THE CRIMINAL LAW REVIEW

VOLUME 10 NO. 1
2024 (76 R.R)

SARDAR VALLABHBHAI PATEL
NATIONAL POLICE ACADEMY
HYDERABAD

SVP National Police Academy

Criminal Law Review-2024(76RR)

Volume - 10 No. 1

Published by

SVP National Police Academy
Hyderabad

SVP NPA Criminal Law Review 2024

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Foreword

Knowledge of law is a *sine qua non* for police officers, who serve as the first line of defense in upholding the rule of law and preserving public trust in the criminal justice system. In an era marked by increasingly sophisticated crimes, it becomes even more imperative to equip officers with a nuanced understanding of the legal framework governing their actions.

I, therefore take great pride in introducing the 10th edition of the SVPNPA's Criminal Law Review which brings together insightful contributions addressing both the theoretical and practical dimensions of law enforcement. From analyses of new criminal laws shaping the foundation of criminal jurisprudence to discussions on emerging issues like cybercrime, human trafficking, and the evolving role of forensic evidence, the journal provides valuable insights for navigating the complexities of modern policing.

The Journal should be of interest not only to law enforcement officers but also to academics, scholars, and practitioners. I commend all the authors and the Law Society for their valuable contributions and I wish them continued success in their careers ahead.

(AMIT GARG)

DIRECTOR

Sardar Vallabhbhai Patel
National Police Academy
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Private Eyes, Public Risk: The Case for Regulating Private Investigators

SAMIKSHA JAIN, SUJAWAL JAGGA*

The Code of Criminal Procedure 1973 ('CrPC'), in its Section 2(h) or Section 2(l) of the new Bhartiya Nagrik Suraksha Sanhita, 2023 ('BNSS') defines investigation as "all proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf", thereby bringing any private element out of its purview. Similarly, under Section 173 of CrPC or Section 193 of the BNSS the report of the investigation can only be submitted by the investigating officer to the court.

Thus, a basic understanding of the Indian procedural and substantive laws suggests that investigation, evidence gathering, and crime detection are functions exclusively bestowed on State-authorized agencies like the police and specialized departments. To this effect, these agencies are duly empowered and regulated by law through a thorough system of checks and balances, rooted in the principles of social contract and protection of fundamental rights of citizens.

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However, unknown to many, there exists a flourishing Rs. 1700 crore industry which readily offers investigation, private surveillance and evidence gathering services to individuals and corporations free from any legal supervision. A search for "private detective services in India" on google and links to websites of hundreds of private detective agencies spring up, soliciting a wide range of investigative services for a fee.

These include individual based information (such as matrimonial matters) to matters of patent R&D, collecting business intelligence, pre-nuptial background checks, investigating extra marital affairs or pre-employment verifications. Even matters which are the domain of core policing squarely fall into their scope such as tracing location of missing persons and even criminal investigations like credit card frauds. One website of a private detective even remarked – "Not satisfied with the police investigation? Contact us!"

Mushrooming in the Dark: How Private Detectives Fill the Gaps

Why do these agencies exist despite an elaborate policing system in the country?

The answer lies in the fact that these agencies fulfill the unmet demand for certain kinds of information or intelligence which cannot be met by the police – such as tracking activities of teenage children or spying on cheating spouses. Also, in a large number of cases, their services are helping meet private investigation and vigilance needs of business enterprises such as keeping a watch on competitors and potential employees.

Besides, such agencies have mushroomed in the conducive shadow of a non-existent legislative and regulatory oversight which enables them to conveniently gather intrusive personal data of

individuals without any regard to procedural safeguards or any accountability whatsoever, unlike in the case of law enforcement agencies.

Finally, comes the case for efficiency. In carrying out their investigation, they use a variety of techniques including sophisticated technological innovations such as spyware links or applications, spy cameras and transmitters, spy microphones, GPS trackers, combined with old school conventional means like physically stalking the target or using informants. There have also been cases of illegally accessing Call data records of targeted individuals through collusion with police officers or internal contacts in telecom agencies. Further, the increasing level of technological sophistication is only set to make surveillance more intrusive and thus nuanced in times to come.

Danger in the shadows: The dark side of private spying

Even as these flourishing private Sherlocks meet growing needs for DIY private justice with growing sophistication and ease, there are significant concerns around their working which demand attention.

Foremost among them is the complete disregard for the fundamental right to privacy of the individual being spied upon. Private detectives engage in covert surveillance without any consent or authorisation - capturing personal activities, intercepting conversations and tracking movements or gaining access to private spaces through deceitful means. Such unauthorized and intrusive surveillance directly violates the individual's right to be left alone and right to informational privacy, which have been accorded Constitutional protection as a part of the fundamental right to life

and personal liberty under Article 21, as laid down by various judicial pronouncements.

Secondly, there is every likelihood of the potential misuse of personal information gathered by these agencies in respect of the people they have spied upon. There have been instances of purpose creep, that is, data collected during a marital investigation, for instance, might be used to blackmail or manipulate the subject in unrelated matters. There may also be passing along or even sale of such personal data to interested third parties for commercial gain without consent. Besides, if a private detective discovers compromising information about an individual, the same may be used to manipulate or coerce the subject into cooperating with their demands. Moreover, any inaccurate or biased reporting of such data may significantly impact the subject's reputation, personal and professional relationships and legal standing in the long run.

Thirdly, the unfettered scope and manner of investigation by private detectives impinges upon the sovereign functions of the state and its enforcement agencies to investigate within the overall legal framework and procedural safeguards, causing duplication and conflicts with the state-led efforts and confusion with overlapping information. Their questionable practices erode public trust in official law enforcement, while the evidence they gather often fails to meet legal standards, undermining its admissibility in court under the Indian Evidence Act, 1872 or Bhartiya Sakshya Adhiniyam 2023. Private investigations that involve access to sensitive data or intelligence could also inadvertently expose vulnerabilities or secrets that threaten national security and confidentiality of state operations.

Finally, contracting parties face risks from detective agencies of dubious reputation in absence of any accountability of such agencies to an independent regulatory authority. In the absence of adequate consumer protection mechanisms, it becomes difficult for the parties to seek redress for breaches or misconduct while inadequate training certification and ethical guidelines for private detectives can result in unprofessional or illegal actions and misconduct. Further, public misinformation about the risks of hiring private detectives can result in poor decision-making and exploitation. For instance, the hiring party may face legal liability or criminal charges for being complicit or for failing to exercise due diligence, if the detectives engage in illegal activities as part of investigation.

Another equally important issue is the use of people from vulnerable sections like children, women etc. for the surveillance activities. The private detective agencies offer a host of monetary and non-monetary incentives to such vulnerable people, to get them to do risky jobs, without caring for the risk to life and property of such people.

The Present Legal Setup vs. Detective Dilemmas: Is It Enough?

On August 23, 2017, in *K.S. Puttaswamy (Retd.) & Anr. vs. Union of India,*[1] Supreme Court of India ruled that the right to privacy is a fundamental right and thus is protected under Article 14, 19 and 21 of the Constitution. The Court recognized privacy as a crucial aspect of life and personal liberty, encompassing bodily autonomy, informational privacy, and the right to privacy choices. It outlined that privacy may only be restricted through state actions that meet three criteria:

[1] (2017) 10 SCC 1.

(1) Having a legislative mandate and following a fair, reasonable legal procedure;
(2) Pursuing a legitimate and reasonable state purpose; and
(3) Being proportionate, meaning the action must be necessary and the least intrusive to achieve its goals.

Thus, the right to privacy, while fundamental, is not absolute and can be restricted, but only through established legal procedures. In response to the *Puttaswamy* ruling, the Indian government also introduced the Personal Data Protection Bill, 2019, which later became the Digital Personal Data Protection Act, 2023. This Act mandates that personal data of individuals must be protected, used only for its intended purpose, and requires obtaining consent from individuals. It also establishes a Data Protection Board to handle data breach grievances and enforce penalties.

Under the Indian Penal Code, 1860, now updated to the Bharatiya Nyaya Sanhita, 2023, several provisions safeguard privacy and regulate the actions of private detectives. Section 354C of the IPC (Section 77 of BNS) specifically targets voyeurism, criminalizing the unauthorized observation or recording of individuals in private spaces where they have a reasonable expectation of privacy. For private detectives, engaging in voyeuristic activities—such as using hidden cameras to observe individuals without their consent—falls under this provision - punishable with imprisonment ranging from 1 year to 3 years and with fine for first conviction.

Section 354D of the IPC (Section 78 of BNS) addresses the crime of stalking, that is, persistently following or contacting someone in a manner that causes distress or alarm. This section is aimed at preventing intrusive behavior, such as continuous

monitoring or repeated, unwanted communication. The section provides for an exception in cases where the person stalking has been entrusted with the responsibility of detection or prevention of crime by the State. Thus, private detectives who engage in persistent and unwanted surveillance of individuals, without any authorization or legal mandate, may be prosecuted under this section with imprisonment upto 3 years and with fine for first conviction.

Section 420 of the IPC (Section 318(4) of BNS) deals with cheating, which involves deceiving someone to gain an advantage or cause harm. This provision is applicable when individuals, including private detectives, use fraudulent means to misrepresent their services, deceive clients, or manipulate information. Those found guilty of cheating can face imprisonment for up to 7 years and/or a fine. This section ensures that private detectives are held accountable if they engage in deceptive practices to obtain information or access unlawfully, thereby protecting clients and other parties from fraud.

The Information Technology Act, 2000, also encompasses several provisions designed to protect privacy and regulate online conduct, which are particularly relevant for private detectives operating in the digital realm. Section 43 of the Act addresses hacking, criminalizing unauthorized access to or retrieval of data from computer systems. Private detectives who illegally access systems or databases without proper authorization could be penalized under this section. Section 66 of the IT Act further criminalizes hacking activities and provides for imprisonment up to 3 years, or fines up to 5 lakh rupees, or both, making it clear that digital intrusion is a serious offense.

Section 66E of the Act deals with the violation of privacy by prohibiting the capture, publication, or transmission of private images of individuals without their consent. For private detectives, this means that secretly recording or disseminating private images or videos without the subjects' permission is a criminal act, highlighting the stringent measures against privacy breaches in the digital sphere.

Identity theft is specifically targeted under Section 66C of IT Act, which makes it an offense to fraudulently use someone else's identity information, such as login credentials, for illegal purposes. Private detectives found guilty of using stolen identities to conduct investigations or access restricted information could face imprisonment of up to 3 years and/or fines, thus ensuring that personal data is not misused.

Section 66D addresses cheating by personation, where an individual uses false representations to deceive others for gain. For private detectives, this means that pretending to be someone else, such as an official or a representative, to obtain information or access, constitutes a crime. The penalty for such fraudulent practices can include imprisonment for up to 3 years and/or fines.

Moreover, Section 72A specifically targets the unauthorized disclosure of personal information that was legally obtained under a contract. Private detectives who reveal confidential information acquired through legal agreements without the consent of the individuals involved are subject to this provision. Violations can lead to imprisonment for up to 3 years and/or fines, reinforcing the importance of maintaining confidentiality and respecting contractual obligations. These provisions collectively ensure that private detectives adhere to legal and ethical standards while

conducting their operations, safeguarding individuals' privacy and personal data.

Finally, as a signatory to the International Covenant on Civil and Political Rights (ICCPR), India is bound by its Article 17, which safeguards individual privacy. This article ensures that individuals have the right to be protected from arbitrary or unlawful interference with their privacy, family, home, or correspondence. It obligates signatory nations, including India, to uphold and respect these privacy protections in their domestic legal frameworks and practices. The Private Detective Agencies (Regulation) Bill introduced in 2007, discussed further, has been an Indian effort in this direction.

Under the Magnifying Glass: The Private Detective Agencies (Regulation) Bill, 2007 Unveiled

Presently, the operation of private detective agencies in India is largely unregulated. While there have been attempts by the government to regulate this industry, no comprehensive single legislation has been enacted as of now. The Private Detective Agencies (Regulation) Bill, 2007 was introduced in Parliament but has not been passed into a law and remains pending. The bill aims to provide a system of licensing for such Agencies and set standards for their operations including professional and ethical conduct, and protection of public interest. The proposed provisions of this Bill have been analyzed in detail as follows:

Proposed key provisions:

- Licensing from Central Regulatory Authority: All private detective agencies must obtain a license from a central regulatory authority to operate legally. This authority will be

established to issue licenses, monitor agency operations, and handle complaints.

- Minimum Eligibility Criteria: Agencies must meet specific criteria, including financial stability, professional qualifications, and adherence to ethical standards, to qualify for a license.
- Code of Conduct: Agencies must follow a prescribed code of conduct to ensure their operations respect legal rights and do not infringe on individuals' rights.
- Professional Training: Agencies are required to provide adequate training to their employees in investigative techniques, legal requirements, and ethical standards.
- Privacy Protection: Agencies must protect individuals' privacy, prohibiting illegal surveillance and other infringements on personal privacy.

The Department related Parliamentary Standing Committee on Home Affairs raised certain policy issues in the bill and recommended a relook into some provisions of this bill. Some of the regulatory riddles in the Bill which require clarity include the following –

1. Gaps in definitions and areas of activity: The term ‘private detective work’ includes phrases like ‘lawful objective’ and ‘lawful manner,’ but these terms are not defined within the bill, leading to ambiguity. Further, Clause 2(1)(g) of the bill does not specifically define the activities of private detectives, leaving room for unclear operational boundaries. Thus, there is a need to provide a clear explanation of the terms used in defining private detective work. Further, it is suggested to provide a clear demarcation of the areas of work for Private Detective Agencies (PDAs) in a separate schedule included in

the bill. For instance, PDAs will be restricted from engaging in work related to state investigative agencies such as IB, RAW, and CBI, and will be limited to the private sector.

2. Licensing Conditions: The licensing conditions in the bill have been criticized as either too stringent or insufficiently stringent. Some argued that the conditions were too lenient, allowing unqualified agencies to obtain licenses, while others felt that excessively strict criteria could hinder the growth of legitimate agencies. There is a need to strike the right balance here, ensuring that "regulation" does not become "strangulation" and maintaining a level playing field for healthy growth of the industry within the legal framework.
3. Reporting Cognizable Offenses: The committee raised concerns about the scope of cognizable offenses that private detective agencies are required to report to the police during investigations, suggesting the need for clearer specifications in context of existing criminal laws.
4. Regulatory Authority Concerns: Doubts were expressed about the effectiveness of a single central regulatory authority in overseeing and regulating private detective agencies nationwide. In this light, it would be desirable to establish regional regulatory bodies in order to decentralize the oversight and aid the central and state regulatory bodies in overseeing the functions of Private detective agencies.
5. Privacy Safeguards and data protection: The committee highlighted concerns about insufficient protections for privacy rights during private investigations, stressing the need for stronger regulations. This can be achieved by including provisions in the bill to address privacy protections, aligning with the larger framework of Article 21 of the Constitution, which guarantees privacy even in the absence of a specific

privacy law. Any infringement of privacy should attract penal consequences.

Further, there were calls for stricter regulations regarding the collection, use, and storage of personal data by private detective agencies, as well as clear penalties for privacy breaches. This in turn requires an alignment with the provisions of Digital Personal Data Protection Act, 2023.

6. Scope of Application: Finally, the bill must clarify whether it applies to individuals providing investigative services independently or only to those working through licensed agencies, to prevent a situation of potentially leaving unregistered or freelance detectives unregulated.

From Shadows to Solutions: Innovative Approaches to Detective Regulation

A committee constituted by the Ministry of Home Affairs has suggested various recommendations apart from the above pertaining to the issues raised by the Department related Parliamentary Standing Committee on Home Affairs. These include the following –

1. Register of Private Detective Agents: Establish a register of Private Detective Agents where individuals who complete the required education and training can register. If an agent is found involved in illegal activities, they may be removed from the national register temporarily or permanently.
2. Citizenship Requirement: Include a condition that Private Detective Agents must be Indian citizens, ensuring that all employed agents are citizens and preventing potential negative impacts from foreign ownership. This will ensure that all the agents employed have to be necessarily Indian

citizens and even a minority foreign shareholding is unlikely to have any adverse social impact or conflict with internal security or privacy of individuals.

Further, the private detective agencies should undergo regular audit and re-evaluation at the time of license renewal to confirm adherence to ethical standards. It is suggested that severe data protection provisions be incorporated within the bill, including clear regulations for data collection, storage, use, and disposal. Agencies should also be obligated to put in place effective cybersecurity safeguards to secure sensitive information.

A transparent and accessible grievance redressal mechanism should be created where clients can file complaints against these agencies. This mechanism should be overseen by an independent agency to maintain fairness.

Final Verdict: Summing Up the Private Detective Regulation Landscape

Private detectives are indispensable in today's world, offering services that extend beyond the capabilities of traditional law enforcement. They fulfill essential roles, from personal background checks to corporate intelligence gathering. However, their operations often slip through the cracks of existing regulations, raising serious concerns about privacy and accountability.

The case for a regulatory framework is clear. Effective oversight is needed to ensure that private detectives operate within legal limits, protecting individuals from potential abuses. Yet, this regulation must be carefully crafted to avoid stifling the industry. The goal is to keep private

detectives in line without tying them up in so many knots that their effectiveness is compromised.

This dual approach ensures that privacy is protected and the industry can adapt to new challenges, striking a balance between effective regulation and operational flexibility. After all, a balanced regulation goes on to protect everyone, including the detective agencies by ensuring that only the genuine and authentic ones remain.

As we look ahead, the need for an overarching privacy protection framework becomes apparent. With technology advancing at a rapid pace, privacy threats are becoming more sophisticated. A broad privacy law would provide the essential safeguards against these emerging risks while supporting the responsible growth of information collection.

Let us thus aim for a framework that preserves both privacy and efficiency, ensuring that regulation supports rather than suffocates.

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The curious case of Belarani Dutta: A Murder Hidden in Plain Sight

ISHAN SINHA*

"Man killed partner in Delhi, dumped body pieces at 2 am for 18 days"

When it first broke, this news sent a shock wave through the entire nation. The brutal murder of Shraddha Walkar by her boyfriend in Delhi had come to light nearly six months after the incident had taken place. The entire country was baying for blood, strictest punishment was demanded for the accused, Aftab Poonawala, and the police had to resort to all the methods in their disposal to ensure a watertight case was presented. They resorted to DNA tests, CCTV footage and even polygraph tests to prove the guilt of the accused.

Yet, nearly seventy years ago, when a similar case happened in Kolkata, the police did not have any of these scientific techniques. Like Shraddha Walkar, Belarani Dutta (or Bela as she was known to her family) was also murdered and her body was chopped into pieces. The Kolkata police had to resort to some ingenious thinking, basic scientific evidence and some stroke of luck to apprehend the accused.

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This article is based on the incident which shook the conscience of an entire city, and how the Kolkata police managed to crack it.

The Horror Unfolds

On 30th January, 1954, the Kalighat market had just begun to be cleaned by the sweepers and cleaners, who typically begin their work early in the morning to ensure they complete it before a deluge of people took to the streets. At around 0530 hrs, one of these sweepers noticed three newspaper-wrapped packets outside a toilet near the Keoratala crematorium. Generally, sweepers overlook such packages, thinking they were mostly garbage, but in this case, the sweeper noticed something amiss.

The newspaper covering was torn from the edges, and protruding from it were human fingers.

Officers from the Tollygunge police station responded within minutes. Their immediate response was to first clear the crowd that had gathered. Once that was done, the packets were opened one by one. Each packet contained a human body part – two arms that went up to the elbow joint, palms, fingers, wrist and forearm ending at the elbow. The newspaper in which the body parts were wrapped was the November 21st edition of Jugantar.

Realising the nature of this murder, the police anticipated that similar such packets could be found in close vicinity. Their thinking was proved right within a few hours. At around 1300 hours on the same day, a guard at Kalighat Park noticed 4 similar newspaper-wrapped packages, discarded behind some shrubbery, in a vain attempt to hide them. On opening one of them, he found human body parts inside.

This time, the Homicide wing of Lalbazar (Kolkata police headquarters) also responded with the Tollygunge police station. The brutality of the crime became more evident as the packets were opened one by one. In one packet, human legs were found, in the second, the upper portion of a woman's body chopped into three portions. In the third, there was a head with eyes gouged out, facial skin peeled off and lips torn off – the obvious intent was to make the face unrecognizable. The fourth packet had a full-grown dead foetus, perhaps a few hours or days before birth.

All four packets had been made using editions of Jugantar newspaper – the editions of 21 November, 10th January, 25th January, and 26th January 1954.

Investigation - A Face Lost to Time

The sensational nature of the crime led the Kolkata police commissioner to hand the case over to the detective department of the Kolkata police, a specialized section of the department which had some of the best detectives of the city. The investigating officer was to be Samarendra Nath Ghosh, a patient and assiduous investigator, two qualities which would pay rich dividends in the resolution of the case.

The post-mortem examination was conducted on January 31. It took the doctors nearly 8 hours to piece together some semblance of a female body from the different body parts. The doctors ruled the cause of death to be by a sharp object near the neck, which was ante-mortem and homicidal in nature. All the other injuries were post-mortem injuries; this could mean that the woman was killed by a blow near her neck first, and then the body was cut into pieces to remove all traces of evidence.

There were two other reasons why the corpse stood out – the woman's feet were unnaturally large, and there was a deep cut mark on the left thigh. These two points would later become critical pieces of evidence in the puzzle that was to ensue.

The police now proceeded to identify the victim; a task made herculean by the state the corpse was in. The face had been severely mutilated, even the facial skin had been peeled off. To resolve this, the investigators contacted Dr Murari Mohan Mukherjee, who headed the plastic surgery department of Kolkata's Karnani hospital (now known famously as SSKM hospital).

Dr Mukherjee, initially hesitant to take up the job, got down to perform plastic surgery on the face of the victim to get a semblance of her face before it was disfigured. This was probably the first time in the history of the country that such a surgery was performed on a corpse, another reason why the Belarani Dutta murder case was considered to be a landmark case in the history of criminal cases.

The doctor, with great skill and patience, did the unthinkable – he managed to create a countenance out of the mutilated head severed from the body. But by this time, putrefaction had set in, so the result was not up to the standards that Dr Mukherjee had expected. Regardless of this, the police took pictures of the face after plastic surgery, and published them in newspapers, asking the public for help in identifying her. Posters were also put up across the city, with the hope that someone would be able to identify the victim.

Yet, there was no response. No further progress could be made in the investigation for a week. After nearly twenty days, the

corpse, till then kept in the morgue of NRS Hospital, had to be cremated. Samples of blood and hair of the victim were kept, photographs of the face, feet and the cut mark on the thigh was taken, and the body was cremated.

In the meanwhile, the police had conducted a thorough reconnaissance of the area. The guard and the sweeper who had found the body parts were questioned; forensic experts visited the scene of crime to look for any further leads. Witnesses who had been passing by the area at the time when the body parts were found were also questioned. Information was sent to different police stations in and around the city, hoping any 'missing persons' report would have been filed. Nothing yielded any leads for nearly a month.

When nothing was forthcoming, all logic had failed and all leads led to a dead end, it was lady luck that smiled on Samarendra Nath Ghosh. For it was by pure luck that the breakthrough came.

A Serendipitous Clue – The worthwhile syrup

On February 25th, nearly a month after the incident, Samarendra had been suffering from a bad cough and cold. At around 2130 hours, he was travelling from Tollygunge to Rashbehari Avenue, when he finally decided to give in to the demands of his body and buy a cough syrup. As his car was passing by Russa Road, he noticed two medical shops standing cheek by jowl. The shutters of one were just being downed, while the other was still open.

Samarendra approached the shop, named South Medical Pharmacy and asked for some cough syrup, but the pharmacy did not have any. Already in bad spirits due to the cold, as well the pressure of the unsolved case, Samarendra curtly asked the

employee how a medical store did not even have a simple bottle of cough syrup. The employee responded that it was always the owner who replenished the stocks, but the owner had not come to the store for nearly a month.

Samarendra left the store, but as his car had travelled a small distance, something that the employee had said rankled in his head. The owner had not been seen for a month. The murder had also been committed nearly a month back.

Not wasting any time, Samarendra hurried back to the shop. It might have been a wild goose chase, but with nothing else to go on, he chose to go with his gut instinct. On questioning the employee, it came to light that the owner's name was Biren Dutta, and his address was 55/4/2 Turf Road, near Shambhu Nath Pandit Hospital.

Samarendra, still undecided whether this was actually a lead or mere conjecture, decided to try his luck. He drove to the address to check on Biren Dutta, but found the house locked. Samarendra then proceeded to question the neighbours, each of whom responded that Biren Dutta had lived there with his wife and son for many years, but the family had not been seen for nearly a month now.

Just as the pieces of the puzzle had started to fall into place, one of the neighbours, called Benu Roy, gave a crucial piece of information. Benu would later be an important witness for the prosecution. She said that Biren's wife Bela had been heavily pregnant for a while, and had been taken to Shishu Mangal hospital nearly a month back for her delivery, or so Biren had told her. Biren had also left his son in Benu's care for a few days, after which he had come back and taken him away. On being asked

about Bela, Biren had responded that she was still unwell and in hospital. Since January 30, Benu had not seen Biren or his family. She also stated that Biren had another address – 102A, Harish Mukherjee Road, not too far from Turf Road.

It did not take more than 30 minutes to confirm that no one by the name of Bela Dutta had been admitted in Shishu Mangal hospital in the past one month. The mystery started to unravel.

Plainclothes personnel were immediately posted near Biren Dutta's house on Harish Mukherjee Road. Constant vigil was maintained, with Samarendra himself taking up some periods of the watch. In the early hours of 27th February, a man was seen emerging from the house, his face covered with a shawl. He was tailed for some time, after which he was confronted by the police near an abandoned road near his house.

Building the Case and the Confession

Supratim Sarkar, a 1997 batch IPS officer of the West Bengal Cadre, has this to say about interrogation –

> *"The accused does not admit to the crime in the initial hours. But he is allowed to say whatever he wants to in order to defend himself. He is not countered, there are no arguments. The investigators keep noting down the statements, unresponsive, their deadpan expressions giving no hint of what's going on in their minds.*
> *After a while, complacency sets in because the person being questioned becomes confident that his lies are being taken for facts… The investigators now begin to draw his attention to the innumerable loopholes, lies and contradictions in his narrative."*

This is what happened to Biren on being interrogated by the police. Initially he kept denying the murder, saying that his wife had eloped with her lover, which was why she had been missing for a month. Yet, he could not sufficiently counter the police's sustained questioning, could not explain his absence from his shop, or why there was no record of Bela being admitted to Shishu Mangal. Under pressure of police questioning, Biren Dutta confessed to the murder.

Biren Dutta had been brought up in a village of North 24 Parganas in West Bengal. He was not much of a bright student, frequently getting into fights and having run-ins with the law. In course of time, his family sent him to stay with his sister Abha. Abha's husband, fond of Biren, bought a medical shop in Kolkata, and gifted it to him.

