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## FOREWORD

Command over law forms one of the fundamental pillars of law enforcement and policing. This is reflected in the curriculum at the Sardar Vallabhbhai Patel National Police Academy. The officer trainees are given a thorough grounding in various major and minor laws along with exposure to practical application of the same.

The NPA Criminal Law Journal is a step to encourage and facilitate research in various new and prominent issues seen at the emerging horizons of law and policing. The journal includes articles from Judicial Officers, Faculty and IPS Officers Trainees of 70 and 71 RR.

The articles include thought provoking legal interpretations and theoretical & practical aspects of criminal law and policing. These would interest police officers, lawyers and academicians alike.

I convey my congratulations to the members of Law Society for this issue of the Journal. I also wish them good luck for a bright future.

( Atul Karwal )

Dated: 01.09.2020

Sardar Vallabhbhai Patel
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# Expanded Option of Sentencing in Death Penalty Cases

RAKESH KUMAR SINGH*

## Introduction

In the present paper, the focal point is not to ascertain the rightness of the approach adopted by the Supreme Court for creating a theory of expanded option of sentencing in some peculiar cases. This paper is humble attempt to understand the basis, nature, scope, mode & manner of utilizing the concept of expanded option of sentencing. We know that a Constitution Bench of Hon'ble Supreme Court speaking through a majority has approved the concept of expanded option of sentencing whereby a convict can be awarded life imprisonment without having any scope for remission at all or having such scope only after a fixed period of time as may be provided by the court itself. Before considering the concept however, we should look into the provision which will take the centre stage in this paper.

## The provision in the lime light

We should first understand a provision i.e. Section-433A of the Code of Criminal Procedure, 1973 which is the central theme of

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expanded option. The provision reads as "*433A. Restriction on powers of remission or commutation in certain cases.- Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment*".

Section-433A is in two parts, first, where the offence provides for death as one of the penalties and the second, where a sentence of death has been imposed. Both the parts need to be appropriately dealt with.

**First, where the offence provides for death as one of the penalties-** In this situation, though the offence may provide for several kinds of punishment and one of them is death, but if the court chooses to inflict only imprisonment of life, the case will fall within Section-433A CrPC.

This includes two types of punishment. One where death and life imprisonment are provided as alternative punishment (like Section-302 IPC) and two, where death, life imprisonment, other terms imprisonment are provided. Section-132, 194, 305, 396 are the provisions where three kind of punishments have been provided i.e. Death, or imprisonment for life, or imprisonment for a particular term. There may be similar such offences in other laws also. Our purpose presently is simply to show that there are offences which attract such type of punishments.

Now, in both kind of punishments, only if the court chooses to inflict a life imprisonment that the interdict of Section-433A will come into play through the first part of the provision. For example,

for Section-302 if the court inflicts a life imprisonment, Section-433A will apply. At the same time, if for Section-132 the court chooses to inflict life imprisonment, Section-433A will apply though Section-132 does not confine the alternative punishment only between life and death. It is therefore clear that choice of alternativity between death and life imprisonment is not a criterion for applicability of Section-433A but the exact criterion is that one of the punishments provided should be a death sentence irrespective of the nature of other punishment(s) and actual infliction should be of life imprisonment.

But then there may really be an entirely different situation. Suppose, under any kind of punishments described herein before, a Court chooses to impose a life imprisonment. Now, Section-433A does not talk about commutation of life imprisonment itself. Even this provision has only been made notwithstanding anything in Section-432. It does not override any other provision of the CrPC or IPC.

At this stage, we may look into the provisions providing for commutation of life sentences. Section-55 IPC and Section-433(b) CrPC which read as "*55. Commutation of sentence of imprisonment for life.- In every case in which sentence of imprisonment for life shall have been passed, the appropriate Government may, without the consent consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years*".

"*433. Power to commute sentence.- The appropriate Government may, without the consent of the person sentenced, commute- (b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine*".

It is clear that there is no limitation on the power of the concerned authority to commute a sentence of life imprisonment into any term not exceeding 14 years. The aforesaid nowhere differentiates between an offence punishable with life or other imprisonment or an offence where death is also one of the penalties. Be it noted that here we are not talking about the concept of remission. Power of commutation of a life imprisonment then will not be prohibited by Section-433A.

It is this situation which has not been accepted by the Supreme Court and it impliedly came to the conclusion that even in such cases the prisoner shall not be released from the custody before 14 years whatever may be the situation subject to constitutional exercise of powers. This situation has to be appreciated properly but need not be done so at present. We may continue with the narrative.

If the court on the other hand chooses to inflict any of the sentence for other term, Section-433A will not apply at all. For example, for Section-132 if the court chooses to inflict 10 years imprisonment, Section-433A will not apply.

However, if the court chooses to inflict a death sentence in any of the above situations, Section-433A though will not come through first part but it may peep in through the second part of the provision as discussed herein after.

**Second, where a sentence of death has been imposed -** In this situation, though the offence may attract any punishment(s) but the offender must have been sentenced to death. Now, if an authority commutes the death sentence into life imprisonment for such offender, the case will fall within Section-433A CrPC.

Now, suppose in any one of the above two kind of punishments, the court chooses to impose a death sentence, the case

will fall under Section-433A through this second kind of cases if the specific condition prescribed therein is fulfilled. The condition is that there must be a commutation of death into life imprisonment. However, if the death sentence is commuted into any other kind of punishment, Section-433A CrPC will not apply.

At this stage, commuting provisions are required to be noted. Section-54 IPC and Section-433(a) CrPC read as "*54. Commutation of sentence of death.- In every case in which sentence of death shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for any other punishment provided by this Code*".

"*433. Power to commute sentence.- The appropriate Government may, without the consent of the person sentenced, commute- (a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860)*".

What becomes immediately clear is that the concerned authority may commute the death sentence into any other punishment which has been provided in the IPC and practically there is no restriction on the choice of the authority except that it should not be arbitrary or actuated by any extraneous reason. Further, the choice of punishment is not limited to the punishment provided for the offence in question but the choice includes any of the punishment provided in the IPC. Meaning thereby that the commuting power is basically referring to Section-53 IPC which provides for the kind of punishments and not to the punishing Section pertaining to the offence in question.

Now, take a case of accused A and B, both sentenced to death in their respective cases. Both apply for or are granted commutation suo moto by the authority. Luckily, A gets a 20 years imprisonment but B gets a life imprisonment. Case of B will fall

within the ambit of Section-433A CrPC but case of A will be out of its prohibition.

The aforesaid discussion shows that what is material is the choice. If the court chooses to impose life imprisonment where one of the punishments is death or where the authority chooses to commute a death sentence into life imprisonment, in either cases the prohibition of Section-433A will come into picture. If the choice of court or the authority is otherwise, Section-433A will not apply.

**Actual prohibition**

What is of significance is to note that the Section-433A nowhere says that prayer for remission or commutation made by the prisoner cannot be considered or dealt with or a prisoner will have no right to move such application before the authorities. Rather the second situation itself envisages that there can be commutation. What the section prohibits is the release of the prisoner before a period of 14 years. Simple.

**Expanded option for sentencing**

Concept of expanded option of sentencing is that a convict can be awarded life imprisonment without having any scope for remission at all or having such scope only after a fixed period of time as may be provided by the court itself. A constitution bench of Hon'ble Supreme Court speaking through the majority in ***Union of India vs V. Sriharan*** *(2016) 7 SCC 1* has expressed itself "*As far as the apprehension that by declaring such a sentencing process, in regard to the offences falling under Section 302 and other offences for which capital punishment or in the alternate life imprisonment is prescribed, such powers would also be available to the trial Court, namely, the Sessions Court is concerned, the said apprehension can be sufficiently safeguarded by making a detailed*

*reference to the provisions contained in Chapter XXVIII of Code of Criminal Procedure which we shall make in the subsequent paragraphs of this judgment.... In fact, while saying so we must also point out that such exercise of power in the imposition of death penalty or life imprisonment by the Sessions Judge will get the scrutiny by the Division Bench of the High Court mandatorily when the penalty is death and invariably even in respect of life imprisonment gets scrutinized by the Division Bench by virtue of the appeal remedy provided in the Code of Criminal Procedure Therefore, our conclusion as stated above can be reinforced by stating that the punishment part of such specified offences are always examined at least once after the Sessions Court's verdict by the High Court and that too by a Division Bench consisting of two Hon'ble Judges..... That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial Court and confirmed by the Division Bench of the High Court, the concerned convict will get an opportunity to get such verdict tested by filing further appeal by way of Special Leave to this Court By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed..... We, therefore, reiterate that, the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified*

*offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other Court in this country To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court*".

It is clear that the option of expanded sentencing can be exercised only by Constitutional Courts and not by trial courts. So, a Court of Sessions while convicting an accused for the offence punishable under Section-302 IPC can though impose a life imprisonment but cannot put a minimum cap for remission or commutation since it cannot exercise the expanded sentencing option.

We may now enlist the situations which can be before a High Court and may see in which situation, the expanded sentencing option can be invoked.

**Appeal for enhancement of sentence -** If the State in such cases of life imprisonment approaches the High Court for enhan- cement of sentence by virtue of Section-377 CrPC, the High Court then may consider the expanded option of sentencing. On the other hand if the State chosoes not to prefer an appeal, the matter would rest and though the case will still fall within the ambit of Section-433A but judicially pronounced expanded option will not be available.

**Death confirmation reference and appeal by the convict-** A matter may appear before the High Court through death confirmation reference. Practically, an appeal by convict is bound to follow. While considering the matter, the High Court may choose not to insist on death. If the High Court chooses to inflict

life imprisonment, it can exercise the option of expanded sentencing by prescribing a minimum cap for release from jail.

**Appeal against acquittal-** Similarly, if the accused is acquitted by the trial court but in an appeal, the High Court convicts the accused and hears the parties on the point of sentence, it may then consider the scope of expanded sentencing option in case it does not want to inflict a death punishment.

**Inaction of the Government-** If the accused is sentenced to life imprisonment by the trial court and government does not approaches the High Court for enhancement of sentence, the convict has to be left with in the realm of actual sentence as passed. Though the case will fall within first part of Section-433A and will attract the statutory minimum cap of 14 years but the expanded sentencing option will not be available to such a situation.

**Appeal by convict against life imprisonment-** If the convict challenges his life imprisonment and State does not approach for enhancement of sentence, then again the High Court cannot exercise its power of expanded sentencing option. Reason is obvious. A person cannot be punished because he preferred to challenge the order. Had he not challenged the life imprisonment, he would have been content within the limit of statutory prescription provided in Section-433A. Only because he chooses to make a challenge, he cannot be deprived of this statutory benefit by saying that High Court will now increase the minimum since he preferred to challenge. Further, the expanded option will be available only when the High Court were to choose between death and life. Here in appeal for the benefit of convict, the High Court cannot have an option to choose between death and life imprisonment. We may now look into type of cases where expanded option of sentencing may or may not be applicable.

**Death and Life cases-** In this class, the offences are such for which only two type of punishments are available i.e. either an imprisonment for life or a sentence for death. Section- 302 IPC is a clear example for this. Choice of sentencing court is therefore limited.

**Death and term imprisonment cases-** There may be some offences punishable with death or any term imprisonment without even referring to the punishment of life imprisonment.

**Hybrid cases of death, life & term imprisonment-** In this class, the offences are such for which several type of punishments are provided. Section-132, 194, 305, 396 IPC are the patent example for this. They normally provide that the punishment may be of death or of life imprisonment or of any term which may extend to any period. Choice for sentencing court is therefore very wide.

**Death sentence cases-** There are certain offences which only provide for death without any reference to any other punishment. Section-307 IPC is a clear example for this. Though we know that Section-303 IPC and Section-27(3) Arms Act providing for a singular death sentence have been struck down but unfortunately, Section-307 remained as it is.

**Simple Life Imprisonment cases-** There are several offences which provide for life imprisonment as one of the punishments without any reference to the death sentence. Clearly, such offences will not fall within the ambit of Section-433A and as such, the prohibition contained therein cannot be utilized for such offences. The courts in such circumstances will not be entitled to exercise their jurisdiction to consider expanded option for sentencing and therefore they cannot fix a minimum cap for remission or commutation of life imprisonment. The situation will remain the same even where the offence itself provides that the life

imprisonment means the period till remainder of the life of prisoner like Section-370 IPC. Reason is obvious. Such prescription has only clarified the already existing law and has not created a new type punishment.

**Special Life Imprisonment cases-** There are certain offences which provide for life imprisonment as a singular punishment. Section-370(6), 388, 389 IPC are clear example of this situation.

**Sentences extendable to life imprisonment-** There are several offences which provide for punishment which may extend to life imprisonment. For instance, Section-376A IPC provides for the punishment as "*imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death*". Here the trial court has been given a choice. It does not say that the court has to inflict either death or life imprisonment with some minimum punishment. What it says is simply that the court may pass any term imprisonment exceeding 20 years or may impose a life imprisonment or death. This is not an example of exercising extended sentencing option wherein a minimum cap can be put on release of a life convict. The case is simply a choice between death or life imprisonment or any number of years exceeding 20 years. It is not as if there is no other instance of punishment extendable to life imprisonment. There are several such provision. Section-304B IPC provides for punishment "*which shall not be less than seven years but which may extend to imprisonment for life*". Section-326A IPC provides for punishment "*which shall not be less than ten years but which may extend to imprisonment for life*". Section-370(3) IPC provides for punishment "*which shall not be less than ten years but which may extend to imprisonment for life*". Section-370 IPC is an interesting provision. It provides for upgradation of punishment according to

the increase in seriousness of the crime. Section-370(4) is though extendable to life imprisonment but a minimum of 10 years is also provided as it involves a minor. Section-370(5) is more serious as it involves more than one minor therefore it provides for 14 years minimum though it is extendable to life imprisonment. Section-370(6) is further more serious as it covers repeated conviction and therefore provides the minimum and maximum at one point i.e. imprisonment for life. No choice left with the court. Whether such provision can sustain constitutional scrutiny or not is not an issue to be considered in the present paper. It is sufficient to note that Section-370 is an example to ascertain that if there is a punishment prescribing a minimum term extendable upto life imprisonment, the same will not amount to a punishment for life imprisonment having a specific term as minimum punishment.

**Alternate suggestion**

It would have been appropriate for the Supreme Court to have read down the provision of Section-433A in such a manner that the expression "fourteen years of imprisonment" would have been read as "such number of years of imprisonment as may have been fixed by the Court".

Hon'ble Supreme Court in ***Union of India vs V. Sriharan*** *(2016) 7 SCC 1* has observed as "*Therefore, in order to ensure that such punishment imposed, which is legally provided for in the Indian Penal Code read along with Criminal Procedure Code to operate without any interruption, the inherent power of the Court concerned should empower the Court in public interest as well as in the interest of the society at large to make it certain that such punishment imposed will operate as imposed by stating that no remission or other such liberal approach should not come into effect to nullify such imposition*".

