir Mushtaq Ahmad, also the Council's Chairman, was presiding. Almost all the members were ignorant about the system. They had been fed on the canard that they would be exposing Delhi to uncontrolled Police Raj. I began by introducing the members to an elementary truth that the system had been in place in the three metros of the country for over a century. In England, the system had been established in 1829 and the one in place in our metros was virtually a replica of that. I asked the members to visit the metros and experience for themselves the distinctly high standard of policing and the overall popular approval of their style of functioning. Maharashtra, Gujarat, Karnataka and Kerala had in fact extended the system to several of their other cities. I quoted to them the high praise Y.B. Chavan, then CM of Bombay, expressed for the I.P.S. officers already running the police administration of the state. After quoting the statement of Sir Bartle Frere, that on principle the Police should be independent of the magistracy, I said they were already answerable to Courts for all their actions. Then I told the members what turned out to be the trump card.

I said, "For the time being, let us assume that the police are villains, who need control to prevent their excesses. Therefore, I shall talk only of the so-called angels, who are supposed to protect the people of India. I began with the President of the Republic. The oath administered to the holder of the highest constitutional position says, 'I shall PRESERVE,

PROTECT AND DEFEND THE CONSTITUTION AND THE LAWS'. An umbrella's worth is known only during a downpour. You all know how this umbrella - the protector and defender" - sheepishly folded up at the sight of Mrs. Gandhi's Personal Assistant and signed on the dotted line declaring Emergency on the night of 25<sup>th</sup> June '75. Then I cited the role of the Parliament which surrendered equally meekly to Mrs. Gandhi's dictates; the Supreme Court, which except for Justice Khanna's valiant opposition, declared that during the Emergency, we, citizens of the world's largest democracy, could even be deprived of our right to life; the Press, which except for the "Indian Express" justified the Emergency; and two senior Ministers, one of whom had since joined the new government, who eulogised the Emergency as the dawn of a new era. And then I recalled how the bureaucracy danced to the tune of the piper's pipe. I had with me a note which a section of the I.A.S. in UP, disgusted with the role of many of their colleagues, had circulated to its members. It noted how policemen were issued blank warrants of arrest under the MISA by various District Magistrates, who are supposed to be the shield against real or imagined police excesses. I quoted to them what Niren De, then Attorney General, openly admitted, that he "used to shake in his pants", and the pathetic admission of Kishan Chand (Delhi's L.G. during the Emergency years) before the Shah Commission - "Sir, those days, (Navin) Chawla was the Governor and I was mere LIEUTENANT". Chawla was his Special Assistant.

At the end of it, I added for emphasis, "Hon'ble members, all the angels, the People's protectors and defenders, had failed them, when they needed their shield. Now try us, the villains, and you will experience the difference."

The Chairman then turned to me and queried, "Mr. Chaturvedi, in all those states where the Commissioner of Police is in place, there is a Cabinet and a Minister to whom the police are answerable. But here, you are not answerable to us and are under the L.G." I promptly replied, "If I had the power, I would place Delhi at par with other states, because I believe that even an inefficient democratic rule is better than the best bureaucratic rule." Surprised, the Chairman asked "Can we quote you?" I said "most certainly, now and always."

At the end of the deliberations, a large majority of the Committee members came out of the meeting to compliment me and to assure me that the Metropolitan Council would overwhelmingly endorse the Bill. And they did.

In the meantime, the internal problems of the Janata Party reached a boil, culminating in Charan Singh's exit from the govt. In the interim, the P.M. assisted by two Ministers of State, looked after MHA. Our periodical enquiries from the Home Secretary's office only resulted in vague assurances. Sometime in April

'78, the PM expressed a desire to review the law and order in Delhi with me and the four DIGs. That was a high level meeting with the L.G., the Delhi Executive Councilors, MPs and senior officers of the MHA attending. Suddenly, he turned to the Home Secretary Vardhan and asked, "What is happening to the Commissioner?" Fond of munching 'Pan Masala', Vardhan replied somewhat casually, "Ho raha hai". The PM flared up - "Ho raha hai? What do you mean? We promised the Parliament one year back." Realising the seriousness, Vardhan added sheepishly, "Sir we will bring the bill in the Monsoon Session of the Parliament. "No question", the PM retorted. "My problem is the incompetence around me. Issue an ordinance. Do it by 30th June. We will go to the Parliament later."