As Biren moved to Kolkata, he began to stay with his cousin Nabani. During this time, Biren fell in love with Nabani's daughter Kamala. Although the feelings were mutual, both of them knew the relationship would not be accepted by their families, as Kamala was related by blood to Biren. Hence, they decided to elope. They rented a room elsewhere, and began to live there together. Being unable to separate the two, Nabani severed all contacts with his daughter. He did not even file a police complaint, afraid that such a step might tarnish his social standing.

Biren gave Kamala a new name – Belarani. The two had a son together, who was six years old by the time of the murder. In spite of spending nearly nine years together, Biren never had their marriage registered. Each time Belarani used to bring this up, he used to rubbish the thought. Belarani did not pursue it, accepting this as her fate.

Gradually, Biren and Belarani's relationship grew strained. Biren now grew enamoured by another girl, called Meera Basu. He soon married Meera, keeping this a secret from Bela, and going a step ahead and registering the marriage, something he had refused to do with Bela till that point.

Biren lived a life of artful duplicity, he was adept at bluffing everyone around him. The two houses he owned were very near to each other, yet neither Meera nor Bela knew of the other's existence. Even the neighbours had no clue about Biren's double life. Biren would have lunch with Bela, while Meera thought her husband was having lunch at a canteen (as she stated later in her statement). Biren would then spend most nights at Meera's place, while Bela thought her husband was making frequent trips outside Kolkata for business.

Perhaps this charade might have gone on for years more. But an issue gradually sprang up – money. It was not easy taking care of two separate households. Of late, the medical store also had not been doing well, mostly because Biren could not give much time to its upkeep.

Then came the tipping point – Belarani was going to have a second child. Biren's relationship with Bela had already soured as she had begun to suspect something was amiss. When Biren came to know Bela was pregnant again, he decided to get rid of her. He knew he could not bear the expenses of a second child, without the two women finding out about each other.

On 27th January, Bela was nine months pregnant. Biren came back from the pharmacy around 2230 hrs, and found his son sleeping. As Bela served him dinner, an argument broke out between them. Biren had been waiting for a moment like this, and

he began to strike Bela. As she fell down, Biren rushed to the kitchen, got hold of a sickle and struck her on the neck. The strike immediately killed her, but Biren did not stop and kept striking her repeatedly. After several repeated strikes, when he was sure Bela was dead, he put her body inside a cupboard and went to bed.

On the morning of January 28, Biren left his son with Benu Roy, the neighbour who had given the crucial piece of evidence. He then left for his medical store, came back around 2130 hours, and set to work on his plan which he had carefully thought out. He cut Bela's body into pieces, and packed them in newspapers which he had brought from his medical store. A putrid smell had begun to fill the house by now, so he put the body parts into the cupboard again and cleaned the whole house with phenyl. He then went to sleep again, as the body remained in the cupboard now for two nights in a row. The next night, (January 29) at 2200 hours, Biren dropped off all the packages at the spots they had been found.

After disposing of the body, Biren went to take his son from Benu. He told her Bela was still unwell and there were complications in the delivery. He then took his son to Meera, and told her that he was a child of one of his relatives who had just died in a car accident, and was an orphan who needed a home. The large-hearted Meera did not think twice about taking him in.

The Prosecution's Ironclad Case – Evidences and chargesheet

After Biren confessed, the Kolkata police got down to the task of evidence collection, apart from the evidences they had already collected, and framing a watertight chargesheet.

Based on Biren's confession, the police went to the Turf Road house and recovery of the murder weapon was made from the kitchen. The recovery of the murder weapon enabled the police to

ensure that part of the confession of Biren Dutta could be admissible in court under Section 27 of the Indian Evidence Act. Generally, a confession in front of a police officer is not admissible in a court of law, but under this section, only that part of the confession which leads to a discovery of fact can be admissible. In this case, the discovery of the murder weapon served this purpose.

The Locard's principle states that with contact between two items, there will be an exchange of microscopic material. This certainly includes fibers, but extends to other microscopic materials such as hair, pollen, paint, and soil. Curiously, the accused had not cleaned the murder weapon properly, in spite of taking great pains to clean the rest of the house. Strands of hair were stuck on the sickle, which were carefully collected by a forensic team. On a closer search of the house, the phenyl bottle was found which Biren had used to clean the house. Some strands of hair were also found on it, which were again collected and packed.

In spite of the extensive cleaning that the accused had subjected the house to, there were still stains of dry blood found on the floor of the house, as well as the cupboard where the body had been stored for nearly two nights. These stains were collected as well, and together with the strands of hair, were sent for forensic analysis. The forensic reports confirmed that these were human blood, and the strands of hair on the sickle and the phenyl bottle were of the same woman.

Nowadays, it would have been very easy to establish that the strands of hair and blood belonged to the victim by a simple DNA test, but in those days, science had not progressed so far. DNA testing was first used in criminal cases only in 1986, in Leicester, England, in connection with a rape and murder case. In

India, DNA testing was introduced only in 1991, for the settlement of a paternity dispute. In 1954, the police had to go through a longer route to prove that the strands of hair and blood were of Belarani Dutta.

The accused had confessed that after killing Bela, he had removed her ornaments from her body before proceeding to mutilate the body. These ornaments were found from the Harish Mukherjee Road house, where Biren used to stay with Meera. To confirm that these were indeed Bela's jewellery, Bela's family members were informed, who came and identified the jewellery as her own.

To further cement the case that the deceased woman was Belarani, the police decided to look for documents that showed she was pregnant. One of the newspaper packages had an unborn dead foetus, hence if the police could show Bela had been pregnant at the time of murder, it would be a crucial piece of evidence. In this, the statement of Benu Roy played an important role, but more convincing was a ticket for a checkup by a gynaecologist at Shambhu Nath Pandit hospital, dated 24th November, 1953. This proved that Bela had been pregnant at the time of the murder.

The accused had a habit of collecting old newspapers in his pharmacy. When the police proceeded for search of the pharmacy, they found several yellowish newspapers, some dating back to nearly a year. All these newspapers were seized and arranged in a chronological order. As expected, only the newspapers dated 21st November, 10th January, 25th January, and 26th January 1954 were missing. These were the same ones that were used to dispose of the corpse. This piece of circumstantial evidence was of major significance, observed the court during the trial.

Belarani's relatives, as mentioned earlier, were informed about the murder. They had stayed out of touch since she had married Biren, but the brutal murder of their girl left them in a state of shock. When they came to meet the police, Samarendra noticed something else. The post mortem report had mentioned the victim had unusually large feet, and now he noticed the same in all her relatives. This was another breakthrough for the police as it helped them prove beyond reasonable doubt that the woman was indeed Belarani.

The DCP of the detective department wrote a letter to Dr. S.S. Sarkar, an illustrious and acclaimed professor of Calcutta University's anthropology department. Photographs of Bela's (or Kamala's feet) along with tracings of her uncle and father's feet were sent to him. He was asked if he could confirm if the two belonged to the same family. Dr Sarkar, after carefully studying the tracings, replied in the affirmative.

The final blow came from Belarani's mother. The postmortem report had stated that the victim had a cut mark on her left thigh. Belarani's mother confirmed that when she was little, Bela had hurt herself when she was eight years old, and since then the mark had been permanent on her left thigh.

Now that the identity of the victim had been established, it was necessary to establish the mens rea, that it was a planned murder, and not a crime of passion. Biren would inevitably try to prove that he had not planned the murder. The Indian Penal Code states that culpable homicide is not murder if it is committed in the heat of passion during a sudden fight, without premeditation, and without the offender acting in a cruel or unusual manner (Section 300, Exception 4).

The latter part of the exception could have been disproved by the way Biren had acted after murdering Bela, but the police decided to prove the premeditated intent as well. For this, Meera's statement was taken. Meera stated that Biren had told her about the orphaned child a week before the child had been brought to her. The police were then able to prove that Biren had mala fide intentions a week before the murder was committed, and that it was not a crime of passion.

Finally, after a thorough investigation, the chargesheet was filed in court. Once the trial began, the defence lawyer gave the following arguments:

1. Not a single witness was produced by the prosecution who might have seen the respondent carrying the body parts to the crematorium.
2. It was further pointed out that other parts of the body remained untraced even till the time of trial.
3. The prosecution had miserably failed to establish any motive for the alleged crime.
4. It was also claimed that the body parts discovered were not of Belarani at all. Instead, Belarani had eloped with her paramour, and hence could not be traced.
5. The prosecution case is based only on hypothesis. These hypotheses are based on the opinion of the experts; the doctor who conducted the plastic surgery as also Dr. S.S. Sarkar, who conducted the test on the tracings of the feet.

To the above questions, the prosecution responded as follows:

1. The complainant did not make any complaint to the police regarding the disappearance of his wife, even a month after she had gone missing.

2. The identity of Belarani was established by the testimony of her relatives, neighbours and the anthropological report of an expert.
3. That Belarani was pregnant was proved by the memo of her visit to her gynaecologist. The body parts also contained a dead foetus, insinuating that the victim was pregnant.

The court found that the prosecution had managed to prove the guilt of the accused beyond reasonable doubt. Biren Dutta was sentenced to death, and he was hanged on the morning of 28th January, 1956.

The law defines a crime by the actus reus (action) and the mens rea (intention), and uses these two facets to define the ingredients of a crime. Although the intention to murder was very clearly proved by the prosecution in the Belarani Dutta case, what no one questioned was the brutality with which it was done.

The law punishes murder, but even the law had failed to anticipate the extent to which humans could stoop.

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Electronic Evidence: Comparative Analysis with the Past and the Peers

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While the history of '*lex fori'* i.e., the law of evidence dates to the ancient ages, the changing technologies have rendered many unexpected challenges to the legal framework. One such technological change is '*electronics*' which has radically altered the evidence laws across the globe. Even our Supreme Court has swung from one side to another in various debates on evidence collection. In the case of *Anvar P.V v. P.K. Basheer*[1], the apex court stated that every digital evidence must be accompanied by a requisite certificate (certifying the integrity of the source of the document) to be admissible under Section 65B of the Indian Evidence Act (IEA), overruling the *Afsan Guru* Case[2], in which the court had held that 65B certificate was not mandatory.

On the other hand, in *Tomaso Bruno* case[3], it held that electronic evidence could be given as secondary evidence under Sec 65 of IEA, only to be held per incuriam in *Arjun Panditrao*

* *IPS (Probationer) 76 RR, AGMUT Cadre*
[1] *(2014) 10 SCC 473.*
[2] *State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru, (2005) 11 SCC 600.*
[3] *Tomaso Bruno v. State of Uttar Pradesh, (2015) 7 SCC 178.*

case[4]. This shows the ambiguity concerning Section 65B. In fact, Justice V Ramasubramanian, in his concurring opinion in *Arjun Panditrao* case, asked to compare the electronic evidence in various jurisdictions and have a relook of Section 65B IEA.

Correspondingly, significant changes with respect to electronic evidence have been made in the new Bharatiya Sakshya Adhiniyam, 2024 (BSA). This paper will critically analyse the latest changes in BSA. At the same time, we shall observe prospective pitfalls in implementing new provisions. Finally, to cap it all, we shall see the best practices concerning other nations, specifically those in the European Union and the United States.

Challenges in a Legacy Legal Framework

The Indian Evidence Act was enacted in 1872 and has seen very few amendments since, showing its robustness. The act has also stood the test of time for various forms of evidence with changing technologies. However, all of it changed for electronic evidence, as the act could not be effectively extrapolated for the same. This is because of the various peculiarities of electronic evidence.

Electronic evidence can be easily tampered with and thus, any standard of proof for its authenticity and accuracy has to be more stringent than other documentary evidence.[5] Moreover, as per the 'Best Evidence' rule, a primary source must be produced before the court. However, bringing entire servers to produce evidence in court is unfeasible. Similarly, any computer output is treated as secondary evidence and accepted only with 65B certificate. This creates much more hassle for evidence that is a computer output.

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[4] *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1.*
[5] *Tukaram S. Dighole v. Manikrao Shivaji Kokate, (2010) 4 SCC 329.*

Apart from that, the current system has many lacunae. There was no standard format for the 65B certificate, which resulted in absolute chaos regarding the certificate. It was most detrimental to justice when certificates carried insufficient details, and electronic evidence was disregarded for such reasons.

There was a lack of clarity as to the status of electronic evidence. Courts were cautious about conferring the document status to the electronic evidence as it would lead to confusion regarding various terminologies and corresponding sections like the computer output, electronic records, etc. Most importantly, there was a dire need to extrapolate the legal framework properly to cyberspace, considering the lacunae and peculiarities mentioned above. In light of this, the trinity of new laws have brought about many changes with respect to the electronic evidence.

Advancements in Handling Electronic Evidence

The BSA has incorporated many changes that have already been part of case laws. More so, it extrapolated the realm of lex fori to cyberspace. Some of these changes which are bound to have a positive impact on the realm of electronic evidence include –

More comprehensive definition of electronic records: Section 63 widens the definition to include electronic records in semiconductor memories. It also widens the applicability of any communication device (e.g. magnetic tapes). This definition is thus more futuristic and inclusive.

Definition of Documents to include electronic records: Although this is analogous to the previous act, the addition formalises electronic records as documents. Section 61 BSA also clarifies that electronic evidence subject to Section 63 BSA has the

same legal effect, validity and enforceability as another document. The inclusion of electronic evidence as primary evidence is along the lines of *Arjun Panditrao* case[6], as the original documents will be considered as primary evidence. In fact, the definition of primary evidence (Section 57 BSA) goes a step further, providing four explanations to clarify when electronic records will be classified as primary evidence.

1. Original Source of electronic record (i.e., file (simultaneous or sequential) where the record is created or stored): This is relevant in large files stored in different servers in many pieces, where all such pieces are deemed primary evidence. It also classifies simultaneous copies maintained by databases as redundancies as primary evidence.
2. Record produced from proper custody (must not be disputed): Reduces the proof of burden in cases of undisputed chains of custody
3. Simultaneous Transmissions/Broadcasts of electronic video recording: Allows transmissions of video records to NVR and disk storage while treating both as primary evidence. Similarly, it allows investigators to simultaneously transmit data/video recording to a safe location directly accessible by the Court to be regarded as primary evidence.
4. All storage instances of a file stored in multiple locations (including temporary files), e.g. thumbnails created by software or RAM dump, are accorded the status of primary evidence. Similarly, large data centres usually split the files into multiple locations for easy access. That can also be regarded as primary evidence

[6] *Supra 4.*

Electronic evidence as secondary Evidence: When the original has been destroyed or is with the person against whom the document must be proved, electronic evidence is categorised as secondary evidence. It also includes information created through intermediaries.

Certificate for authenticity: Like Section 65B, a Certificate is mandatory under Section 63 BSA. However, it can be given by any 'person in charge of the computer or communication device' instead of 'occupying a responsible official position.' This provides clarity regarding personal computers and who shall provide the certificate. It also prevents the need to climb the hierarchy to acquire a certificate.

Similarly, the BSA Schedule includes a proforma certificate to prevent confusion and promote consistency across law enforcement agencies.

The potential Lacunae and Inconsistencies

The new legal ecosystem, while making significant improvement, have failed to address certain critical issues with regards to electronic evidence. Moreover, it has been argued that the changes made have created a few logical inconsistencies or confusion. Some of these inconsistencies include –

Who shall provide the certificate?: Section 63(4) BSA requires two certificates from the 'person in charge' and another from the 'expert'. This adds redundancies in the system. The proforma of the two certificates provided are very much alike. Furthermore, it is impractical to have an expert at every cybercrime scene investigation with these capabilities to give a similar certificate for the same evidence.

Seizure of Electronic Records: Karnataka High Court laid down guidelines for the search and seizure of electronic records in case the user doesn't reveal the password as follows[7] -

1. Notice in the name of the accused by IO through the investigative agency to reveal the password, or else adverse inference may be drawn. Simultaneously, the IO can approach the Court for a search warrant. A search warrant issued mandates the accused to provide a password/biometric.
2. If the user doesn't provide the password, then the Court can direct the service provider to provide access to the device/email account.
3. If the manufacturer is unable to or is not providing the password, the IO can apply to the court to hack the phone or hire a hacker to hack the phone (akin to breaking open the lock on the door)
4. If data is deleted during any of these procedures, IO can rely on the adverse inference notice sent earlier

While Section 94 of the BNSS includes notice sent by the Court on request by IO to produce any electronic document/device, but the rest of the procedure is not included in the Acts.

Chain of Custody: Electronic records are susceptible to tampering and alteration, but an appointment with an Examiner of Electronic Evidence is the only protection against primary evidence. Specifically, electronic records are vulnerable to tampering during search and seizure procedures. In fact, the Parliamentary Committee on Home Affairs had, in its discussion, highlighted a need for a provision for chain of custody - "*The Committee takes into account the suggestion submitted before the*

[7] *Virendra Khanna v. State of Karnataka, AIROnline 2021 Kar 525.*

Committee and recommends that a provision may be inserted to mandate that all electronic and digital records acquired as evidence during the course of investigation are securely handled and processed through the proper chain of custody. An appropriate provision in this regard may be made in the Bharatiya Nagrik Suraksha Sanhita, 2023."[8]

Primary and Secondary evidence: SC observed that a certificate is unnecessary if the device's owner produces the original document in court, which can be applied even to electronic evidence[9]. Furthermore, Sections 61 and 62 provide that proof for electronic records may be provided according to Section 63. But this contradicts the fundamental meaning of primary evidence as the primary evidence are original documents and they need not be proved in the Court. Thus, an electronic record that is a primary evidence, according to Section 62, also must be proved, which makes the categorization of electronic evidence as primary redundant.

Confusion in the definition: The definition of computer output is given in Section 63(1) as "*any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media or semiconductor memory which is produced by a computer or any communication device or otherwise stored, recorded or copied in any electronic form*". Computer Output shall be deemed a document according to Section 63(1) if subsection (2) conditions are followed. But, the illustration of the definition in Section 2(1)(d), 'document' has an illustration which includes 'words, printed or photographed are documents',

[8] *Report No. 248 on Bharatiya Sakshya Bill 2023. Parliament of India. (2023).*
[9] *Supra 4.*

which deems it as documents in all conditions. This creates confusion as to the definitions of document and computer output.

The Alignment with International Standards

The new criminal laws and previous jurisprudence of the courts adopted many international good practices. However, given the nascent nature of the field, it is often difficult to determine the correct course. We have adopted many approaches from various countries, which will be assessed below.

In the USA, FRE (Federal Rules of Evidence) govern rules for electronic evidence. Case laws have further embellished the US electronic evidence laws. For instance, before the admissibility of electronic evidence, questions such as is the content of the document relevant, it is genuine or only hearsay, whether the document is original or duplicate and does the probative value of the evidence stand in the scrutiny of principles of fair treatment the following checks must be checked.[10]

In contrast, the UK followed a very different journey, where the Police and Criminal Evidence Act of 1984 severely restricted the admissibility of electronic evidence, which caused miscarriages of justice. Thus, the restrictions were lifted in the Youth Justice and Criminal Evidence Act 1999, and in almost all cases, electronic evidence is admissible (Vinod, 2020). Indian style is a compromise between US and UK systems where the checks are only about the source, relevance and authenticity before admissibility.

A different method for authenticating other types of evidence is adopted according to "*Grimm-Brady Chart*." This ensures better authentication and proper verification without extra steps for

[10] *Lorraine v. Markel American Insurance Co, 241 F.R.D. 534 (US District Court of Maryland (2007).*

various types of devices. For instance, the data stored on the cloud must be authenticated differently than data stored on drives. Indian approach of one shoe fits all creates redundancies and often excessive steps for law enforcement to prove the authenticity of evidence.

Similarly, Rule 41(e)(2)(A) of the Federal Rules of Criminal Procedure governs warrant for Electronic Evidence. The Law Enforcement Agencies (LEAs) must use a warrant to search and seize any electronic information. Such a request for a warrant must contain reasonably accurate details of the evidence. Upon receiving the warrant, LEAs have the power even to hack the computer remotely. This situation is an extrapolation of physical ingress into a private place without consent into cyberspace. Such a provision, however, is not legally available in India. In India, the Court can compel the user to provide the password,[11] but this process is lengthy and time-consuming. Section 94 BNSS also adds the ability to seize the communication devices, but there is no provision to compel the production of any electronic records from the device.

In the case of European Union, the Council Framework Decision 2008/978/JHA on European evidence warrants the purpose of obtaining objects, documents, and data for use in proceedings in criminal matters dealing with electronic evidence. Accordingly, the judiciary can request electronic evidence from service providers and prevent foreign service providers from deleting data. While this provision is similar to that in India, it has some added power, i.e. non-compliance with such requests being a penal offence of up to 2% of global revenue.

[11] *Supra 7.*

EU also requires a report by qualified IT experts to establish security in the chain of custody. Thus, accountability in the document's custody ensures the document's authenticity. Similarly, an identical copy is in the presence of the defendant/independent party to prevent tampering. This way, the integrity and authenticity of data are ensured. BSA allows for chain of custody and documents with chain of custody into evidence, but we don't require it to be verified by qualified IT experts.

A most important feature that one can observe in EU laws is the importance of privacy and a check on police excesses. In that matter, no data unrelated to the criminal investigation is seized or recorded. This is ensured by the fact that police must give relevance/need of the information requested/seized/recorded. However, there is no penalty if information is not found in the seized data. This protects the police during the investigation. No such provision exists for any electronic evidence seized in India. Adding this provision aligns with the right to privacy and ensures that only relevant data is seized.

Most countries, including India, focus on the reliability of document certification i.e. trying to prove that the document is authentic and trustworthy. However, the approach suggested in the Model Law involves showing the system's reliability as the basis for the admissibility of the document (product of that system).

Accordingly, it has a presumption of integrity if the computer system/similar device was working correctly and no other reasonable grounds to question the document's integrity. Integrity can also be presumed if the document is stored or recorded by "any party with adverse interests to the party seeking

to introduce it" or by a usual person with no interest in the ordinary course of business.

Moving towards a Digital India

The BSA is a crucial change to the century-old Indian Evidence Act. It provides a starting point for updating the laws to suit the needs of the modern Indianized criminal justice system, where electronic evidence forms the cornerstone in investigation and evidence gathering. While there are many welcome changes in BSA concerning electronic evidence, there must be a careful review pertaining to electronic evidence handling in various other jurisdictions. Digital India must be supplanted with digitally sound, just and efficient laws that cater to the fast-changing digital landscape. Only then can the dream of Digital India be fulfilled in letter and spirit.

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Indian Police Stress- Stressors and Scale Development

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Research on stress suggests the occupations which have constant exposure of general public are on higher level of stress than other occupations. Policing is one of those occupations. The stressors experienced by police officers are qualitatively and quantitatively different from those encountered by general public. (Bezie et al., 2024; Jones & Kagee, 2005). At the same time, culture, location of work and society also play a key factor which accumulate specific stressors in a given circumstance among police personnel. The present study attempts to identify the most potent stressors among police in India with a police subculture of Uttar Pradesh. The present study also aims to develop a specific police stress scale for Indian police personnel on the basis of most potent stressors as there is no specific stress measurement scale for Indian police in general. The study is exploratory and qualitative in nature. 584 police personnel of Uttar Pradesh police were interviewed from seven districts. Based on their conversations, ten major stressors were identified. A police stress scale for Indian police personnel has been developed after extensive literature review, expert opinion

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and on the basis of the qualitative survey. The scale is validated with another survey of 615 police personnel of Uttar Pradesh.

1. Introduction

Police are a highly visible and essential part of society. As representatives of the government, they are first line of defense in times of crisis (Yadav et al., 2022). This necessitates a responsive and dynamic approach. While their duties are diverse and interesting, they also face complex challenges. The primary function of the police is to maintain law and order, which is crucial for a nation's development. They play a pivotal role in detecting, preventing, and combating crime.

As the job of police personnel is difficult, multifaceted and challenging, police work is an occupation replete with stress (Queiros et al., 2020; Violanti et al., 2004). It is evident from the growing number of suicidal cases among police personnel in India for various known and unknown reasons (National Crime Record Bureau, 2022). In one of the recent cases, a senior IPS officer of Assam Government committed suicide. In CAPFs alone as per media reports, 654 police personnel have committed suicides and 50000 have resigned in last five years due to occupational stress. Additionally, police personnel face higher rates of personal and professional challenges, including substance abuse, mental health issues, and physical ailments vis-à-vis members of other professions (Brown & Campbell, 1990; Gilmartin, 2002; Violanti, 1996). This is not surprising considering the inherent dangers and challenges police face in the course of their duties (Schaible & Gecas, 2010). The duties of a police officer can involve witnessing and responding to traumatic events, including the deaths of colleagues, victims of crime, and individuals involved in accidents.

Police officers may also be called upon to investigate cases of domestic violence and child abuse (Soltes et al; 2021; Gulle et al., 1998). Stress is a byproduct of police work (Violenti et al., 2016; Myendeki, 2008). It is evident by the fact that police officers are more likely to die by suicide than by being killed in the line of duty (Kates, 2005).

The present study is an attempt to understand the stress among police personnel in India especially in Uttar Pradesh and to identify the most important stressors for Indian police personnel. It has been observed from existing literature on police stress that most of the studies have been conducted using general questionnaires. However, the police personnel are exposed to both type of stressors- one group of stressors are general in nature while the second group of stressors is police-specific. The present study is a step towards developing a police specific stress questionnaire for Indian police personnel.

2. Objectives

There are two major objectives of this research paper. The objectives are listed below-

- To identify most significant sources of stress for Indian police personnel.
- To develop a police specific stress questionnaire for Indian police personnel.

3. Materials and Methods

Data was collected between 2016 to 2018, as a part of Post doctoral dissertation. It was a descriptive study with a primary focus on assessing the nature and quantum of stress among police personnel.

The data was collected from seven districts of state of Uttar Pradesh. More than 2000 police personnel were contacted and around 600 personnel were interviewed. 584 responses had been recorded through qualitative research. The data was collected from 521 lower-level police officers (Head Constables and Constables), 55 middle level police officers (Inspectors, Sub Inspectors and Assistant Sub Inspectors) and 8 senior police officers (Superintendent of Police, Deputy Superintendent of police). The structure of police in India is pyramidical in nature with a very wide base. It is the reason of less inclusion of senior officers in the study. The study was approved by Aligarh Muslim University. Organizational Role Stress Scale (ORS scale) was used to assess the role stress among police personnel. In addition, the qualitative data was also collected through interviews and administrating five major open-ended questions. The open-ended questions allowed us to gain a deeper understanding of the stressors experienced by police officers. By analyzing the responses and grouping similar themes, we were able to identify the most prevalent sources of stress.

4. Result and Discussions

The open-ended questionnaire included five questions, with the first two focusing on specific job stressors. While respondents might not identify personal stressors, they were often willing to point out bothersome factors in their colleagues' work. Our analysis revealed that respondents treated these two questions similarly, highlighting a range of stressors.

We categorized the responses into 22 distinct stressors, although some respondents mentioned multiple factors. For clarity, we've listed the top ten stressors in Table 1. The total number of

respondents included in this analysis is lower than the initial sample size due to incomplete questionnaires and the fact that some respondents identified multiple stressors.