Concept of reading down is not unknown to the law. The Supreme Court for several legislation has adventured into this concept in one or the other form. Some of them are enlisted herein under:

Exception-II of Section-375 IPC was read down only in respect of number of years to mean as "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape" vide ***Independent Thought vs Union of India***. The expression "adult male" was directed to be deleted from Section-2(q) of the Domestic Violence Act, 2005 vide ***Hiral Harsora vs Kusum Narottamdas***

Words in Section-89 CPC were inter changed between sub-sections. Earlier, the expression "mediation" was appearing in sub-clause-(d) and "judicial settlement" was appearing in sub- clause-(c). The judgment made an inter change and declared that "mediation" was to be read in sub-clause-(c) and "judicial settlement" was to be read in sub-clause-(d) vide ***M/S. Afcons Infra. Ltd. vs M/S Cherian Varkey Construction***.

Section-14(1)(e) of Delhi Rent Control Act was directed to be read in a different manner by striking the expression "let for residential purposes" vide ***Satyawati Sharma vs Union of India.***

**Ancillary issue**

Now some thought about the concept of remission. Jail manual normally deals with the concept of earned remission. Section-432 CrPC deals with statutory remission. It reads to the relevant extent as "*432. Power to suspend or remit sentences.- (1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts,*

*suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced*".

Upon an analysis of entire scheme, the Court in **Shriharan (supra)** has observed as "*Therefore, it can safely be held that the exercise of power under Section 432(1) should always be based on an application of the person concerned as provided under Section 432(2) and after duly following the procedure prescribed under Section 432(2). We, therefore, fully approve the declaration of law made by this Court in Sangeet (supra) in paragraph 61 that the power of Appropriate Government under Section 432(1) Code of Criminal Procedure cannot be suo motu for the simple reason that this Section is only an enabling provision. We also hold that such a procedure to be followed under Section 432(2) is mandatory. The manner in which the opinion is to be rendered by the Presiding Officer can always be regulated and settled by the concerned High Court and the Supreme Court by stipulating the required procedure to be followed as and when any such application is forwarded by the Appropriate Government. We, therefore, answer the said question to the effect that the suo motu power of remission cannot be exercised under Section 432(1), that it can only be initiated based on an application of the persons convicted as provided under Section 432(2) and that ultimate order of suspension or remission should be guided by the opinion to be rendered by the Presiding Officer of the concerned Court*".

In respect of life imprisonment cases, Hon'ble Supreme Court in ***Maru Ram vs Union of India*** *1981 (1) SCR 1196* has observed as "*Even if the remissions earned have totaled upto 20 years, still the State Government may or may not release the prisoner and until such a release order remitting the remaining part of the life sentence is passed, the prisoners cannot claim his liberty. The reason is that life sentence is nothing less than life-long*

*imprisonment. Moreover, the penalty then and now is the same – life term. And remission vests no right to release when the sentence is life imprisonment"*.

And also in ***Bhagirath vs Delhi Administration*** *(1985) 2 SCC 580* has observed as "*The question of setting off the period of detention undergone by an accused as an undertrial prisoner against the sentence of life imprisonment can arise only if an order is passed by the appropriate authority under Section 432 or Section 433 of the Code. In the absence of such order, passed generally or specially, and apart from the provisions, if any, of the relevant Jail Manual, imprisonment for life would mean, according to the rule in Gopal Vinayak Godse, imprisonment for the remainder of life*".

**Commutation by Constitutional Functionaries**

President and Governor can commute a death sentence by their respective powers. They may convert it into a sentence of life imprisonment. Section-433A does nowhere speaks about manner of commutation of death sentence and its second part basically starts only after the time when the death sentence is commuted to a sentence of life imprisonment. It is therefore clear that Section-433A is not dependable on the authority who has commuted or the manner in which the commutation has been made. As such, Section-433A will equally apply to a commutation of death sentence even by the President or the Governor.

The second category of death commutation by constitutional functionary is the exercise of power by High Court and Supreme Court. We have to understand that when the High Court or Supreme Court hears a challenge against any judicial order and in such a process, discuss the necessity of sentence, the situation would be something else. To be precise, if an accused is convicted for Section-302 IPC and is sentenced by the trial court with death

sentence and he ultimately approaches the Supreme Court, the Supreme Court may upheld the Conviction. After this, the Supreme Court has to hear on sentence. It can in the circumstances simply choose to inflict a sentence of life imprisonment. This change of sentence is not a commutation of death sentence into a life imprisonment. It is only a final verdict in a case imposing life imprisonment and nothing else. Therefore, this situation will fall within first part of Section-433A instead of second part.

However, there may be some entirely different situation. Suppose, after the final verdict, the convict moves a clemency petition before the President but for a long time, the President does not decide the same. In such a situation if the convict moves the Supreme Court on account of violation of fundamental right and the Supreme Court considers his petition, the consideration will not be regarding the judicial sentence but would be bound to be regarding executive clemency. If then the Supreme Court finds the fundamental rights violated and holds the convict entitled for commutation and converts the sentence to life imprisonment, such conversion then will definitely come within the ambit of commutation of sentence and will therefore fall within the ambit of second part of Section-433A CrPC.

**Expanded option is a judicial legislation or takes its strength from Section-433A**

To understand the point in question, we have to look into the pronouncements. Hon'ble Supreme Court in ***Swamy Shraddananda vs State of Karnataka*** *(2008) 13 SCC 767* has observed as "*This Court, therefore, must lay down a good and sound legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission and to be carried out as directed by the Court so that it may be*

*followed, in appropriate cases as a uniform policy not only by this Court but also by the High Courts, being the superior courts in their respective States*"..... "*When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all*".

Hon'ble Supreme Court in ***Union of India vs V. Sriharan*** *(2016) 7 SCC 1* has observed as "*for which conviction is imposed on the offender for which offence the extent of punishment either death or life imprisonment is provided for, it should be held that there will be every justification and authority for the Court to ensure in the interest of the public at large and the society, that such person should undergo imprisonment for a specified period even beyond 14 years without any scope for remission*" "*Viewed in*

*that respect, we state that the ratio laid down in Swamy Shraddananda (supra) that a special category of sentence; instead of Death; for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative*".

Hon'ble Supreme Court in ***Vikas Yadav vs State*** *dated 03.10.2016* has observed as "*In the present context, a convict is not permitted to submit an application under Section 433- A CrPC because of sentence imposed by a Court. There is no abrogation of any fundamental or statutory right. If the imposition of sentence is justified, as a natural corollary the principle of remission does not arise. The principle for applying remission arises only after expiry of 14 years if the Court imposes sentence of imprisonment for life. When there is exercise of expanded option of sentence between imprisonment for life and death sentence, it comes within the sphere or arena of sentencing, We have already held that the said exercise of expanded option is permissible as has been held in many a judgment of this Court and finally by the Constitution Bench. The said exercise, on a set of facts, has a rationale. It is based on a sound principle. Series of judgments have been delivered by this Court stating in categorical terms that imprisonment for life means remaining of the whole period of natural life of the convict. The principle of exercise of expanded expansion has received acceptance because the Court when it does not intend to extinguish the spark of life of the convict by imposing the death sentence*".

It becomes immediately clear that the theme was to utilize the vast hiatus between 14 years' imprisonment and death with a view to avoid disastrous situation accruing on the court taking a path of capital punishment in cases where it did not find the life imprisonment sufficient. Section-433A however does not think on

the same line. Though in Shiharan(supra), the Court at one point mentioned the argument of Attorney General that excess minimum cap was permissible as Section-433A indeed provided for "atleast" 14 years, the same does not really support the concept of expanded option. Firstly, the same would amount to substitution by judicial interpretation which though permissible has to be expressly done. Secondly, the same does not care about a case where the convict was though sentenced to death but punishment was commuted to life imprisonment in which case the judicial sentencing process being over, there would have been not question for exercise of the expanded option. Thirdly, if this was so, the option should have been exercisable by any court passing the sentence as Section-433A is not dependable on the status of court passing the sentence. It is therefore clear that concept of expanded option of sentencing has nothing to do with the Section-433A and is therefore a clear judicial legislation.

**Meaning of life imprisonment**

The Supreme Court's view, in ***Kartar Singh vs State of Haryana*** *AIR 1982 SC 1433*, was that if a person, on his conviction, stood sentenced to imprisonment for life and not for imprisonment for term, he was not covered by the provisions of set off as embodied in Section 428 of the Code of Criminal Procedure and, thus, these provisions of set off were not available against imprisonment for life. However, a Constitution Bench in ***Bhagirath vs Delhi Administration****, reported in (1985) 2 SCC 580*, the principal question, which arose, was: whether the expression "imprisonment for life" means a "term of imprisonment" for the purpose of invoking the powers of set off exercisable under Section 428 of the Code of Criminal Procedure? The Supreme Court observed, in Bhagirath's case (supra), that there is little warrant for qualifying the word "term" by the adjective "fixed", which is not to

be found in Section 428 of the Code of Criminal Procedure and that the assumption that the word “term” implies a concept of ascertainability or conveys a sense of certainty, is contrary to the letter of the law as is found in Section 428 of the Code of Criminal Procedure. It was also observed by the Supreme Court, in Bhagirath's case (supra), that even the marginal note to Section 428 of the Code of Criminal Procedure does not bear out such an assumption; rather, Section 428 of the Code of Criminal Procedure belies such an assumption and that the marginal note of Section 428 of the Code of Criminal Procedure shows that the object of the legislature in enacting the particular provision was to provide that “the period of detention undergone by the accused” should “be set off against the sentence of imprisonment” imposed upon him. It was pointed out by the Supreme Court, in Bhagirath's case (supra), that there are no words of limitation either in Section 428 of the Code of Criminal Procedure or in its marginal note, which would justify restricting the plain and natural meaning of the word "term" so as to comprehend only such sentences, which are imposed for a fixed or ascertainable period and not for imprisonment for life. In Bhagirath (supra), the Supreme Court also points out that to say that a sentence of life imprisonment, imposed upon an accused, is a sentence for the “term” of his life does offence neither to grammar nor to the common understanding of the word “term”; rather, to say otherwise would offend not only the language of the statute, but go against the spirit of the law, that is to say, the object with which the law was made. Now, with the introduction of proviso in Section-428 CrPC matter has been set at rest as it has been provided therein that the set off if is to be done in life imprisonment cases falling under Section-433A, the same shall be done in relation to the minimum limit of 14 years.

Section-45 of IPC is clear that the meaning of life imprisonment is the imprisonment till the end of the life. This

provision has not undergone any change even when the other provisions of IPC have been amended to denote that punishment shall be life imprisonment which shall mean the rest of the life of the convict. It is therefore clear that those provisions providing of sentence regarding specific crimes are only clarificatory in nature.

**Nature of remission and commutation**

In the case of a remission, the guilt of the offender is not affected, nor is the sentence of the Court, except in the sense that the person concerned does not suffer incarceration for the entire period of the sentence, but is relieved from serving out a part of it. Commutation is a change of a sentence to a lighter sentence of a different kind.

**Difference between commuting power in IPC and CrPC**

Section 433 of CrPC provides for a power of the Government to commute the sentence and Clause (b) thereof provides that the appropriate Government may without the consent of the person sentenced commute a sentence of imprisonment for life, for imprisonment for a term not exceeding 14 years or for fine. It may be pointed out that this provision is similar to the provision in Section-55 of the Indian Penal Code, 1860. Similarly, clause-(a) of Section- 433 CrPC provides for commutation of death sentence in any other punishment. This provision is on the same line as of Section-54 IPC. The power to commute a sentence of death is independent of Section-433A. The restriction under Section-433A comes into operation only after the power under Section-433 is exercised. Clause (c) of Section-433 deals with commutation of a sentence of rigorous imprisonment to simple imprisonment for any term to which the person might have been sentenced, or to fine.

It needs to be understood that commuting powers available in Section-54 & 55 IPC and Section-433 CrPC are mutually

exclusive. By virtue of Section-4 & 5 CrPC, the commuting power under Section-433 equally applies to offences under any law for the time being in force. But due to the bar created by Section-5 IPC, the commuting power of Section-54 & 55 IPC does not apply to offences under any other law for the time being in force. Even further, Section-433 provides for wide range of commutation as compared to IPC. Even there is a clear difference in commutation of life imprisonment in IPC and in CrPC. Interestingly, whereas a life imprisonment can be commuted to a term punishment upto 14 years under IPC, the same can be commuted under CrPC either as term punishment upto 14 years or even for fine. Both the situations are clearly contradictory. It has therefore to be accepted that commuting provisions of IPC are mutually exclusive vis a vis CrPC.

Unfortunately, neither in **Shraddananda (supra)** nor in **Shriharan (supra)**, the impact and distinguishing features of commuting provisions of IPC has been noted.

**Conclusion**

In view of the aforesaid analysis, we may come to the following conclusions:

1. In expanded option of sentencing, a convict can be sentenced to life imprisonment having no scope for remission at all or having such scope only after a particular time period exceeding 14 years as may have been fixed by the Court;
2. If a convict is sentenced to death and the same is commuted by the authorities to life imprisonment, he shall not be released before expiry of atleast 14 years;
3. If a convict is sentenced to life imprisonment in the alternative of death sentence and the court does not chooses to exercise expanded option of sentencing, he will still come

within the ambit of Section-433A CrPC and shall not be released before expiry of atleast 14 years;

4. A trial court being the court of sessions cannot exercise the power of expanded option of sentencing;
5. Expanded option of sentencing can only be exercised by the High Court or the Supreme Court;
6. Even High Court or Supreme Court shall exercise this expanded option only when they deal with the judicial sentencing process when the matter comes before them;
7. High Court or Supreme Court cannot exercise the expanded option of sentencing when only the convict has approached through appeal against Life Imprisonment;
8. Expanded option of sentencing cannot be invoked in cases hybrid punishments;
9. No minimum cap for release can be put by trial court even where the punishment prescribed is extendable to Life Imprisonment but prescribing any minimum term imprisonment;
10. Set off for period already undergone is also allowable for a punishment of Life Imprisonment though it can only considered if specific order of remission or commutation is passed by executive authority;
11. Set off in respect of life imprisonment (imposed where one of the punishment is death or where death is commuted to life imprisonment) will be done against the period of 14 years prescribed in Section-433A CrPC;
12. Earned remission is also allowable for a punishment of Life Imprisonment though it can only be considered if specific order of granted remission or commutation is passed by executive authority;
13. Death sentence can be commuted to any kind of punishment provided in the IPC and is therefore not limited to

commutation to life imprisonment;

**14.** Life imprisonment can be commuted to any term imprisonment or fine and such commuting power is not limited by Section-433A CrPC in general cases but special cases of death and alternate life are governed by Section-433A and as such, Section-433 will not apply;

**15.** Section-433A is not dependable on the authority who has commuted or the manner in which the commutation has been made. As such, Section-433A will equally apply to a commutation of death sentence even by the President or the Governor.

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# Three Decades of DNA Fingerprinting In India

NOOPUR MODI*

## Introduction

India was one of the first countries to recognize the significance of DNA fingerprinting in criminal justice system. As held by Chief Judicial Magistrate of Telicherry (Thalassery) vide case No. M.C. 17 of 1988.[1]

> - PW4 is an expert in the matter of molecular biology and the evidence tendered by him is quite convincing and I have no reason why it should not be accepted. Just like the opinion of a chemical analyst, or like the opinion of a fingerprint expert, opinion of PW4, who is also expert in the matter of cellular and molecular biology, is also acceptable"

It was the first paternity dispute in India, which was solved by DNA fingerprinting test and was followed by DNA finger printing based resolution of hundreds of civil and criminal cases, including cases such as the assassination case (s) of ***Beant Singh*** **and** ***Rajiv Gandhi*****,** ***Naina Sahni Tandoor*** murder case, ***Swami***

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[1] *II (1991) DMC 499)*

***Premananda case***. India was one of the first countries to recognize the forensic application of DNA fingerprinting and the judiciary system has time to time appreciated the development in this filed.