Shaken, the MHA worked overtime to meet the deadline. The Delhi Police Bill as the Delhi Police Ordinance 1978 was taken to Calcutta on the 29<sup>th</sup> June, where the President was on tour. It was signed and notified on the 30<sup>th</sup> June 1978. It must have been the first time since Independence that an administrative change of such import was brought about through an ordinance.

Delhi Police officers led by DIG CID and Security G.S. Mander, converged on my office to celebrate the occasion with sweets and flowers.

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## POOR HANDLING OF ECONOMIC CRIME-A CASE STUDY IN A.P.

*Umesh Sharraf, IPS\**

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### **The trigger**

On 16.2.2013 at 1300 hours, a complainant lodged a report stating that a firm started on attracted them to deposit money on the promise of huge returns and that they have deposited an amount of 98.5 lakh and the management absconded on 16-2-2013 without making payment.

Based on the report, a case u/s 420, 406 and 120(B) Indian Penal Code, Sec. 5 of A.P Protection of Depositors of Financial Establishments Act, 1999 and Sec. 4, 5 and 6 r/w 2 (c), 3 of the Prize chits and Money Circulation Schemes (Banning) Act, 1978 r/w 120-B IPC was registered on 16-2-2013 in IV town Police Station, Visakhapatnam city.

On 19-2-2013, another case u/s 420, 406 Indian Penal Code, Sec. 5 of A.P Protection of Depositors of Financial Establishments Act, 1999 and Sec. 4, 5 and 6 r/w 2 (c), 3 of the Prize chits and Money Circulation Schemes (Banning) Act, 1978 r/w 120-B IPC was registered at Gajuwaka Police Station on a similar complaint against the same company.

### **The investigation**

A-1 and his partners established a partnership firm on 09.09.2009 and got the same registered with the Registrar of Firms and tied up with Bajaj, Birla Sun life, HDFC companies and made businesses on behalf of said companies and collected an amount of about Rs.68 lakhs from 474 customers.

In the same year, he started another partnership firm for real estate business on 27-11-2009. Through the said firm, they collected money of about Rs.61 lakh from about 2,668 customers as advance towards house plots.

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When they noticed steady flow of customers, they set up another private limited company on 11.11.2010 on the same address with the Registrar of Companies, Hyderabad and they collected deposits from public without getting registered with the RBI.

#### **Financial Irregularities Committed by the Company:**

Banks including co-operative banks can accept deposits. Non-banking finance companies, which have been issued certificate of Registration by RBI with a specific license to accept deposits, are entitled to accept public deposit. Thus certified NBFCs registered with the Reserve Bank of India are entitled to accept deposits.

Unincorporated bodies like individuals, partnership firms and other association of individuals are prohibited from carrying on the business of acceptance of deposits as their principal business. Such unincorporated bodies are prohibited from even accepting deposits if they are carrying on financial business.

The company offered high rates of interest. The maximum interest rate that an NBFC can pay to depositor should not exceed 12.5% or as per the changes published by the RBI from time to time.

The company invested the proceeds of deposits made by public to purchase land and plots and promised regular payments besides becoming a pride owner of a plot on maturity. Thus the firm floated collective investment schemes without getting permission from the regulator i.e. SEBI.

The company floated investment schemes which amounted to money circulation by promising easy or quick money on enrollment of members. The money circulation schemes are those schemes that collect money from public of promise of high returns. As there is no asset creation, money collected from one depositor is paid as returns to other. The company had been paying commission to the agents up to 7 levels in the pyramid.