Table 1: Ten Key Stressors among Police Personnel

Factors	Number of Responses (N=584)	Percentage	Rank
Non grant of leave on time	112	19.17	1
Non-fulfillment of family responsibilities	94	16.09	2
Exploitation by senior officers	90	15.41	3
Political Pressure	56	9.54	4
Workload	52	8.90	5
Unlimited duty hours	49	8.39	6
Living away from family	42	7.19	7
Inadequate salary	32	5.47	8
Transfer/lack of promotions	30	5.13	9
Lack of cooperation from public	27	4.62	10

- **Non-Grant of Leave on Time:** Leave issues are a major source of stress for police personnel. Many respondents reported difficulties in obtaining leave when needed, especially those in lower ranks. The study by Chhabra & Chhabra (2009) highlights the challenges faced by police officers in securing leave and the negative impact it can have on their well-being.
- **Non-fulfillment of family responsibilities:** Police personnel often experience role conflict between their professional and personal lives. This is evident in challenges related to family education, welfare, and social obligations. Many respondents

expressed frustration at being unable to be present for their families during important moments, especially female officers who struggle to balance work and family demands.

- **Lack of Empathy of Senior Officers:** The hierarchical structure and disciplinary measures implemented by senior officers can create a stressful work environment for lower-rank police personnel. Many respondents felt unable to approach their superiors for support or assistance, highlighting a breakdown in communication channels. Additionally, the use of disrespectful or abusive language by senior officers further exacerbated the stress experienced by lower-rank personnel.
- **Political Pressure:** Political pressure was identified as fourth significant stressor for police personnel. Many respondents reported feeling pressured to work against their will or engage in unethical practices to satisfy political demands. Refusal to comply with these demands often resulted in negative consequences, such as transfers. Some middle-level officers advocated for a separation between politics and policing to ensure the effectiveness and efficiency of the police force.
- **Workload:** Despite being the most populous state in India, Uttar Pradesh has a significant shortage of police personnel, with over 50% of positions vacant. This shortage places a heavy burden on existing officers, who often work long hours and have to deal with excessive paperwork. In addition to their regular duties, police officers in Uttar Pradesh must also manage responsibilities related to festivals, games, VIP security, and elections. This multifaceted workload can contribute to stress and a sense of inefficiency among

officers (Dhanush & Shobha, 2023).

- **Unlimited duty hours:** The unpredictable nature of police work can lead to long hours, irregular sleep, and poor work-life balance. This can negatively impact the physical and mental health of police officers. Many respondents reported sleep deprivation and difficulty maintaining focus, which can hinder their performance and make it challenging to respond effectively to crises. Additionally, the demanding nature of the job can make it difficult for officers to empathize with the problems of others.
- **Living away from family:** Many police personnel are forced to live away from their families due to a lack of suitable housing. When they do receive accommodation, it's often located in remote areas, impacting their children's education and overall quality of life. This separation from loved ones can be a significant source of stress and tension, particularly for lower-level officers. The strict rules governing interactions with outsiders can further exacerbate feelings of isolation and loneliness (Savarimalai et al, 2023).
- **Inadequate Salary/facilities:** Police personnel often feel undervalued despite their demanding and often dangerous work. Many believe that the facilities and benefits provided to police officers do not commensurate with the sacrifices they make. As highlighted in the film "Singham," police officers often work long hours for relatively low pay and inadequate living conditions. This disparity between the demands of the job and the rewards received can be a significant source of stress.
- **Transfers/Lack of promotions:** Frequent transfers and a lack of promotional opportunities were identified as

significant stressors for police personnel. Many officers reported feeling uncertain about their future due to frequent transfers and limited opportunities for advancement. The monotonous and challenging nature of the work, combined with a lack of recognition and rewards, can contribute to feelings of dissatisfaction and demotivation.

- **Lack of cooperation from public:** Police personnel often face challenges related to public perception and cooperation. The lack of public trust can be a significant source of stress for officers, as it can hinder their ability to effectively carry out their duties. While the public can be a valuable asset in crime prevention and investigation, many officers feel that the public is reluctant to cooperate.

Police personnel identified a range of other stressors, including poor infrastructure, physical abuse, lack of basic amenities, pressure to perform, shift work, a mistrustful environment, marital problems, social isolation, a negative public image, and leadership issues. These findings are consistent with previous research on the challenges faced by police officers. (Mohiddina et al., 2022; Anand et al., 2022; Mathur, 1994; Suresh, 1992; Tripathy, 1993; Singhvi & Mathur, 1997; Kumar, 2006; Deb et al., 2006; Selokar, 2011; Bano, 2011).

To gauge the respondents' satisfaction with their jobs, we asked if they would recommend a career in policing to their children. The majority of respondents (73%) indicated that they would not, suggesting a negative perception of their profession. Only 19% expressed a desire for their children to become police officers. Remaining 8% respondents indicated that they would like their children to make the choice profession on their own (Table 2)

Table 2: Opinion about Children's Career

Factors	Number of Responses (N=481)	Percentage
I would not like the children to choose police department	351	72.97
I would like the children to choose police department	91	18.91
I shall let children decide their profession	39	08.10

The findings of this study clearly indicate that police personnel are experiencing significant levels of stress. By identifying key stressors and comparing them to other professions, we can see that the problem is particularly severe among police officers. Approximately half of the respondents reported experiencing moderate to high levels of stress, while 11% reported very high levels. This is evident in the fact that most respondents would not recommend a career in policing to their children. Addressing the issue of stress among police personnel is crucial for the well-being of both officers and the society they serve.

The above discussion explains the major strong stressors which are important for police personnel in India. As discussed earlier, the need for police stress questionnaire was felt. Thus, we have used these ten most potent stressors as the variables for our police stress scale. Further, on the basis of literature survey, the questions were framed to suit the requirement of the phenomenon. The details of the variables and the items under each variable are given in Table 3. For making it more respondent friendly, we have renamed name of some variables such as Lack of empathy by senior officers has been renamed as relations with senior officers etc.

Table 3: Scale Development

S. No.	Variables (Stressors)	No. of items	Statements of items	References
1.	Non grant of leave on time	6	• I don't get leave when I need it most. • I feel socially isolated as I can't join the social occasions due to demands of my job. • Often despite bad health, I am forced to be on call of duty. • I can't avail my all sanctioned leaves. • The process of grant of leave is transparent. • I usually miss my family on important social and religious occasions.	Savarimalai et al., (2023); Mathur (1999), McCafferty et al. (1992), Naik (2012), Bano (2011 & 2013), Chhabra and Chhabra (2013)
2.	Non-fulfillment of family responsibilities	7	• The demands of my work interfere with my home and family life. • The amount of time my job takes up make it difficult to fulfill my family responsibilities. • Things I want to do at home do not get done because of demands my job puts on me. • My job produces strain that make it difficult to fulfill family duties. • Due to work-related duties, I have to make changes to my plans	Rathi and Barath (2013), Singh and Nayak (2015), Gary et al. (2004), Bano (2013), Kurtz (2012), Savarimalai et al., (2023)

			for family activities. • Often I am unable to join family celebrations due to demands of my job. • Often I have to cancel my commitments due to non-availability of time.	
3.	Relations with senior officers	10	• I usually forced to carry out work against my willingness. • I feel bad doing personal work for senior officers apart from my duty. • I am not happy due to domination by seniors. • I feel harassed due to biased behavior by my seniors. • My superiors support me when needed. • My superiors usually insult me by abusing or by using unrespectable words. • I am recognized by my seniors on any achievement. • I am not happy with too much supervision by senior officers. • There is no freedom of speech in my department. • I actively take part in decision making process on any issue.	Bano (2011 & 2013), Joseph and Nagarajamurthy, Water and Ussery (2007)

4.	Political Pressure	6	• Often I work against my will due to political pressure on my work. • Due to political pressure, I have to work against the general good. • I have been transferred in past due to political reasons. • The effectiveness of police department declined due to political interference. • I don't feel any political pressure on my work. • Political interference is the major contributor towards the poor public image.	Patterson (2002), White et al. (1985), Weber Brooks and Leeper (1998), Slate et al. (2007), Suresh et al. (2013)
5.	Workload	8	• I have to do things that I don't have the time and energy for. • I need more hours in the day to do all the things that are expected of me. • I don't ever seem to have anytime for myself. • I am overloaded with work round the clock. • There are times when I cannot meet everyone's expectations. • I feel I have to do things hastily and not satisfied with the	Dhanush & Shobha (2023); Collins and Gibbs (2003), Tyagi and Lochan Dhar (2014), Oweke et al. (2014), Singh and Nayak (2015)

			quality of the work. • Due to deficiency of colleagues, I have to work more than required. • There is a lot of paper-work in my job.	
6.	Extended duty hours	7	• I usually work continuous without break. • I find difficult to work in extreme climate conditions. • I usually feel body ache and uneasiness due to standing long hours in field duty. • I am unable to take my meals properly due to nature of my job. • I have to work during holidays and festivals. • I have troubled sleeping due to not having fixed time schedule. • I am worried about unexpected sudden calls for duty while at home.	Brown and Campbell (1990), Brown and Fielding (1993), Seloker et al. (2013), Gu et al. (2012)
7.	Living away from family	6	• There is lack of good accommodation facility in my job. • I live separate from my family as the accommodation I got is in the remote location. • I have to live away from my family	Jackson and Maslach (1982), Burke (1993), Bano (2013),

			because there is no facility of good schools at my place of posting. • I feel socially isolated due to rules of my job. • I think about my family most of the times at my workplace.	
8.	Inadequate salary/ facilities	8	• I don't get adequate salary in my job. • I don't get sufficient allowances especially travelling allowance. • I have to bear expenses of my official visits out of my pocket. • My accommodation and workplace is not hygienic. • The condition of official quarters is unsuitable for my family. • We lack police dispensaries/hospitals or schools like other government employees. • I want to become a part of a police union. • I get sufficient resources to be effective in my role.	Violanti and Aron (1994), Suresh et al. (2013), Singh and Kar (2015), Spielberger et al. (1981)
9.	Transfer/ Promotions / Training	8	• Transfer and promotion system in my department is fair. • There is bias towards appointing the police	Adebayo and Ogunisina (2011), Agolla (2009), Bano (2013)

			personnel in their favorite place of posting. • I can be transferred anytime against my will. • It is easy to get promotion in my department. • Undue influence plays important role in transfer and promotion in my department. • I am not adequately trained to be effective in my role. • Promotion scheme is based on the performance in my department. • I am always under threat of being suspended anytime.	
10.	Relations with public/media	9	• The general public doesn't trust me. • The public considers me as friend. • My child is teased in the school because I am in police. • My family has not been accepted by society. • Public gives us full support during investigation. • Media only highlights our failure rather than what we have achieved.	Suresh et al. (2015), Qureshi et al. (2016), Ma et al. (2015), Kaur et al. (2013)

			• Public loses faith in us due to media publishing. • I feel upset due to false accusations by public. • Public perceives us corrupt in our practices.	
11.	Occupational Hazards	12	I feel stressed while: • Seeing dead bodies in deformed conditions • Making forcible arrests • Handling various issues related to violence • Seeing brutal child abuse cases • Seeing crimes against women • Delivering death news to relatives of victims • Dealing with drunkards • Handling riots, mob violence, sectarian violence, strikes etc. • Dealing with the unreasonable demands of the accused/ prisoner • Using physical force during duty • Waiting long hours in court. • Going for raids to disrespectful places	Yadav et al., (2022); Based on interviews Bano (2013)

Table 3 presents 87 items scale to measure job stress among Indian police personnel. The scale has been validated through a further survey of Uttar Pradesh police. After the reliability and validity analysis after using it further for future studies, the scale would be refined and may be used as a standard scale.

5. Conclusion

The study identified eleven most potent stressors causing stress among Indian police personnel. This research also presents the development process of a police specific stress scale for Indian police personnel. This scale may be used for data collection in future after the validation process. Police organizations may devise stress management techniques and coping mechanisms based on the particular problems faced by their colleagues. The paper recognizes the need to understand the stress among police personnel in precise and it also calls for its effective elimination as its presence hamper the functioning of the police force resulting instability in society.

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Sardar Vallabhbhai Patel
National Police Academy
Criminal Law Review 63 - 73

Closing the Case: Navigating 'Last Seen' Evidence in Police Investigations

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The "Last Seen Theory" is a vital evidentiary tool in criminal trials, particularly when direct evidence is lacking. This theory states that if an individual is the last person seen with the victim before their death or disappearance, a presumption arises linking them to the crime. While not definitive proof of guilt, it shifts the burden onto the accused to provide a plausible explanation. Widely used in Indian courts, the theory must be supported by circumstantial evidence and other corroborative factors to hold weight. Its application requires careful judicial scrutiny to avoid wrongful convictions, ensuring it serves justice without undermining the presumption of innocence. This article illuminates the problems brought about by admitting Last Seen evidence in legal proceedings and the inherent prejudice it creates for defendants.

Last Seen Theory: Explained

The "Last Seen Theory" under the Indian Evidence Act 1872 (hereinafter IEA 1872) is a crucial judicial principle used in criminal cases where direct evidence of a crime is absent. It refers to the circumstance in which the accused was last seen with the victim before

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their disappearance or death. The theory operates under the presumption that if a person is last seen with the victim, they are likely involved in the crime, shifting the burden of proof onto the accused to provide an explanation. While not conclusive, the Last Seen Theory, when corroborated by additional evidence, can be instrumental in securing a conviction, making it a vital tool in the Indian judicial process.

This theory is crucial in building the prosecution's case, especially in situations where direct evidence is lacking. By focusing on the timeline and the accused's proximity to the victim before their death, the theory helps strengthen the circumstantial chain of evidence.

The legal foundation for the Last Seen theory can be traced back to Section 7 of the IEA, 1872, which deals with facts that relate to the occasion, cause, or effect of a relevant fact or fact in issue. In this context, the time and circumstance when the accused was last seen with the deceased becomes a relevant fact, allowing it to be used as evidence in court.

Over time, several key judgments have shaped the application of this theory. In *Bodhraj vs. State of Jammu & Kashmir*[1], the Hon'ble Supreme Court held that the time gap between the last time the accused and deceased were seen together and the discovery of the deceased plays a crucial role in determining the relevance of this evidence. A short gap strengthens the inference of guilt, whereas a longer gap weakens it.

In another significant case, *Satpal Singh vs. State of Haryana*[2], the court emphasized that Last Seen evidence, while important, cannot serve as the sole basis for conviction. It must be corroborated by other

[1] *(2002) 7 SCC 334*
[2] *(2010) 8 SCC 714.*

circumstantial or direct evidence to establish the accused's guilt beyond reasonable doubt.

Essentiality of Last Seen in Establishing Guilt

The Last Seen theory holds considerable importance in criminal trials, especially in murder cases or instances where the victim's death remains unexplained. This doctrine helps establish a timeline and a direct link between the accused and the victim, assisting the prosecution in connecting the dots of the crime.

This theory becomes particularly useful when there is a short time gap between the last sighting of the accused and the victim and the discovery of the deceased. In such cases, the theory gains substantial weight and can significantly bolster the prosecution's case.

However, it is critical that the time gap is small and other factors, such as motive or forensic evidence, support this inference. Courts also assess whether there were any other people in proximity to the victim after the accused was last seen, as this can affect the weight of the Last Seen evidence.

Evidentiary Value of Last Seen Theory

The evidentiary value of the Last Seen Theory in criminal trials is significant but limited, as it primarily functions as circumstantial evidence rather than direct proof of guilt. This theory establishes a presumption of the accused's involvement when they were the last person seen with the victim before their death or disappearance. However, it cannot independently establish guilt unless supported by additional corroborative evidence, such as motive, conduct, or forensic findings. The strength of the Last Seen Theory depends on the proximity in time between the last sighting and the discovery of the crime. If the time gap is narrow, the presumption of involvement becomes stronger, and the burden shifts to the accused to provide a credible explanation. Conversely, a wider time gap weakens the inference of guilt. Hon'ble

Supreme Court on several occasions has emphasized that this theory should not be applied in isolation but must be weighed alongside other evidence to ensure fairness and justice, given the potential for wrongful conviction if misapplied.

In ***Satpal Singh***[3], the Hon'ble Supreme Court reaffirmed that this evidence must be supported by additional corroborative evidence, such as motive, forensic findings, or witness testimony, in order to establish guilt beyond reasonable doubt. For example, if they were seen together in an isolated location shortly before the victim's death, the inference of guilt becomes stronger. However, if the time gap is too large, or there is evidence suggesting other possible suspects, the evidentiary value diminishes.

Additionally, the court takes into account the possibility of other intervening factors. The burden of proof lies with the prosecution to establish that no other plausible explanation exists for the victim's death within the time frame.

Burden of Proof and Special Knowledge

Under Section 106 of the IEA 1872, once Last Seen Evidence is established, the burden of explaining the circumstances shifts to the accused. This section assumes that the accused has special knowledge about their actions and the circumstances surrounding the victim's death. Consequently, the accused must provide a reasonable explanation for their presence with the deceased. However, this presumption can only be invoked if the prosecution has first proven certain foundational facts.

Failure to do so leads the court to invoke Section 114 of IEA 1872, which allows the court to draw presumptions based on established facts. This presumption arises when the accused cannot fulfill their burden of explanation under Section 106 of IEA 1872. However, the

[3] *Ibid.*

inference made under Section 114 of IEA 1872 can be significantly different in Last See cases than in other situations.

Nature of Inference under Last Seen Evidence

In ordinary cases, Section 106 of IEA 1872 is used to infer factual details, such as possession of an article or residence, based on the accused's failure to provide an explanation. However, in Last Seen cases, the inference drawn is far more serious. It is not merely about the accused being present at the scene, but rather the presumption extends to the accused having played a role in the death of the deceased.

For example, if the accused fails to explain their possession of certain belongings of the deceased, the inference might relate to theft. However, in Last Seen evidence, the failure to explain one's presence leads to a broader inference that the accused may have been involved in the killing. This leap from presence to involvement creates a stark difference in how Section 106 of IEA 1872 is applied in Last Seen cases compared to other offences.

Foundational Facts and Prima Facie Case

The prosecution must establish basic facts before Section 106 of IEA 1872 can be applied. These foundational facts, which include proving the accused's presence with the deceased, are essential for creating a prima facie case. The Hon'ble Supreme Court in *Reena Hazarika vs State of Assam*[4] has affirmed that merely invoking Last Seen evidence is insufficient; the prosecution must establish a prima facie case by proving these facts. Justice Navin Sinha in this case ruled that merely because Reena Hazarika was last seen with the victim, the burden does not lie on her to prove her innocence and in order to convict someone on the basis of circumstantial evidence and invoke the last seen theory, the chain of circumstances must lead to the 'inescapable' conclusion of that

[4] *(2018) 13 SCR 1108.*

person committing the crime. However, the exact nature of these foundational facts remains ambiguous, leading to inconsistent interpretations in the courts.

The Hon'ble Delhi High Court in *Gurdeep Singh vs State*[5] clarified that foundational facts include establishing a close connection between the accused and the deceased and proving the accused's exclusive possession of the location where the body was found.

Yet, other courts have interpreted a prima facie case to involve proving additional relevant circumstances beyond Last Seen evidence, resulting in varied judicial outcomes.

The time gap between when the accused was last seen with the deceased and the discovery of the victim's body is crucial in determining the relevance of Last Seen evidence. A longer time gap theoretically decreases the likelihood that the accused was involved in the crime, as the opportunity for interference by others increases. Courts have historically debated the acceptable length of this time gap for Last Seen evidence to be considered relevant.

Judicial Trends and Inconsistencies

In *Bodhraj vs State of Jammu & Kashmir*[6] the Supreme Court ruled that Last Seen evidence is relevant only if the time gap between the last seen event and the death is minimal. This position has evolved, with recent rulings allowing Last Seen evidence even with a longer time gap if the prosecution can prove that the accused had exclusive control over the location where the death occurred. This shift reflects ongoing judicial inconsistency in interpreting the time gap for Last Seen evidence.

[5] *CRL.A. 1243/2018.*
[6] *(2002) 7 SCC 334.*

The *Reena Hazarika vs State of Assam*[7] case highlighted that rulings on the time gap are often overturned on appeal, either for considering an unreasonable gap or neglecting the defense's explanation. This inconsistency underscores the challenge in establishing a clear judicial standard for the time gap in Last Seen evidence.

Contextual Factors

Contextual factors, such as the location where the accused and deceased were last seen, also affect the probative value of Last Seen evidence. In crowded or public places, such as markets or bars, the prosecution faces a higher burden to establish a prima facie case due to the potential for interference by other individuals. Conversely, if the last seen event occurred in a secluded or private location, the inference of guilt may be stronger.

The application of Last Seen evidence is complex, involving presumptions under Section 106 of IEA 1872 and considerations of time gaps. While Last Seen evidence is a valuable tool in building circumstantial cases, its effectiveness depends on the careful establishment of foundational facts and the assessment of the time gap. Judicial inconsistencies in interpreting these factors highlight the need for clearer standards to ensure fair and just outcomes in criminal trials.

Challenges of the Presumption in LS Evidence

This presumption, while reasonable in theory, can be problematic. The Last Seen inference involves the assumption that the accused's presence directly correlates with their involvement in the crime. The killing or the crime itself often remains a mystery, with the prosecution relying heavily on Last Seen evidence. In such cases, the accused may find it difficult to provide a satisfactory explanation, leading to a potentially unfair inference of guilt.

[7] *Supra 4.*

Further complicating the issue is the fact that the inference drawn under Last Seen evidence is often used to convict the accused, especially when combined with other circumstantial evidence. The question of what constitutes a sufficient explanation on the part of the accused remains legally tenuous, leaving room for inconsistent judgments.

Challenges of Last Seen Evidence in Policing Investigations

In criminal investigations, the doctrine of Last Seen evidence places a heavy burden on the accused to explain their presence with the deceased before the crime occurred.

Under Section 106 of the IEA 1872, the burden shifts to the accused, as they are considered to have special knowledge of the circumstances. However, this often leads to inconsistent and unfair applications in the judicial process. From a policing perspective, relying too heavily on LS evidence without substantial support can hinder an objective investigation and lead to wrongful conclusions.

The nature of Last Seen evidence depends on variables such as the time gap between the accused's presence with the deceased and the time of the crime, as well as the surrounding context. For law enforcement, establishing this gap and context becomes crucial. The accused is expected to provide a reasonable explanation, but in practice, this can be highly subjective and often difficult to prove conclusively.

For instance, consider an accused who was last seen in a public place with the deceased. The subjective nature of their explanation makes it challenging for both investigators and courts to accept or reject it. Furthermore, courts have applied LS evidence inconsistently—sometimes ruling in favor of the accused when prosecution witnesses lacked credibility, and other times dismissing plausible explanations simply because of the proximity of the accused to the victim.

This unpredictability complicates policing efforts, as investigators might inadvertently over-rely on LS evidence without building a robust case supported by additional evidence.

Investigations must account for the fact that explanations based on the mere presence of the accused are not conclusive proof of guilt.

Burden of Proof and Judicial Inconsistencies

Once a prima facie case has been established through LS evidence, the burden shifts to the accused to explain the circumstances of their presence. In many cases, this explanation is interpreted with a high standard of proof, which places an unfair burden on the accused.

As per the Supreme Court's decision in *Reena Hazarika***,** the accused's burden under Section 106 of IEA 1872 is based on the preponderance of probabilities. However, this standard is often applied inconsistently, making it difficult to predict how a court will interpret the accused's explanation.

For example, in one case, a court ruled that the accused, who was last seen sleeping in the same room as the deceased, had to explain how the victim died by strangulation. In another case, the mere companionship of the accused with the deceased was deemed insufficient to raise an inference of guilt e.g in cases of dowry death generally husband or his relatives are supposed to accompany the deceased. These variations in judicial rulings make it difficult for law enforcement to rely solely on Last Seen evidence during investigations.

From a policing perspective, such inconsistencies can result in investigators placing undue pressure on the accused to provide a convincing explanation, even when the prosecution has not established all the necessary foundational facts. Investigators must be cautious not to

prematurely draw conclusions based solely on Last Seen evidence, as this could lead to miscarriages of justice.

The Need for Clear Guidelines on Presumptions

To avoid the pitfalls of unfairly burdening the accused, it is essential for courts and law enforcement to adhere to clear guidelines on the use of presumptions. Courts must reaffirm that the burden of proof under Section 106 of IEA 1872 should only be applied when the prosecution has established strong foundational facts, and the accused's explanation must be judged on the standard of preponderance of probabilities.

Furthermore, as proposed in *Reena Hazarika*, the explanation offered by the accused, even if inadequate, should not be automatically considered conclusive. Instead, courts should evaluate the entirety of the circumstances before raising a presumption of guilt. Law enforcement officials must similarly be trained to treat LS evidence as one part of a broader investigative process rather than the sole determinant of guilt.

A prime example of the dangers of over-reliance on Last Seen evidence can be seen in the infamous *Arushi Talwar case (Dr. Mrs. Nupur Talwar v. State of UP & Anr),*[8] where the court placed the burden of proof on the accused servant, who was last seen in the house. His explanation of being asleep with the air conditioner masking any noise was rejected, and the court accepted the prosecution's version without the prosecution ever proving their foundational facts. This misstep in judicial reasoning highlights the importance of maintaining the balance of burden in criminal investigations.

The hasty and inconsistent application of Last Seen evidence in investigations places an unfair burden on the accused, which goes against

[8] *2012 (11) SCC 465.*

the fundamental principles of criminal law. Policing agencies must recognize the limitations of Last Seen evidence and ensure that investigations are not solely driven by this doctrine. Instead, Last Seen evidence should be one element among many that contribute to establishing a complete and credible case. Clear guidelines on the use of presumptions and a balanced approach to Section 106 of IEA 1872 are essential to avoid miscarriages of justice and ensure that investigations remain objective, thorough, and fair to all parties involved.

Conclusion

While the Last Seen Theory plays a pivotal role in criminal trials, particularly in cases where direct evidence is absent, it must be applied with caution. Its evidentiary value lies in creating a presumption of involvement, but it is not sufficient on its own to secure a conviction. Courts must rely on additional corroborative evidence—such as motive, forensic analysis, and surrounding circumstances—to strengthen the inference drawn from the last seen theory. Furthermore, the time gap between the last sighting of the accused with the victim and the discovery of the crime is crucial in determining its probative value.

To avoid miscarriages of justice, courts should adopt a balanced approach, ensuring that the burden on the accused to explain their whereabouts or involvement does not infringe upon the principle of the presumption of innocence. The theory must be used as part of a broader evidentiary framework, requiring careful judicial scrutiny and application to ensure it upholds justice rather than undermines it.

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Plea-bargaining in India: Progress, Problems, and Pathways ahead

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Warren Burger, the Chief Justice of the Supreme Court of United States in the case of *Santobello v. New York*[1] held that plea-bargaining is an important component of justice system, and if properly administered, it leads to prompt and largely final disposition of most criminal cases. However, the provision of plea-bargaining is still not very much successful in India despite that the provision of plea-bargaining was inserted in the Code of Criminal Procedure in 2005. This article aims to address the concept of plea-bargaining in Indian context, reasons for its mild success and suggestions for its full-scale implementation for achieving the goal of 'justice for all.'