During last 30 years, India has set up DNA fingerprinting facilities at various levels to aid the criminal investigation.

1. In 1996, Centre for DNA fingerprinting and Diagnosis was established by Department of Biotechnology, Govt. of India.
2. As of now, three out of six central Forensic Science laboratory and 28 State FSL have DNA facility.
3. Recently, "Sakhi Suraksha" lab was dedicated to the nation. The lab has capacity of 2,000 cases per year.

Though, the forensic application of DNA profiling is well adapted by law enforcement agencies, India has still long way to go to fully utilize its potential as an accurate and reliable evidence. With comparison to other countries, India faces challenges in following aspects:

**DNA Evidence vs Right to Privacy and Self-Incrimination**

Our judicial system does not deny the use of scientific aids in investigation of criminal cases but questions over self-incrimination and privacy have been major blockade for its admissibility. India is a signatory to International Covenant on Civil and Political Rights, 1966, and right to privacy is derived from Article 21 of the Constitution and from Directive Principles of State Policy. As held in ***People's Union for Civil Liberties v. Union of India*****,** right to privacy under Article 21 cannot be curtailed except according to procedure established by law.

In this context, it has been widely debated how courts can ask the accused to give his sample for DNA analysis or will it violate the protection against self- incrimination. If the accused

refuses to supply the sample, can an adverse inference be drawn against him?

Taking of fingerprints was challenged in the case of ***State of Bombay v. Kathi Kalu Oghad*****,** the Hon'ble Supreme Court held that Article 20(3) of the Constitution gives protection to a person not to be a witness against himself. However, "to be a witness" is not equivalent to "furnishing evidence" in its widest term and significance. Giving thumb or finger impression or exhibiting parts of the body by way of identification are not included in the expression "to be a witness". Being a witness has been interpreted to mean imparting some sort of knowledge in testimony. From this perspective, it can be observed that there will be no constitutional restriction on the collection of samples for DNA analysis.

It is to be noted here that is no specific legislation or provision for DNA either in Indian Evidence Act, 1872 or Code of Criminal Procedure, 1973. The Code of Criminal Procedure was amended in 2005, and New explanations were included like sweat, hair sample, swabs, fingernails, blood, blood stains, semen, sputum by using modern technique which is necessary in case of sexual offences. The admissibility of DNA evidence has been given much emphasize under Indian Evidence Act, 1872 under Section 45 which deals with opinion of expert.

Section 3 and 5 of the Identification of Prisoners Act, 1920 enables the Investigation officer and Magistrate (respectively) to collect Fingerprint impressions, foot print impressions of a prisoner. However, accused cannot be forced to undergo X-ray examination, if it is suspected that property of theft or other material which is necessary for the purpose of investigation is swallowed by him.[2] The act also remains silent for collecting other

[2] *Bharati Law Review, Jan. – March, 2017, published in www.manupatra.com.*

body fluids from the body of the suspect such as blood, semen, urine etc. for DNA analysis. In this respect, sections 53, 53A are relevant.

> *Examination of arrested person by medical practitioner at the request of police officer - Section 53 (1): When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a Police Officer not below the rank of Sub-Inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such force as is reasonably necessary for that purpose.*

In this section and in section 53A and 54 the term "Examination" shall include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case.

The Supreme Court has from time to time held that when there is a strong prima facie case to conduct DNA profiling for identification then, DNA test must be performed. Some of the important judgement with regards to admissibility of DNA profiling is mentioned below:

1. ***Sharda v. Dharmpal (2003)***[3]**-** a matrimonial court has the power to order a person to undergo medical test. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution
2. ***Selvi v. State of Karnataka***[4]**-**Use of DNA for the purpose of comparison and identification does not amount to testimonial act for the purpose of Article 20(3).
3. ***Krishan Kumar Malik v State of Haryana***[5]**-** The court ordered for DNA test invoking Section 53A of CrPC

**Dilemma over child legitimacy and DNA test**

Under section 112 of Indian Evidence act, there is a conclusive presumption that a child born during the continuance of a valid marriage or within 280 days of dissolution of marriage and mother remaining unmarried, shall be conclusive proof of legitimacy of child, no matter, how soon the birth is, after the marriage or dissolution. But one would observe that section 112 carves out an exception to the above mentioned presumption. If the party is able to prove the non access between them then the presumption of legitimacy may be dropped. This clarifies that DNA cannot be used in routine matter in cases of paternity issue. Only if the party is able to prove the non access only then Court shall allow the permission to conduct DNA test.

In case of ***Jayaprakash v. Nisha***[6]**,** Kerala High court opined that DNA test need not be ordered as a matter of routine in all cases where the legitimacy or paternity of a child is in issue. A distinction had to be drawn between 'legitimacy' and 'paternity' of the child.

[3] *AIR 2003 SC 3450*
[4] *AIR (2010) SC 1974*
[5] *(2011) 7 SCC 130*
[6] *R.P. (F.C.) No. 151 of 2012*

Legitimacy can be established by legal presumption, while it is desirable to establish paternity by DNA test, particularly when both parties agree.

Till now in disputed paternity cases, DNA testing is not allowed because of the limited scope of exceptions to this law and the standard of conclusive proof. In recent case of ***CKP v. MP***[7]***, Delhi High court*** bench observed that –

> *An application seeking DNA test of the child in our view has very strong repercussion on the child and such an order for conducting a DNA test should be passed in very rare cases where very strong reasons are set out and in extreme circumstances when the matter cannot be resolved by leading evidence in the matter.*

In ***Narayan Dutt Tiwari v Rohit Shekhar and Another***[8], the SC upheld the order of Delhi HC in conducting DNA test to prove the paternity issues.

The Law Commission of India has made suggestions for the amendment of section 112 of the Act in the Indian Evidence (Amendment) Bill, 2003. The bill proposes to expand the scope of exceptions to section 112 to include tests which can conclusively prove paternity at the expense of the disputing party. It also lays down certain procedures to ensure that the test is conducted in a scientific and safe manner. The proviso to the amendment also states that if the man refuses to undergo such tests, he will be deemed to have waived his defence to any claim of parentage made against him.

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[7] *2019 SCC OnLine Del 8077*
[8] *(2012) 12 SCC 554*

## Challenges in DNA evidences

Admissibility of the DNA evidence before the court also depends on its accurate and proper collection procedure, preservation and documentation in order to satisfy the court that the evidence placed before it is reliable. That brings us to the second aspect of challenges faced in DNA evidences.

1. **Lack of resources/awareness-** The reliability of DNA evidence has been subjected to scrutiny in any case for its proper handling i.e. collection, preservation and forwarding of biological exhibits.
   a. Field level officers are not well equipped with proper collection tools/kits for biological evidences such as FTA cards, sterile cotton swabs, Sexual assault evidence collection kits, buccal swabs etc
   b. Ministry of family and health welfare and DFS have issued detailed protocol for sample collection from victim and accused in sexual assault cases. However, most of the field level officers and Medical examiners are not aware or not trained about it.
   c. With very poor lab to population ratio and lack of kits and manpower in Forensic Science laboratory, DNA testing is currently being done on an extremely limited scale in India with approximately 30-40 DNA experts undertaking less than 3,000 cases per year, which represent 2-3% of the total need.
   d. Very few Officers are aware about specialized government institutes/laboratories (Except FSLs) which provides DNA forensic services in India. Some of them are:
      i. Centre for Cellular and Molecular Biology, Hyderabad
      ii. Centre for DNA fingerprinting and diagnosis, Hyderabad
      iii. Rajiv Gandhi Centre of Biotechnology, Thiruvanthpuram

2. **Upgrading DNA facilities-** While we are still struggling with clearing pendency in DNA facilities at FSL, the science has expanded its horizons. We are yet to upgrade our resources to fully utilize it:
   a. **UADB/UCDB and Missing persons**- Genetic technologies can give information on missing individuals and unidentified/unclaimed human remains Recently, AIIMS has proposed to establish DNA database for unidentified/ unclaimed dead bodies. BPR&D has also suggested to collect biological sample for DNA during post mortem of UADB/UCDB. However, that would require High throughput analysis and Laboratory automation, DNA database. Most of the DNA facilities in State FSLs are far away from it.
   b. **Human Trafficking**- The DNA database generated for missing persons can be used to identify the victim of human trafficking. One such project DNA-PROKIDS has generated promising data in 16 countries to reconcile victims to their families.
   c. **Mass Disaster Victim Identification**- DNA analysis is currently a gold standard for identifying mass disaster victims. DNA analysis is the main method of choice to identify individual mass disaster victims from severely fragmented and commingled bodies or severely charred, decomposed or skeletonised bodies. India has demonstrated it successfully on various occasions such as AI flight 812 crash, Uttarakhand cloudburst, Puttingal Temple fire. However, these are limited to resources available with institutes and State FSLs need to advance their facilities.
   d. **Sexual assault cases- Y**-STR screening is manifestly useful for corroboration in sexual assault cases and it can be well used as exculpatory evidence and is extensively relied upon in various jurisdictions throughout the world. It provides

separate tool to generate genetic information from following scenarios:

i. For mixed stains where the proportion of female DNA is higher than the male DNA present (which is frequently observed in vaginal swabs collected after sexual intercourse)
ii. For cases with very old semen stains, where the majority of sperm cells are suspected to be degraded
iii. For cases in which, seminal stains of two or more perpetrator are present in the sample.

e. **Rapid DNA-** All forensic facilities in India use conventional PCR based DNA profiling which would take 3 to 5 days for generating profile. However, with advances in science, DNA profile from the given sample can be generated in 90 mins. This also reduces the human interference in the whole process. India is yet to make it available in forensic laboratories.

**3. The DNA Technology Regulation Bill-** The long awaiting legislation on DNA will provide regulation of use and application of DNA technology for the purposes of establishing the identity of certain categories of persons including the victims, offenders, suspects, under trials, missing persons and unknown deceased persons. The said bill has provisions to establish national and regional DNA data banks, DNA Regulatory Board. However, there have been questions over necessity for storage of such DNA profiles, pointing out that this violates the fundamental right to privacy. The Bill has been referred to the Parliamentary Standing Committee on Science and Technology, Environment and Forests. Some of the lacuna in the proposed bills is:

a. It does not define the "DNA profile" or "DNA data". Many predictive information about misusing the genetic data is one of the concern over the right of privacy. However, the

definition must explain the procedure that only forensic significant region of DNA is targeted and saved. This data is from non-coding region and does not reveal any genetic information excepts its application for comparisons and identification.

b. There is no provision of database for field level officers and it is necessary to exclude the contamination in analysis.
c. There is no clarity over the procedure of consent with regards to civil cases.
d. It does not include the financial implication and cost analysis study. The proposed infrastructure and procedure would cost in thousand of crores and immense resources.

## Conclusion

DNA fingerprinting technology has immense potential to speed up the process of criminal justice system. The issues related to use of genetic material has been widely debated across the world. It is quite clear that Indian judiciary has taken positive approach for considering DNA as admissible evidence for establishing guilt or innocence. Role of DNA fingerprinting is not limited to criminal justice system but also establishing identity of unknown i.e Humanitarian need. The Procedural guidelines on sample collection, availability of funds and resources, reinforcing the DNA facilities are the preliminary steps to utilize its full potential. DNA technology bill is yet to see the light of the day, but can act as strong legislation and can act as the uniform and national level law on conducting DNA tests and its admissibility. Section 112 is based on presumption of public morality and public policy. it is essential to delve into the scope and extent of Section 112 today keeping in view of evidentiary value of DNA.

*"Interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former."*

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# Deliberate Absenteeism in Judicial Processes of Organised Crime Cases -A Study from Tuticorin

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## Introduction

Justice delayed is justice denied is the fundamental axiom of any criminal justice system. The Indian criminal Justice system is marred by the high rate of pendency in our courts. According to data from the NITI Aayog, three crore cases are pending with judicial courts our country. A lion's share of them is with subordinate judiciary.

Reasons for this huge pendency is insufficiency of staff in courts and poor infrastructure. However, dilatory tactics perpet - uated by accused and their legal advisers contribute major reason for this high pendency. Planned absenteeism is one of the most used modus operandi in ensuring dilation of court proceedings. This is particularly evident in cases involving rowdy elements with pre-existing criminal background involved in organized crimes. They often have political backing to fund their criminal activities and their proceeding before the court. Collusion

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between politicians,criminals and lawyers, is the major conduit through which most rowdies, with criminal background, escape the hands of justice. Rowdy criminals also take advantage of certain sections of Cr.P.C. to ensure that trial does not proceed smoothly section 273 of Cr.P.C envisages that the evidence has to be taken in the presence of the accused. However, it provides an exemption that if the personal attendance is dispensed with the same can be taken in the presence of his pleader. The researcher got an opportunity to study this external factor i.e. "absenteeism of accused" and its effect on trial process during district Practical Training while by posted as trainee of Tuticorn, Tamil Nadu. The present study is intended to to bring out intuitions on the nature of behavior of such rowdies and organized criminals during trial process which results in of pendency of such cases, and to propose remedial measures from policing perspective to reduce the delay in delivery of justice to the victims of rowdy atrocities.

## Objective of Study

To analyze the absenteeism of accused rowdies during court proceedings at Tuticorin, Tamil Nadu.

## Methodology

The study was conducted in the Thoothukudi (Tuticorin) district of Tamil Nadu State. Thoothukudi district is well known since its formation in 1984 for its law and order problems. The lower level of education compared to other districts of the state as well as lack of profitable economic and agricultural activities has lured large number of its youth to various criminal activities including rowdyism. These rowdies with varying levels of criminal background are the major reasons of caste-based violence and organized crime in this district. In the majority of cases the rowdies are in connivance with local politicians and advocates so that

conclusion of trial and subsequent conviction is prolonged, and they have a free rein to continue with their activities. Thus, Thoothukudi with an adequate number of rowdy cases and a disproportionate amount of cases long pending was a suitable choice to conduct the study.