The company neither registered itself with the RBI nor specifically authorized to accept deposits which is contemplated u/s 45-I of the Reserve Bank of India Act.

#### **Modus Operandi of the Company:**

The accused floated real estate ventures and gave wide publicity through printed brochures in the name of “Every customer becomes partner” and other attractive captions with an intention to attract the gullible small investors. They encouraged the agents to mobilise deposits by offering 15% of the deposit amount as commission at different stages and announced sops like Cars /Motor cycles

to the best performing agents.

The accused opened a main office at Akkayyapalem in Visakhapatnam city and set up 20 branches at

1. Gajuwaka,
2. Maddilapalem,
3. Narsipatnam,
4. Chodavaram,
5. Yelamanchili,
6. Anakapalli,
7. Atchutapuram,
8. Payakaraopeta,
9. Koyyalagudem of Visakhapatnam district,
10. Srikakulam Town and
11. Palasa of Srikakulam district,
12. Vizianagaram of Vizianagaram district,
13. Tuni,
14. Mandapeta, and
15. Rajahmundry of East Godavari district,
16. Eluru,
17. Tanuku,
18. Tadepalligudem and
19. Jangareddygudem of West Godavari district and
20. Guntur of Guntur district.

The company collected about 278 crores of rupees as deposits from about 45 thousand customers and paid about 137 crores only. They collected about 61 crores from about 2668 depositors and paid about 90 crores to the depositors in real estate business and collected about Rs.68 lakhs towards insurance premiums from 474 customers and paid about 96 lakhs. The company paid the assured payments in the beginning and later discontinued operations abruptly on 15-02-2013 causing irreparable loss to the depositors and thereby cheated the gullible public and misappropriated the amounts for their own use. The exact amount required to be paid to the depositors is yet to be assessed as some of the depositors reinvested the received payments along with the bonus.

The company enlisted about 8,000 agents for their business by offering handsome commission. It paid about 15% of the deposit amounts to the agents as commission. Some of the agents deposited their commission amounts in the same company and the exact amount paid to the agents is to be assessed and the commission paid is to be recovered.

The Managing Director (A1) and other directors also diverted some of the deposited amount to for stock trading. Similar cases were then registered against the company in Srikakulam Dist., Vizianagaram town, Atchuthapuram, Chodavaram, Narsipatnam of Visakhapatnam Dist., Rajahmundry town and at Guntur on the complaints of the depositors. Besides the above 2 cases, 7 other cases were also registered against the company at various places within A.P.

**Subsequent progress made in the Investigation by the local Police:**

Soon after registration of the case, one officer of the rank of ACP was entrusted the investigation and a team of officers was designated to assist him in the investigation. The I.O examined 115 witnesses collected 40 thousand applications of depositors, searched various premises of the company and seized cash, gold ornaments, computers, TVs, furniture, etc.

Almost all the directors including the CMD were arrested and sent for judicial custody. The preliminary charge sheet was filed on 04-05-2013 in the court of Metropolitan Sessions Judge at Visakhapatnam to prevent the accused from securing bail.

Letters were addressed to the concerned Sub-registrars and Tahsildars to stop transactions on the lands and properties of the company and its directors. A memo was filed in the Court to issue orders to open an SB account in the name of competent authority i.e. Commissioner of Police, Visakhapatnam. Letters were addressed to all the Branch managers of the banks wherever the accused had bank accounts, to freeze all cash transactions. Letters were also addressed to all the stock broking houses concerned to furnish information about the share trading business carried out by the accused. Letters were addressed to the RTAs concerned to furnish information about the vehicles purchased by the company, its directors and other accused and not to entertain further transactions on the seized vehicles. The registered and unregistered properties located throughout the State were verified before sending proposal for interim attachment orders of the Government. The Police invoked the sections of Prize Chits and Money Circulation schemes (Banning) Act 1978 as the company accepted money under money circulation/pyramid structured schemes.