Tracing the Roots: The Origin and Growth of Plea Bargaining

The idea of plea bargaining was first introduced in the US and has since grown to be a key component of the country's criminal justice system. Plea bargaining is the pre-trial negotiations in which the accused enters a guilty plea in exchange for a specific

* *IPS (Probationer) 76 RR, Tripura Cadre*
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[1] *404 U.S. 257 (1971).*

concession made by the prosecution. Usually, this entails talks to lessen the severity of the charge or the sentence. There are, in fact, three types of plea bargaining –

1. Charge Bargaining – It involves bargaining for dropping some charges in a case of multiple charge or settling for a less grave charge.
2. Sentence Bargaining – When the accused admits guilt and settles for a lesser punishment, it is called sentence bargaining.
3. Fact Bargaining – Fact Bargaining involves negotiation for admitting certain facts in return for an agreement not to introduce certain facts.

Plea bargaining is widely resorted to in the US, so much so that, ninety to ninety five percent of the criminal cases end with negotiated agreements rather than court room trials.[2]

The concept of Plea bargaining was first recommended by the Law commission of India in its various reports viz, 142nd,154th and the 177th report. Subsequently the Committee on Reforms of the Criminal Justice System, 2003 headed by Justice V.S. Malimath, the former Chief Justice of Karnataka and Kerala High Courts also presented a case in its favour. Consequently, The Code of Criminal Procedure, 1973 was amended by Criminal Law Amendment Act, 2005 to introduce the concept of plea bargaining in India. Chapter XXIA, consisting of 12 Sections (Sec 265-A to 265L) enshrines the provisions for Plea Bargaining.

The Law Commission of India in its 142nd Report recommended the introduction of the concept "concessional treatment for those who choose to plead guilty without any

[2] *American Bar Association, Project on Minimum Standards for Criminal Justice: Standards relating to Pleas of Guilty.*

bargaining" under the authority of law informed with adequate safeguards. Recommendation of the commission was prompted on account of, quoting the commission:

> *"By problems arising on account of abnormal delay in disposal of criminal trials and appeals, and by the explosion of the number of under-trial prisoner languishing in jail for very much years."*

The Malimath Committee mentioned plea-bargaining as a means for the disposal of accumulated cases and expediting the delivery of criminal justice and thus, recommended for its introduction in the Indian context. Moreover, there has not only been an increase in the annual number of cases filed for trial but the pendency of cases awaiting trial have also increased over the years. As on August 2024, almost 83 thousand cases are pending in the Supreme court and more than 61 Lakh cases & 4.5 crore cases are pending in various high courts and trial courts respectively.[3] As per the latest NCRB report, there has been an issue of overcrowding of jails in India with an occupancy rate of more than 130%.[4]

Plea bargaining can be a means to clear this huge pendency and backlogs of cases and can reaffirm the trust and faith of the public over the Indian judicial system. Further, not only will it expedite the disposal of cases, it may also result in adequate compensation for the victim of crime, since he along with the prosecutor will be in a position to bargain with the accused. It is a device which ensures that victims receive acceptable justice in

[3] *National Judicial Data Grid. (2024, August). National Judicial Data Grid.*
[4] *National Crime Records Bureau. (2022, December). Prison statistics in India, 2022. Ministry of Home Affairs, Government of India.*

reasonable time without risking the prospects of hostile witness, inordinate delay and non-affordable costs.

Judicial Reservations: Early Opposition to Plea Bargaining in India

Initially, the Indian judiciary had a very stringent stance on plea bargaining. The court generally held the view that an agreement between the accused and the victim does not release the offender from criminal liability, since it was determined that a crime is an offense against society as a whole and needs punishment by the state. This approach has been reflected by the Supreme Court in a series of cases.

In *Madan Lal Ram Chandra Daga vs. State of Maharashtra*[5] the Hon'ble Supreme court observed that

> *"In our opinion, it is very wrong for a court to enter into a bargain of this character. Offences should be tried and punished according to the guilt of the accused. If the Court thinks that leniency can be shown on the facts of the case it may impose a lighter sentence."*

Again, in the case of *Murlidhar Meghraj Loya etc Vs State of Maharashtra*[6] and *Kasemchai Ardul Rehman Bhai Sheikh vs. state of Gujarat and Anr.*[7], the Hon'ble Apex court examined the concept of plea bargaining and observed that

> *"Plea-bargaining is against public policy and it has a tendency to pollute the pure fount of Justice because an innocent accused might be induced to plead guilty and suffer a light and in-consequential punishment, rather than face*

[5] *AIR 1968 SC 1267.*
[6] *AIR1976 SC 1929.*
[7] *AIR 1980 SC 854.*

> *criminal trial. The judge also might be likely to be defected from the path of duty to do justice. This practise encourages corruption and collusion thereby contributing to lowering the standards of justice."*

Moreover, in *State of Uttar Pradesh vs. Chandrika*[8], the Hon'ble Apex Court observed that the court has to decide a case on merits and further held that, mere acceptance or admission of guilt should not be a ground for reduction of sentence, nor can the accused bargain with the court.

This shows that the hon'ble Supreme court has in the past been quite vocal about its displeasure at the concept of plea bargaining. It is important to keep in mind, though, that all of these instances occurred prior to the inclusion of the plea-bargaining clause in our statute books, and that the criticism appears to have been predicated on an interpretation of plea bargaining that differs from the one that is currently found in CrPC. Accepting the recommendations of Malimath committee and balancing it with the concerns of the Indian judiciary, the Indian Parliament gave legal recognition to plea bargaining in 2005. After the amendment, the attitude of the apex judiciary has been more forthcoming and favourable towards it.

The *Hon'ble Gujarat High Court* in *State of Gujarat v. Natwar Harshini Thankor*[9], held that the criminals who admit their guilt and repent upon, a lenient view should be taken, while awarding punishment.

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[8] *AIR 1999 SC 164.*
[9] *2005 Crl. L.J. 2957.*

Further, the Hon'ble Supreme Court, in the recent judgement of *Re Policy Strategy for Grant of Bail v. Respondent*[10], gave suggestions to make plea bargaining a effective tool in the Indian Criminal Justice System. These judgments reflect the wider acceptance that plea bargaining has gained over time.

Challenges and Roadblocks: Why Plea Bargaining Struggles in India

Despite the great promise that plea bargaining holds, the results have not been commensurate to the expectations. According to the latest National Crime Records Bureau (NCRB) data, of the 1,70,52,367 cases that went to trial in courts across the country in 2022, only 19,135 cases were disposed of through plea bargaining — a mere 0.11%.[11]

Plea bargaining is at its budding stage in our country. Low usages of plea bargaining is on account of various factors. Limited awareness among the people, untrained judicial officers and lawyers with respect to implementation of plea bargaining, ambiguous nature of law and restricted applicability of Chapter XXI-A are some of the factors contributing to limited usages of Plea bargaining in India.

A detailed section-wise analysis of Chapter XXI-A of the Code of Criminal Procedure, 1973 on plea bargaining is presented as table hereinafter to understand issues with plea bargaining in India:

Section	Provision	Issues
265A	Sub-section (1)	This section does not cater to the

[10] *SMW(Curl) No. 4/2021.*
[11] *National Crime Records Bureau. (2022). Crime in India report, 2022. Ministry of Home Affairs, Government of India.*

	Section 265A states the applicability of plea bargaining. It states that the remedy is available only in respect of offenses for which punishment is less then 7 years of imprisonment Further, there are exclusion regarding offences affecting socio-economic conditions, against women and children less than 14 years.	large chunk of cases due to its limitation in applicability Further, a person is also excluded from applicability who has committed an offence for which the punishment is lesser than seven years if the minimum punishment is prescribed by law for that offence.
	Sub-section (2) Central Government has been conferred with power to determine list of offences that affect the socio-economic condition of the country and notify the same.	Socio economic offences cover many of the legislations starting from Dowry Prohibition Act, 1961 to recent Acts like Domestic Violence Act. Exclusion of such offences leads to limited applicability of plea bargaining. No guidelines are provided in the chapter for laying down the basis of classifying offenses as socio-economic offenses for the Central Government.
265B	In accordance with Section 265B, the accused may apply for plea bargaining in the court where the case is pending. The application must be accompanied by an affidavit sworn by the accused, which must state	Most of the time, the courts are left to judge whether an application is voluntary based on the particular facts and circumstances of each case. However, because the accused is receiving a reduced charge or sentence, there will always be some pressure on him. Nobody wants to go through a drawn-out trial, and in

	that he has voluntarily preferred the plea bargaining in his case after understanding the nature and extent of the punishment provided by law for the offence, and that he has not been found guilty by a court in a case in which he was charged with the same offence before. The Public Prosecutor or the case's complainant is then notified by the court that the accused will be questioned in camera.	certain situations, they might agree to make such a concession. Objective basis to decide whether an accused is voluntarily submitting himself or herself to the process of plea bargaining is a difficult task. Furthermore, a person who has been found guilty of the same crime cannot apply for plea bargaining under this section. Once more, the legislature has limited the possibilities for plea negotiations by ignoring the seriousness of the offense.
	Sub-section (4) It stipulates that the court must give the parties enough time to reach a mutually satisfactory disposition.	Given that the goal of plea bargaining is to expedite justice and speedy resolution of cases, section should have provided with a specified time frame for a mutually satisfactory disposition.
265C	Guidelines for Mutually Satisfactory Disposition (MSD) The section mandates that the Court notify the parties involved and that it is their responsibility to guarantee that the process of reaching a mutually agreeable resolution of the case is voluntary.	Although the section stipulates that the court must ensure the volunatriness of the process, the court is not actively involved in the satisfactory disposition procedure. The clause in and of itself doesn't establish any rules for the court to follow in order to guarantee that there is openness and that the accused is never forced to appear in court.

265D	Under S. 265 D, the Court has to prepare a report, if a mutual satisfactory disposition of the case has been worked out. Further, such report shall be signed by the presiding officer of the Court and the parties in the Joint Meeting. Section further states that if no satisfactory disposition is made out, the Court has to proceed with the case, by dropping the proceedings in plea bargain and start the proceedings from the stage, wherein the application is entertained.	Lengthy Process which makes admission of guilt by the accused less compelling in comparison to usual trial process. Apprehension of unnecessary time-consumed by the prosecution when plea bargaining fails to materialize.
265E	An accused is entitled for setting off the period of detention from the sentence of imprisonment imposed under S.265E, in case plea is disposed.	
265F and 265G	Judgement by the Court under section 265F Section 265G states the judgement u/s. 265F is final and no appeal will lie against such Judgment.	However, such Judgments can be challenged before the High Court or Supreme Court using Writ petition or Special Leave Petition respectively. This in turn creates the similar time consuming and lengthy process as that of criminal trial for the victim.
Other	Section 265H: The Court	The procedure mentioned under the

Procedural Sections	shall have all the authority vested in relation to bail, the trial of offenders, and other matters pertaining to the disposition of a case in order to carry out its duties under this Chapter. Section 265I gives the accused the right to deduct the time he spent in detention in the same case, solely in violation of S. 428 provisions, during the investigation, inquiry, or trial but before the date of conviction. The non-obstante clause is found in Section 265J.	Chapter makes the Court – a central figure in plea bargaining.
265K	It states that the information provided by the accused in a plea bargain application may only be used for the objectives of this chapter and for no other purpose.	This section is not sufficient to allay the fear and reluctance of accused persons of bearing the taint of guilt. Further, the accused have hesitancy in accepting their conviction under a particular offence which may lead to other civil consequences.
265L	Section 265L makes the chapter not applicable in case of any juvenile or child as defined in Section 2(k) of Juvenile Justice (Care and Protection of Children) Act, 2000.	Exclusion leading to limited applicability of Plea bargaining in India.

Plea bargaining raises additional concerns that cases may not receive enough time and attention from the police and that it may result in subpar investigations. As a result, the investigating officers and other relevant parties would be more likely to turn to plea deals rather than seeking conviction through the proper discharge of their duties.

Reimagining Plea Bargaining: Recommendations for Reform

The issues plaguing plea bargaining in India—such as procedural inconsistencies, potential for coercion, and uneven application—are significant barriers to reaping its true benefits. To overcome these challenges, targeted solutions must be implemented.

First, the Law commission in its 142nd report suggested for "constitution of "competent authority" i.e. a Metropolitan Magistrate or a Magistrate of the First Class specially designated as a "Plea-Judge" by the High Court in case of offenses punishable with imprisonment for less than seven years, and in case of other offenses, two retired judges of the High Court appointed in consultation with the Chief Justice of the High Court and his two senior most colleagues- to decide on whether or not to accord concessional treatment to an accused who makes an application for the same"[12].

The Hon'ble Supreme Court, in the case of *Re Policy Strategy for Grant of Bail v. Respondent*[13], suggested setting up of

[12] *Law Commission of India. (1991). 142nd report on Concessional treatment for offenders who on their own initiative choose to plead guilty without any bargaining. Ministry of Law and Justice, Government of India.*

[13] *SMW(Crl) No. 4/2021.*

clear guidelines for fixing the accountability of each stakeholder-courts, prosecution and defendants. It also suggested that a brief training session may also be organised for the Judicial Officers in the Judicial Academies make them well versed with the concept of plea bargaining and to make it a living reality.

Second, the Apex court in *Sonadar v. State of Chhattisgarh*[14] observed that the major stumbling block in the fructification of the concept of plea bargaining is the reluctance of accused persons to avail it due to the fear of bearing the taint of guilt and the burden of other civil consequences that may ensue. It, therefore, recommended that the principles of 'Alford plea' and the 'nolo contendere' plea prevalent in the USA can be applied without any legislative changes in India. The Court also observed that like other common law countries, India should also permit plea bargaining not only with respect to the sentence but also to the nature of offence.

Third, as suggested by the Malimath Committee, Indian judiciary should adopt selective inquisitorial practices alongside the current adversarial system to empower the prosecution and defendants to enter into independent and fruitful negotiation with respect to plea bargaining. Further, certain changes in the law may be made in order to breathe new life into it. These changes include:

- The applicability of Chapter XXI-A should be expanded, and classification for the purpose of plea negotiations should take into account the seriousness of the offenses as well as the number of years of imprisonment for a given offense.
- Further, the law ought to provide a deadline for reaching a mutually satisfactory disposition. This provision, to large

[14] *SLP(Crl) No. 529/2021*.

extent, has been incorporated under section 290 of Bhartiya Nagrika Suraksha Samhita ('BNSS') by setting a time limit of 30 days from the date of framing of charges.

- Additionally, it suggested that in order to lessen the court's workload, the mediation cell should be handed over with a mutually satisfactory disposition agreed by both the parties, with the court acting as the final arbiter.

These reforms are crucial for transforming plea bargaining from a problematic practice into a robust mechanism for delivering fair and efficient justice.

The Future of Plea Bargaining in India's Quest for Justice

In a criminal justice system that is collapsing under its own weight, experimenting is the only way to restore the public faith in the system. It is high time that we let go of our extremely cautious approach in restricting the scope of plea bargaining and loosen the reins a little more to serve the very object of law i.e. to provide easy, cheap and expeditious justice.

As argued by Thomas Church, any model of plea bargain is as rational and constitutional as the process of trial, if it satisfies the four cardinal principles (1) the defendant always has the alternative of a trial at which is independent of process of plea bargaining both in terms of verdict and sentence; (2) the defendant is represented by a competent counsel; (3) both defence and prosecution have equal standing to access relevant evidence; and (4) both sides have sufficient resources to take a case to trial.[15] The direction for reform for plea bargaining in India then should be to seek to achieve these conditions rather than to question the reality that plea bargaining now is.

[15] *T. W. Church, In Defense of 'Bargain Justice' (1979.)*

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Criminal Justice System in the Indian Cinematic Universe

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Indian cinema has long been recognized as a flagbearer of societal trends and historical narratives, reflecting the evolution of our society. Beyond its artistic mastery and compelling performances by acclaimed actors and directors, Indian cinema has progressively developed its representation of legal systems and law enforcement. From its inception, the portrayal of state power has been intricately tied to the policing system, with reel-life policemen often playing a crucial role in the success of films centered around law, justice, and social issues. The depth of these portrayals has evolved significantly over the decades.

This paper aims to analyze the development of police and legal depictions in Indian cinema, examining how different legal provisions were portrayed or adapted in various cinematic eras. Additionally, it delves into the legal nuances embedded within pivotal movie scenes and how these representations reflect the broader socio-political landscape.

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Changing Landscapes: 1960s to 2020s

If we try to look through the meta-detailing of the Indian police shown in the movies of the last millennium with the current ones, we will see an impact on the socio-political structure. Iconic films like *Zanjeer*, *Deewar*, and *Kotwal Saab* showcased policemen as larger-than-life figures embodying strength and machismo. These characters, often depicted as angry enforcers with extraordinary powers, were seen as society's gatekeepers, eradicating injustice through personal heroics.

As time passed, films began to explore more complex narratives. Negative portrayals of police corruption were notably depicted in films like *Gangajal*, while later movies such as *Singham* and *Dabangg* continued the tradition of portraying a single hero defeating societal ills. However, a shift toward more realistic portrayals emerged in series such as *Family Man* and *Delhi Crime*, which focused on procedural accuracy and the personal dilemmas faced by police officers. These depictions reflect a more grounded approach, capturing the intricacies of police work and the ethical challenges encountered by officers.

Law in the Show: Arrest, Abuse and Preventive Detention

The Climax scene of Deewar is exhilarating in all senses with policemen starring Sashi Kapoor chasing Amitabh Bachchan. While escaping the confinement, Sashi Kapoor fired from the back and the bullet fatally injured Amitabh leading to a classic emotional scene. However, the question that arises is: Was the Action justified? The use of deadly force is considered to be an exception rather than a norm. But, Section 46 of the Criminal Procedure Code

(CrPC) authorizes a police officer to use "all means necessary" to effect an arrest when either the person forcibly resists arrest or attempts to evade arrest. As Amitabh was evading the police custody, it was within the rights of the policeman to shoot at him and injure him.

In stark contrast, the police brutality depicted in *Jai Bhim*, where the accused is tortured while in custody, is a direct violation of Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty. The film highlights the misuse of power by law enforcement, an issue that has been addressed by the Supreme Court in *Arnesh Kumar v. State of Bihar*,[1] where guidelines were issued to prevent unnecessary arrests and custodial abuse. The Protection of Human Rights Act, 1993, also prohibits such acts, emphasizing the need for accountability in law enforcement. Similarly, Section 167 of the Code of Criminal Procedure (Section 187 of the Nagarik Suraksha Sanhita, 2023) prescribes the procedure when an investigation cannot be completed in twenty-four hours, but that period of custody is subject to inquiry in case of indiscriminate use of brute force by the police upon common citizens.

Indian films have often depicted preventive detention, a tool used by authorities to curb dissent or prevent potential crimes. In *Court*, for instance, the protagonist is arrested from a public gathering under preventive detention laws. These powers are derived from laws like the National Security Act (NSA) and Unlawful Activities Prevention Act (UAPA), or state-specific laws like the GOONDA Act. However, the indiscriminate use of

[1] *(2014) 8 SCC 273.*

preventive detention has been criticized. The Supreme Court, in the *Mallada vs. State of Telangana* judgment,[2] emphasized the need for caution in applying such laws, urging authorities to ensure that individuals are not unjustly detained. The movie *Court* directed by Chaitanya Tamhane masterfully portrays this legal issue by focusing on the unjust use of such powers against an ordinary folk singer, highlighting the importance of safeguarding civil liberties.

The Role of Evidence: Eyewitness, Confession

Eyewitness testimony is a cornerstone of the Indian legal system, as outlined in Section 3 of the Indian Evidence Act (IEA). According to Section 134 of the IEA, the testimony of even a single witness can be sufficient to prove a fact in court. This is vividly portrayed in *Jolly LLB*, where an eyewitness's account becomes the key evidence in a hit-and-run case. One of the key victims of the rash driving case was found in their hometown and was brought in front of the court. His testimony ultimately leads to the conviction of the driver, illustrating the power of eyewitnesses in criminal proceedings.

In *Jolly LLB 2*, the cross-examination of a witness, though presented humorously, underscores the importance of truthful testimony. Section 137 of the IEA provides for the examination and cross-examination of witnesses in court. In this film, the lawyer exposes a witness's lies, leading to the acquittal of the lawyer's client and implicating the police in the falsification of evidence. This reflects the serious consequences of perjury, which is punishable under Section 192 of the Indian Penal Code.

[2] *2022 SCC On Line SC 424.*

In some films, the surrender of an accused person to the police plays a significant role in the narrative. In *Gangs of Wasseypur*, for instance, the character of Danish (brother of Nawazuddin Siddiqui) surrenders to the police, setting off a complex legal process. Section 437 of the CrPC governs the procedure for surrender, allowing individuals to either surrender to the police or a magistrate. It is then up to the magistrate to determine whether the person should be taken into custody or granted bail.

The evidentiary value of confessions made to police officers is another important aspect often depicted in Indian films. Section 24 of the IEA states that confessions made to police are generally inadmissible in court. However, in *Raman Raghav 2.0*, the suspect's statement made under Section 161 of the CrPC aids the police in solving the crime, demonstrating how such information, though not directly admissible, can still be valuable during an investigation.

One of the most compelling cinematic portrayals of legal evidence is in *Drishyam*, where the absence of a victim's body becomes central to the story. The concept of *corpus delicti*, or "body of the crime," is crucial in proving criminal cases. In this film, the protagonist uses an alibi, creating an elaborate ruse to evade murder charges. This legal tactic is grounded in Sections 11 and 103 of the IEA, which outline the conditions under which an alibi can be used as evidence.

Similarly, *Talwar*, based on the real-life Aarushi Talwar murder case, emphasizes the importance of crime scene investigation. Section 157 of the CrPC outlines the procedures for conducting an investigation, while Section 45 of the IEA allows

expert opinions, such as forensic reports, to be used as evidence. In the film, the mishandling of forensic evidence and crime scene contamination plays a pivotal role in the investigation's outcome.

Victims often serve as the emotional and legal fulcrum in cinematic depictions of crime. In *Delhi Crime*, based on the 2012 Delhi gang rape case, the series meticulously portrays the police investigation and the victim's dying declaration. Recorded under Section 32 of the IEA, a dying declaration holds significant evidentiary value in court. The principle of *nemomoriturus praesumitur mentire*, meaning "a person will not lie on their deathbed," underpins the weight given to such declarations. This principle allows courts to convict based solely on a dying declaration without the need for corroborating evidence.

The Indian legal system, with its complexities and nuances, is often portrayed in simplified terms in popular cinema. While these representations may not always capture the full intricacies of the law, Indian filmmakers have made significant efforts to incorporate legal details into their storytelling. By doing so, they have brought a level of authenticity to their depiction of law enforcement, legal proceedings, and justice, offering viewers a glimpse into the interplay between law and society.

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Towards Healing, not Harming: A Humane approach for NDPS

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Immanuel Kant in his theory of justice emphasized that individuals are rational agents and deserve to be held accountable for the actions they perform. Kant says if an individual commits any wrong, he is liable to be punished and the punishment would restore the balance of the society which the crime had disturbed. This, 'eye for an eye' is the retribution approach which Kant emphasized on. On the other hand, Jean Jacques Rousseau emphasized on the idea that punishment should aim to change and reform the offender in order to improve the society. As per Rousseau, humans are inherently good beings and society corrupts them, and thus punishment should focus on rehabilitating the individuals. The inherent difference between Kant's and Rousseau's approach lies at the center of how an offender guilty under the Narcotic Drug and Psychotropic Substances Act, 1985 (NDPS Act) must be dealt with.

The National Crime Report Bureau's Crime in India 2021 reports finds that over 10% of all jailed undertrials in India are

*IPS (Probationer) 76 RR, Haryana Cadre

accused under the NDPS Act which is the fourth highest number of jailed for any crime after murder, rape, and theft. Possession (irrespective of quantity: small, intermediate, or commercial), production, cultivation, manufacturing, sale, transport, purchase, import, export, consumption etc. are all punishable offenses under the Section 8, 21, 22, 23, 27 etc. of the NDPS Act. While most of the offenses are of grave nature and punished with the Kantian approach, consumption or addiction have been provided immunity if they volunteer to undergo treatment for de-addiction and have been punished with Rousseau's approach after the recent amendments in the act.

However, as per a 2018 report by Vidhi Centre for Legal Studies despite changes in the law with respect to consumption under section 64A, in states like Punjab, the conviction rate of addicts under the NDPS Act stands around 90.7% in contrast to conviction rate under the Indian Penal Code which stands around 30.9%. Also, the same report shows that between 2013 and 2015, no person brought before the court was directed to de-addiction and rehabilitation through the courts, exemplifying the traditional view of criminalisation of addicts. There hence, remains a dichotomy in the understanding and implementation of the provisions of the act with respect to the addicts and consumers. Despite the act providing for a more modern rehabilitative approach in the letter, the criminal justice system still follows the traditional retributive approach in the spirit.

The article explores the contrasting approaches to justice in the context of India's Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, highlighting the tension between retributive and reformative justice, it critiques the NDPS Act's harsh penalties for

drug-related offenses, noting the high conviction rates for personal drug use, especially in states like Punjab. Despite amendments that offer immunity for addicts seeking rehabilitation, the implementation remains inconsistent and stigmatizing. The article discusses successful alternative approaches, such as Sikkim's reforms, which distinguish between drug users and traffickers, focusing on rehabilitation over punishment. It concludes by advocating for a shift in India's drug policies towards a more humane, health-centered model that treats addiction as a medical issue rather than a criminal one.

The Changing Landscape

In 1971, the United States declared a "war on drugs" in response to rising drug abuse and its perceived threat to societal order. This approach, widely adopted globally, emphasized on punishment fueling mass incarcerations and often overshadowing efforts to address addiction as a public health issue. Many countries, including India, embraced this approach, adopting policies focused on retribution and deterrence. As a signatory to the three UN Drug Conventions, India enacted the NDPS Act, 1985, which mirrored this global trend by imposing strict penalties and prioritizing punitive measures in the fight against drug-related offenses. Under section 27 of the NDPS Act, the consumption of any narcotic drug or psychotropic substance is made a punishable offense. The Section punishes consumption of cocaine, morphine, diacetylmorphine or any those drugs or substances mentioned in the official gazette by central government with rigorous imprisonment for a term which may extend to one year and

consumption of substances other than these with imprisonment for a term which may extend to six months.

Besides being signatory to the three UN Drug Conventions, India is also a member of UN Human Rights Commission. The original act was not in consonance with the principles of Human Rights of individuals who are affected by drug use. Hence, an amendment was brought in form of section 64A in 1989 and later in 2001, Section 64A of the act provides immunity to the addicts who volunteer to undergo medical treatment for de-addiction from a hospital or institution maintained or recognised by government or local authority from prosecution under section 27. The said immunity can be withdrawn if the addict does not undergo the complete treatment.

The change in approach emphasizes that an addict is a victim of drug abuse. The legislative intent of the change indicates that the individual substance user should be subjected to rehabilitation while the drug traffickers should be subjected to penal action. This was made through making a distinction between small quantity and commercial quantity in the 2001 amendment itself. The changes were made with expectations of reform, reduction in criminalization of drug users, reducing burden on the judicial and prison system, reducing recidivism, and establishing a network of treatment centers in India.