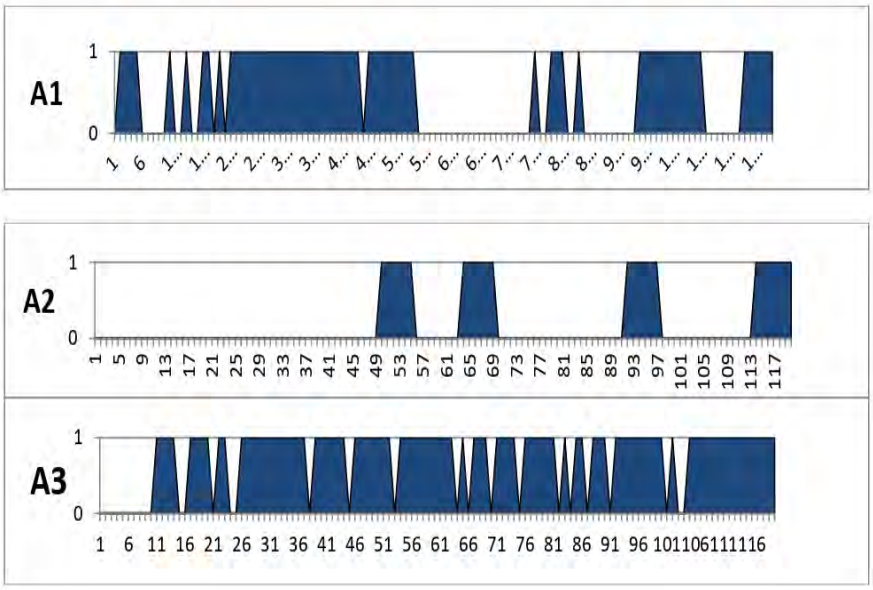
Based on the analysis of reports from District Crime Records Bureau (DCRB), it was found that Thoothukudi-South police station has the largest number of such long pending cases involving rowdies. Thoothukudi South PS comes under Thoothukudi Town subdivision. The longest pending cases of the station was selected, and it was compared with other cases of murder involving accused who were not having any criminal background. Altogether three cases were selected, 1 with rowdy accused and 2 with no rowdy accused. Case 1 was Cr. No. 783/2009 U/s 147, 148, 301, 506 (2), r/w 34 IPC has 7 accused with rowdy background. Case 2, Cr. No. 803/ 2016 U/s 302, 294(b),307, 506 (2) IPC and case 3 - Cr. No. 822/2016 U/s 302, 294(b), 506(11) IPC were selected for comparative study where accused were lesser and had no criminal background. Case 1 was pending from last 11 years and still in trial phase with committal happening in 2013 after 4 years. Trial sessions were personally attended by researcher to have insights of the proceedings of the court and analyze the behaviour of accused. Details of every hearing of the case, since being taken into file, was collected from the records of court file with the assistance of the court constable of the Thoothukudi Court Complex.

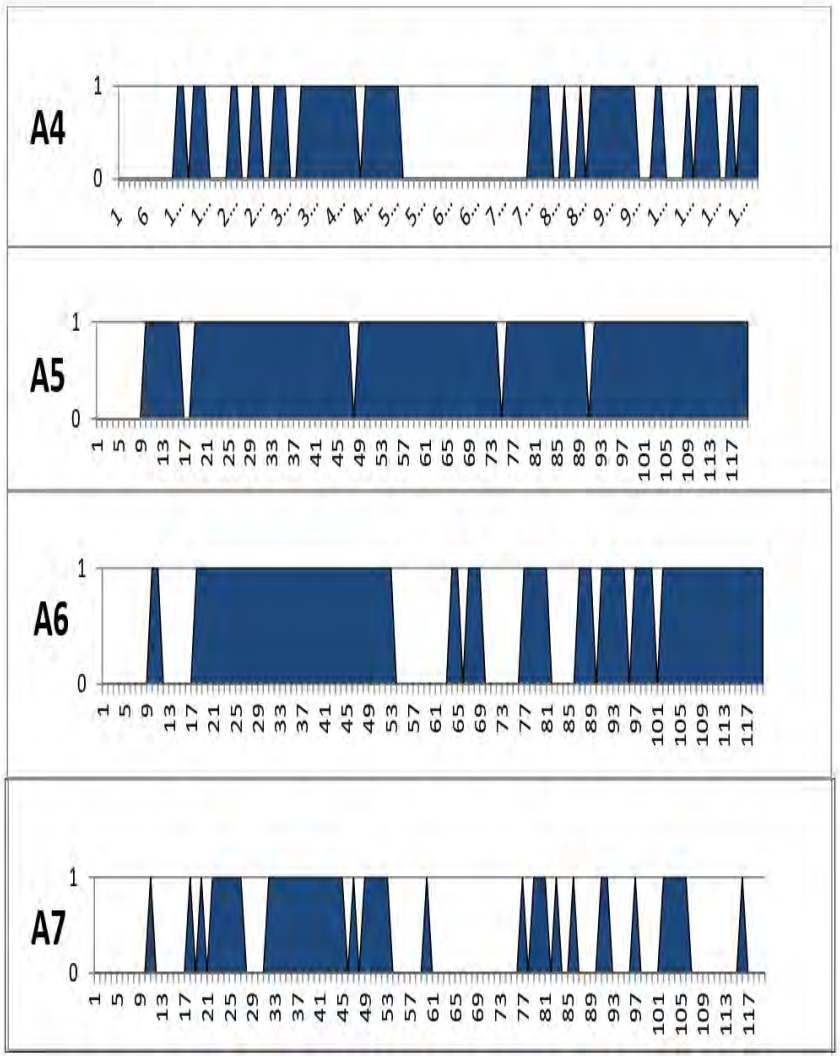
The movement of each of the seven accused in case 1 and others in case 2 and 3 were also graphed with the intention to obtain the level of planning in ensuring pendency.

## Results

When the movement of each of the seven rowdies accused in case 1 was analyzed it was found that they took turns to ensure that all rowdies were not present on a day so that the trial is extended. In many cases the same advocate appeared to file application u/s 317 CrPC to ensure that a few of the accused are not physically present. However, in case 2 and Case 3, the accused were mostly present unlike rowdy accused. Fig. 1 shows the nature of appearance of the 7 accused in case 1. In the figure, value of 1 shows presence and value 0 shows absence. From Fig 1, it becomes clear that none of the accused attended in full, the various hearings of the case in the court. Most of the accused appeared occasionally followed by extended breaks of absence.

**Fig. 1: Nature of appearance of 7 accused in case 1**






In comparison to case 1, the accused of case 2 and case 3 were mostly present in court during hearings. This is mapped in Fig 2 and Fig.3. The comparison of these mappings show that there is deliberate attempt by organized criminals in eluding court proceedings which is the major reason behind long pendency of organized crime and rowdy cases.

**Fig. 2: Nature of appearance of accused in case 2**

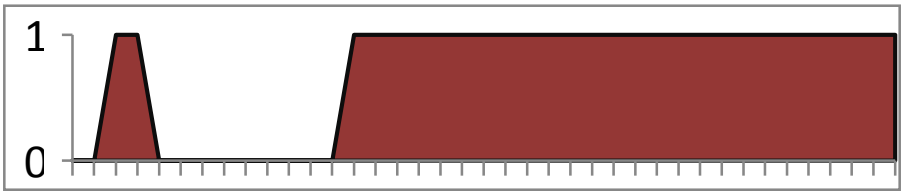
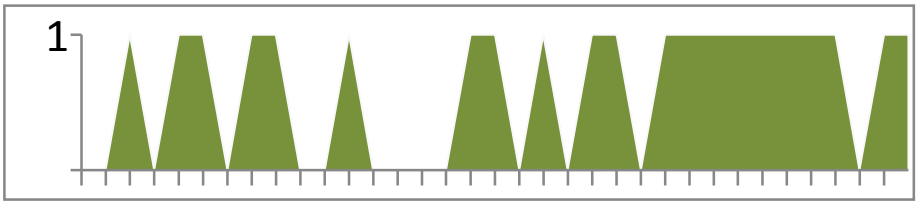



**Fig. 3: Nature of appearance of accused in case 3**




**Discussion**

The discussions of the paper are limited to motivational factors behind such deliberate attempts and steps to reduce them. Ensuring the presence of the accused on a regular basis will reduce the time interval between hearings, and thus result in speedy conviction and faster delivery of justice. It is also shown by empirical studies that faster the trial, lesser is the chance of witnesses turning hostile. This is because the accused gets lesser time to influence or threaten the prosecution witnesses. Thus, ensuring presence of accused in courts and subsequent faster trials will have a positive role in increasing the whole conviction rate of cases and delivery of justice.

The major advantages of using dilatory techniques to delay trial include delaying the punishment, waiting for change of benches so as to appear before more liberal Judges, ensuring that livelihood and day to day lives are not affected as well as buying

time for coercive methods against witnesses and victims to ensure acquittal. Absconding from the area, using 317 petitions, non acceptance of summons, collusion with process teams of police etc. are some of the major methods of evading such presence. In some cases, ignorance about an accused arrested in a different jurisdiction may lead to non serving of summons or failure in attendance.

**Recommendations**

In the backdrop of the discussion, the following measures are recommended to prevent the malaise of long pendency of rowdy cases and to ensure speedy delivery of justice.

1. **Supervision by *SHO*** - SHO of a PS is the link between court constables and summons team. He must be well versed with the status of court cases, processes issued against accused, and status of summons served, and warrants executed regarding an ongoing trial. Without due interest of SHO, the process team and court team work in silos without coordination and result in blame game.

2. **Ensuring of accountability of process team** – Many a times summons are not collected to keep records safe. Supervision should be done at SDPO level on pending processes by corroborating it with court records. This can be done only by someone who see a bigger picture. In this regard, the recommendation to delegate process duty to private agencies will only reduce accountability.

3. **Developing digital database of prisoners across states through an online system to coordinate summons issued, and arrests made-** This will help courts to issue production warrant easily as in many cases arrests done in one district is not known in another district. Ensuring access to SHOs to the consolidated database which can be created using data of CCTNS is a good

solution.

**4. Taking surety action** – Often police are reluctant to take action against sureties. It is observed that if actions are initiated against surety then accused automatically comply to court orders and surrender in court.

**5. Trial in absentia under section 299 CrPC**- Section 299 of the Code reads as "record of evidence in the absence of the accused". Clause (1) of this section states that the Court competent to try the accused or conduct his trial may examine any witnesses produced by the prosecution, in the absence of the accused, in a situation where the accused has absconded and where there exists no immediate prospect of his arrest. In case of an accused absconded or if there is no immediate prospect of arresting him, court can proceed with recording of witnesses in his absence and carry on with trial of the other accused. The only practical issue is that such cases will still remain in records as pending until the absconding accused is arrested. However, such a move will meet ends of justice. In the case of ***Jayendra Vishnu Thakur vs State Of Maharashtra***,[1] the Hon'ble SC observed that "an accused is always entitled to a fair and speedy trial but then he cannot interfere with the governmental priority to proceed with the trial which would be defeated by conduct of the accused that prevents it from going forward".

Further, in the case of ***Hussain and Anr. v. Union of India,***[2] the Supreme Court suggested that "an amendment be made at par with Section 339-B of the Code of Criminal Procedure, as applicable in Bangladesh, providing for trial in absentia of an

[1] *Criminal Appeal No. 981 OF 2009 (Arising out of SLP (Crl.) No. 6374 of 2007.*
[2] *Hussain and Anr. v. Union of India, (2017) 5 SCC 702.*

accused who absents himself from the trial". This case is noteworthy as it dealt with the judicial backlog and the pendency of cases in criminal courts. The importance of speedy trials was restated, and the right to a fair and speedy trial was held to be in consonance with the fair, reasonable and just procedure under Article 21 of the Indian Constitution.

**6. Frequent use of *Section 353 (6) Cr.P.C.*** - The proviso to section 353(6) of the Code states that, "where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence." In 2016, the Gujarat High Court directed all lower courts to proceed with the trial and pronouncement of the final verdict of absconding under-trial prisoners absenting themselves from court proceedings. "A circular was issued, with the instructions of the Chief Justice RS Reddy, by the Registrar General of the High Court, for judicial officers to follow and act in accordance with sections 299 and 353(6) of the Code, empowering the courts to conduct trial, record evidence, and deliver final verdict in the absence of the accused."[3]

**7. Judicious application of section 205 and section 317 Cr.P.C.-** Sec 205 empowers Magistrate to dispense with the personal attendance of the accused and permit him to appear by his pleader. It also contemplates that at his discretion, he may enforce such attendance. The plain reading of this section shows that it is the discretion of the Magistrate to dispense with the personal attendance of the accused. However, such discretion has to be

[3] *https://criminallawstudiesnluj.wordpress.com/2019/07/25/conducting-trials-in-absentia/#:~:text=Clause%20(1)%20of%20this%20section,immediate%20prospect%20of%20his%20arrest, accessed on 26.08.2020.*

exercised judiciously. The word 'reason' used in the said section shows that the Magistrate has to take the decision giving cogent reasons. Magistrate has to balance the interest of accused as well as Justice. Magistrate may consider relevant circumstances like inconvenience likely to be caused to the accused if he is required to be absent from his profession and calling for attendance in court, against prejudice likely to be caused if he does not appear in the court. He should also take into account with regard to any prejudice that may be caused to the administration of criminal justice. The paramount importance is in relation to the administration of criminal justice.

8. **Faster issuance of NBW** –Warrants can be issued if it is learnt that deliberate dilatory tactics are used. Prosecution department and SHO should work in close coordination for this. According to section 230 CrPC, the Judge can issue any process to compel attendance of witness. Also, according to section 87 Cr.P.C.- warrant in lieu of summons can be issued, if court believes that accused has absconded or that he will not obey summons. This can be done even before issue of summons.

9. **Use of 83 Cr.P.C.-** This section be utilized more and more to pressurize the accused to surrender under the fear of attachment of property. Further, in cases where proclamation order has been issued u/s 82 Cr.P.C. and accused has also been declared proclaimed offender then FIR be registered against him u/s 134 A IPC.

## Conclusion

Delaying the completion of trial and thus final judgment is a deliberate act used by rowdies to circumvent the arms of criminal justice system. The main intention behind these acts is to buy time to coerce the prosecution witnesses to get acquittal, or to wait for

liberal benches for acquittal, and to carry out their routine anti social activities. It is common knowledge that they posses support of influential persons by virtue of the helps they offer. Rowdies involve in planned absenteeism and abusing legal loopholes to keep the cases long pending. This study has tracked the trajectory of rowdies in court, thus bringing forth the fact that most rowdies follow occasional presence followed by continued absence. It becomes clear that calculated that absence is a technique used by rowdies to delay the trial and that it has met with success in most of the cases. However, this often leaves a large dent in the delivery of justice to the victims of rowdy atrocities as the punishment is neither severe nor certain nor swift. Inefficiency of police system is also a major reason for this. Inadequate supervision by SHO and SDPO, absence or non utilization of digital technologies, lack of training of subordinate officers, ignorance of legal provisions and poor coordination between the police, prosecution and the judiciary are some of the reasons for this sad state of affairs. This can be solved to a large extend by adequate supervision at various levels of police hierarchy, training to police personnel in legal provisions of CrPC, ensuring a digital database of state wise prisoners, efficient utilization of CCTNS network, and effective coordination between various stakeholders of the criminal justice system. Though section 205 and 317 provides for exemption of accused from attending the proceedings but these sections should not be allowed to be used by the accused to cause any impediment in the progress of the trial, in case is presence is dispensed with.