The case was transferred to the state C.I.D. on 12-06-2013.

**Should we be pleased with our response?**

The local police did a commendable job in reacting to the public outrage in February 2013. It registered cases quickly and took decisive action. However, could we have prevented this magnitude of the crime?

On the strength of a newspaper report published in a local daily on 22-03-2011 that the company was collecting deposits from public by offering high rates of interest and may cheat the depositors and vanish, the then Commissioner of Police, Visakhapatnam City had instructed the IV Town Police to register a case against the company and investigate. Basing on the news item, the Inspector, IV Town PS of East sub-division prepared an occurrence report and registered the case suo-motu and took up investigation.

During the course of investigation, the Inspector (SHO) recorded statements of 7 depositors, verified the registration certificates of the company, which was registered under the Companies Act, 1956 and the Indian Partnership Act, 1932. As the company had not defaulted and was making monthly payments to the investors/depositors regularly as promised, no depositor had complained against the activities of the company. The case was referred as 'Mistake of Fact' on 30-10-2011.

The company had not defaulted to its depositors at that time because the critical mass that is required for such bubbles to burst had perhaps not been reached. But all the irregularities seen in investigation now should have been seen even in 2011.

**But did only the local police fail to read the situation properly?**

One complainant had sent an email to CID on 6-8-2012 making certain allegations against the company, stating that "...NBFC with centers at Visakhapatnam Rajahmundry, Narsipatnam and other places is looting money from public promising 10,000 per month for one lakh against RBI guidelines. Kindly enquire and stop such NBFCs and save public money."

This was sent to the Inspector of CID at Vishakhapatnam to enquire into and he submitted his report on 7/11/2012. It will be useful to see some excerpts from his report:

"...the allegation that the NBFC is looting money from public promising 10,000 per month for one lakh against RBI guidelines is not substantiated as there is no evidence forth coming from any of the witnesses examined and no allegations of victimization came to light against the firm during my enquiry.

... the customers who purchase the house plots by making full payments

will not face any problem with the firm, as their plots were registered and were handed them over to them physically. But, the problem arises in respect of the customers who pay the land booking advances to the firm, as their sale agreements were not registered and there is no any guarantee for the payments of the post dated cheques issued by the firm. There is every likely hood that the firm may close their business all of sudden due to losses or any other reason. In such a case, all these customers had to face irreparable loss as their payments are not guaranteed by the firm in any way...”

When I read this report, I found no evidence that the company was actually going to default. After all, as an investigation agency we could not take over the role of a regulator. The CID enquiry did not uncover the irregularities that this company was indulging in, that have been now brought out in investigation. Refusing to act on mere suspicion or hunch, I recommended that this enquiry be closed and it was. I had made the classic error of mistaking absence of evidence for evidence of absence.

So there were two missed opportunities to the police to control the activities of this company: once in 2011 by the local police and then a year later in 2012 by the CID.

**But did we have all the facts?** Was a signal hidden in all the noise?

On a complaint a case had been registered against the same accused at CCS, Hyderabad in u/s /406,420IPC & Sec. 4 of Prize chits & Money Circulation Act. He had mobilized customers by conducting meetings at his office and lured gullible customers by offering high return/incentives on various schemes. Initially he started a scheme in which the customers had to purchase a home appliance product by paying Rs.125/. Subsequently the same customer had to introduce three customers for which they would get Rs.75/-. Likewise, he spread the scheme among thousands of customers and paid benefits to them and gained their confidence.

Gradually he updated the schemes and started another scheme in which the customer had to be pay Rs.7000/- and purchase a home appliance which cost Rs.2,000/- and made the customers to believe that the company would give Rs.1,000/- per month to the customers for 12 months. He spread the schemes among the customers successfully and did business for total transaction of Rs.5,21,13,968/- between 20-5-2005 and 31-3-2009. Initially he did business successfully and also paid the monthly benefits to first batch. Subsequently he closed his business without intimating to the customers and absconded. He collected Rs.72 crores from the gullible public on various schemes out of which he paid Rs.60 crores as commission to the public.