The Underutilization of Section 64A

The amendments were expected to bring in changes that were visible in Portugal after its adoption of its own National Strategy for the Fight Against Drugs in 1999. However various

data and analysis indicate that Section 64A only exists in letter and not in spirit. Due to limited awareness and inconsistent judicial application, the provision has been underutilized. Social stigma, inadequate de-addiction facilities, and poor support systems further hinder rehabilitation, increasing the risk of relapse. Data from Crime in India Report 2010 to 2022 indicate that the judiciary's application of section 64A remains minimal. In 2022, more than 40% of the cases were related to possession of drugs for personal use but no official data is shared about use of 64A and data remains scarce due limited practice of the same.

These are other key issues in application of Section 64A when read with the penalizing Section 27 of the Act –

1. The use of the term 'addict': The term addict is not only universally considered as stigmatizing but also devoid of any specific definition. All provisions in NDPS act applicable to addicts are equally applicable to those people who consume narcotics drugs and psychotropic substances without suffering from addiction. This leads to labelling non-regular consumer as addicts and punishing them with same sentence with which addicts are punished.
2. Confession of addiction and possession only at the trial stage: Despite a reformative approach in law, these provisions are usually used after a long process of arrest, custody and trial.
3. Treatment facilities unavailable: Lack of de-addiction centers around the country, irrational overlap between mental health facilities and de-addiction centers, lack of in-patient treatment facilities. This is specifically related to section 71 of NDPS Act. *Section 71 which gives power to the government to*

establish centers for identification, treatment, management, after-care and social reintegration, etc of the addict. Can remove the bracket here.

The challenges surrounding Section 64A highlight the broader difficulties in implementing a rehabilitative approach to drug addiction in India. These issues are particularly evident in states like Punjab, where the drug crisis is rampant. The state's high conviction rates, especially for possession and personal consumption, reflect the ongoing reliance on punitive measures rather than rehabilitation, underscoring the need for more effective strategies to address addiction and its social impact.

Punjab's Efforts to Combat Drug Addiction

In 2022, Punjab accounted for more than 30% of the total NDPS cases in India among which more than 40% were related to possession and personal consumption. Post green revolution led prosperity, the agriculture and industrial sector in Punjab has seen stagnation. The non-farm job opportunities are limited causing increasing economic frustration. Substance abuse has become an escape for many who are unemployed, the data indicates that 71% of individuals involved in NDPS cases were between 20-40 years old which belong to the demographic dividend group of the population. Traditionally opium and poppy husk were widely used but there has been significant rise in use of synthetic and pharmaceutical drugs like heroin, dextropropoxyphene and buprenorphine.

The NDPS Act which has strict liability provisions has higher conviction rates in Punjab but the data suggests that the high

convictions have not effectively deterred drug crimes in Punjab. Most drug cases involve quantities between small and commercial and often lead to lack of consistency in sentencing for similar offenses causing failure in deterring drug addiction and trafficking. The narratives in the chargesheet are also found to be repetitive indicating that law enforcement agencies may be relying on standardized templates rather than conducting detailed investigation. The approach of deterrence through harsh penalties has yielded much lesser results than required, it has also diverted resources away from rehabilitation efforts and led to criminalization of individuals who could benefit from treatment and social reintegration.

Punjab has adopted a changed approach post 2013. The Punjab State Cancer and Drug Addiction Treatment Infrastructure Fund Act was launched to constitute a fund for supporting the creation of infrastructure for cancer and drug addiction treatment. It constitutes a board headed by the chief minister of the state. It aims to create and upgrade infrastructure for treatment, rehabilitation and de-addiction of drug addictions. A total of 31 de-addiction centers have been set up in the state along with 21 government sanctioned counseling centers. Private and NGO run centers outnumber the government facilities but are unevenly distributed across the state. A detailed SOP is also given by the Punjab state government for private centers providing de-addiction treatment services. The SOP lays down a detailed procedure which the private centers must follow for treatment, maintenance and stabilization of drug addicts.

- Despite Punjab taking several steps against the drug use disorder, the results have been fluctuating and not as

satisfying as wanted. In 2014-15, Punjab jails were packed with around 30,000 addicts who were held with small quantities of drugs. However, in 2024, there are signs of changes. In January 2024, the Punjab government adopted a reformative approach providing immunity to over 270 addicts caught with small quantities of drugs sending them to de-addiction center rather than to prisons utilizing section 64A of the NDPS Act.

Sikkim's Innovative Approach to Drug Control

In 2006, Sikkim Anti–Drugs Act (SADA) was a significant piece of legislation which aimed to control, regulate and prevent abuse of drugs and controlled substances. It mirrored the NDPS Act, 1985 focusing on deterrence-based approach, which criminalized use of drugs and had limited rehabilitation provisions.

With drug related issues falling under the concurrent list in the constitution, in 2017, SADA was amended to recognize the distinction between peddlers and consumers. Anybody caught with small quantities of drugs was now categorized as a consumer. The recognition of distinction between consumer and peddler has enabled SADA channelise its healthcare services to most vulnerable drug users. The amendment made psychiatric evaluation of all illicit drug users compulsory, while detoxification and rehabilitation were also provided for.

The amendment also provided for a more appropriate and novel quantification method. Unlike NDPS Act, where small and commercial quantities were provided against all drugs in weight and volume, SADA used three delivery formats like tablets, syrups,

and injection vials to determine quantities thereby avoiding inconsistencies arising out of measurement in weight and volume. Further, the 2018 amendment importantly recognized involuntary and forced deaddiction could do more harm than good, thus, it does not force compulsory detoxification and rehabilitation. Data from 2019 also indicate the success of the changes, in 2019, the numbers of arrests fell, the number of undertrials in Sikkim Central Jail had fallen from over two hundred to sixty-six after the 2018 amendment. The Sikkim state government approach holds lessons that can be replicated at the national scale, which is basically approaching healthcare services without any fear of prosecution and imprisonment.

From Retribution to Rehabilitation – Suggested Amendments suggested for Section 64A.

Based on the current status of implementation, procedural safeguards given by the Supreme Court that must be strictly followed to ensure that drug addicts are treated fairly under the NDPS Act in the case *State of Punjab vs Balbir Singh*[1] as well as *Amritpal Singh vs. State of Punjab*,[2] Central Government's National Action Plan on Drug Demand Reduction and Nasha Mukht Bharat Abhiyan, the following changes and amendments can be made in NDPS act to ensure better implementation of reformative provisions.

First, the term 'addict' can be replaced with generic terms like 'people affected by drugs or substance use disorder or drug user or

[1] *1994 3 SCC 299.*
[2] *2023:PHHC:112554.*

substance user. This will indicate clearly the intention of the legislature and ensure effective utilization of the provisions.

Second, if the accused admits to the investigating officer that the substance he is caught with is to be used for personal consumption and admits himself to be a drug user or consumer, he should not be booked under any offense and be referred directly to the nearest de-addiction or health facility as suitable from the police station itself. This ensures that the consumer doesn't face the stigma of being labeled as a criminal and has better access to health facilities. The understanding that imprisonment doesn't cure addiction but instead worsens it is necessary to bring such an amendment. Also, the above said change could save resources for better utilization in investigation, thereby reducing burden on the criminal justice system and the prison system.

Third, the Court in *Bhupender Singh vs State of Haryana,*[4] held that Section 71 is a very significant provision related to treatment and rehabilitation but most states in India do not have in place state NDPS rules to recognize facilities for treatment, states must make provisions to recognize such facilities. De-addiction facilities need not always be in-patient facilities which are misunderstood across India.[3]

With regard to the above changes, the amendment sections can be as suggested:

[3] *2024:PHHC:059708.*

Section 27: Provision of treatment for consumption of any narcotic drug or psychotropic substance: Whoever, consumes any narcotic drug or psychotropic substance shall be referred to the nearest health facility for assessment and treatment, rehabilitation, and other support services, provided the person is not found contravening any other provision under the Act or committing any other offense.

Hence, the word punishment is removed from the title as well as the section.

Beyond Retribution: The Need for a Compassionate Approach

In India, the National Survey on Extent and Pattern of Substance Use in India conducted by the Ministry of Social Justice through NDDTC, AIIMS during 2018 estimates that more than 7 crore people in India are suffering from drug use disorders. The number is only increasing year on year. With suggested amendments and experiences of different states, it is essential to understand that the legislative intent would only be fulfilled if the criminal justice system follows up with equal intent. The role of police as well as judiciary is central in such cases noting the difference between a drug trafficker and a drug user.

It is essential to treat the problem with care and compassion rather than tackle it with an eye for eye approach. Swiss writer Johann Hari in his book Chasing the Scream says, "*Imagine if the government chased sick people with diabetes, put a tax on insulin and drove it into a black market, told doctors that they couldn't treat them.....then sent them to jail. If we did that, everyone would know we were crazy. Yet we do practically the same thing every day in the week to sick people hooked on drugs".*

In conclusion, the shift from a retributive to a reformative approach in NDPS cases represents more than just a change in legal strategy; it is a profound philosophical rethinking of justice itself. Retribution seeks to punish and balance the scales through suffering. But does the infliction of pain truly heal society or rehabilitate the individual? Reformative justice, on the other hand, asks a different question: How to restore what has been broken?

As philosopher Michel Foucault once observed, punishment must move away from the body and toward the soul, fostering transformation rather than vengeance. A reformative approach recognizes that addiction is often not a crime but a crisis of health, environment, and circumstance. Instead of isolating individuals behind bars, it aims to reintegrate them into society as contributors, not pariahs.

In taking this path, Nelson Mandela's words must be kept in mind: "*It is said that no one truly knows a nation until one has been inside its jails."* How those are treated at the margins of our legal systems reveals the values a nation holds at its core. By embracing a reformative approach, it chooses compassion, recognizing that every individual possesses the potential for change and redemption. Ultimately, the question is not merely how to punish, but how to heal—both the person and society. Should justice be a mirror of the basest instincts for retribution, or should it reflect the highest aspirations for renewal and mercy? The answer lies not in the law alone, but in the collective understanding of what it means to be truly human.

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Comparative Analysis of Marriage Age Eligibility in Nepal vs. India

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Marriage is a fundamental social institution, and the laws governing it play a crucial role in shaping societal norms and individual lives. In South Asia, both Nepal and India have established legal frameworks that dictate the age at which individuals can marry. However, there are notable differences in these laws that reflect divergent social, cultural, and legal landscapes. This article provides a comprehensive comparison of the marriage age eligibility in Nepal and India, explores the implications of these legal frameworks, and examines their broader societal effects.

Legal Architect for Marriage Age

Nepal has made significant strides in recent years towards aligning its marriage laws with international human rights standards. According to the Civil Code 2017 (also known as the Muluki Criminal Code), the legal age for marriage is 20 years for both males and females. This legislative change aimed to address

* *76 RR, Nepal Police Service.*

various social issues, including child marriage, which had been prevalent despite existing laws.

Prior to the Civil Code, Nepal had set the minimum age for marriage at 18 years for women and 21 years for men, as stipulated in the Marriage Registration Act 1971. However, the progressive shift towards higher age is often marred by lax enforcement contributing to a high incidence of child marriages.

India's legal framework for marriage age eligibility is multifaceted due to its federal structure and the existence of personal laws for different communities. The primary legislation governing the age of marriage is the Prohibition of Child Marriage Act 2006, which sets the minimum marriage age at 18 years for women and 21 years for men. This law was enacted to address the issue of child marriage, which remains prevalent in some parts of the country.

India's personal laws for various communities, including Hindu, Muslim, and Christian laws, generally align with the Prohibition of Child Marriage Act. However, there are regional variations due to religious and tribal norms along with different interpretations which can affect enforcement. For instance, the question whether a Muslim girl can marry a person of her choice after attaining puberty before the legal age to marry remains moot in India.[1]

The most evident difference hence, between Nepal and India lies in the minimum legal age for marriage. Nepal mandates that individuals must be at least 20 years old, while India sets the

[1] *National Commission for Protection of Child Rights v. Javed, Special Leave Petition (Criminal) Diary No. 35376/2022.*

minimum age at 18 for women and 21 for men. This difference reflects varying national priorities and approaches to addressing social issues related to marriage.

Impact on Child Marriage

Both countries face challenges related to child marriage, but the impacts and responses differ due to the variations in legal age limits. In Nepal, setting the minimum marriage age at 20 years is a strategic move to combat child marriage and ensure that individuals have reached a more mature stage of life before entering into marriage.

In India, while the law stipulates 18 years for women, there are still concerns about enforcement and the prevalence of child marriages in certain regions. The discrepancy between the legal age for women and men also highlights an area of potential concern, as the lower age limit for women can perpetuate gender disparities.

Despite the Indian government's efforts to curb child marriage and promote child welfare, the existing disparity in the legal marriage ages for girls and boys highlights an underlying gender inequality. This difference in age requirements reveals a persistent inequality between genders, contrasting with the government's broader initiatives aimed at protecting children and ensuring their well-being.

Health and Well-being

The age of marriage also impacts health outcomes, particularly concerning reproductive health and overall well-being. By promoting a higher marriage age, Nepal aims to reduce health risks associated with early pregnancies, including maternal and infant mortality. The welfare and health of women is closely

connected to how they are treated as mothers during pregnancy, while giving birth, and in the days after. Children's health is also crucial not only in terms of reducing child mortality but also to be able to nurture healthy young people and adults.

In previous decades, Nepal had one of the highest maternal mortality ratios (MMR) in the world, with many women dying during pregnancy or childbirth due to insufficient access to quality healthcare services. Since 1996, when the ratio was at 539 deaths per 100,000 live births, there has been a sharp decline in the MMR. In the years following there have been steady improvements in the healthcare of birthing women, leading to an MMR of 151 in the latest census of 2021. The maternal mortality has fallen sharply, and the general health of mothers has improved as per the report of Ministry of Women Children and Senior Citizens. This has, among other things, led to a higher life expectancy at birth for women. The legal framework supports public health initiatives that focus on improving maternal and child health.

Early marriages can lead to early pregnancies, which are associated with higher health risks for both mothers and infants. Addressing these risks requires effective enforcement of existing laws and comprehensive health education. Various initiatives in India have significantly contributed to minimizing health risks associated with child marriage by addressing both the root causes and the consequences of this harmful practice. Increased focus on reproductive health education and services is essential to mitigate the health impacts of early marriage.

Promoting Women's Rights and Opportunities

Marriage age laws play a crucial role in advancing gender equality and empowering individuals. In the context of Nepal, the

higher marriage age aligns with efforts to promote gender equality by ensuring that women have more opportunities for personal and professional development. Recent data from the 2021 NDHS indicated that the prevalence of child marriage had further decreased. As of this survey, about 37% of women aged 20-24 reported being married before the age of 18. Whereas, it was 60% and 40% in the 1990's and 2010's. This continued decline reflects both improvements in public awareness and legislative changes.

The legislative change reflects a broader societal shift towards valuing women's rights and opportunities. In the Indian scenario, it can be argued that the difference in legal marriage age for men and women highlights ongoing gender disparities. While the law aims to address child marriage, cultural and social factors continue to impact gender equality. Complementary efforts, such as women's empowerment programs and education initiatives, are critical to achieving gender parity.

There are various debates on the fact that the age for marriage for girls and boys to be reduced to 18 or increased to 21 in India. The *Jaya Jaitly* committee has been advocating to bring equality of age of marriage for girls and boys. While 18 is considered the age of adulthood, not all individuals might be emotionally or financially ready for marriage at that age. The focus should also be on ensuring that individuals are truly prepared for the responsibilities of marriage.

Labour Force Participation Rates

Women's labour force participation in Nepal is relatively high compared to many other countries in South Asia. In 2023, the female labour force participation rate in Nepal was 29% as per the data of world bank. In 2023, the ratio of female to male labour

force participation in Nepal was 53.17%. as per the data of International Labour Organization. Equal age of marriage for Girls and boys expands the horizon of opportunities for women leading them to Independence.

In contrast, India has a lower female labour force participation rate, which has been fluctuating in the recent years. This rate is comparatively low for a country of its size and economic diversity. In the first quarter of 2024, India's labour force participation rate was 50.20%, up from 49.90% in the fourth quarter of 2023 as per the International Labour Organization.

Women's participation in India is affected by various factors, including socio-cultural norms, economic barriers, and educational attainment. Lower age of marriage is a hindering Factor for women causing such barriers. While for male LFPR increased from 73.5% to 74.4% during this period, for female, LFPR increased from 22.7% to 25.6% during this period.

Cultural and Societal Implications

In Nepal, the higher legal marriage age of 20 years reflects a growing recognition of the importance of education and personal development before marriage. This legislative shift is part of broader efforts to address gender equality and improve the overall well-being of women and children.

By delaying marriage, individuals, particularly women, have more opportunities to pursue higher education and career prospects. Nepal has achieved gender parity in enrolment in primary and secondary education, complete with near equal youth literacy rates. The commitment to educational equity is also reflected in the increase of women in higher education. The literacy rates are increasing and the gender gap in literacy is closing in

Nepal. In 2019 the national average of literacy rates for youths aged 15-24 years was 88 percent for women and 93 percent for men (NMICS 2019).

Education is one of the most crucial tools in reducing inequality. Access to education is essential in knowledge-based decision making as well as important for being able to break free from poverty. Education can lead to economic benefits, by granting access to work and income, and empowers individuals to live healthy lives. literacy rates have improved dramatically during the last decade for women. With a legal marriage age of 20, Nepali youth are more likely to complete higher education, contributing to a more skilled workforce. Educated individuals often contribute more significantly to the economy, fostering long-term economic development

On the other hand, in India, the lower legal age for women has cultural and practical implications. In many communities, early marriage is deeply ingrained in cultural practices. Although the law mandates a minimum age, traditional norms can sometimes overshadow legal requirements. The age at which individuals marry significantly influences educational attainment and economic opportunities. Higher marriage ages generally allow for more extended periods of education and career development.

While the legal age is set at 18, early marriages can disrupt education for young women. Efforts to promote educational attainment and economic empowerment are critical in addressing this issue. Variations in enforcement across states and communities can lead to inconsistent application of marriage laws, affecting the effectiveness of the Prohibition of Child Marriage Act.

Early marriages can disrupt educational pursuits, particularly for women. Despite legal stipulations, cultural practices often lead to early marriage, impacting educational and economic outcomes. Early marriage can perpetuate economic dependence and limit career opportunities for women, contributing to broader economic disparities.

The Path Towards a More Equitable Future

The differences in marriage age eligibility between Nepal and India reflect broader social, cultural, and legal dynamics. Nepal's higher minimum age of 20 years represents a proactive approach to addressing issues related to early marriage, promoting education, and improving health outcomes. In contrast, India's legislation, which sets the minimum marriage age at 18 for women and 21 for men, highlights ongoing challenges related to cultural norms and enforcement.

Both countries face challenges in addressing child marriage and its consequences. Effective enforcement of laws, coupled with supportive social and educational programs, is crucial in improving outcomes related to marriage age eligibility. By understanding and addressing these differences, Nepal and India can work towards creating more equitable and supportive environments for all individuals, ultimately contributing to a more just and progressive society.

India and Nepal can strengthen their legal frameworks, support each other in enforcement mechanisms, and develop joint initiatives to empower women and girls. Such collaboration not only addresses the immediate issue of child marriage but also contributes to broader goals of gender equality and social development, creating a positive ripple effect across both societies.

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Navigating Bail Provisions in PMLA: A Judicial Perspective

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'No person shall be deprived of his life or personal liberty except according to the procedure established by Law'

- Article 21, Constitution of India

The word 'bail' comes from the old French word '*Baillier*,' which means to deliver or hand over. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) defines Bail under Section 2(b) as-

> *"Release of a person accused of an offence from the custody of law upon certain conditions imposed by an officer or court including execution by such person of a bond or a bail bond."*

The concept of bail is based on the premise that the accused is innocent until proven guilty. It has been incorporated into the Indian criminal justice system to protect individual liberty and ensure social justice. It also gives practical shape to the idea of personal liberty which is a fundamental right enshrined in our Constitution.

IPS (Probationer) 76 RR, Odisha Cadre

The bail provisions in respect of various offences committed under IPC and other Special and Local Laws are contained in CrPC/BNSS, wherein, factors which become important for grant of bail are nature and seriousness of offence, probability of the accused to abscond, criminal record and past conduct of the accused, likelihood of tampering with evidence or influencing the witnesses, whether the accused might interfere with the pending investigation among others.[1] However, often bail conditions go beyond this yardstick in regard to offences relating to specialised laws such as the Prevention of Money Laundering Act (PMLA).

In this article, efforts will be made to understand the reasons behind enactment of PMLA and various legal provisions of PMLA. We will understand how bail provisions are different in PMLA as compared to other offences, along with its evolving legal jurisprudence. Towards the end, we will analyse why and how the interpretation of bail provisions is being dynamically evolved by the judiciary.

PMLA's Unique Approach to Bail: Stringency and Safeguards

The United Nations took serious note of flourishing drugs trade at global level in 1988 United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances come into effect. All countries were urged to prevent laundering of proceeds of drug crimes and other connected activities. Further, Financial Action Task Force (FATF) was set up in Paris by seven major economics in 1989 to combat menace of money laundering. It was followed by adoption of resolution in 1990 by United Nation General Assembly (UNGA), which called upon member countries

[1] *Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528.*

to enact suitable legislation to prevent money laundering on account of proceeds of drug.

The Narasimham Committee on banking reforms underscored importance of taking anti-money laundering measures in 1998. In this background, Indian Parliament enacted the Prevention of Money Laundering Act in 2002 which came into force in 2005. It demonstrates India's commitment with regard to fight against money laundering and terror financing which is paramount to safeguard integrity and sovereignty of the country.

Economic offences are treated as separate category of offences as economic offences pose grave threat to progress and stability to the nation. The Court has held that an economic offence is committed with comprehensive calculation and thoughtful design with an eye on personal profit regardless of its consequence on the community. Hence, it was of the view that economic offences are a different class and need to be visited with a different approach in the matter of bail.[2]

Special laws have been enacted by the Parliament of India to deal with economic offences. These special laws adopt a different approach towards bail and the Prevention of Money Laundering Act, 2002 is one such legislation. Section 45(1) of PMLA describe the bail conditions as –

> *"Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable under this Act shall be released on bail or on his own bond unless--*

[2] *V.K Murthy v. The State, Crl.O.P.No.22782 of 2017 (Madras HC)*

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

From the plain reading of above, it is evident that PMLA sets stringent conditions for bail requiring the accused to prove prima facie his innocence and to demonstrate that he is not likely to commit any further offence while on bail. These are commonly referred as 'twin bail conditions' or 'reverse burden of proof' on the accused.

Evolution of jurisprudence of bail provisions

The stringent conditions of bail provisions under the PMLA have been contested before higher courts for its constitutionality and interpretation over the years. Before 2018, Section 45(1) (the section which specifies these strict bail conditions for offenders under PMLA) was applicable only to persons accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule.

However, in 2017 in the case of *Nikesh Tarachand Shah vs Union of India*[3] Supreme Court of India struck down the twin conditions of bail mentioned in Section 45(1) of PMLA Act as it considered them to be violative of Articles 14 and 21 of the Constitution. Prospectively, the Government later on amended Section 45(1) wherein the words "*punishable for a term of imprisonment of more than 3 years under Part A of the Schedule*"

[3] *(2018) 11 SCC 1.*

was substituted with "*under this Act*", thereby expanding the ambit of the Section.

Hence, post 2018, Section 45 (1) of the PMLA Act stands as –

> *Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable under this act shall be released on bail or on his own bond unless--*
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*

From the above provision of Section 45 of the PMLA, it is evident that 'twin bail' conditions under PMLA are operationally different and more stringent as compared to the bail conditions as prescribed under the CrPC. Bail provision under Section 45 of PMLA has been made more stringent keeping in view the serious and complex nature of money laundering cases which have interconnect with other types of organized crime; thereby threatening internal/external security and economic stability of the country.

The constitutional validity of the above 'twin bail conditions' has been upheld by the Supreme Court in the case of *Vijay Madanlal Choudhary v. Union of India.*[4] In the said decision, it was held that section 45 of PMLA (as applicable post amendment in 2018) is reasonable and has direct nexus with the purpose and

[4] *2022 LiveLaw (SC) 633.*

objects sought to be achieved by the 2002 Act and further, it does not suffer from vice of arbitrariness or unreasonableness.

In the said decision, it was observed by the Court that money laundering is one of the heinous crimes which not only affects social and economic fabric of the nation but also tends to promote other heinous offences such as terrorism, offences related to NDPS Act among others. Thus, the court held in clear terms that the 'twin bail' conditions, though are stringent in nature, are in coherence with the objects of the PMLA. The said judgement also justifies non-disclosure of ECIR to the accused on the ground that it is an internal document, disclosure of which can impact pending investigation. It is enough if ED discloses grounds of arrest at the time of such arrest.

Balancing Individual Liberty with National Security Concerns

In the past couple of years, the courts have started providing a slightly different interpretation of the bail provisions in case of PMLA offences. This is because of various factors such as delay in trials, accused being subjected to long periods in incarceration etc. which is prima-facie a violation of fundamental rights of the accused. This can be understood from the following case laws discussed below.

In October 2023, a bench of Justices A S Bopanna and P V Sanjay Kumar in case *Pankaj Bansal vs Union of India*[5] held that it will be necessary for ED to communicate the grounds of arrest to the person who is arrested and provide him a written copy of the same to him henceforth. This is essential as it will enable the arrested person to challenge an illegal arrest in the court of law.

[5] *2023 SCC OnLine SC 1244.*

These safeguards are essential as the PMLA law imposes a high bar in granting bail to the accused. A written order will ensure transparency as well as compliance to the rule of law.

Later, the Court in the case *Ajay Ajit Peter Kerkar vs Directorate of Enforcement*[6] held that if there is a delay in the trial, then the bail laws can be relaxed if the accused has already spent long periods of incarceration. If the person has spent more than half of the maximum sentence in the jail as an undertrial, the accused shall be released on bail, even in offence relating to money laundering. This judgement ensures that process itself doesn't become a punishment for the accused.

In a more recent case of *Prem Prakash vs Union of India,*[7] the Supreme Court has underlined the legal principle that *'jail is an exception and bail is the rule'*, even in the cases under PMLA. The Court observed that it can't be said that conditions provided under Section 45 impose an–absolute restraint on the grant of bail. The court was guided by Article 21 of the Constitution, which says that 'no person shall be deprived of his life or personal liberty except according to the procedure established by law' i.e. liberty of the individual is always a rule and deprivation is an exception. Deprivation can only be by the procedure established by law, which has to be valid and reasonable in nature. Section 45 does not mean that deprivation is a norm and liberty is an exception, where the accused has already been in custody for a number of months and there is no likelihood of conclusion of the trial within a short span. In such conditions the rigor of section 45 of PMLA can be suitably relaxed to afford conditional liberty.