## References

i) *Case files of Cr. No. 783/2009 U/s 147, 148, 301, 506 (2), r/w 34 IPC, at Thoothukudi south PS.*

ii) *Case files of Cr. No. 615/ 2017 U/s 302, 120 B, 364, 294(b)*

*IPC, at Thoothukudi south PS.*

iii) *Case files of Cr. No. 803/ 2016 U/s 302, 294(b), 307, 506 (2) IPC at Thoothukudi south PS.*

iv) *Case files of Cr. No. 822/2016 U/s 302, 294(b), 506(11) IPC at Thoothukudi south PS.*

v) *Criminal procedure Code 1973*

vi) *Indian penal code 1860*

vii) *42nd report of Law Commission*

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# Implementation of Supreme Court Monitored Pilot Project for Photography and Videography of the Crime Scene

RAHUL GUPTA*

## Introduction

Investigation of a crime starts with inspection of the scene of crime. After inspection, we seize different evidences recovered at the crime scene. In cases such as NDPS, many times scene of crime is a person from whom recoveries are made from personal search. In all such recoveries and seizures, integrity of crime scene plays important role. Doubts always linger over the fact that Police has planted or tampered with some particular evidences to implicate the accused or benefit the accused. Thus, to ensure impartial investigation documenting the crime scene is of utmost importance. Keeping this in mind, Supreme court had in 2018 ordered to start a pilot project regarding photography and videography of crime scene in Shafhi Mohammad vs State of Himachal Pradesh (SLP 2302 of 2017). BPR&D and NCRB were tasked to come out with the modalities. BPR&D developed the application. In July 2019, it was decided that Pilot project for implementation will be taken up by Delhi Police in South Delhi.

*IPS (Probationers) 71RR, AGMUT Cadre

**About Shafhi Mohd case**

Shafhi Mohammad in H.P was caught by Police with the possession of drugs and a case under NDPS was registered. He argued in court that he was not carrying it. Police planted it on him. Shafhi's defence lawyer argued that if Police had videographed the incidence, it would have become clear that Shafhi had no such drug. Matter was referred to Supreme Court as the case involves a substantial question of law of general importance.

In Hon'ble court, there were arguments that whether videography of crime scene would help in investigation and what about legal requirements under section 65B of IT act. The Apex Court observed that now investigating agencies in India are now fully equipped and prepared for the use of videography, the time is ripe that steps are taken to introduce videography in investigation, particularly for crime scene as desirable and acceptable best practice. Also, by the videography, crucial evidence can be captured and presented in a credible manner. Additional Solicitor General of India had submitted that videography will help the investigation and was being successfully used in other countries. Additionally, it was submitted that "Body-Worn Cameras" in the United States of America and the United Kingdom have played a great role in curbing anti-social behaviour and also as a tool to collect the evidence. References were made to Section 54-A of the Cr.P.C. providing for videography of the identification process and proviso to Section 164(1) Cr.P.C. providing for audio video recording of confession or statement under the said provision.

The court ordered in July 2019 that there should be pilot implementation of a platform for such innovation. South Distt, Delhi was selected as the district for the implementation and the next date of hearing for the checking the status of the application

was fixed as 26th November 2019. Application was designed by BPR&D under the supervision of NCRB.

**Legal Aspect about Admissibility of images and videos**

The question that arises is that whether the photos and videos stored in the server will be admissible in the court of law. Through this application, the data generated at the crime scene will get automatically stored in the server after IO uploads it. Hence, the authority operating the server is not generating the content by his/her operations. In such scenario, who will provide certificate as mandated under Section 65B of IT act? Supreme Court in a landmark judgment ***Anvar PV vs PK Basheer 2012*** had held that an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. However, in Shafhi Mohd case Supreme court held that "we clarify the legal position on the subject on the admissibility of the electronic evidence, especially by a party who is not in possession of device from which the document is produced. Such party cannot be required to produce certificate under Section 65B(4) of the Evidence Act. The applicability of requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies… Such evidence should always be relied with some caution and assessed in the light of all the circumstances of each case. it will be wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved."

**Advantages of photography and videography of crime scene**

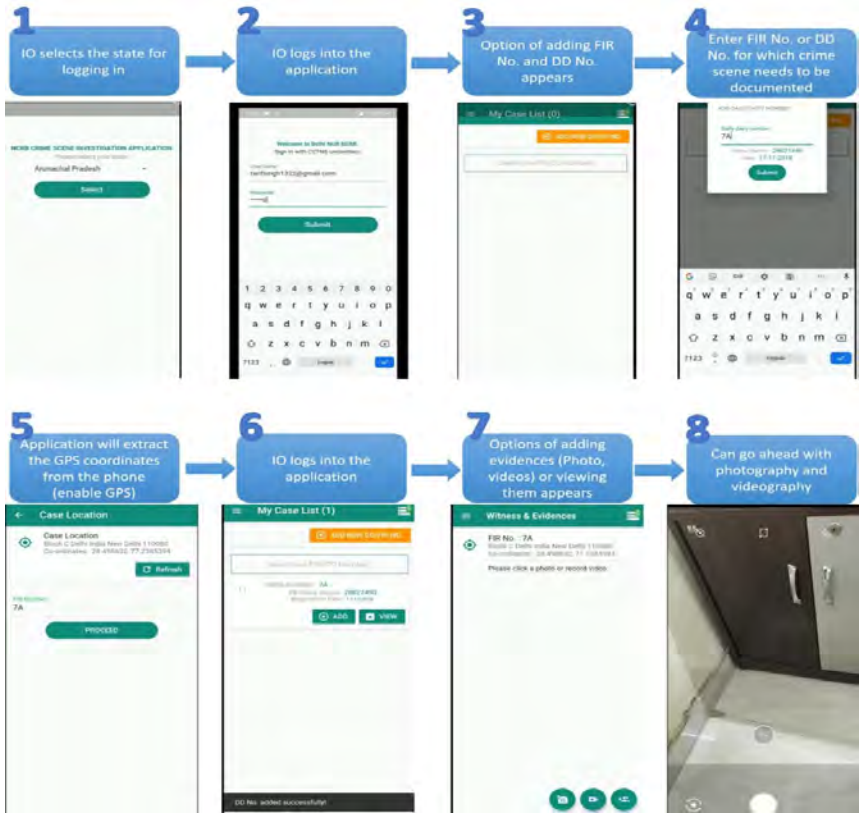
1. Credibility of crime scene preserved, thus higher chances of impartial investigation and conviction in the case.
2. The photographs and videos will help in refreshing the memory of investigating officers in long drawn out

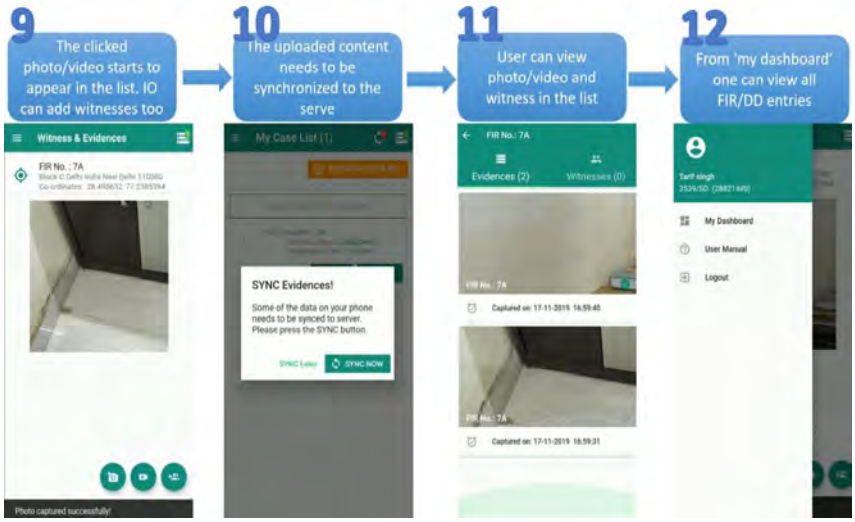
investigation and during trial. The change of IO or Investigating agency will not make much difference to the investigation process in such circumstances

3. The supervision by senior officers will improve as they will be able to guide the IO in Police station in a better way after going through the photographs and videos of the crime scene. In the long term, the trust deficit between Police, prosecution, judiciary and Public will reduce and it will strengthen rule of law in the society.

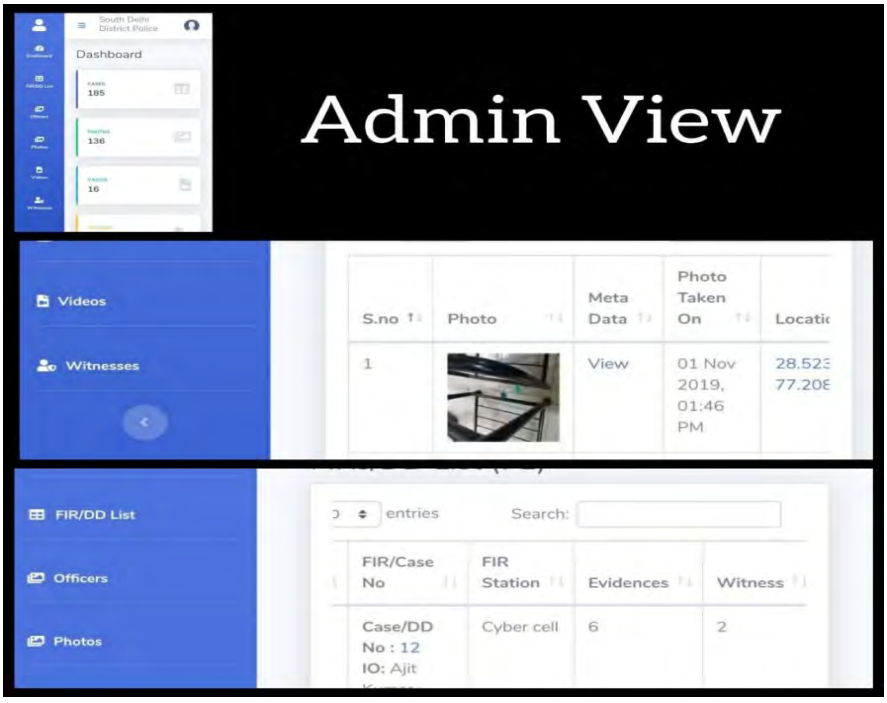
**Description of the application developed**

The application was available for android phones only. Its working can be understood through following flow diagram






The admin can view the statistics of the cases and documents uploaded and also retrieve the content available on the server.



## The implementation Challenge

Login ids were created for 10 IOs of different ranks of each Police station. A two-day training module was organized by Director CAPT Bhopal himself about how to use the android application. Thereafter the IOs started capturing photos and videos for the crime scenes. During implementation various challenges were faced -

1. **Technological skills** - Many IOs could not be trained in the desired manner because of lack of education and attitude towards technology. Thus, they did not make sincere efforts to take quality pictures.
2. **Attitudinal problem** - To ensure effective implementation, first we'll have to accept that there is problem in present set-up of Police investigation. Thereafter change will come. Changing the status quo is difficult, because vested interests have been developed in the present state of affairs. And technology is still not seen as a way to solve the problems. Thus, status-quoist attitude and an attitude against technology were the major hindrance in the implementation.
3. **Quantity vs Quality**- Target was given to ensure clicking of 200 photos and videos from each PS. Rather focus should have been more on the quality.

On the date of hearing on 26th November 2019, Delhi Police submitted to the Supreme court the status of implementation. In that submission, data about number of cases in which the application has been used and no. of photos and videos were mentioned along with benefits and shortcomings observed during the implementation. Supreme court appreciated the efforts of South distt, that we were able to implement a challenging pilot project.

**Benefits observed during the implementation**

1. It was a simple mobile application. Most of the Investigating officers (IOs) were able to use it effectively after two days of training.
2. The data collected by the application was in a secure environment in the in- house server. In physical form, the criminal case file documents are prone to weathering and getting misplaced.
3. Storage was in a secure environment hence the possibility of damage by tampering or losing the device is also ruled out.
4. Easy retrieval of data in future for court use was possible.
5. Quality of supervision was found to be improved. The data generated by the application can be viewed by supervisory officers at one touch at any point of time after the entry has been created.
6. Investigating Officers are using the data gathered by them to have a better recall of case details.

**Shortcomings observed in the application**

1. The application had no option to transfer one Investigating officer's case files to other Investigating officer in the same Police station, which usually happens in the Police station after one IO is transferred out of the Police station.
2. Application does not function in offline mode. It should be able to store photo and video data and upload it later to the server when it gets connected to the internet.
3. Application does not move forward if it is not able to extract GPS coordinates (case location) and for GPS coordinates it again requires internet connection. The issue needs resolution such that the app should be able to extract the location in offline mode and then be able to store the photo and video data.

4. Currently, supervision is only at the admin level where all the case data for the district is visible. The applications should allow multi-level supervision where ACsP/DCsP are able to see the data of the case within their jurisdiction. This can happen either at the CCTNS' end or ACsP/DCsP can be provided their own ID/password to view data by logging in into the original application.
5. There should be option of selecting DD no. or FIR no. Present application takes both the inputs as a single entry. Date should also be stamped along with DD no. or FIR no.
6. At the supervisory level, the supervising officer should able to sort the FIRs based on sections.

**Future: Issues that remain unaddressed**

1. **Ensuring Security**- Being a mobile application running on IO's mobile phone, the application data inside the phone is vulnerable to hacking. If IO's phone is compromised, many complications will emerge. A likely solution would be to provide specific number of phones to each Police station which are kept only for this particular use so as to ensure cyber safety of the devices.
2. Ensuring good quality of the images and videos being captured remains a challenge. Additionally, having high quality mobile phone cameras that function in dark hours will be a necessity.
3. **Victims' privacy -** There is lack of clarity about how IO and the new system will protect identity of the victim as required by CrPC when IO is using the application.
4. Protecting the identity of secret informer as mandated by section 125, Indian Evidence Act 1872, will remain a challenge, if s/he is seen in the video captured at the crime scene.

5. **Ensuring credibility and authenticity of the images/videos captured -** In Tukaram S. Dighole v. Manikrao Shivaji Kokate, (2010) Supreme Court observed that Standard of proof of its authenticity and accuracy (of electronic evidences) has to be more stringent than other documentary evidence. Thus more exhaustive rules and standards need to be laid down to ensure zero possibility of tampering in the whole process.
6. **Integration and merger with CCTNS -** There is still no clarity about whether the application will be integrated with CCTNS so that the photos video captured through this application will become visible to the IO after logging into the CCTNS. Another possible scenario is that CCTNS itself has a mobile application platform, that includes features of photography and videography of the crime scene.

**Update in the new application**

A new version of the application has been developed by NCRB based on the inputs given by South Distt after first phase of implementation. The new version is still to be tested on the ground level. It has following new features –

1. The new application has access to CCTNS database of IO username, password and FIRs. Thus, changing an IO for a case through CCTNS will automatically get reflected in this application.
2. Supervisory officer can ask access the case photos and videos by entering an OTP that IO will receive on the his/her phone.
3. To ensure offline working of the application, new application has feature of clicking and storing the photograph in the gallery through application and then uploads them to the server whenever IO connects to the internet.

4. In the new application only FIRs details can be entered not DD entries comprising of Dial 112 calls or local complaint. For a complaint of substantial nature, which might convert into FIR, IO can click the photos and videos through the application and keep them in the gallery. If it does get converted into the FIR, then these photos and videos can be later uploaded to the concerned FIR entries.

## Conclusion

Implementation of Supreme court monitored application was a challenging experience. Important learnings were how difficult it is to implement a new system. Additionally, understood how well thought-out technological interventions can help Police become more professional. Most importantly, I learnt how the system works and how to work within the system to bring a change.