The accused was arrested on 5-1-2009. The CCS recorded his confessional statement and seized two cell phones and one C.D. On 6-1-2009 he was remanded to judicial custody.

While the case was in progress, the complainant filed a petition before the Spl. Judge for the offences under A.P. Protection of Depositors and Financial Establishment Act 1999 cum Principal Session Judge, Nalgonda as he had invested Rs.1,80,000/- in the accused company. The same was referred to Alwal PS for investigation. The case was registered u/s 420,506 IPC & Sec. 5 of APPDFE Act 1999 P.S. Alwal of Nalgonda District Later, the case file was transferred to CCS Hyderabad for further investigation where the first case had been registered and on 10-12-2010 a clubbed charge sheet was filed before the CMM Court, Hyderabad. During the trial the accused did not attend court.

Again, was this the first time this criminal had cheated the public?  
Unfortunately, No!

He had been arrested on 4/8/2003 as A2 in a case u/s 420 IPC of PS Governorpet of Vijayawada, where he and other accused had defrauded the public of nearly 3.3 lakhs by floating a company.

So, neither the Vizag police nor the CID were aware that the accused had a **history** of cheating the public. The investigation of Vizag police and the enquiry of the CID in 2012 would perhaps have been on a different footing, had the investigating officers been privy to this crucial information.

#### **The problem of poor handling of economic crime**

Much of the crime under these economic offences is often lost in the rubric of “other IPC” or “Special and Local Laws” while studying crime. There is thus a lack of clarity as to the nature of economic offences; and in addition to IPC and the plethora of special and local laws enacted to control them, there is also a large number of agencies tasked with enforcement of these laws. Police officers should therefore not only familiarize themselves with the governing enactments, they should also liaise with the different agencies for a concerted effort against the gamut of economic crime, which is connected with each other in myriad ways.

In A.P. while 206.5 crores property was lost in traditional property offences, 1536.8 crores worth of property was lost by the public in white collar offences in 2012, which was 7.5 times of the traditional crime. 10536 economic offences were reported in 2012 as compared to 9223 cases reported in 2011 and 8775 cases in 2010. There is an increase of 14.2% in 2012 over previous year. Among

them, cheating constitutes 87.48% and Criminal Breach of Trust constitutes about 10.45%. Thus, much of economic crime is reported under these two heads only. This would also be the state of affairs in the rest of the country.

There is also negligible effort by police to recover the proceeds of crime in economic offences. While 58.3% of property lost in traditional property crime was recovered, negligible amounts were recovered in the 1536.8 crores of property lost by the public in economic crime. In the state of A.P. property acquired by the accused person out of proceeds of crime can be attached under the following laws and the Investigating Officers must make full use of the relevant and applicable provision of the law to attach and confiscate the properties of the white collar offenders:-

- Criminal Law (Amendment) Ordinance 1944.
- The AP Protection of Depositors of Financial Establishment Act, 1999.
- Prevention of Money Laundering Act 2002.

How do we ensure that serial cheats are not able to keep floating new companies to cheat the public?

Clause 167 of the Companies Bill 2012 passed in the Parliament in August 2013 provides that the office of the Director shall be vacant in case he is convicted by a Court of any offence whether involving Moral Turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months provided that the office shall be vacated by the Director even if he has filed an appeal against the order of such court.

Although this is an improvement over the existing provision where the convicted Director can escape disqualification during the appeal period, I will now reveal why this is still not adequate enough.