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[6] *Special Leave Petition (Criminal) Diary No. 16364/2024.*
[7] *2024 INSC 637.*

While interpreting Section 45 of PMLA, the Court also observed that Article 21 being a higher Constitutional Right, statutory provisions should align to the higher constitutional right. It observed that where the public prosecutor opposes the bail application under the PMLA, the counter affidavit of the ED should make out a cogent case as to how the three foundational facts set out in *Vijay Madanlal* case are prima facie established. These foundational facts include, first, that the criminal activity relating to a scheduled office has been committed; second, that the property in question has been derived or obtained directly or indirectly by any person as a result of that criminal activity and third, that the person concerned is directly or indirectly, involved in any process or activity connected with the said property being proceeds of crime.
Therefore, it is evident from the above decision of the Court that Section 45 of PMLA should not be construed as making granting of bail impossible, rather it should be seen as a provision which aims at regulating the procedure of granting of bail. Only when the public prosecutor is able to prove the guilt of the accused, only then the presumptions of Section 24 will be applicable i.e. the burden of proving that proceeds of crime are untainted property shall be on the accused.

It held that even in respect of PMLA cases, bail is the statutory right subject to certain conditions. If the ED chooses to oppose the bail, then it must prima facie establish foundational facts of the offence of Money Laundering in the Court of Law. It is significant to establish that the accused has been involved in the offence of Money Laundering. This framework has been laid in the Vijay *Madanlal* case and has been reaffirmed in the recent case of *Prem Prakash.*

Furthermore, the ruling can't be seen as a fundamental shift from the principle laid down in the case *Vijay Madanlal Choudhary* as in the present case, the Hon'ble Court has struck a balance between individual rights of liberty and rights of the state to protect integrity and sovereignty of the nation.

Future Directions: Strengthening PMLA's Framework

PMLA has been enacted as an anti-money laundering framework in order to protect the social and economic fabric of the nation and to safeguard the integrity and sovereignty of the country. Therefore, it is important that the law should be implemented in such a way that its machinery and soul are in sync with each other. Keeping in view the heinous and complex nature of money laundering, it is very important to strengthen its preventive and investigating mechanisms. In the era of digitization, offence of money laundering has assumed contours of anonymity and transnational footprints. Therefore, it is vital to have coordination and collaboration between various national and international agencies such as ED, Police, Income Tax. DRI, FIU, Financial Institutions and International Agencies for sensing early symptoms of money laundering and for speedy investigation along with capacity building of the personnel.

Such an approach will help in collecting evidences expeditiously to be presented before the Courts at the bail application stage so that provision of Section 45 can be applied in conformity and intent with the objects and the purposes sought to be by the PMLA Act, 2002 in appropriate cases to safeguard territorial integrity, sovereignty and economic stability of the nation.

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Maldivian Police System

MARIYAM MILNA*

"Understand, our police officers put their lives on the line for us every single day. They've got a tough job to do to maintain public safety and hold accountable those who break the law."

Barack Obama

Policing is not different in different parts of the world be it in India or Maldives. Just like the Indian police service, Maldives also has its Maldivian Police Service. Maldives Police Service was framed around 87 years prior, it was first settled by law in 1933, with just 120 cops working in the assistance. The principal obligation of the Police officials is to patrol the market territory and all around the island. Besides, they investigate the cases, maintain internal security, prevent any law-and-order problem, ensure free and fair elections and guarantee the fundamental rights of the citizens. Over the years, the number of youngsters joining the service has expanded and presently the assistance is possessing more than 6000 trained cops in the Maldives.

* *76 RR, Maldives Police Service.*

Use of technology

The Maldives police offer an app for its citizens called "Police MV," which provides various e-services, including the ability to report a crime, inquire about a case, apply for a police certificate, check the validity of a police certificate, inquire about towed vehicles, check parking tickets, report lost phones and vehicles, and access crime statistics. The citizens can also use the app to approach the '*neighbourhood police officer*; (similar to community policing & Mohalla policing in India).

Further, the police system also uses technology for investigating cases, data management and record keeping. The Police Information Infrastructure is used across Maldives to ensure coordination and connectivity among the police personnel. This is similar to CCTNS used in India.

Maldivian police, similar to Indian police, use body cameras while patrolling to ensure transparency and accountability of police. Maldivian police also use Artificial Intelligence for facial recognition technology for maintaining criminal databases and searching for missing people or dead bodies during disasters.

Specialization in Maldivian police

The Police system has different specialized departments like –

1. Central Investigation Command which has subsidiary departments like drug enforcement, economic crime investigation, family and child protection and gang crime investigation
2. Major crime investigation which includes anti-human trafficking department, death and homicide investigation,

serious and organized crime investigation, terrorism and violent extremism investigation

3. Under the investigation department, there is one specialized investigation support department which includes the Bureau of Crime Records, evidence management services, witness protection unit and victim support department which ensures more scientific, humane, data-based and victim-centric investigation.
4. Digital data and technology department includes an administration and training unit, Cybercrime centre, Data and Innovation center, Information systems, ICT projects and services, various centers of excellence with a specialized Research and Development wing.
5. Forensics services and crime scene investigation department with digital evidence laboratory, DNA laboratory, fingerprint laboratory, drug and chemical laboratory, evidence control and physical evidence laboratory for scientific examination of evidence.
6. Operational support command which includes canine department, Marine police, police custodial, protective security for special protection and diplomatic & critical infrastructure protection.

This specialization offers highly trained and competent officers while ensuring quality delivery of services to the citizens. Hence, issues of accountability and clarity of roles are also taken care of by this segregation of departments in policing.

Neighborhood policing

In 2018, the Maldives Police Service implemented a local area policing initiative incorporating neighborhood policing

strategies. Initially launched in the Greater Malé Area, this approach was expanded to the southernmost communities of the Maldives in November 2019. The primary objective of local area policing is to ensure the safety and security of the assigned neighborhoods through dedicated officers.

This model aims to foster a strong connection between the assigned officer and the community within their jurisdiction. Neighborhood policing is designed to enhance communication and build a close relationship between officers and residents, thereby improving crime prevention capabilities. Officers working under this system are stationed within the same neighborhood during their duty hours, which allows them to become more familiar with local issues and the community they serve.

Additionally, officers are expected to engage actively with residents, addressing concerns and resolving issues collaboratively. As part of this initiative, patrol units, or "petroleum beats," are also deployed in the designated areas under the supervision of the neighborhood officer, further strengthening community ties and operational effectiveness.

Challenges to Policing in Maldives

1. Political interference - Police are not able to use their power as defined by the Constitution of Maldives. The police are misused by the political powers to use excessive force on the people. This limits the rights of the citizens and puts the police in a bad light. For example - In 2011, a peaceful protest on May Day, triggered by rising inflation and the country's deteriorating economic conditions, escalated into violence when demonstrators clashed with the police. The police responded with force and tear gas, leading to the arrest of

several activists after five nights of unrest. On January 16, 2012, at the behest of President Mohamed Nasheed, the Maldivian military detained the Chief Justice of the Criminal Court for obstructing corruption prosecutions against former President Maumoon Abdul Gayoom. This action led to a 22-day protest at Republic Square, during which police were ordered to suppress the demonstrations with maximum force. However, reports indicate that some officers refused to comply with these orders, potentially due to political pressure. The situation escalated further when President Nasheed ordered the use of rubber bullets on protesters, which the police also refused. Eventually, President Nasheed resigned, triggering a counter-protest led by him and the Maldives Democratic Party. This protest was also dispersed with force. These events raised significant concerns about human rights abuses, excessive use of force, and policing practices during the February 8, 2012, protests.

2. Lack of coordination and coherence in intra and inter-departments because of specialization and compartmentalisation. Over-specialization leads to police personnel working in their specialized domains and not being experts in overall policing. The education cum certificate-based specialized workforce also creates a shortage of police personnel on the field to manage the groundwork.
3. Financial resources - Limited Budget due to Maldives' small economy limits the resources available for policing, including equipment, training, and personnel.
4. Island Isolation - The Maldives is a chain of islands, making it difficult to respond to incidents in remote areas. Further, the equipment, labs and specialized workforce that is available in the capital city - Male' is not available in other remote

locations. For instance, in the Maldives Police Service, there is just a single measurable lab situated in the fundamental capital city, all the proof gathered the nation over will be examined there as it were. From far away territories here and there, it requires nearly 30 days to present their proof to the lab for examination and delay in the examination cycle, hence delaying the whole process of investment and adjudication

5. Infrastructure Limitations - Limited infrastructure, such as roads, inter-island connectivity and communication networks hampers police operations.
6. Human resources - Due to the lack of specialized forces like NDRF in India, during any natural or man-made disaster, the police force is directed to tackle the issue at hand, sidelining the day-to-day law and order and policing work.

Maldivian police services tend to learn a lot from police services across neighborhoods including India, Sri Lanka, Singapore, etc. This helps in building expertise of Maldivian police personnel not only in one field but in a vast range of things like investigation, cyber crime, forensics, etc. making the police force competent to deal with modern-day issues and the evolving nature of crime. It also helps the MPS to learn the best practices of the Indian police service like –

1. Specialized and trained teams for fighting disasters and natural calamities so that police work may continue without any break. India has specialized and trained forces for quick action against cyclones, floods, storms, etc under NDRF and SDRF. Such a system can be followed by Maldives for better and smooth functioning of the system.
2. In the Indian state of Orissa, one feedback form is given to the citizens through SMS where the questions are framed

regarding police behaviour, responsiveness, quality of services delivered, any form of police deviance and their overall experience. Based on the feedback, actions are also taken to improve the service delivery further. This initiative helps maintain the trust of citizens in the police department and government as a whole. Maldives can also adopt this system to build trust and project transparency and accountability towards its citizens and Constitution.

3. In India, the government provides housing and transportation facilities for the officers and health and education facilities for the families. This ensures that police personnel are motivated and are not worried about the basic needs, allowing them to focus on their job. However, in Maldives, no police personnel get housing facilities from the government, which makes transfers a hassle and creates a hurdle for officers to deliver their best. Hence, Maldives can adopt the Indian system to ensure ease of living for its police force.

Conclusion

The Maldives Police Service, while relatively young, has made significant strides in modernizing its operations and adopting best practices from international police forces, including India. Despite facing challenges such as limited resources, island isolation, and political interference, the MPS has demonstrated a commitment to improving its services and ensuring the safety and security of its citizens.

By implementing initiatives like neighborhood policing, utilizing technology, and specializing its workforce, the MPS is willing to adapt to evolving policing needs. However, addressing the challenges posed by political interference, resource constraints,

and infrastructure limitations remains crucial for the long-term sustainability and effectiveness of the Maldivian police force.

As the Maldives continues to develop and face new challenges, the MPS must remain vigilant in its efforts to maintain public safety, protect human rights, and build trust within the community. Through ongoing reforms, collaboration with international partners, and a commitment to accountability, the MPS can continue to play a vital role in the development and prosperity of the Maldives.

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The Unholy Nexus Between Human Trafficking and the Fraud Epidemic

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The Southeast Asian region has emerged as a hub of a peculiar kind of transnational organised crime (TOC) in recent years. The new and growing trend points to persons being trafficked and forced to commit online scams and financial fraud, particularly occurring in the Special Economic Zones (SEZs) largely prevalent in Cambodia, and Lao PDR among others in the region. Though this phenomenon has already been identified in many parts of the world, it has become recently prominent in Southeast Asia. The information about this trafficking started trickling in 2021 from media reports on the scam compounds of the region.

The peculiarity of this type of forced criminality after trafficking is enhanced by its very open operation. These illicit activities are linked to various legal and illegal entertainment establishments, such as casinos, hotels, and registered businesses which operate from compound-like buildings where victims are

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held and forced to commit cyber-enabled crimes. The United Nations Office on Drugs and Crime (UNODC) 2022 Global Report on Trafficking in Persons has put trafficking in persons for forced criminality at 10.2% of all reported trafficking cases globally.

The UNODC defines Human Trafficking as the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, to exploit them for profit. It has to be noted that exploitation in criminal activities within the trafficking definition is not explicit in the definition of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking in Persons Protocol). However, only a few countries have adopted this form of exploitation in their domestic laws. Malaysia is the only country in Southeast Asia to do so.

In the context of Trafficking In Persons (TIP) online scam centres in the Southeast region, the UNODC reports about criminal syndicates collecting profits at low risk by forcing victims to carry out illegal activities. The activities include cyber scams, investment frauds, honey trapping etc. The casino complexes and SEZs in Cambodia and Laos provide the necessary crime infrastructure for the boom of scam compounds within such complexes.

Victims from Africa, the Middle East, and South America have been identified at the scam compounds. This victim profile shows that it is a global problem. TIP is just one part of TOC that is growing in Southeast Asia. It is intertwined with the operations of casinos, money laundering, corruption, cyber-enabled crimes, and other criminal offences such as torture and extortion.

The involvement of multiple countries, unreported human trafficking, and the nature of cyber frauds make it a legal challenge

for the enforcement authorities. This article talks about the modus operandi of such trafficking, the legal challenges, the need for international cooperation, strengthening domestic laws, and help in the victim identification process.

Understanding the Modus Operandi of Trafficking Networks

The trafficking networks adopt a sophisticated and precise modus operandi spread over spatial and temporal aspects to entrap the potential victims. The mechanisms of forced criminality encompass the following stages -

1. Recruitment: People are recruited by someone they know, like friends, family, or local agents, with the promise of a good job abroad. The job offers are shared through social media platforms. The recruited person might be well-educated, have professional skills, and speaks several languages. Some job offers ask for qualifications in marketing, IT, or human resources, while others require basic social media and computer skills.
2. Transportation: The person might rely on someone else for guidance, unsure of what to say or do. They could enter one country legally, and then be guided to cross into another country illegally, for example from Thailand to Myanmar, without knowing it. In some cases, they are given new ID documents, possibly fake ones.
3. Harbor and Receipt: The person might be picked up and transferred to another location by people they have never met before. They could be taken to or kept in places like hotels or casinos which are mostly in the safe havens of SEZs.
4. Means: The most common problem seen is deception, fraud (about the job), coercion, physical and emotional abuse, use of

force, threats, blackmail, and taking advantage of vulnerable people. Committing crimes of online fraud

5. Committing crimes of online frauds: The victim is forced to do online or phone-based tasks that involve scams and fraud. These activities include things like illegal gambling where they create fake profiles, build relationships, and convince people to invest in fake schemes, often using cryptocurrency. Other tasks might involve fake loans through apps or making cold calls to unsuspecting people.

For instance, the Tamil Nadu Police rescued 13 people of their state from a job racket in Myanmar in 2022. The victims narrated how they signed a one-year contract and had their passports seized. The said company engaged in cryptocurrency fraud. The modus operandi was to create fake accounts in the name of models and lure rich businessmen who have registered on dating apps. They were then convinced to invest.

Legal and Enforcement Challenges

The response of states to the problem of trafficking for forced criminality can be understood in terms of the legal framework surrounding the issues like initial identification and release of potential victims, formal victim identification, victim protection and repatriation, investigation and prosecution of offenders, regional cooperation and prevention. There are various gaps and challenges within the above responses.

Firstly, the initial identification of potential victims of trafficking for forced criminality is hampered as the police are reluctant to intervene in the scam compounds as they are located within the SEZs. Even in cases where they manage to gain access, they only seek the release of specific individuals whose names have been

listed in the reports from NGOs, victims' families or embassies. Further, there are no SOPs for the conduct of rescue operations.

Secondly, the issue of formal victim identification has not fully evolved. The authorities here treat complaints from the trapped victims as contract or labour dispute issues. Traffickers conveniently issue employment contracts to deceive the unsuspecting victim as well as authorities. But we need to recognise that it is an attempt of the criminal groups to legitimize their illegal operations. Moreover, after their release, the victims are promptly deported to their country of origin due to a lack of material evidence of their trafficking experience. It leads to two negative outcomes – poor investigation of the crime network and punishing the victims for their forced criminality leading to further victimization.

Thirdly, the concept of victim protection and repatriation which is seen in cases of human trafficking is largely absent for victims of trafficking for forced criminality. These include shelter, healthcare, psychological counselling, legal aid, and compensation. Most of the victims are treated as irregular migrants and as potential criminals. Punishing the victims for forced criminality creates a double whammy by discouraging them from seeking assistance and emboldening the organized crime groups to act with impunity due to the transfer of legal responsibility. It is violative of the key principle of non-punishment to victims. The repatriation of victims is successful only when the government of the country of origin has a good liaison with the destination country for paying immigration fines and repatriation flights.

Fourthly, the investigation and prosecution of offenders are largely limited to recruitment agents in the country of origin. Further, obtaining evidence from scam compounds in SEZs is very

challenging. When raids are conducted, there is no legal mandate to collect items for investigation. The poor investigation and prosecution of criminal networks have led to their proliferation in the region. Moreover, there is no consensus on whether an individual is a victim of trafficking due to the lack of joint investigation between the country of origin and destination. There are no SoPs to distinguish victim from perpetrator.

Fifthly, the regional cooperation for rescue and repatriation of victims is largely confined to bilateral processes to overcome the issues of immigration fee payment and penalties. There has been a high-level meeting among the ASEAN members to initiate the development of a strategic roadmap to respond to transnational organized crime and the trafficking of persons for forced criminality.

Overcoming the legal challenges to establish TIP:

The aim of victim identification should not be punishment for crimes they were forced to commit under coercion after trafficking. It should rather be support and protection of victims The three core elements as per the TIP Protocol are the Act, the Means and the Purpose. TIP is a complex activity and can not be established by the presence of a single indicator. Having multiple indicators is crucial to establish links between various stages of the trafficking activity.

Further, the presence of an employment contract does not negate the fact that a person has been trafficked. It can be used to establish the 'means' used to traffic a person. It can thus be used to counter the definitions in the domestic trafficking definitions.

A peculiar aspect of this category of trafficking is the exploitation of the victims to commit criminal offences. If such an

offence does not feature in domestic legislation, charges dealing with slavery or forced labour can be pressed based totally on the evidence and the victim's experiences. The UNODC recommends amends to the domestic legislation to recognise such crimes for better deterrence.

Firstly, we should develop new bilateral Memoranda of Understanding (MOUs) to address the evolving challenges of trafficking. This includes recognizing the phenomenon of trafficking for forced criminality and adapting to changing trafficking routes, where countries traditionally considered as sources are increasingly becoming destinations.

Additionally, establishing MOUs and Standard Operating Procedures (SOPs) at local levels—such as provincial and district—along with drafting clear guidelines will enhance the efficiency of cross-border victim identification, release, protection, and access to justice.

Furthermore, victim identification and rescue efforts should be proactive. Law enforcement agencies should not wait for complaints from victims, their families, or embassies. Instead, they should actively identify suspected trafficking sites and conduct raids to secure victims' release.

It is also essential for embassies to play a coordinated and proactive role in identifying and protecting victims. Standardizing victim identification criteria tools across Southeast Asia will help ensure consistency and effectiveness in these efforts.

Finally, victims who have been wrongfully included on immigration blacklists should be removed to restore their rights and facilitate their protection.

The Way Forward: Improving Regional and International Responses

To combat organized crime in Southeast Asia, particularly online fraud and trafficking for forced criminality, it is necessary to strengthen law enforcement capacity and investigation process. Specialized units should be established at the national level, involving different agencies so that information can gathered from all agencies and can be used for tackle human trafficking.

To tackle the online scams and fraud, collaboration with cyber and technology companies is essential. This partnership can complement law enforcement agencies' capabilities in investigations and prosecutions. Furthermore, debriefings with rescued and repatriated victims should be conducted to collect and document intelligence, which will be helpful during investigations and prosecutions. This will also help in better understanding of trends in human trafficking.

Investment in improving financial and technological literacy, especially in communities vulnerable to criminal groups linked to casinos and scams, is crucial. At the regional level, strategic dialogues among ASEAN and other affected states should be continued to ensure political leadership and commitment for addressing transnational organized crime.

Additionally, Southeast Asian states should develop a centralized database to store and share critical information, enhancing cross-border cooperation. Standard operating procedures (SOPs) should be established to ensure efficient and consistent responses from relevant state entities at both domestic and regional levels.

With the proliferation of technology, the avenues for cybercrime also increase. However, the use of human trafficking to enable this forced criminality is an alarming trend and needs to be addressed with great alacrity. It is as much an issue of crime as that of human rights. There is an urgent need to develop a coordinated response among the stakeholders, capacity, and SoPs in law enforcement agencies to deal with this growing menace.

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Deception and Consent: Examining Rape Under the Pretext of Marriage

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In recent years, the intersection of sexual consent and deceptive practices have taken a particularly insidious form of exploitation. These are cases where the act of sexual intercourse is conducted under the false promise of marriage. This offense, often described as rape under the pretext of marriage, involves a perpetrator engaging in sexual activities with a partner while deceitfully promising marriage, only to later retract or fail to fulfil this promise.

This situation involved considerable legal and ethical issue involving deceit, manipulation and polluted consent. The introduction of Section 69 of the Bhartiya Nyaya Sanhita ('BNS') specifically addresses this issue by filling a certain vacuum under the erstwhile architecture governing rape laws under the Indian Penal Code (IPC).

Legal Interpretation of Consent Under IPC

Section 375 of the IPC outlines the definition of rape. As per the section, sexual intercourse is considered rape if it occurs

*IPS (Probationer) 76 RR, Chhattisgarh Cadre

without the consent of a person or where the consent is obtained through coercion, deceit, or any means of fraud. Moreover, the provision also provides that consent should be an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act.

The Supreme Court in a catena of cases has also held that consent should be informed, voluntary and free of any deception.[1] In other words, consent obtained through deceit or misrepresentation is not considered valid under the law. Thus, when consent for sexual intercourse is secured under a false promise of marriage, it is considered rape.

Before the introduction of the BNS, false promises of marriage were dealt with under Section 90 of the IPC, which states that consent given under a misconception of fact is not valid consent. Section 90 provides that a consent is not such a consent if it is given by a person under fear of injury, or under a misconception of fact. Therefore, the act of false promise leading to sexual intercourse would be prosecuted under Section 375 of the IPC read with Section 90 of the IPC. However, proving this offence posed challenges for the prosecution, particularly in establishing the accused's intention not to marry. Moreover, the malafide intention has to be distinguished by the conduct of the accused for the court to draw a conclusion regarding the commission of offence The courts also have to draw a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but

[1] *Deelip Singh v. State of Bihar, (2005) 1 SCC 88; Uday v. State of Karnataka, (2003) 4 SCC 46, 58.*

subsequently not fulfilled. This is pertinent because only a false promise to marry made with an intention to deceive a woman would vitiate the woman's consent being obtained under misconception of fact, but a mere breach of promise will not amount to a false promise. The Courts have faced a tough dilemma to identify the original intention of the accused and as a result the possibility of bonafide promises being punished but malafide promises going unchecked always remains. However, the Court over a catena of cases have tried to laid down certain criteria to resolve this dilemma.

For instance, in the case of *Deepak Gulati v. State of Haryana*[2] the court ruled that any ruled consent obtained through deceit, particularly with the intent to marry, renders the consent invalid. It also clarified that fraudulent promises or misrepresentations related to marriage could invalidate consent. Similarly, in the case of *State of Uttar Pradesh v. Chhotey Lal*,[3] the Supreme Court held that consent obtained through deceit does not constitute valid consent. The decision emphasized that fraud undermines the nature of consent, which is crucial for determining whether the act constitutes a criminal offense.

In the case of *Sidhartha Vashisht v. State (NCT of Delhi)*[4] where the fact revolved around a situation where deceit about one's identity was used to obtain sexual consent., the court held that consent given under deceitful circumstances is not valid. The Court found that the nature of deceit impacts the authenticity of consent, therefore leading to criminal implications.

[2] *AIR 2013 SC 2071.*
[3] *AIR 2011 SC 697.*
[4] *(2010) AIR 2010 SC 2352.*

At the same time, the Supreme Court has also highlighted how the law has been misused and circumstances matter a lot in deciding the commission of offence. For instance, in the *Sidhartha Vashisht* case, the Supreme Court clarified the standards for determining whether deceit undermines consent. The Court acknowledged that while deceit can impact the validity of consent, the specific circumstances and evidence must be considered. In some cases, the Court may find that the deceit was not significant enough to invalidate consent, depending on the facts presented.

Similarly, in *Deepak Gulati v. State of Haryana*,[5] the Supreme Court ruled that a promise to marry, if made in good faith and later not fulfilled, does not necessarily amount to criminal deceit. The Court will consider in such cases, whether the promise was made with genuine intent and whether the complainant's expectations were reasonable. The ruling indicated that not all deceitful promises result in criminal liability, especially if there is no intention to deceive.

In the case of *Dhruvaram Murlidhar Sonar v. State of Maharashtra,* [6] the apex Court held that in all such cases the Court must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. The court ruled that, '*if the accused has not made the promise with the sole intention to seduce the woman to indulge in sexual acts such an act would not amount to rape.'*

[5] *Supra 2.*
[6] *AIR 2019 SC 327.*

The Introduction of BNS: Changes and Implications

As we have seen from the above cases, under the IPC due to absence of separate provision, rape by false promise of marriage cases were decided by joint reading of multiple provisions associated the rape and consent. It also led to increase in the discretion of the Court which had to take multiple relevant factors into consideration. The BNS now has not only made it a separate offence but also broadened the scope of offence. Section 69 of the BNS states:

> "*Whoever, by deceitful means or making by promise to marry to a woman without any intention of fulfilling the same, and has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."*

The provision further clarifies that "deceitful means" shall include the false promise of employment or promotion, inducement or marrying after suppressing identity. Hence, The BNS has diversified concept of false promise to marriage, employment/promotion and inducement. Certain illustrations of the same can include –

- Sexual intercourse under false promise of employment- Casting Couch, sexual favours in a job interview etc.
- Promotion - A supervisor tells an employee that sexual favours are required for a promotion. The employee consents to the sexual act under the belief that it will secure her promotion, which constitutes inducement.

- Inducement- An individual threatens to leak compromising photos or personal information unless the victim agrees to have sex with them. The victim consents under duress, making the sexual activity a result of inducement,
- A financially dependent person is coerced into sex by someone who controls their financial resources, with the promise of financial support or stability if they comply,
- An individual falsely claims that sexual activity is necessary for health reasons or reassures the victim that there are no risks involved, leading the victim to consent based on false information,
- A person pretends to be single or available for a serious relationship to engage another person in sexual activity, while in reality, they are in a committed relationship or otherwise unavailable etc.
- Marrying- person having sex with woman with mala fide intention to never marry her but promises her to marry.

All these offences would be punished effectively under the BNS.

The Debate: Will BNS Bring Effective Change?

The new provision holds tremendous potential to rectify ongoing injustices against vulnerable women. In states like Punjab, many women fall prey to non-resident Indians (NRIs) who promise marriage, engage in sexual relationships, and later disappear or abandon the marriage promise altogether. According to a Parliamentary Standing Committee Report, Punjab has 14% of such cases, with approximately 10,000 similar cases occurring annually across India (as per the NCRB).

In addition, numerous cases of other deceitful means like casting couch, sex favours for a job or promotion, under

inducement like demanding sexual favours under threat of leaking personal or intimate photos or videos or having sexual intercourse by suppressing identity etc can be criminalised effectively and ensure justice for the victim. By criminalizing such actions under the BNS, justice for victims can be more effectively ensured.