## References

1. *Shafhi Mohd vs State of HP, Supreme Court Judgement (SLP 2302 of 2017)*
2. *Anvar PV vs PK Basheer 2012 Judgement*

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# Effective Human Resource Management at Police Station using IT Intervention

SAGAR KUMAR*

## Introduction

All organizations be they business, educational or government are dependent on human resource deployed therein. Their success is directly or indirectly related to efficiency of personnel involved. The management of human resource of an organization is an important function. Human resource can yield optimum results if managed properly but it may cause serious issues if left unmanaged. Human Resource Management has responsibility for identifying, selecting, inducing the competent people, training them, facilitating and monitoring them to perform at high level of efficiency and providing mechanism to ensure that they maintain their affiliation with their organization. Police department is not an exception. HRM is of utmost importance in a police department as it renders direct services to the society and is responsible for protection of members of the society. The police personnel, who are qualified, well trained, best motivated and lead by the competent superiors will improve the present work culture.[1]

*IPS (Probationers) 71RR, Bihar Cadre

[1] *https://shodhganga.inflibnet.ac.in/bitstream/10603/7597/10/10_chapter%205.pdf, accessed on 26.08.2020.*

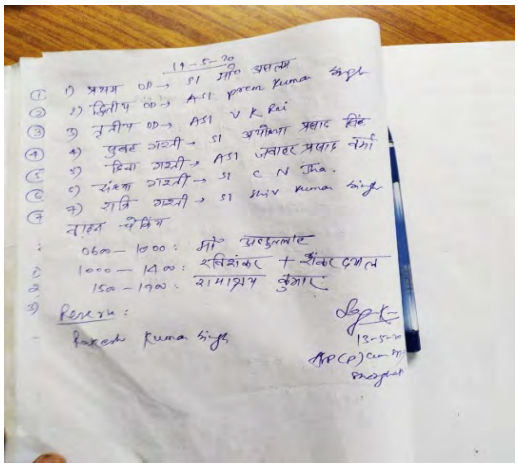
The following areas are covered in human resource management in the police department:

a) Recruitment and selection
b) Training
c) Transfers and promotions
d) Leadership
e) Communication
f) Authority and Responsibility
g) Motivation and Incentive
h) Superior- Subordinate relationship
i) Compensation Management
j) Performances Appraisal

All these areas of police human resource management can be improved upon with better policies and incorporation of IT initiatives. Let us begin by asking "Is there really a need for IT intervention for a better Human Resource Management in a police station?" The simple answer is Yes. Because police personnel in a police station are overworked. Technology acts as a force multiplier and can thus compensate for low police-to-population ratio. There is too much of paper work in the current system. At a time when most of the Indian states have shifted to CCTNS, Bihar is yet to do so. Therefore these IT interventions can be later integrated into the CCTNS platform once it rolls out. The SHO of a police station has a lot of discretion in allocation of duties and assignment of cases to IOs. Therefore, there is a need to address these personal biases by using IT tools. IT interventions at police station will reduce the work load, remove personal bias in the allocation of duties, reduce costs and improve the working culture of the police station. It should be clearly stated at the outset that given the level of IT skills our police personnel possess, these IT tools must be user friendly.

## Let us explore the possible IT interventions relevant for policing straightaway

### 1. DUTY ALLOCATION



a) **OD Register-** In every police station in Bihar, there is an OD register maintained by SHO, which is related to allocation of duty on a daily basis. Accordingly, a typical entry for a day in the OD register looks like this:

Some of the duties are considered easier and less risky than others. Therefore the SHO of the police station out of personal bias tends to repeatedly allot the same duty to a particular set of officers. Other reasons include favoritism, nepotism, corruption and violence of departmental rules in carrying out one's duties. Erosion of police morale has resulted in the fall of standards of police performance and increase in complaints against them. It results in police ineffectiveness. This not only lowers the morale of sincere police personnel but also lowers the efficiency of the system. This tendency can be eliminated by automating the process of duty allocation in OD register using a simple IT tool. This would also ensure that an officer on night duty do not get the morning duty on the next day.

b) **Rotation of shifts of Patrolling party**

| Date | Morning Patrolling | Evening Patrolling | Night Patrolling | Sentry Duty |
|---|---|---|---|---|
| 12-07-2020 | DAP | SAF | BHG | BMP |
| 13-07-2020 | BMP | DAP | SAF | BHG |
| 14-07-2020 | BHG | BMP | DAP | SAF |
| 15-07-2020 | SAF | BHG | BMP | DAP |
| 16-07-2020 | DAP | SAF | BHG | BMP |

i. DAP: District Armed Police
ii. SAF: State Auxillary Force
iii. BHG: Bihar Home Guard
iv. BMP: Bihar Military Police

This roster chart can be sent through Whatsapp Group of the Police station to the officers in charge of the patrolling party. An IT tool can ensure equitable distribution of duties.

c) **Passport Verification-** Verification of passports is generally considered rewarding by officers. Therefore there is a tendency on the part of the SHO to either verify passports himself or to assign such task to his favourite officers. This is an unhealthy practice and equitable distribution of such verification can be ensured by a simple IT tool.

d) **Assignment of cases to IOs and allotting enquiries-** Ensuring equitable distribution of cases to all IOs in a police station can be ensured using an IT tool. Assigning cases and enquiries in a cyclical manner, taking into account the number of pending cases with an IO can reduce backlogs and even out the workload. A database showing the list of pending cases IO wise in a police station is proposed. This will enable the SHO to supervise the ongoing investigation in a better way.

e) **Investigation and L & O-** In Bihar, even though investigation and Law and Order has been separated, there seems to be a

disconnect between their skill sets and their allotted wing. Currently, it is not uncommon to find some officers doing law and order duties only much to their dislike. Apparently, there is a need to fix this anomaly by timely shifting of officers across the two wings based on their choice and their skill sets.

1. **Updating Registers** - There are nearly 25 registers that are maintained in a police station in Bihar. However they are not regularly updated. Further there is repetition of similar information across registers. In order to reduce the redundancy in the process and to streamline the process of updation of registers, an IT tool can be designed to semi-automate the entire process. Most of the registers are directly related to the FIR Index and Final Reports. Therefore few basic registers can be maintained by manual entries and the rest can be updated automatically using IT tools.

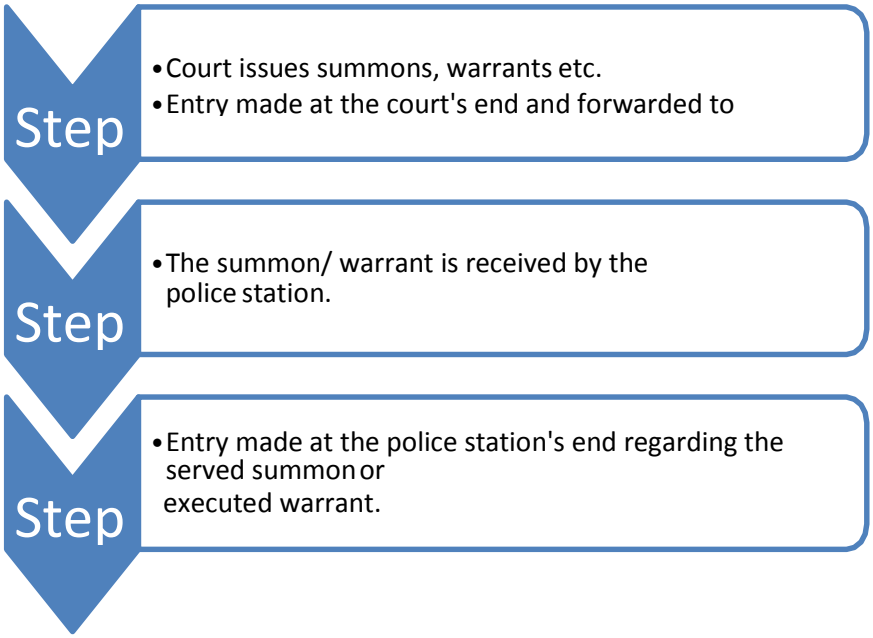
   **Illustration**: After an FIR is lodged, the name of the complainant, the name of the accused, Sections of Law etc can be populated across FIR Index, Running Register, Crime Index, CD Part 2, Theft/Robbery/Dacoity Registers as the case may be automatically.
2. **Crime Meeting-** In every Crime Meeting chaired by the District SP, the SHO of the police station is supposed to attend with Daily Report whose summary is like this:

| No of cases pending at the beginning of this month. | Total number of fresh cases added during this month. | No of cases disposed during this month. | No of cases pending at the end of this month. |
|---|---|---|---|
| 710 | 35 | 45 | 700 |

In order to evade the ire of the district SP, the SHO employs all tricks of the trade to show number of disposals as more than the

number of registered cases. Therefore an IT tool which automates the process of making of daily report is proposed. Further IT tool which facilitates analysis of registered crimes using heat maps, pie charts, histograms, crime hotspots etc is proposed. It will go a long way in devising crime control strategies.

3. **Summons and Warrants** - In police stations, there exists a whole bunch of summons that are not serviced and a bigger bunch of warrants which remain unexecuted which delays the trial process. Therefore in order to fix this anomaly, a pair of software one each at the end of court and the police station is proposed.




The proposed IT tool is expected to streamline the process of serving summons and execution of warrants.

4. **Training** - It is not uncommon to find a handful of officers being sent for training over and over again during their careers while others never get mid career training at all. This is

detrimental for efficient policing. Therefore an IT tool that tracks the previous training of each officers and thus ensures equitable opportunities for training of all serving personnel in a police station is proposed. This can well be integrated with a database maintained at the district and State level.

CRPC, IPC Quizzes can be arranged on IT platform periodically for upgrading skills of police personnel. Every police station in Bihar has a designated post of Thana Manager who is mandated with the task of ensuring the proper maintenance, upkeep and cleanliness of police station premises. However the levels of sanitation in Police stations across States like Bihar is not upto the mark. Therefore an IT tool to monitor the cleanliness, maintenance and upkeep of Government property, lockup, Bell of Arms is proposed.

**5. Monitoring of health**

SHO as the in charge of the police station should ensure that the general fitness of his subordinates do not fall. Fitness should not remain merely within the four walls of the training academy. A simple IT tool to keep a track of weight or Body Mass Index (BMI) and its linkage with choice postings can go a long way in improving the fitness of the police personnel.

**6. Alert for filing chargesheet**

Section 167 CrPC states that no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,

i. ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
ii. sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days,

or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail.

*However there are cases where the accused gets default bail using this provision simply because it slips out of the mind of the IO. It is questionable to what extent the IO can be held liable for this because an average IO in a police station in Bihar has 100 cases under his name.*

Therefore an IT tool that keeps track of the date and alerts the IO a week before the expiry of such a period can ease the burden of compliance of this provision.

7. **Malkhana** -In a police station the in charge of case property or colloquially Malkhana Prabhari has a difficult task at hand. The upkeep of case property is not upto the mark due to insufficient space inside the premises of police station. Further verification of case property physically while handing over the charge to an incoming officer is a humongous task and takes months to complete. Therefore an IT tool which maintains the inventory of case property in the form of an Excel database is proposed. It will enable quick retrieval of property during trial and ease the burden on the Malkhana Prabhari.
8. Leave Issues-There are two kinds of leaves availed by police personnel posted in a police station. One which is granted by the SP on line day in Police Lines of the district. This type of leave for example Maternity Leave, Earned Leave is well accounted for and is maintained systematically. However there is another type of leave like Casual Leave, Compensatory Leave which is granted by the SHO. This category of leave is improperly maintained.

Therefore an IT tool that keeps an account of availed and un-availed leaves type wise for each employee is proposed. This database needs to be integrated with the one in the Leave Section, Reserve Office of the district. This will enable the officers granting leave to make a quick check on the available leaves and the type and quantity of last leave taken. It will prevent misuse of provision of leave and usher in transparency.

9. **HRMS**-Currently, HRMS (Human Resource Management System) software exists at the Reserve Line, District Police Office. A mini version of it can be maintained at the police station containing all the details of the employee posted there like blood group, previous postings, training certificates, years of experience etc. It would help the incoming SHO to know his men instantly.

## Challenges

1. **Lack of trained manpower-** Above IT interventions can be successful only when the police personnel know the basics of IT. Bihar has provided for 33% reservation to lady constables. They are undoubtedly going to be the face of Bihar Police in the decades to come. There is thus a need to train them in IT skills in big numbers.
2. **Security and Privacy concerns**- Any IT tool has an inherent risk of data leak, breach of privacy etc. Our proposed IT tools are not an exception to this.

## Conclusion

Studies have revealed sorry state of affairs as far as implementation of effective human resource policies are practiced in police department. Reforms in human resource practices are urgently required to create healthy work culture in police. Police is a service provider and their performance directly affects the

security of citizens. The areas like recruitment and training are many times subject to criticism. Highly motivated and professionally trained police officers and constables will definitely improve public image of police at police station level. Though there will be inertia in graduating from the older setup to these new IT tools, the proposed IT tools will be instrumental in making incremental changes in the conventional policing. It will reduce the chances and scope of discretion of the SHO. IT interventions at police station will reduce the work load, remove personal bias in the allocation of duties, reduce costs and improve the working culture of the police station. It should be clearly stated at the outset that given the level of IT skills our police personnel possess, these IT tools must be user friendly.

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# Socialization of Crime

AMIT KUMAR*

## Introduction

"Criminal behavior" in a "Subgroup", may sometimes be considered normal while being regarded delinquent behavior at global level. There are no global values and ethical standards which every society adopts unanimously. Each society is unique and uniquely socialize its new member as per their values and beliefs. But at certain level these local beliefs and values come in conflict with constitutional standards, democratic values and global ethos. What is virtuous for one society may be deviant act as per global standards or democratic value system. For example confining girls to household chores and not encouraging their further studies, child marriage, demand for dowry may be an acceptable norm within a particular community but denounced in another. Where such deviations are accepted as part of routine or a norm, it gets imbibed or ingrained into the social behavior, conduct and thought process of members of society and leads to socialization of these deviations and crime. Question arises here, whether process of socialization becoming toxic or is this socialization of crime? One would agree

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that societal acceptance of a delinquent behavior ultimately leads to "Socialization of Crime".

**Socialization of Crime**

The process of socialization is lifelong. People learn rules, values and morals through this process. The socialization of individual begins even before birth depending on environment of primary socialization which starts with individual's parents and rest of family members. Family members are first agents of socialization. The secondary socialization begins with school where one might be learning various aspects of life including career but these learning's may also perpetuate social norms in the garb of hidden curriculum. This may include respecting authority and keeping responsibilities. Other agents of socialization are peer groups which may shape up contrary or alternative view point in contrast to primary socialization agents. This conflict may lead to formation of an independent identity. As individual grows, countless other entities like religion, workplace, community, social media etc. may contribute further to the socialization process.

A crime is an illegal act, condemned by societies and punishable by law. Cultures and socialization can assist in the definition, enforcement and punishment of crime. There is a theory worth to mention that people experience strain when their culture ask them to achieve material success but do not provide opportunities needed for achieving said such success. Majority may not deviate from norms but deviation may still crop due to cultural conflict, subculture influences, and ecological perspective to differential association. However, all these explanations are rooted in structure, culture and history of society.