APPM (A.P. Police manual) Order No. 596 deals with opening of history sheets on habitual criminals (called KDs or Known Depredators). There are two lacunae in this order. Firstly, the automatic opening of history sheets is contingent on conviction a certain number of times depending upon the gravity of offence. For instance a single conviction under dacoity will suffice, whereas three convictions are required for theft. Cheating using public funds, if convicted even once, will also enable opening of a history sheet. However, in my career, I have never seen any PS opening a history sheet for a cheat! Be that as it may, the problems with this type of history sheet opening in that there is a very big time lag between the activities of the criminal and the subsequent



conviction, if any! The trial in the case of 2003 u/s 420 IPC of PS Governorpet is still on, for instance! In cheating cases particularly, where the investigation is document based, most judicial officers do not evince interest in early disposal of the case as they have to plough through huge amount of paperwork and their disposal rates get affected adversely. The less said about the quality of investigation in such cases, the better. Even today, most police officers investigating such cases base their chargesheet on the confession of the accused, something that has no evidentiary value. See, for instance, the investigation done by CCS Hyderabad. Except recording the 'confession' of the kingpin and 'recovering' whatever he was in possession of, what material did the CCS collect to prove the charge?

In many cases, the police confuses mere 'breaches of contract' with 'cheating' and in many cases victims of 'cheating' are turned away on the grounds that theirs is a 'civil dispute'!

A glance at the Crime in India figures published by the NCRB will reveal the extent of the problem: In 2011, in 72.7% of all cognizable IPC crime investigation was completed. However, this figure was only about 54% for offences of cheating & criminal breach of trust. Thus, the chargesheeting rate for cheating/criminal breach of trust was significantly lower than other crime. While the conviction percentage for all IPC crime was 41.1%, it was only 27.5% for cheating & 31.2% for criminal breach of trust. While the courts disposed off 13.5% of the pendency of all IPC cases, this disposal rate was only 9.4% for cheating & 8.5% for criminal breach of trust. Thus, cheating & criminal breach of trust are not only, comparatively speaking, investigated by police more tardily, they are disposed off more tardily in courts and the conviction rate is also much lower than other type of cases. In AP, this conviction percentage was as low as 12.9% for cheating & 7.7% for criminal breach of trust whereas the overall convictions percentage was 33.4% in 2011.

If we take only AP, in 2012 this was the detection percentage & conviction percentage of various heads of crime:

SI. No	Head of Crime	Detection %	Conviction %
PROPERTY CRIME			
01.	Murder for gain	33.49	50.00
02.	Dacoities	42.19	0.00
03.	Robberies	48.92	39.47
04.	Burglaries	39.35	56.11
05.	Ordinary Thefts	50.29	34.30
	TOTAL:	47.60	37.77
BODILY CRIME			
06.	Murders	46.76	20.00
07.	Culpable Homicide	52.26	33.33
08.	Riotings	55.49	7.69
09.	Kidnapping/Abduction	57.33	7.59
10.	Rape Cases	45.55	5.26
11.	Hurt Cases	81.53	12.05
	TOTAL	75.47	12.07
WHITE COLLAR OFFENCES			
12.	Cheating	33.20	3.27
13.	Criminal Breach of Trust	30.41	5.56
14.	Counterfeit	13.66	0.00
15.	Stupefying Drugs	20.00	0.00
	TOTAL :	32.55	3.43
16.	OTHER IPC	69.53	47.07
TOTAL COGNIZABLE CRIME		64.18	39.94

The detection percentage of white collar offences was less than half of other crime. The conviction percentage for cheating was an abysmal 3.27%!

Thus, the inescapable conclusion is that if we try to base our surveillance of cheats on APPM Order No. 596, i.e. based on conviction, it will be a case of **too little and too late**. The second lacuna in this model is that it focuses more on geographical location of the criminal and is based on the concept of domiciliary visits by beat policeman. This is not viable in the present scenario.