However, certain challenges remain. The fine line between consensual intercourse and rape will continue to challenge courts, which must carefully examine factors such as malafide intention and the nature of the promise. Additionally, the law could be weaponized in cases of failed relationships or as a tool of revenge, further complicating legal proceedings.

To address this concern, the Supreme Court in *Mandar Deepak Pawar v. State of Maharashtra*[7] held that a consensual physical relationship based on a genuine promise of marriage that was later not fulfilled does not constitute rape. The Court emphasized that to establish a charge of rape, it must be shown that the man gave the promise of marriage in bad faith, with no intention of fulfilling it.

The Supreme Court bench of justices Dhananjaya Y Chandrachud and MR Shah elucidated the legal position while exonerating a 30-year-old man of the rape charge under Section 376 of the Indian Penal Code. The bench said that to establish that the consent of a woman for a physical relationship was obtained by fraud and misconception of fact through a false promise of marriage, it was necessary to show that the man gave the promise in bad faith and never had any intention of marrying his girlfriend. "*Every breach of promise cannot be said to be a false promise*," underscored the bench.

[7] *2022 LiveLaw (SC) 649.*

The Way Forward: Balancing the Rights

While the potential for misuse exists, Section 69 of the BNS serves as a powerful tool to curb sexual exploitation through deceitful promises. It provides greater legal protection for women while reducing the judicial discretion that previously complicated such cases. As Martin Luther King Jr. once said, "Laws are not to change the heart but to restrain the heartless." This provision aims to protect those who are vulnerable to exploitation, even if it cannot eliminate all wrongdoing.

The Supreme Court of India has consistently ruled that consent obtained through deceitful means is not valid. Deceit undermines the integrity of consent, impacting whether the sexual act is considered consensual or criminal. The Court has clarified that consent in sexual matters should be based on honesty and transparency. For this, the nuances of each case, including the nature of the deceit, the intent of the accused, and the evidence presented are crucial in determining the outcome.

The law, however, must evolve to ensure fairness for all. The police must ensure conduct of unbiased investigation without prejudice. As a personal proposal, I advocate for making the concept of rape under false promise of marriage and other deceitful means gender-neutral. This would ensure that men who are also victims of sexual exploitation receive justice, thereby fostering a more equitable legal system.

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Community Sentencing: An Unexplored Alternative to Imprisonment

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The 'Rule of Law' is basis for any democracy and is the basic feature of the Indian constitution, yet the country ranks 79th out of 140 countries in the Rule of Law Index by World Justice Project. Indian criminal justice system is based on the premise '*abhor the crime not the criminal*', yet retributive punishment gains more momentum in our criminal jurisprudence. Retributive justice not only forms the forefront of Indian criminal laws, but with increasing crime rates it is also understood as a better form of crime prevention method by public as well. This can be seen from the increasing incidents of mob violence, encounter killing, custodial torture, protesters demanding death penalty for sexual offences among others.

In this context, introduction of community sentencing in Section 4(f) of Bhartiya Nyaya Sanhita ('BNS') has opened the scope of discussion regarding array of punishments and penalties that can serve as an alternative to imprisonment. Community sentencing refer to making offender do unpaid work for the community welfare. It is also referred as community payback.

* *IPS (Probationer) 76 RR, Gujarat Cadre*

There is a pressing need to explore alternatives to imprisonment in Indian Criminal Justice System. While some measures like bail, parole, probation of offenders, and others have been explored, community sentencing remains the least explored area. Introduction of community sentencing in BNS is a welcome step, but there is much more that is needed.

Community sentencing is practiced in the cases involving petty offences, juveniles, pregnant women, mother of young infants, alcohol and drug addicts, patients of mental illness etc. In the aforementioned cases reformation is more beneficial to the society and to the offender rather than retribution. Although justice to the victim and cost of crime (cost that society bears) should be primary criteria for determining punishment, there are other factors that are pertinent as well. For instance, these factors are: nature of offence, monetary loss caused due to offence, first time offender or repeat convict, age and social background of the offenders, among others. Retributive system based on retaliation narrowly considers revenge as punishment. However, the punishment may have deeper impact on psychology of the offender, which might be much greater in proportion than the offence committed which may lead to recidivism. Therefore, this ironically increases the crime rate rather than resolving the issue.

Moreover, cost of punishment is often not considered while announcing sentences. Cost of punishment includes lodging, transportation, food, and other costs that the prison system bears. Thus, overburdening the prison system, and state exchequer. In this background this article aims to discuss the newly introduced provision of community sentencing in BNS.

This article aims to explore various dimensions of community sentencing. Part I of the article analyses basic premise

and concept of community sentencing along with its utility in the India context whereas part II analyses various attempts made in India to bring it in the mainstream. It further discusses new provisions of BNS which introduces community sentencing. Part III discusses various challenges in implementation of community sentencing. Further, part IV aims to juxtapose community sentencing in India against the experiences with the system of community sentencing in UK. Part V will explore scope and future prospects of community sentencing in India. This will be followed by the conclusion on how to go forward with the reformative approach.

Community Sentencing as an Alternative to Imprisonment

Community sentencing, also known as community service, is part of an array of alternative sanctions to imprisonment. It is defined as a form of non-custodial punishment for offenders to undertake unpaid work for a certain number of pre-determined hours. In case of community sentencing, various types of work of social importance like cleaning, gardening, painting, teaching, removing graffiti from the walls and other such items are assigned to the offenders according to their skills and suitability. Such sentences are usually meant to be given to first-time offenders, convicted for less severe offences, instead of awarding a short-term sentence or fine.

To understand community sentencing, it is important to understand how it is different from various other types of punishments. First, let's examine the comparison between community service and the concept of open prisons. While open prisons require a structure as well as burden on the administration to find lodging and employment. This is not present in the case of

community sentencing. Here, the offenders continue to reside at their residence and at the same time undertake task ordered by trial court. It is important to note that community sentence is not a full-time employment but only a service for the welfare of the society.

Second, a noteworthy difference can be drawn from the already existing Probation of Offenders Act, 1958, where the offenders are released from prison on the bond for good behaviour. However, in community sentencing the concept of neither prison nor bond exists.

Given the existing alternatives, one might wonder why there is a growing emphasis on the need for community sentencing in our criminal justice system. The established rule of penology is firmly based on harsh punishment. Various theories of criminology focus upon severity of the punishment. However, if looked closely, the definition of punishment given by Herbert Hart in his book Punishment and Responsibility,[1] punishment constitutes the following five elements. First, pain, which is unpleasant; second, administered for offence against the legal provisions; third, administered to offenders or supposed offenders who has committed offence; fourth, intentionally inflicted by person other than offender and; fifth, administered by legal authority.

Thus, elements of punishment have less to do with its harshness and more with the deterrence it creates, its legality, and its effectiveness. Community sentencing fits well in these parameters.

There already exists multiple forms of punishment, thus it is pertinent to ask that why community service matters. *Firstly*, from

[1] *Hart, H. L. A. (1968). Punishment and responsibility: Essays in the philosophy of law. Oxford University Press.*

experience of other countries it is proven to be a more effective method of punishment for minor offences, as it not only protects the offender from 'labelling' but also reduces the possibility of recidivism. This can further be elaborated by explaining its significance. Prison Reform Trust (UK) held a consultation on effectiveness of community sentencing. It stated that *"success of community sentences are now outperforming short prison sentences and are 8.3 % more effective in reducing re-offending rates. The best way to do so is to identify the elements that work particularly well: intensive supervision, community payback, restorative justice, developing personal responsibility, and dealing with support needs such as housing, employment, addictions, mental health and learning disabilities and difficulties".*[2]

Further, in 1771, John Howard, in his book *'The State of the Prisons in England and Wales'* wrote that "*prisons are the schools for crime*".[3] This new form of alternate sentencing would prove effective in the protection and reformation of convicts. Community sentencing is commonly used for petty offenses, juveniles, pregnant women, mothers of young infants, those with alcohol and drug addictions, individuals with mental illness, and other similar cases. In these situations, rehabilitation is more advantageous for both society and the offender than punitive measures. In a study conducted by the BPR&D in the year 2020-21, contemplation on '*Alternatives to Custodial Sentences for Mothers'*, suggested that to protect women prisoners from the collision effect of Prisonization, alternatives to imprisonment such as Probation service and

[2] *Gov.uk. (2023). Community sentences. https://www.gov.uk/community-sentences.*

[3] *Howard, J. (1777). The state of the prisons in England and Wales. William Eyres.*

community service order are the best ways to provide relief from the social stigma attached to incarceration.[4]

From the point of view of victimology, community service as a punishment is only for minor offences and therefore does not create an imbalance in the society. In various countries community sentencing also includes payment of reparation to the victims, which further achieves the objective of monetary justice.

Moreover, from the point of view of cost of punishment, it is a viable solution to the already overcrowding prisons, thereby saving cost of prison infrastructure. The Ministry of Home Affairs says that prison overcrowding is more often a result of the criminal justice system's administration than rising crime rates. The main factors contributing to overcrowding are the overuse of pre-trial detention and strict sentencing practices. According to the National Crime Records Bureau (NCRB), India's prisons were 131% full as of December 2022, which is a one percentage point increase from 2021. Community sentencing is a viable option against strict sentencing practice against petty offences.[5]

In all, one can say that the idea of community sentencing is an evolution towards a more humane and just criminal justice system. In addition, it does not overlook victims' perspective and effectiveness of deterrence in criminal justice system as well.

Exploring India's Journey with Community Sentencing

[4] *Bureau of Police Research and Development. (2020-2021). Outcome of 8 research studies completed by BPR&D in 2020-21.*

[5] *Bureau of Police Research and Development. (2024). Overcrowding in prisons.*

In 1997, the 156th Law Commission Report suggested amending Section 53 of the Indian Penal Code, 1860 to include 'community service' as an alternative to imprisonment, though this recommendation was never implemented. However, legal jurisprudence has since then embraced community service as a significant condition for bail.

In the case of *Sunita Gandharva v. State of MP*,[6] Madhya Pradesh High Court considered whether the scope of bail conditions under Section 437(3) CrPC should include community service. The court ruled in affirmation, stating that the phrase "*any other conditions in the interest of justice"* in Section 437(3) gives courts the authority to direct offenders to perform community service or other reformative actions. It was also noted that such conditions could be "innovative" but must be voluntarily accepted by the accused, with the court considering their ability and willingness. In *Giljar Singh v. State of MP*[7], the High Court granted bail under Section 188 IPC with the condition of installing a water harvesting or recharge system. Similarly, in *Banti Jadhav*, a bail condition under the MP Excise Act required service at a primary health center, and in *Shiv Kumar v. State of MP*[8], the court imposed a condition to plant saplings when granting bail under Section 307 IPC.

This approach aligns with the Hon'ble Supreme Court's stance in *Pappu Khan v. State of Rajasthan*[9], where it was emphasized that a welfare state cannot sustain a large, non-productive prison population as it burdens state resources. The

[6] *2020(3) MPLJ (Cri.) 247.*
[7] *M.Cr.C. No.29827/2019 (Madhya Pradesh HC).*
[8] *Criminal Appeal No. 1503 of 2022.*
[9] *2005 CRILJ 4732.*

Court highlighted the importance of reforming prisoners by teaching them skills to secure a livelihood upon release. In *Babu Singh v. State of UP*[10], the Supreme Court further encouraged restorative measures, such as community service, meditation, or study classes, to aid in the rehabilitation of offenders.

The only legal recognition of community sentencing was through Section 18(1)(c) of the Juvenile Justice (Care and Protection of Children) Act, 2015, which provides for community sentencing for convicted minors. Under Section 64A of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS'), there exists immunity from prosecution to addicts volunteering for treatment, who are charged with an offence punishable under Section 27.

A landmark development in this regard has been inclusion of community service in BNS. Section 4(f) of the BNS, introduces community service as a new form of punishment. BNS provides for 'community service' as a form of post-conviction punishment for various offences including minor theft, defamation, attempt to suicide, public misconduct among others.

Challenges in Implementing Community Sentencing in India's Legal Framework"

In India, community sentencing is at its very nascent stage. It finds its place in judicial pronouncements and has been further concretized through Bhartiya Nyaya Sanhita, 2023. However, this doesn't eliminate the need for a proper framework for implementation of community sentencing. Some of the questions that crop up are: What will be the guidelines for community

[10] *1978 AIR 527.*

sentencing? What constitutes community sentencing? Whether there will be a distinction between hard community service and soft and hard community service? What happens if someone fails to obey the guidelines of community sentencing? Does trial courts still have discretion to grant community service as a condition for bail? When there should be imprisonment? etc. These are some of the challenges, regarding lack of clarity with respect to community sentencing.

Due to the legislative vacuum regarding community sentencing, there exists various discrepancies that arise at the level of judicial pronouncements as well. For instance there are cases where the court has directed to marry or tie *rakhi* to the accused in rape cases.

Malimath Committee noted lack of uniform guidelines for sentencing punishments. This problem has further lead to pronouncement of different degree of community service in by different courts for similar offences. Thus, there is a need for provisions which can form basis of the judicial pronouncements.

Learning from the UK Model of Community Sentencing

It is pertinent to look at one of the most successful models of community sentencing i.e. the UK model. Through this model we can draw ideas and inspiration with respect to forming a legislative and policy framework for community sentencing in India.

This article examines UK's model of community sentencing for two reasons. *First*, the model has worked very well in their country. This can be substantiated by the consultation held by Prison Reform Trust (UK). It found that "success of community sentences are now outperforming short prison sentences and are 8.3

% more effective in reducing re-offending rates. Further it was found that the wraparound support offered to female offenders after due recognition of their circumstances have cut down reoffending rate to 5% as against national average of 23% in the country.[11] In 2022, around 69,000 offenders were sentenced to a community sentence, which constitutes 7% of the total offenders sentenced to imprisonment.[12]

Second, laws of United Kingdom have been foundational principles especially with respect to Indian criminal laws and therefore their practices are best suited for incorporation under the Indian criminal framework. Mentioned below are the some of the essential features of community sentencing in UK:

1. The court must look at the objective criteria while sentencing an offender who is above 18 years of age. This includes deterrence effect; reform and rehabilitation; protection of the public; reparation by the offender to the victims and people affected by their crime.
2. Once a community order has been served by the Court, the Probation Service leads on its delivery. The Probation Service is an executive agency of the Ministry of Justice, in charge of supervising all offenders in the community, including those serving community sentences.
3. Section 201 of the Sentencing Act, 2020 lists down the requirements that can be attached to a community order served to an adult offender: This includes unpaid work requirement, rehabilitation activity requirement, programme requirement,

[11] *Bureau of Police Research and Development. (2020-2021). Outcome of 8 research studies completed by BPR&D in 2020-21.*

[12] *Sentencing Council, Community sentences – Sentencing.*

prohibited activity requirement, curfew requirement, exclusion requirement, residence requirement, foreign travel prohibition requirement, mental health treatment requirement, drug rehabilitation requirement, drug testing requirement, alcohol treatment requirement, alcohol abstinence and monitoring requirement, attendance centre requirement, electronic compliance monitoring requirement, electronic whereabouts monitoring requirement.

4. Community rehabilitation service has been outsourced to third parties like NPOs for effective implementation.
5. There are two monitoring systems, probation officers monitor the offender, and in case they fail to fulfil the court mandated obligations then there exists a system of fines, penalty, harsher community service and even imprisonment. Another, arm of monitoring aims to supervise '*community rehabilitation services'*, this is done at the macro level by Ministry of Justice

Thus, important features of community sentencing system in UK are community payback (unpaid work for community); treatment and programmes for those who suffer from mental illness and addiction; provisions for cancellation of community sentencing if rules are not obliged; and use of community sentencing if offender is under 18 years of age.

Future Prospects and Applications in India

The court diversion programs represent an innovative approach in the legal system, aimed at redirecting certain offenders away from traditional criminal justice processes, towards alternative interventions. This approach seeks to address the underlying issues that contributes to criminal behaviour, such as substance abuse, mental health problems, or social challenges,

through tailored support and rehabilitation programs. By doing so, it aims to reduce recidivism, alleviate the burden on the court system, and provide more constructive and individualized outcomes for offenders. In pre-trial stage itself, the charges are reduced or dismissed in exchange of court mandated community service.

Furthermore, community sentencing can be considered as part of plea bargaining. Various offences in BNS where the monetary cost is lower than a pre-decided threshold, community sentencing can serve as an alternative punishment. Some of these offences can be affray, creation of obscene acts and songs, negligent conduct with the animals, and such others. Additionally, under Section 27 of NDPS Act, community service along with already existing rehabilitative programmes is suggested. There is a need to amend Motor Vehicles Act, 1988, to include community service as a punishment in cases of drunk driving; over speeding; jumping red light; overloading vehicle; etc. Moreover, amendment to Probation of Offenders Act, 1958, is needed to form a concrete framework to implement community service. This will help to fill the legislative vacuum that exists today.

Adopting a Rehabilitative Approach

Police would play a crucial role in implementing community sentencing and must be properly educated about its effectiveness. Additionally, the judiciary would need to act as a guardian to ensure strict adherence to the orders and provisions of community service. Courts would need to strike a balance between corrective and deterrent measures based on the specifics of each case. It's also essential to ensure that while community sentencing is promoted, the discretion given to the courts isn't exploited by

privileged individuals to manipulate the justice system. Furthermore, the State cannot implement community service sentences on its own; strong community support is necessary to truly reform the justice system. Therefore, fostering a reformative approach within all state institutions and society is essential for realizing the objectives of community service sentences once they become an accepted part of criminal sentencing in India.

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Firm, Fair and Flourishing: Future of Forensics under the BNSS

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Forensic evidence plays a critical role in the criminal justice systems across the world. It is more than a mere crime-solving tool, but has a larger purpose in the criminal justice system, including supporting the establishment of the facts of the case, clearing the unfairly accused, and identifying the offender. The range of forensic evidence is extensive and covers digital, biological, toxicological and ballistic evidence. In broad terms, anything that can be used in a court of law and was gathered using scientific methods is considered forensic evidence. However, each such evidence comes with a distinctive set of issues pertaining to its gathering, analysis, and presentation. India's first DNA exoneration, the landmark case of *Anokhi Lal v. State of Madhya Pradesh*,[1] highlights the hazards of misleading forensic interpretation. Here, the accused was convicted and sentenced to death twice for the same offence - the rape and murder of a nine-year-old girl - before being exonerated, largely based on the cross-

* *IPS (Probationer) 76 RR, AGMUT Cadre*

[1] AIR 2020 SC 232.

examination of the DNA expert who prepared the concerned forensics reports.

As the Bhartiya Nagarik Suraksha Samhita, 2023 (BNSS) approaches forensics with a heightened sense of urgency, the science is set to expand itself with a new found vigour. Yet, there are challenges. These include the infrastructure constraints, requirement for qualified specialists, and the justice system still getting used to the subtleties of scientific testimony. As we look towards the future, the potential that forensics has to contribute to the legal system is huge, all we need is a committed effort. In this article, we will examine the changes which have been introduced under the BNSS, and the related issues and challenges that need to be addressed. The last part of the article explores some solutions and looks towards the future of forensics in India.

The upgraded legal regime under the BNSS, 2023

It is a stated aim under BNSS to use forensics and new technology in the criminal justice system. BNSS has expanded the power of the state to collect forensic evidence from crime scenes as well as individuals, while also reducing the need for oral testimony of forensic experts. In this part, we'll delve into the major changes introduced under BNSS.

1. Enhanced Evidence Collection from Crime Scenes

Under Section 176(3) of BNSS, it is mandatory to cause forensic evidence present at the crime scene to be 'collected by a forensics expert' in all offences where prescribed imprisonment is of seven years or more. A five-year period for the implementation of the provision is also provided, given that the current capacities of some states would not be able to fulfil this requirement.

Given the lack of statutory regulations on crime scene management, the introduction of this Section is significant. Currently, modes of collecting evidence vary across states. In some, scientific staff from state Forensic Science Laboratory or District Forensic Science Units is called for crime scene visits by police officials, when required. Interestingly, in Karnataka, the state police have hired civilian forensic experts as Scene of Crime Officers (SoCOs) to assist the police at the crime scene.[2]

2. Wider Evidence Collection from Individuals

The power under Section 311A of CrPC, that allows collecting forensic samples from individuals, has been expanded by Section 349 of BNSS in two significant ways. First, the types of samples that can be collected now include voice samples and fingerprints as well, in addition to signatures and handwriting. Second, in addition to collection of samples from the accused previously arrested under Section 311A, under Section 349 of BNSS, collection of samples from *any* person can be ordered while providing the reasons for such collection in writing.

3. Exemption of Experts from Judicial Scrutiny

Corresponding to Section 293 of CrPC, Section 329 of BNSS does not require oral testimony in case of submission of a report by a government scientific expert as evidence. BNSS enlarges the categories of experts exempted from testifying in court. Now, any scientific expert certified by the government, including private experts, may be notified as 'exempted' from deposing in court.

[2] '*In a first, Karnataka to have 'scene of crime officer*s', The Hindu, 13 July 2021.

The hindrance to challenging forensic reports in Section 329 is strengthened again by Section 330 of BNSS. Corresponding to Section 294 of CrPC, this section omits the requirement of formal proof for those documents whose genuineness are not challenged by the defence. Importantly, a new provision in BNSS, Section 330(1) provides that an expert '*cannot'* be called for examination before the court '*unless'* the report is disputed by either party. While discussing Section 294 CrPC, courts have differed on the question whether expert reports, like post mortem or forensic reports are admissible as evidence without the cross-examination of the concerned experts, where the genuineness of that report is not challenged.

Some courts opined that such admission can apply to those documents only which speak for themselves after being formally proved.[3] A medical report, however, can only contradict or corroborate the expert and cannot substitute for cross-examination in the court.[4] This perspective posits that even when the genuineness of the scientific report is undisputed, the requirements under Section 45 of IEA regarding expert evidence would still hold. Therefore, unless the expert is cross-examined, such a report would only be a certificate, and thus not to be considered 'evidence'.[5] Meanwhile, some courts also opined that a medical report can be considered as a document Section 294 CrPC. Therefore, if the genuineness of such a scientific report is not disputed, it can be admitted as evidence without courtroom

[3] *Dhirai v. State of Tripura* 1998 SCC Online Gau 233.
[4] *Ram Deo Yadav v. State of Bihar* 1987 SCC Online Pat 257.
[5] *Nahadariya v. State of Madhya Pradesh* 1980 JLJ 501.

examination.[6] Section 330(1) of BNSS addresses this difference of opinions in judiciary by backing the latter interpretation.

Persistent Challenges in Forensic Integration

Incorporating forensic evidence into the Indian judicial system presents several challenges. These difficulties often arise from inadequate infrastructure, insufficient training, and the complex relationship between legal and scientific disciplines. To fully leverage the potential of forensics, it will be essential to address deficiencies in both legal frameworks and scientific expertise.

1. The problem of experts: None of the above-mentioned Sections clearly define "expert". This situation leads to ambiguities regarding the legal definition of an expert. In the *H.P. v. Jai Lal* case,[7] the Supreme Court defined an expert as someone "specially skilled" due to their education and experience, but a precise statutory definition is still needed. Section 176(3) suggests that the term 'forensic expert' could apply to both government and private experts. While medical professionals are regulated by the National Medical Commission through a registration and licensing system, there is currently no regulatory framework for forensic science education or practice in the country. Thus, permitting private forensic experts to participate in crime scene investigations necessitates the establishment of a regulatory body to ensure adherence to professional and ethical standards.

Equally importantly, there needs to develop a clear distinction between the role of I.O. and the forensic expert on the

[6] *Saddiq v. State* 1980 SCC Online All 614.
[7] (1999) 7 SCC 280.

crime scene. In order to perform the procedures of lifting, packaging, and handling evidence, sealing and forwarding it, the forensic expert would require not just technical knowledge, but some additional training as well for clarity on chain of custody etc. In *Rahul v. State (NCT of Delhi)*,[8] The Supreme Court dismissed the DNA evidence because the lower courts had not thoroughly examined the foundation of the DNA report or verified the reliability of the expert. The judiciary also exercises additional caution, as noted in *Ram Chander vs. State of Haryana*,[9] where the Supreme Court held that the forensic evidence needs to be corroborated.

Moreover, there are potential issues that arise when FSL Experts visit the crime scene**.** When the same set of forensic experts, who hitherto analyse evidences within the laboratories, proceed to crime scene as well, some cognitive and contextual biases can affect forensic examiners, who might be exposed to various irrelevant details, such as the accused's confession, witness statements, or the disturbing aspects of a crime scene. Additionally, the demands of visiting crime scenes, managing a heavy caseload, and dealing with staff shortages can further challenge forensic examiners.

2. Limiting Inquiry into reliability of Expert Reports: The proviso to Section 330(1) restricts both the accused and the victims to questioning experts solely on the genuineness of the relevant FSL report. Although sub-clause (2) officially grants judicial discretion to call and question experts, this usually hinges on a

[8] 2023 SCC Online Del 5453.

[9] AIR 1983 SC 817.

defence application that justifies the need for a particular expert, making it reliant on the quality of legal representation. In general, Section 329 broadens the exceptions to oral examination for forensic experts, which contrasts sharply with practices in other jurisdictions like the United Kingdom, where courts are required to justify any decision not to question an expert whose report has been accepted as evidence.

3. Privacy concerns: Regarding privacy issues, the broad authority to collect personal data under the Criminal Procedure (Identification) Act, 2022 also applies to Section 349 of BNSS. This allows for the collection of fingerprint and voice samples from individuals without needing to establish their connection to the crime or the relevance of their samples to the investigation. Incidentally, the government withdrew the DNA Technology (Use and Application) Regulation Bill 2019 from the Lok Sabha in 2023, halting a two-decade effort to establish a new regulatory framework for DNA fingerprinting technology, leaving concerns about privacy still hanging.

*4. Infrastructure and Resource Limitations***:** Forensic laboratories in India encounter major infrastructural and technological difficulties, such as outdated equipment, lack of accreditation, and inconsistent quality control and standardization. These issues often lead to backlogs and delayed results, which hinder the justice process. While mandating the presence of a forensic expert at crime scenes is a positive step, it adds pressure to India's already strained forensic infrastructure, which currently comprises just 7 Central Forensic Science Laboratories, 32 State Forensic Science Laboratories, and over 80 Regional Laboratories. Additionally, there is a pressing need for ongoing professional development and training in the latest forensic techniques.

5. Legal understanding of Forensic Sciences: Legal professionals, including judges and lawyers, frequently struggle with the complexities of forensic science, particularly if they lack a scientific background. To address this, there should be a greater emphasis on forensic literacy within legal education and the provision of scientific advisors to courts to help prevent misinterpretations of forensic evidence.

Pathways for Advancing Forensics in India

Though the new legislation, BNSS does provide a five-year timeframe to create adequate forensic facilities, the hurdles are quite significant. This part of the article looks into solutions that can be explored as we align ourselves with the forensic-centric objectives of BNSS.