## Socialization vs Crime

The nature of society, its history and culture are significant variables in understanding criminal behavior. For understanding any crime in India, the knowledge of historical and cultural background of India is must. The Manu Smriti describes various forms of criminality. During British rule in India, a large section of people were designated as criminal tribes. It should be noted that before independence defining crime and criminality was not justifiable. But now any act against the human rights or exploitative in nature are considered as crime. Clearly in modern, democratic, rule of law based society crime could not be called being socialized. It is different matter that people are tending to accept certain criminal activity as normal behavior. Hate speeches are prevalent, trolling on social media is becoming common, violent movement for demands of particular community are all examples of crime where people take law in their hands. So the question is why people are more pro to take law on their hands? Why certain type of criminal activities is being socially accepted? Why there is need to think of socialization of crime?

## Causes of crime in Indian society

To understand all aspects of criminality in India it should be classified in two headings,

1. Conventional
2. Some crimes which have indirectly attained the status of acceptable behavior reflecting "Socialization of Crime"

## Conventional

The circumstances that motivate or encourage crime may be social and economic disparities, the rapid urbanization, exposure to new culture ethos brought by new communication systems are factors that may be constructed to influence criminality. India is a

society with diversity. There is small affluent class which have own large percentage of countries' recourses. While on other hand India stand low on UNDP HDI (Human Development Index), the hunger and malnutrition has become great challenge. Although women are on top of every field but female infanticide and problems of dowry are known to everyone. Despite constitutional provision of equality, caste remains dominant factor in social behavior. As such, sociological, economic, political and psychological factors are likely to play a major role in determining causes of crime in country. Some of them are discussed below:

1. Economical deprivation
2. Neglected childhood
3. Growing consumerism in Indian society
4. Loosing social bondage due to rapid urbanization, induction of new cultural norm and independent life style
5. Failure of justice system in providing speedy justice

**Cases of "Socialization of Crime"**

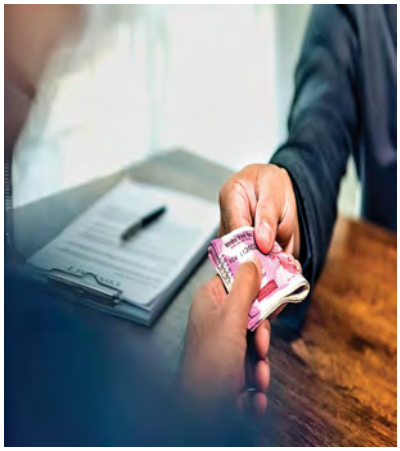
Crime means not following the rules. When certain behavior is on trend in society which as per the law, ethics, and sociology called crime this situation is so called socialization of crime. These trends are following:

1. **Dowry system-** *I*t is widespread and permeated in every section of society. Dowry no longer resembles the traditional outdated version of transferring assets to bride. Rather it has become prestige issue. In today's scenario, dowry is fixed based on caste, creed, color, education and earning of groom. The system is fine example of socialization of crime. And cases are increasing. For example in capital of India, Delhi, around 3,877 cases of cruelty by in-laws and husbands have been registered in 2016. Till March 15 2017, as many as 506

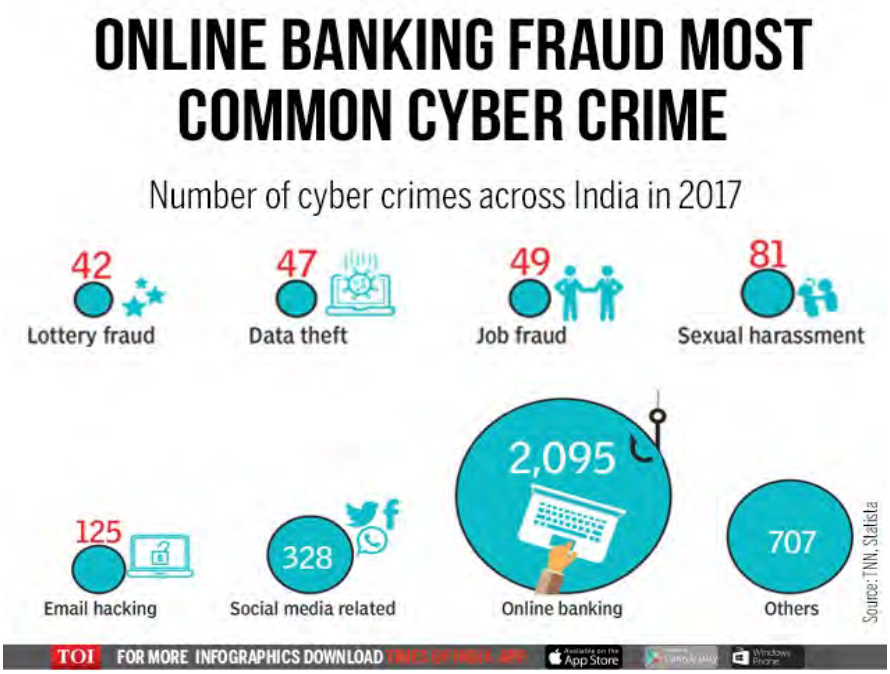
such cases have been reported in the city. The Dowry Prohibition Act, 1961, prohibits the request, payment or acceptance of a dowry 'as consideration for marriage'. It is notable that as per NCRB 'crime in India' report for the year of 2017 there is shocking increase of 16% in crimes against woman as compared to 2013 data.

2. **Mob lynching-** Increasing incidents of this horrific act all over the country showing how this crime is becoming more social phenomena. People who are accused for it feel empowered and representative to all people to particular community. These victims are from minorities or schedule cast or tribe. Sometime the rumor is the cause for it or some time hardline political thinking. In September 2015 Mohammed Akhlak, 45 years, lynched in Dadri, Uttar Pradesh; in 2017 Pehlu khan, 55 years died of injuries after being attacked in Alwar Rajasthan; in May 2017 Gautama Verma, his brother Vikas Verma and friend Ganesh Gupta were beaten to death in Jamshedpur, Jharkhand over kidnapping rumors. According to the quint database total 113 people have been killed because of mob violence.

3. **Violent agitation-** *Another criminal activity which is more often a violent agitation of certain community for their getting their demands fulfilled. Examples Jaat agitation in 2016 where they were demanding reservation, Patel agitation took place in April 2016 over demand of reservation in Mehsana Gujrat , agitation of supporters of Baba Ram Rahim took place in 2017 in Haryana after Dera verdict, agitation against the film Padmavat in 2018 where mob blocked road and damaged vehicles, recently agitation against CAA etc.*
4. **Female Foeticide-** *India is witnessing one of the highest female infanticide incidents in the world as per the study by Asian Center for Human Rights. According to Population Research Institute, at least 12,771,043 sex selective abortions had taken place in between 2000 and 2014. This is the crime which is known to everyone. People are aware of the offence as many States still practice it. The grave concern is after achieving better results on health and education in Kerala the child sex ration is getting bad.*
5. **Corruption-** *even though the government said it is following zero tolerance on the matter of corruption but this crime is evergreen. India's rank in the corruption perception index 2019 has slipped from 78 to 80 compared to previous year as per transparency international. Not just high level of administration but on lower level where people desire favor are involve in various forms of corruption.*



6. **Cyber bullying-** Cyber bullying is defined as harassment through digital devices such as computers, laptops, smart phones and tablets, and can occur over social media, in chat rooms and on gaming platforms. *With more than 500 million active internet users in India society is adopting various form of cyber-crime especially cyber bullying, hate speeches, trolling, fake news etc. which are threatening because of their nature of being part of socialization.* Cases of cyber stalking or bullying of women or children increased by 36% from 542 in 2017 to 739in 2018, data released recently by the National Crime Records Bureau showed.




7. **Substance abuse-** One juvenile, on an average, is dying due to drug overdose every 10 days in India over the past three years according to NCRB data (times of India 2020) in 2018, 875 people died of overdose, an increase of 17% compared to 2017.

This is again very concerning because drugs are becoming way of fashion among youth. No one can deny adopting such criminal activity by large part of society is where crime is becoming socialized.

8. **Honor killing-** The root of this behavior is rigid patriarchal and feudal values that zealously preserve endogamy and continue to treat women as objects of servility. Social and cultural controls over women's bodies and minds condition them to meekly fall in line with misogynistic and medieval practices based on notions of honor and purity. Punishing young women who dare to break free of these controls is always a collective decision of the community and families. This is how crime adapts as part of socialization.

**Factors for Socialization of Crime in India**

1. One of the prominent reason is economical distress in which is not coming back on track. Agriculture sector, Manufacturing sector, India's export and the automobile sector, MSME's which provide employment large section of country all are in distress. If the economic condition is not favorable, then people will be more volatile about their demands as we have witnessed Jaat and Patel movement.
2. Since the internet affected Indian society is facing the heat of western culture, the love for western life style has made certain communities aggressive and obsessive about preservation of Indian culture. This is also a reason that nationalism, these days, is very sensitive issue. Since majority Indians are Hindu they tend to think other minorities as threat to culture and expose to criminal behavior.
3. Role of social media is very disputable. It is being used to spread hate speeches and has become a weapon for serving

vested interests of political parties. The fake news create serious damage to fabric of composite society of India.

4. Role of Indian media is again disputed and very concerning. To get higher TRP they present spicy news. The relation between corporate and news channels and the political parties are in debate that how freedom of media work in favor of fewer groups.
5. The slow criminal justice system in India and pendency of cases is being taken in negative way and people have been resorting to illegal ways for taking law in their hands. Cases are pending, process of hearing is slow, the corruption in judiciary is debatable and so does the nepotism. All these have created loss of faith in system which opens way for masses to go on street.
6. Role of law enforcement agency is again disputed. Recently videos showing police brutality went viral during agitation against CAA. The corruption and targeting certain community are other debatable topics related to these agencies.
7. Hate speeches given by political leaders and criminalization of politics etc. have created a situation where party based crime in India take place.

Given factors interrelate with the causes behind with conventional crime in India. This looks like society is becoming more intolerable and certain criminal activities are on trend.

**Way Forward**

1. The education system should be quality based. The ethical and moral education with practical and other social bonding activities should be given more focus.
2. Modernization of law enforcement agency and reform in judicial system in India should be taken as immediate effect.

3. Solution of corruption is developing work ethics among children, letting them know importance of rules and laws, digitization of all government offices and ensuring every formal relation of government to be on record.
4. Government shall promote research in psychology and sociology related to crime and help police to create innovative models of crowd control, mob agitations, speedy conviction etc.
5. In matter of internet, there should be right balance between violation of freedom of speech and privacy of citizens. The sense of impunity must be erased by better advancement in technology.

## Conclusion

Socialization is a neutral process. The important part of this process are agents and the value system of those agents whether its family, society or peer groups. So if the agents are adopting new behavior which is delinquent or is in direct conflict with the customs of society, it indicates an advancement of crime getting shaped up in process of socialization. There is dire need that all the stakeholders understand their roles and government policies and legal provisions are made very strict to check this kind of socialization from its very beginning.

We must understand that any type of criminal activity which is prevailing in society always get scrutinized sooner or later. So we should be strict about labeling certain behavior as part of socialization. Instead these should be called abnormalities of societies which occur in every civilization. If we have to deal with this we must break the process of the chain of activities which are being part of human psyche and against the democratic and universal value system.

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# Usage of Narco-Analysis in India and Its Evidentiary Value

RITIRAJ*

## Introduction

In recent times, use of questionable modern scientific techniques for criminal interrogation has increased alarmingly. Most noteworthy of these have been the brain mapping, lie detector and narco-analysis test. Among them, narco-analysis has raised multiple ethical and scientific questions which deems it necessary to explore its legal admissibility in Courts as well. It refers to the process of psychotherapy conducted on a subject by inducing a sleep-like state with the aid of barbiturates or other drugs.[1]The subject is then interrogated by the investigating agencies in the presence of doctors.[2] Statement given herein is recorded both on audio and video and is used by investigators to corroborate existing facts or collect further evidence. Herein the article, we will explore how the evidentiary value of the results of this process have been restricted by the Indian Judiciary keeping in mind various

* *IPS (Probationers) 71RR, Telangana Cadre*

[1]*https://frontline.thehindu.com/the-nation/article30191389.ece*

[2]*https://www.outlookindia.com/newswire/story/godhra-set-the-trend-of-using-narco-test/681113*

restrictions imposed by our Constitution. Use of this procedure is limited by fundamental rights of self-incrimination, protection of privacy and health of individual and criminal laws such as Cr.P.C.[3]Advocates of the process opine that these processes will help in fact-finding and will effectively help investigating agencies in gathering evidences ensuring conviction of guilty and acquittal of innocent.[4]Further, we will see how this process has been used in various high profile criminal case investigations and what results it has yielded. This will help us appreciate the debate, whether this process has any scientifically proven results, failing which it will be difficult to defend it legally. Later, talking about its acceptability or rejection internationally, we will see whether India should follow examples set by certain countries or not? Concluding with leanings from the study, the author will try to ascertain, the future course such procedures will have in criminal investigation in India.

**Legality of conducting the procedure**

International law supports the principle of rule against self-incrimination. Article 7 of the **ICCPR** (International covenant on Civil and Political Rights) says that no one shall be subjected to medical or scientific experimentation without his free consent. Article 14(3)(g) further says that no one can be compelled to testify against himself or to confess guilt. Similarly, Article 20(3) of constitution of India says that no one can be compelled to be a witness against himself. This concept is intimately related to the idea of personal liberty and privacy covered under Article 21. Both

[3] *Use of Modern Scientific Tests in Investigation and Evidence: Mere Desperation or Justifiable in Public Interest?, Abhyudaya Agarwal and PrithwijitGangopadhyay, (2009) 2 NUJS L Rev 31*

[4] *Supreme Court judgment on polygraph, narco-analysis & brain-mapping: A boon or a bane, Suresh Bada Math, Indian Journal of medical research, 2011 Jul; 134(1): 4–7*

Article 20 and 21 are crucial in the sense that they cannot be suspended even during emergency. Narco-Analysis has been touted to be a procedure that disrupts both ideas of self-incrimination and privacy.