A more effective mechanism should be to open “suspect sheets” under the provisions of APPM Order No. 600(1)B by taking orders of the Superintendent of Police. Then, as the activities of such cheats invariably encompass more than one police station area, these sheets should be immediately upgraded as Dossier Criminal sheets (DC sheets) as per APPM Order No. 748-1. DC sheets for cheats should not be surveilled by local PSs but should be maintained by the CCS (central crime stations) of the concerned units. The medium of surveillance must not be domiciliary visits but more in terms of activity supervision and intelligence. **The police manuals of the other states would also be required to be carefully used for a similar action in those states.**

Whenever such cheats are arrested, it would be advisable to immediately address the Ministry of Corporate Affairs, Government of India to exercise its powers u/s 609(5) of the Companies Act to direct the registrars of Companies (ROCs) all over India to red flag any company registration by the same individuals in future. Individual marker IDs like PAN card number, Aadhar card no., DIN no. (Directors Identification Number) should be invariably collected at the time of interrogation and furnished so that the Ministry of Corporate Affairs can be requested to red flag this individual in its MCA-21 system.

I suggest the following heuristic for Unit Offices to follow when an offence of cheating, criminal breach of trust, (swindling of deposits, money circulation schemes, other scams etc. on a large number of people) is reported:

- a) offence is less than 1 lakh - local PS to register the case and take necessary action.
- b) offence is more than 1 lakh & less than 100 lakhs: CCS or the Central Crime Station (if available) of the unit to take necessary action. Unit Officer to open a history sheet under appropriate orders of the police manual and the CCS to maintain the history sheet.
- c) offence is more than 100 lakhs: CCS of the unit to take up preliminary investigation. Unit Officer to open a history sheet on Promoters and Directors of the company under appropriate provisions of the police manual by issuing a speaking order. Both CCS of the unit and state CID to maintain a copy. Copy of the history sheets opened in such cases must be sent to the State CID. Care should be taken to open sheets on only surveillance worthy cheats.

A Superintendent of Police, in the state CID should be the custodian of such history sheets in the CID. That Superintendent of Police should organise quarterly reviews with all units on the activities of these cheats.

Once the compilation of data is complete, the state CIDs should address the Ministry of Corporate Affairs, Government of India to red flag all the above offenders so that they will not be able to register new companies elsewhere to cheat the gullible public.

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The first hub of this strategy is the preparing and training of a large pool of officers of the police who are of the cutting edge level, in the skills and techniques involved in cyber security. This is being done by the PRTS under its flagship program – the e-Investigator Development Project (e-IDP). This program has been underway since January 2012. Till date 45 training courses in 9 disciplines and 5 major seminars have been held under its aegis. A total of 1584 police officers of the rank of SI-Addl. SP have been successfully trained. In addition to officers of MP Police, police officers from 21 other state police forces; 6 Central Police Organizations and the Indian Army have been trained under e-IDP. Today PRTS is a major hub for cyber security training in India and such a sustained and continuous effort at cyber security training is not undertaken by any other police formation anywhere in the country.

The second hub of the strategy is spreading awareness amongst the citizens so that they remain safe & secure while using the cyber space. For this the PRTS has, on its own initiative, launched the “BLUE FLAME INITIATIVE”. This has three strategies:

1. Sandesh: For spreading awareness amongst school children.
2. Sankalp: For spreading awareness amongst College students.
3. Samadhan: For spreading awareness in the community & institutions.

The first workshop under this initiative was launched on 28th November 2013. In a short duration of 3 months 25 such workshops have already been organized and 3500 individuals already made cyber security aware. The community at large is greatly benefitting from this Initiative. It will soon be spread to other parts of the state of MP.

Both these hubs of the PRTS strategy are designed to reduce and control cyber crime. The second hub will ensure that due to better awareness the community remains safe while using the cyber space and even by default does not become a victim or become an offender by mistake. In spite of this even if crime occurs then the community members are also sufficiently aware to report the incident. After the report the first hub of the strategy kicks in. The police officers of the cutting edge level are all trained and equipped sufficiently to register the complaints and subsequently investigate and detect such cases. This in turn will again insure that the incidents of cyber crime are reduced further and this menace is effectively tamed and controlled.

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