1. Accredition and quality control: Maintaining high standards in forensic services demands rigorous compliance with accreditation criteria. In India, the National Accreditation Board for Testing and Calibration Laboratories (NABL) certifies forensic labs according to the ISO/IEC 17025:2017 standard to ensure reliable and accurate results. Forming a statutory regulatory body for forensic services could improve quality control, standardize procedures, handle complaints, support capacity building, and conduct regular assessments of forensic experts. India could gain from establishing a forensic ombudsman akin to the Texas Forensic Science Commission or the UK Forensic Science Regulator.

Moreover, Working Procedure Manuals (WPM) or handbooks for forensic experts exist only for a handful of forensic fields in India, like computer forensics. WPMs provide detailed and comprehensive instructions for forensic examination. Such manuals need prior internal validation studies for all domains of forensics to

ensure expected performance from the procedures within the lab and getting accurate results. An analogy can be drawn from FBI's Handbook of Forensic Services, that is frequently updated and covers the latest SOPs to be followed, in a wide range of fields.

2. Integrating advanced technological solutions: Emerging technologies such as artificial intelligence, machine learning, and blockchain hold significant promise for advancing forensic science. AI can enhance pattern recognition in digital forensics, while blockchain provides a secure method for preserving the chain of custody of digital evidence. Innovations like next-generation sequencing (NGS) for DNA analysis and sophisticated cyber-forensics tools have the potential to revolutionize the field. Additionally, virtual autopsies using medical imaging and forensic genealogy are poised to broaden forensic science's applications. In India, the future may see a shift toward specialized areas like neuro-forensic science, which examines the link between criminal behaviour and neurological conditions.

*3. Bridging the gap between law and scienc*e: The intersection of law and science is complex, often leading to misunderstandings of forensic evidence in legal settings. To address this, judges and lawyers need enhanced training in forensic science in order to appreciate the forensic evidence and make informed decisions. Simultaneously, Forensic experts or scientists need to comprehend the legal implications of the work they do so as to give more comprehensive and relevant statements.

4. Overcoming resource constraints: Frugal forensics is defined as the development of resilient and economical forensic methods or tools without compromising quality and safety. For example, several published papers explore easily available natural

substances for latent finger-mark detection[10]. G*enipin*, a natural dye obtained from gardenia fruits, and turmeric are being explored as potential candidates for fingerprinting in certain countries like Brazil where resources are lacking.[11] Regardless of the local challenges, the development of systems for forensics can be undertaken in a collaborative manner by the global south.

5. International Benchmarks: Forensic practices in India have some gaping differences in resources and protocols, compared to jurisdictions like the US or UK. While the FBI's CODIS (Combined DNA Index System) is a global benchmark for DNA database systems, India has initiatives like NAFIS (National Automated Fingerprint Identification System), which is comparatively nascent. The Frye test (1923) and the Daubert test (1993) of the supreme court of the United States certify the reliability of a forensic technique. Even after rigorous scientific verifications, forensic reports are fallible, since human interface involves the risk of fraud, errors, etc. These error margins need to be acknowledged and accounted for as per international best practices. India is already working toward standardizing protocols, along the lines of the FBI's Quality Assurance Standards for Forensic Sciences.

Forensic science has the potential to stand as a lighthouse of truth in the complex criminal justice landscape. While hurdles remain,

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[10] Myriam Azoury, et al. (2005). Genipin, a novel fingerprint reagent with colorimetric and fluorogenic activity, part II: optimization, scope and limitations. *Journal of Forensic Sciences*, *50*(6), 1367–1371.

[11] H.K. Rakesh K. Garg, & Ramanjit Kaur. (2011). A new technique for visualization of latent fingerprints on various surfaces using powder from turmeric: a rhizomatous herbaceous plant (*Curcuma longa*). *Egyptian Journal of Food Science*, *1*, 53-57.

the trajectory is set for a more comprehensive, scientific, and responsible use of forensics. Collaborating with international institutions can help with exchange of ideas and the improvement of standards. A systemic investment in education and training for forensic professionals will certainly enhance their skills. The path forward for forensic science in India involves embracing advancements and collaboration for a more efficient and robust system, based on the continued dialogue between stakeholders. BNSS in India does kindle hope for a more justice-oriented system, underscoring the importance of scientific rigor and evidence probity.

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Autonomous Vehicles in India: Is the Legal Infrastructure Ready?

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Autonomous vehicles (AVs), or self-driving cars, represent the cutting edge of transportation technology. Defined in Article 1 of the Convention on Road Traffic, these vehicles use a sophisticated combination of hardware and software to exercise dynamic control, which includes all the real-time operational and tactical functions necessary to move a vehicle without human intervention. AVs rely on a range of advanced sensors to gather data from their surroundings, which is then processed by artificial intelligence (AI) systems that make driving decisions in real time. Key components like steering actuators, braking systems, and throttle control enable autonomous navigation, while vehicle-to-everything (V2X) communication and over-the-air updates ensure continuous connectivity and software improvements.

This paper explores a range of issues associated with self-driving vehicles, including ethical dilemmas and legal challenges that necessitate new regulations. Key topics covered include liability, cybersecurity, and personal data protection in the context

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of self-driving vehicles. Additionally, the paper offers an analysis of the legislative approaches adopted by countries that have implemented regulations on autonomous vehicles to varying degrees, such as the United States, and the United Kingdom and how India can be prepared for such legislative requirements in future.

India's Regulatory Landscape and Legal Challenges

The Society of Automotive Engineers (SAE) has classified driving automation into six levels, ranging from no automation to full automation. This classification is crucial in determining liability in the event of accidents, assigning responsibility to either the vehicle owner or the manufacturer based on the level of automation. As automation progresses, the legal and regulatory frameworks surrounding AVs will need to evolve, opening a new chapter in legislative and policy development.

India, with its rapidly growing urban population and worsening traffic congestion, presents a strong market potential for autonomous vehicles. However, the country's regulatory environment is still in its infancy. Clear standards and rigorous testing protocols are needed to ensure the safe deployment of AVs. Additionally, the state of India's infrastructure, including variable road conditions and the need for smart city integration, raises concerns about whether the country is ready for widespread AV adoption. The successful introduction of self-driving vehicles in India hinges on the establishment of a supportive legal framework before AVs can be rolled out on a large scale.

At present, accidents involving motor vehicles in India are governed by the Indian Penal Code, 1860 (IPC) and the Motor Vehicles Act, 1988 (MV Act). However, neither of these laws

adequately addresses the complexities of autonomous vehicles. Section 279 of the Indian Penal Code/Section 281 of Bhartiya Nagrik Nyaya Samhita 2023 (BNS) creates the offence of rash driving with penalties including imprisonment for up to six months, a fine of up to ₹1,000, or both. Similarly, Section 329 IPC/Section 119(2) BNS and Section 322 IPC/Section 117 BNS deal with various degrees of hurt by the legislation lacks clarity on how these rules would apply to AVs making automated decisions. Section 304A IPC/Section 106 BNSS imposes imprisonment for up to two years (ten years in the case of BNS) or a fine for deaths caused by negligence, a provision that may not apply neatly to non-human drivers.

The MV Act, which governs the operation of vehicles in India, currently does not recognize or permit the use of autonomous vehicles. Under Section 140, the Act holds vehicle owners responsible for compensating victims of accidents, based on the principle of "no-fault" liability. However, AVs introduce complexities that make it unclear who should bear responsibility in the event of an accident—the owner, the manufacturer, or the AI system.

The Enigma of Autonomous Vehicles

The introduction of semi-autonomous vehicles on Indian roads is expected to grow significantly, with fully autonomous vehicles potentially arriving within the next decade. Such advancements prompt significant inquiries concerning criminal and civil liability, the responsibilities of manufacturers and insurers, and the prospective regulation of road transportation within India. Additionally, considerable ethical and privacy issues must be addressed.

1. Criminal Liability:

Current criminal law frameworks are built around human actions, which poses a challenge when dealing with AVs. In a scenario where a fully autonomous vehicle causes an accident, the "user-in-charge" may not be directly responsible, as the vehicle operates according to its programming and the manufacturer's design. This situation creates a "responsibility gap," necessitating new legal doctrines or accountability mechanisms that can assign liability when no human can reasonably be held responsible.

As fully autonomous vehicles, designed to adhere to road traffic regulations and avoid collisions, become more prevalent, legislators need to address the challenges associated with their interaction with human-driven vehicles, which may not consistently comply with traffic laws. In cases where road traffic regulations are breached by a vehicle under the control of an Automated Driving Systems (ADS), whether in the context of a criminal offence or in causing harm to third parties, the issue of manufacturer liability may invoke considerations of product liability.

A significant case in this context is *Haji Zakaria v. Naoshir Cama,*[1] where the Court ruled that vehicle owners cannot be held liable if no negligence is proven. In the context of AVs, this ruling suggests that manufacturers, rather than vehicle owners, may be held responsible in the event of accidents involving self-driving cars.

2. Civil Liability:

Parallel issues arise concerning civil liability for damages caused by a vehicle operating under the supervision of an ADS.

[2] AIR 1976 AP 171.

Current fault-based liability frameworks may exonerate the user-in-charge from liability, shifting responsibility to the ADS. To address this, it is necessary to introduce new legal principles, such as strict liability, to ensure that victims receive appropriate compensation for any incurred damages. Legislation should also provide computation and quantum of compensation to the victims, proportionate to the degree of injury in case of accidents. Provisions must also be made regarding insurance—whether the insurer or the car owner is liable, depending on the circumstances.

3. Ethical Considerations:

AVs will need to make complex ethical decisions, much like human drivers. For instance, in a potential accident, the AI system must choose between protecting the vehicle's occupants or minimizing harm to others. These ethical decisions require careful consideration, and manufacturers will need to develop frameworks that prioritize public safety. However, market forces may lead manufacturers to favor user protection over utilitarian ethics, making government regulation essential to ensure ethical alignment with public interest.

4. Privacy and Confidentiality

ADS systems are data-dependent and data-generating, including sensitive personal data such as information regarding individual movements. Data generated by autonomous vehicles is shared with other autonomous vehicles and central systems and may need to be disclosed to regulatory and law enforcement authorities under certain conditions. It is essential to balance the data processing required for the safe operation of autonomous vehicles and privacy protection for drivers, passengers, and other road users. The Digital Personal Data Protection Act, 2023, for

example, does not currently cover AV-related data collection and usage.

In addition, consent is an important aspect under the section of the Indian penal code. Obtaining express consent is challenging due to interactive interfaces, which may not effectively communicate all necessary information about the vehicle's safety, liability, and responsibilities. For consent to be legally valid, individuals must fully understand this information before agreeing to the terms and conditions especially related to liability regime.

In the case of privacy and confidentiality, which often includes sensitive personal data, the position of the Information Technology Act, 2000 (IT Act), must be discussed, particularly Section 66 of the Information Technology Act, 2000, since this technology is vulnerable to hacking. Since the concept of 'computer resource' does not involve autonomous vehicles, hacking autonomous vehicles would be beyond the scope of the current provision on hacking under the IT Act.

5. Cybersecurity

The risk of cyberattacks poses a significant threat, as interconnected devices can lead to widespread data breaches if compromised. Self-driving vehicles have many technical features that enable cybersecurity breaches through wireless networks (keyless entry systems, Bluetooth, cellular, and other connections). In the event of data breaches, it will be critical to protect the owners and passengers. The new technologies used in ADSs put cybersecurity in question since it will be possible to hack the ADS and harm passengers in various ways such as causing a crash, kidnapping, terrorism, abusing passengers' data among others.

Lessons from Global Experiences and Case Studies

The United Kingdom has taken proactive steps to regulate autonomous vehicles. The Automated and Electric Vehicles Act, 2018, for instance, ensures that insurance will cover accidents involving AVs similar to traditional vehicles. It also clarifies that liability for accidents involving AVs will generally rest with the vehicle owner or the insurer, rather than the individual in control of the vehicle at the time of the incident.

Additionally, the UK government's strategy documents, such as the "Road to Zero" and the "Future of Mobility" reviews, support AV development and deployment on the roads. A Code of Practice for Testing Automated Vehicles issued by the Department for Transport (DfT) provides guidelines for safe testing on public roads which includes the safety requirements, data sharing mechanisms among others.

Germany has also been one of the pioneers in devising the legal framework for Automated Vehicle systems. It amended the Road Traffic Act 2017, incorporating Level 3 automated driving systems. These systems allow vehicles to perform tasks independently, keeping the drivers responsible. Level 4 automation was incorporated through amendment in 2021 in which full automation was proposed and multiple approvals based on operational area and usage were devised. German legal structure emphasizes the testing apparatus and the continuous evaluation of the scenario in the automated vehicle ecosystem.

Globally, The Vienna Convention on Road Traffic requires that a driver must always be in control of the vehicle, presenting a challenge for the deployment of fully autonomous vehicles. The Convention's provisions on licensing, registration, safety standards,

and liability will need to be updated to accommodate the unique aspects of AV technology.

An interesting case arose in Arizona where a car, being driven on autopilot and at the speed of 39 mph, collided with an old woman on a bicycle aged 49. The US National Transportation Safety Board commented that the driver was watching a TV show on his mobile phone and his eyes were off the road a few seconds before the incident. Consequently, it found that human error was mostly to blame for the accident and the driver was held liable.

Volvo in its flagship project "Drive Me" (launched in 2014), put forward a proposition of taking full liability regarding any accident happening due to automated vehicles in Sweden Pilot project. It was the first instance where the responsibility shifted from human to the manufacturer. The project also incorporated risk pooling and amendments in the insurance system to fit the automated vehicle ecosystem.

Path Forward for Autonomous Vehicle Integration in India

Autonomous vehicles raise pertinent and concerning questions on the moral and ethical obligations of AI, which may include prioritization and preservation of human life, data protection, removal of bias, and fair decision-making process, based on ethics and established societal norms, amongst others. For India to successfully integrate autonomous vehicles, the legal framework must evolve. Cybersecurity and data protection must be prioritized, and ethical standards for decision-making must be regulated.

The law should distinguish between the liability of manufacturers and that of the user-in-charge, depending on the level of vehicle automation. The act should impose liability on the

manufacturer for any fault of AI, but for negligence on the part of the user-in-charge, he shall be made responsible. Therefore, the legislation must have two distinct aspects with clearly defined manufacturer liability and user-in-charge liability with maximum possible situations of crisis as per the levels of automation driving system.

To ensure robust legal and effective legislation for Automated Vehicles, the robust data privacy principles must be considered. For this, explicit consent must be obtained at the time of data collection, with individuals given options to review, correct, refuse, or withdraw their consent. The collection and use of data must align with lawful purposes related to the data collector's activities. Stakeholders are required to have and publicly share a privacy policy. Personal data should not be disclosed to third parties without prior consent, except as mandated by law. Additionally, entities handling data must implement reasonable security measures appropriate to the nature of the data collected.

Additions in new laws Bhartiya Nagarik Suraksha Samhita 2023, will be needed to mention the procedures involved in accidents related to automated driving systems to remove all loopholes regarding steps to be followed at the scene of crime.

As noted by the RAND Corporation, 'Automated Vehicles will need to be driven hundreds of millions of miles and sometimes hundreds of billions of miles to prove their reliability in terms of fatalities and injuries.' The right foot forward in this transition is to 'Lead by Legislation', coming up with new laws which will pave the way for a sustainable, safer, and ethical future of mobility.

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Cyber Terrorism Offence: International & National Legal Provisions

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The Russia-Ukraine conflict was a paradigm-altering event in humanity's history. It has exposed to the world what was suspected in policy circles for a long time- that cyberterrorism is here, and the discourse is no longer prospective but real. Of all the high-tech avenues for terrorism, cyber-terrorism is unique because of its accessibility, cost-effectiveness, and malleability compared to nuclear or biological weapons.

However, we are at a primordial stage where no consensus exists on fundamental things such as definitions. There are very few agreements that target cyber-terrorism. Neither the UN Security Council nor its Counter-Terrorism Committee has specifically addressed cyber-terrorism. There are no cooperation or enforcement mechanisms on multilateral levels for the prosecution of cyber-terrorists. Against this background, we shall examine a few such legal facets of the definition of cyberterrorism, along with a comparative analysis with a few major approaches to the definition.

* *IPS (Probationer) 76 RR, AGMUT Cadre*

Beyond the Screen: Unpacking the Multifaceted World of Cyber-Terrorism

As a concept, cyberterrorism traditionally evolved as *terrorist attacks over the internet.* However, given the pervasiveness of the internet in all domains of life, its use has transpired in various aspects of terrorism. Thus, the holistic terminology would be "*terrorist use of the internet*" instead of cyber-terrorism. In this case, the terrorists can use the internet for broadly three purposes –

1. Defensive: This involves protecting the anonymity of terrorists and their information security, as well as providing training and support on how to set up defenses and avoid detection. It also includes efforts to mitigate data leaks and protect the anonymity of terrorist acts.
2. Operational: This involves using cyberspace to facilitate terrorism, such as through propaganda, recruitment, fundraising, hacktivism, and opening new chat rooms.
3. Offensive: This involves using cyberspace to conduct terrorist acts, including attacks on critical infrastructure, stealing sensitive data, and ransomware attacks.

At the same time the exiting legal framework is often not suitable to effectively deal with this issue for various reasons. First, the exigent treaties in force today essentially exhibit a criminal law approach, viz., identifying the person responsible and punishing the same. However, conducting the same exercise in cyber technology cases is very challenging. (Fidler, 2016) For example, Islamic State's so-called 'Cyber Caliphate' claimed responsibility for attacking a French television station, which French officials asserted was terrorism. France later indicated Russian hackers were

to blame- at which point attribution remained unclear, as did whether the incident was terrorism. In the not-so-distant future, AI bots can be employed to manage terrorist websites, which will render the legal provisions incompetent.

Second, due to the pervasiveness of cyber technologies, even the most minor changes can have a wide range of consequences, from disruption to destruction. Typically, other forms of terrorism involve injury, death or severe property damage. However, that is not always true in cyber terrorism, and cyber terrorists exploit that difference. For instance, ISIS's Cyber Caliphate attack on social media channels only caused temporary disruption but the impact was manifold.

Finally, the damage/changes involved in cyber-terrorism involve corrupting or accessing restricted data. Thus, the damage is not apparent or physical and is often underestimated. Even today, physical espionage is considered a grave crime, whereas the cases of honey-trapping defence officials or hacking of defence are primarily neglected or mishandled.

The Indian Perspective on Cyber-Terrorism

While many acts cover cyberterrorism, Section 66F of the IT Act defines Cyber Terrorism as a specific crime. This definition extrapolates the definition of terrorism and adds cyberspace-specific dimensions. To be precise, it adds the actus reus, which involves cyberspace, whose impact is terrorism. For convenience, the definition is divided into two parts, each with a Mens Rea, Actus Reus, and Impact:

Part A:

Mens Rea: intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people

- Actus Reus: Denial of access to any authorised person / unauthorised access / introducing contaminant
- Impact: causes or is likely to cause death/injuries/damage to property/disrupt essential services/adversely affect critical information infra

Part B:

- Mens Rea: knowingly or intentionally
- Actus Reus: penetrates /unauthorised access to obtain access to data restricted for the security of State/foreign relations, etc.
- Impact: reason to believe that data so obtained can harm State interests/foreign relations/public order/decency/morality /contempt to court/incitement to an offence/ (Also includes espionage) advantage to any foreign nation/group of individual or otherwise

Prima facie, the definition given in Section 66F of the IT Act appears quite comprehensive. It includes the cyberespionage and cyberwarfare. In fact, it can be construed as a wide extrapolation of terrorist attacks over cyberspace including physical, analogue and digital. Denial of access includes deleting any data or ransomware. However, it has a few loopholes which need to be plugged. The definition clearly doesn't include any operational or defensive aspects of cyberterrorism mentioned above, as the modus operandi is not fulfilled. For instance, Mehid Masroor Biswas was spreading ISIS Propaganda in India, but it

doesn't fall under the definition of Cyber Terrorism under Section 66-F of the IT Act.[1]

Secondly, Part A specifically mentions only critical *information infrastructure (Section 70 IT Act defines it as a computer resource).* While the attack on critical infrastructure like the Parliament is part of ordinary terrorism, the 2001 attack on Parliament involved the terrorist use of the Internet. However, it is not covered in the definition given in the 66F IT Act. Similarly, part B is a bit debatable as impacts such as decency/morality/ contempt to court do not always amount to terrorist acts. Thus, they are prone to misuse by the State.[2]

The Unlawful Activities Prevention Act, 1967 (UAPA) deals with different aspects of cyber terrorism in separate offences, namely Terrorist Act (Section 15), Raising funds for terrorist act (Section 17), Conspiracy to commit a terrorist act (Section 18), Terrorist Camps (Section 18A), Terrorist Training (Section 18B), Holding proceeds of terrorism (Section 21), Member of terrorist gang/organisation (Section 20).

The definition of terrorist act is not exhaustive and specifies that the act of terror could be done with *any other means of whatever nature which ostensibly includes cyberspace as well. Moreover,* compared to 66-F, this definition is clearly wider e.g. cryptocurrency manipulation to affect financial stability is also included. It also solves the limitations of critical information infrastructure of the Section 66-F IT Act. However, since the cause must be factual or legal, this definition can only include the

[1] *Mehid Masroor Biswas v. State of Karnataka, CP 4039/2016 Karnataka HC.*

[2] *Amish Devgan v. Union of India, AIR Online 2020 SC 930.*

offensive aspects of cyberterrorism. The defensive and operational aspects don't constitute a terrorist act. Such acts are covered under sections 17,18, of UAPA, or as a part of sedition, waging war against the government, and promoting enmity in IPC. But it is not given the status of terrorist act.

Global Perspectives: How Different Nations Tackle Cyber-Terrorism

The definition of cyber-terrorism remains elusive due to the broader uncertainties surrounding both terrorism and cybercrime. This ambiguity is particularly evident in how different jurisdictions approach the concept. This part of the paper examines the definition of cyber terrorism which has been adopted by different jurisdictions across the world.

Israel

Israel integrates cyber-terrorism into its broader framework of terrorism, defining terrorism as any act intended to influence policy, ideology, or religion, or to instill fear, panic, or pose a threat to government security. Notably, Israel's new Fighting Terrorism Law extends beyond weapons of mass destruction (WMDs) to cover all acts of terrorism, presuming intent upon the commission or threat of an act.

This provision, compared to the Indian definition, makes proving the offence very easy for investigators, but it is equally harsh for someone without a guilty mind. This may result in potentially granting extensive powers to the state (Housen-Couriel, 2020). Furthermore, it also includes another provision, which provides for intent to cause fear and panic by injuring one person. These features are even more relevant in covering critical

individuals/entities, especially in cyberspace, as the attacks on these accounts can cause widespread fear and panic.

Tallinn Manual for NATO

The Tallinn Manual adopts a distinct perspective by focusing on cybercrimes first and then distinguishing cybercrime from cyber-terrorism. It defines cyber-terrorism as any cybercrime with the primary purpose of instilling terror among civilians (Tallinn Manual on the International Law Applicable to Cyber Warfare, 2013). The Manual also differentiates between cyber espionage and cyber warfare based on the scale and impact of the operations, asserting that these activities must be comparable in scale and effect to non-cyber operations to be considered as such. This clear demarcation is essential for segregating cyber espionage from cyber-terrorism.

United Nations Counter-Terrorism Implementation Task Force (CCIT)

The CCIT provides a definition of cyber-terrorism that emphasizes a convergence of cybercrime and terrorism, encapsulated as follows:

- Special Intent: To intimidate a population or compel a government or international organization to act or refrain from acting.
- Damage Level Contemplated: Actions that unlawfully and intentionally cause death or serious bodily injury, severe damage to property, or significant economic loss.

This definition tries to define cyberterrorism as a convergence of cybercrime and terrorism. However, it is narrower in scope compared to all the above definitions as it only includes *ex-post*

facto cases, i.e., after the terror incident. Acts that are not cybercriminal (like maintaining a website) but may contribute to terrorism are not covered. Similarly, the definition covers only economic loss, meaning spyware that threatens sovereignty will not be covered.

Compared to the Indian definition, it is more modular, simpler and thus easier to understand and analyse. This definition also explicitly includes private property to prevent the distinction between state and non-state-owned property. It also includes all types of cybercrimes with special intent and damage levels contemplated as compared to the restricted actus reus mentioned above (e.g. Mehid Masroor Biswas case 2016) in the definition.

Navigating the Future of Digital Threats

Since cyberterrorism has not yet been defined with any degree of international consensus, it is difficult to discern how it differs from other cybersecurity issues, on the one hand, and with 'ordinary terrorism' issues, on the other. Cyber-terrorism, an international crime, must harmonise laws across all international dimensions. However, this is hard to follow with the rapidly evolving international thinking of the UN Open-Ended Working Group (OEWG) and international divergences.

One of the biggest challenges in defining cyberterrorism is the poor prosecution and investigation capabilities, which render a considerable deficit in judicial pronouncements. The definition can be thus regarded as widely untested and immature and needs further analysis. This is further complicated by emerging concerns in cyberspace like deepfake tech, AI-driven attacks and blockchain capturing, which still need to be addressed by the laws.

The latest modus operandi of the cyber-terrorists is to resort to ransomware and state-sponsored cyberattacks. Ransomware attacks spread fear and panic, as seen by the Hive attack on the US pipeline. But the intent to spread fear is easily refutable. Similarly, state-sponsored cyber-attacks don't have a singular criminal entity behind them but an entire set of cybercriminals. In such scenarios, the question of State involvement and to what extent it becomes a matter of challenge.

Conversely, the definition must also balance national security with rights. Many cyberterrorism laws have been criticised for being overly broad and being used by governments to prosecute activists and dissidents. (UNODC, 2019) We must adequately address the data protection and privacy laws, along with protecting freedom of opinion and principles of natural justice. Acts like UAPA have the potential for abuse and infringement of fundamental rights. The best example is the case of *Amish Devgan v. Union of India*,[3] where sufficient grounds for terrorism were not made.

Charting the Path Forward

Cyber Terrorism is a relatively nascent offence but will be a pivotal part of counter-terrorism strategy. While there aren't many cases yet, many terror organisations have already started making their footprint in cyberspace. The lack of global consensus and poor investigative powers only hamper the abilities of the States to counter terror attacks. The lack of international consensus on the definition is of particular concern as it is misused by rogue States to provide state-sponsored terrorism, which is even more accessible in an interconnected world.

[3] *Supra 2.*

As far as the definition goes, a proper balance is a must between rights and prosecution. Mislabelling of acts as cyberterrorism can have detrimental consequences, resulting in disproportionate sentences for those prosecuted for this cybercrime. While most countries attribute strict criminal liability in cases of WMD, the flexibility of the use of cyberspace for varied purposes needs a properly segregated outlook. Similarly, clubbing cyber-terrorism under one umbrella definition opposes the various nuances and types of actions possible.

Cyber Terrorism is rapidly transforming into a faceless offence and must be dealt with as such; instead of the current whack-a-mole strategy of knocking down known sites, we must take concrete steps by involving all stakeholders and global coordination with special treatment for electronic evidence as done in the context of European Union.

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HYDERABAD