Examinations of scientific tests have been covered under Explanation (a) of Section 53 of CrPC. This section provides that using scientific techniques like DNA profiling, examination of blood, semen, finger nail clippings and *such other tests which registered medical practitioner thinks necessary* is allowed. This phrase *other tests* has caught the fancy of advocates of narco-analysis. However, in *Selvi v. Karnataka*[5], the Supreme Court specified that using the interpretation tool of *ejusdem generis* we can interpret such other tests to be only those that can be characterised as physical evidence. Whereas, results of techniques like narco-analysis should be treated as testimonial acts.[6] This distinction between testimonial act and physical evidence made the court exclude tests like these from the ambit of Section 53 of CrP.C. Thus, these tests cannot be prescribed by a registered medical practitioner and be conducted on the suspect/ accused without his volition as that will be a violation of both Section 53 of Cr.P.C and constitutional value of privacy under Article 21 as the investigator will be able to access the mind of subject without his knowledge. It further said that forcing person to undergo a procedure like this is akin to restraining their personal liberty without keeping in mind substantive due process.[7]

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[5] (*2003) 4 SCC 493.*

[6] *Constitutionality and evidentiary value of narcoanalysis, polygraph & BEAP tests, Dr. Dharmendra Kumar Singh International Journal of law, Volume 3; Issue 4, p.86*

[7] *https://www.lawctopus.com/academike/critical-analysis-selvi-v-state-karnataka/*

Only when this test is conducted with consent of person and on request of the Magistrate, will its results have some iota of evidentiary value. The test results by themselves cannot be admitted as evidence because the subject has no conscious control over the responses, he is giving during the test.[8] However, if a subsequent fact/information is discovered in consequence of information received from the test, the same would be admissible under Section 27 of the Indian Evidence Act.[9]Further, if test results are being used to corroborate or compare facts already known to the investigator, the same is admissible since they are not giving new information obtained by violating his privacy. Moreover, if the results are not incriminating in themselves but merely "*furnishing a link in chain of evidence"*, the same would be admissible.[10]The results so obtained have a testimonial character, hence different from material evidence as covered under Explanation (a) of Section 53 Cr.P.C.[11] So, if they are given under compulsion, they become a result of testimonial compulsion which is sought to be prevented by the principle of self-incrimination.

Though, this test can be conducted on orders of the Court, Supreme Court held that in civil matters as well, the test cannot be done forcefully on the subject.[12] Here the court had intended to conduct the examination to ascertain the mental state of the party in a divorce proceeding since insanity is a ground for divorce and this was a relevant question for the Court to decide. The Gujarat High Court in a case[13]ordered the trial court to dispose the bail petition put up by a party and not defer its decision until completion of

[8] *Supra 6*
[9]*Selvi v. Karnataka, (2003) 4 SCC 493*
[10]*NatvarlalAmarshibhaiDevani Vs. State of Gujarat and Ors, AIR 2010 SC 1974*
[11]*Supra 8*
[12] *Sharda v. Dharampal - AIR 2010 SC 19714*
[13]*SantokbenSharmabhai Jadeja Vs. State of Gujarat 2008 Cr.L.J. 3992*

narco-analysis. The High Court stated that the Trial Court was at freedom to reject the bail petition on this ground, but could not keep it pending. Herein, the Court detailed that narco-analysis can be used as a last resort after having exhausted all possible alternatives of investigation, despite which the investigative authorities were in the dark and there was no headway in investigation.[14] On the basis of information received herein, if investigating agency finds some clues or records, some statement which helps or assists further investigation of crime, then it will not be violation of Article 20(3) of Constitution of India[15] as it will be admissible under Section 27 of Indian Evidence Act.

**Use of Narco-Analysis in investigation of various criminal cases**

1. **Nithari killings case**- Nithari- Here during narco-analysis of Surender Koli, he admitted to having committed ghoulish crimes like rape and cannibalism. However, his co-accused only talked of his debauchery and not of any crime specifically. Till now 16 cases have been filed against accused Surender Koli and he was awarded death sentence in the 10th case, while the other cases are pending trial.[16] However his statement given under narco analysis has become a ground for people to demand that he needs a doctor instead of a hangman. His confession shows that he was a psychopath whose actions were not under his control and he would be in a different state of mind while committing these acts. Since Psychopathy is

[14] *http://iosrjournals.org/iosr-jhss/papers/Vol19-issue10/Version-1/H0191015257.pdf, Narco-analysis Test: An analysis of various Judgements of Indian Judiciary Ajay Kr. Barnwal1 Dr.S.N.Ambedkar*

[15] *http://iosrjournals.org/iosr-jhss/papers/Vol19-issue10/Version-1/H0191015257.pdf, Narco-analysis Test: An analysis of various Judgements of Indian Judiciary Ajay Kr. Barnwal1 Dr.S.N.Ambedkar*

[16] *https://www.hindustantimes.com/noida/nithari-killings-surinder-koli-given-death-penalty-in-10th-case/story-eGoUjxox7WK9u2pLXAc5YI.html*

considered a mental illness and defined as a "personality disorder wherein the person showcases enduring anti-social behaviour, diminished empathy and remorse and dis-inhibited or bold behaviour.[17] Since, this mental illness can be a ground of mitigation of his offences, there were demands of lowering his punishment from capital punishment.

2. **Investigation of Abu Salem in 1993 Mumbai blast case**- A Terrorist and Disruptive Activities court in Mumbai in 2005, hearing the 1993 bomb blast case had allowed ATS Mumbai to conduct the test on Abu Salem. Herein he gave a wealth of information regarding underworld activities. He furnished details of people involved in his financial chain of collection and distribution of money.[18]
3. **2006 Mumbai train blast case**- There was some doubt over who are the perpetrators of this attack. While Mumbai crime branch caught Indian Mujahideen's co-founder Sadiq Sheikh and 22 other members, ATS using Sheikh's narco-analysis statement showed that they had nothing to do with the blast and it was in fact the banned organisation SIMI (Students Islamic Movement of India)[19].

To mention a few others, narco-analysis has been used in various other cases like Malegaon blast case, Aarushi murder case, Telgi fake stamp paper case etc. In most cases, the results of the either being admitted using Section 27 of IEA or being taken as corroborating already known facts.

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[17] *https://scroll.in/article/679297/nine-reasons-not-to-hang-alleged-nithari-serial-killer-surendra-koli*

[18] *https://timesofindia.indiatimes.com/india/Abu-Salem-sings-under-narco-test/articleshow/2286455.cms*

[19] *https://www.ndtv.com/cheat-sheet/verdict-in-mumbai-train-blasts-likely-today-10-developments-1216434*

## Criticism of procedure

The reason why this procedure is used as a method of investigation tool is because it is believed that while under the influence of the various drugs used, the person goes into a state where his imagination is neutralised and reasoning ability is diminished.[20] Due to this, he is no more in a position to make up things, modify answers and most importantly lie. He can only answer simple questions which he is asked and he will end up saying everything with respect to the question asked, which he knows, since he will no longer be able to deceive. However, our major concern is that it is merely a belief which has not yet been proven scientifically. In fact, we have scientific reports to the contrary.

The CIA of the United States have been using this as part of their interrogation tactics. Their report says that administration of these drugs can help the subject overcome resistance, It's not necessary that what they speak will be the answers we are looking for. Content might be a result of psychotic manifestations, hallucinations, illusion, delusion, disorientation in the form of garbled speech.[21] Joost Meerloo, author of *Rape of Mind* says that this process can be abused to bring out planned answers from the subject since investigator via his questions can induce and communicate his own thoughts and feelings into the subject.[22] This is because, the subject is in such a state that he will not be able to discern, rationalise much and will accept whatever he is being told.

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[20] *Constitutionality and evidentiary value of narcoanalysis, polygraph & BEAP tests, Dr. Dharmendra Kumar Singh International Journal of law, Volume 3; Issue 4, p.84*

[21] *https://frontline.thehindu.com/the-nation/article30191389.ece*

[22] *https://www.raggeduniversity.co.uk/2016/09/11/historical-source-medication-into-submission-a-review-of-mental-seduction-and-menticide-by-alex-dunedin/*

The so-called truth serum may cause the subject with a weak ego or yield to the synthetically injected thoughts and interpretations of the interventionist.[23]Sometimes, the subject's mind may also resent chemical intrusion and enforced intervention.[24] Studies have also shown that people who give valuable information under a narco-analysis test are the ones who would have given the answers anyway if the interrogators would have used regular methods in an effective manner.[25]

Dr. P. Chandra Shekharan, the only Padma Bhushan awardee in the field of forensic science and former Director of FSL, Tamil Nadu has termed Narco-Analysis as an unscientific third degree method of investigation.[26] However, Dr. BM Mohan, Director of FSL, Bangalore, the hub of narco-analysis says that there is 96-97% success rate of this process and he has data from over 300 cases to prove his point. He said that studies that show unreliability of this process do not consider the use of *pentothal sodium* which is what we use in India which gives successful results in investigation.[27] He affirmed that during the procedure the tendency of subject is not to hallucinate, rather sleep if not questioned. This was however contradicted by Dr. CR Chandrashekhar, Dy. medical superintendent and Professor of Psychiatry for 30 years at NIMHANS. He said that use of this drug does not guarantee that subject will tell the truth only. It is also possible that under influence of drug, subject may say things which

[23] *https://www.raggeduniversity.co.uk/2016/09/11/historical-source-medication-into-submission-a-review-of-mental-seduction-and-menticide-by-alex-dunedin/*

[24] *https://www.raggeduniversity.co.uk/2016/09/11/historical-source-medication-into-submission-a-review-of-mental-seduction-and-menticide-by-alex-dunedin/*

[25] *https://frontline.thehindu.com/the-nation/article30191389.ece*

[26] *https://frontline.thehindu.com/the-nation/article30191389.ece*

[27] *https://frontline.thehindu.com/the-nation/article30191389.ece*

were in his unconsciousness i.e. thing she wished were true but actually are not.

Despite all of this, there are nonetheless some cases where witnesses have turned hostile like Jessica Lal case, Best Bakery investigation etc. Hence, use of these procedures should not be as a regular measure, instead we must focus on improving our investigative skills, collection and appreciation of evidence. There are other scientific methods which can be used to examine material evidence in a much better way that will help our investigative agencies do their jobs better.

**Way forward**

In various countries this method is increasingly being used as an investigative tool. The problem is when it is seen as an easy way out i.e. used as the first recourse when we hit even a simple roadblock in investigation. It must never be used as a substitute to the regular practices of investigation which still are very useful if used efficiently by trained personnel. It must always be seen as the last resort and only in very serious cases with consent of the Court and subject, else its abuse can have drastic effects on our cherished principles of *Rule of law, right to privacy and Right against Self-incrimination.*

Since, the procedure involves violation of privacy, adherence to procedural law is crucial to allow its indirect evidentiary value to remain in court. It will be wrong to deny that in certain serious cases, it has indeed helped in uncovering the truth but the fact is, it must be treated as an exception and not a rule.

Amongst other countries that use this process, US has been using it for a long time. However, some time back, its use was stopped after its reliability was questioned. However, recently its use has begun again, since after 9/11 though not accepted publicly.

But the American interrogation techniques have received the ire of international community at large and that is not what we want to keep as the gold standard[28] to be followed by our investigative agencies.

Thus, we can say that since there is no final scientific report affirming the fact that use of these truth serums can guarantee truth in investigation and use of this process involves violation of privacy and is against the right against self-incrimination, two of our most cherished Constitutional values, its use must be highly restricted. As leaders in the Police hierarchy, we must ensure that we do the job of keeping the balance by using our discretion wisely in suggesting the use of this method in only important cases where there is serious lack of any lead at all.

[28] *https://frontline.thehindu.com/the-nation/article30191389.ece*

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# Drones Applications in Policing

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## Introduction

Technology has always been a driving force for mankind to deal new challenges and criminals and Law Enforcement Agencies are not exceptions to it. With India under lockdown, to stem the spread of novel Corona-virus, drones are proving to be a crucial tool in the functioning of Law Enforcement Authorities and other government agencies which are deploying these Unmanned Aerial Vehicles for carrying out surveillance, sanitization and to reach out to people, minimizing the risk of infection for their personnel. While there are numerous pros to using drones, there are also several perceived challenges to their deployment. These concerns are important to consider, particularly given the wide range of circumstances in which drones can be used.

Perhaps proving themselves as highly useful technology, drones can become threat to our society and might create obstacles for police department. The recent incident at Punjab justifies the above mentioned statement. In January 2020, an Army soldier and two others were arrested for allegedly smuggling drugs and weapons from across the Indo-Pak border using GPS-fitted drones

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in collusion with their Pakistani accomplices. The police seized two Chinese made drones, 12 drone batteries, some custom-made drone containers, an INSAS rifle magazine, and two walkie-talkie sets, besides Rs 6.22 lakh in cash from them. The cash was suspected to be the sale proceeds of the smuggled drugs. Out of the two drones seized from smugglers, first drone, a Quadcopter was recovered from an abandoned government dispensary in Modhe village in Amritsar (Rural) and the second one, a Hexacopter, was recovered from the house of a friend of the arrested Army Naik, in Haryana's Karnal city. The seized drones were GPS-fitted, and it was discovered that such drones were being used to drop weapons, hand grenades, satellite phones and fake currency notes in India. The senior officers confirmed that drones were not only procuring and supplying drugs but their handlers were also training the cross-border smugglers in how to use them.

In another incident, one drone recovered from a paddy field in Mohawa village of Amritsar district in September 2019 was found to be a hexacopter drone of Chinese make, powered by six electric motors with 25kgs of weight and payload capacity of 21kg which is enough to carry weapons and bulky consignments. Thus, we can note that in coming years drones can be a major security challenge for our country. In this regards, India must develop the necessary Technological and Human infrastructure required to not only use these drones, but also intercept the hostile ones.

**Drones**


Drones are unmanned aerial vehicles that can be equipped with high definition, live-feed video cameras, thermal infrared video cameras, heat sensors, and radar all of

which allow for sophisticated and persistent surveillance. Drones can record video or still images in daylight or infrared. They can also be equipped with other capabilities, such as cell-phone interception technology, as well as backend software tools like license plate readers, face recognition, and GPS trackers. There have been proposals for law enforcement to attach lethal and non-lethal weapons to drones.

**How Drones Work**

Drones vary in size, from tiny quadrotors to large fixed aircraft. They are harder to spot than airplane or helicopter surveillance and can sometimes stay in the sky for a longer duration. Some drones are tethered to the ground with a very thin wire so that they do not need to landto recharge their batteries. they are generally smaller, less expensive, faster to deploy, and are able to fly at low altitudes and, in some cases, indoors.

Some drones are controlled manually through hand-held devices. These usually have a video camera attached to them, not just for surveillance, but for the operator to view through the camera to control the drone. Some drones may also be autonomous in the sense that they can fly and perform certain functions without continuous operator engagement.

**What Kinds of Data Drones Collect**

Drones can be equipped with various types of surveillance equipment that can collect high definition video and still images day and night. Drones can be equipped with technology allowing them to intercept cell phone calls, determine GPS locations, and gather license plate information. Drones can be used to determine whether individuals are carrying guns. Synthetic-aperture radar can identify changes in the landscape, such as footprints and tire tracks. Some drones are even equipped with facial recognition.

**Police departments are also using drones to protect and serve. Here are some of the most common uses.**


➢ **Mapping of the city**

Using drones to map out the entire city for pre-storm assessment. the police needed to identify the key areas of the city that might be affected. Mapping highly frequented locations is a common use for police drones around the country. Instead of paying 50,000 per hour for a helicopter to cover the entire city, a police department can instead purchase a few drones to do the same job for the price of electricity in the batteries. These maps can then be used for all future events or crime scenes. They can also be used for before-and-after images of natural disasters.

➢ **Chasing suspects**

Hundreds of police departments buy drones each year to aid in chasing down suspects. When a suspect takes to the roof, it can be difficult for the ground units to know where he or she is. Having an eye in the sky provides critical intelligence and guides the ground units to optimal positions. Reducing uncertainty also helps to reduce the stress levels of SWAT teams. Suspects often report not even being aware of a drone since they are so small and much quieter than a helicopter. Drones can also help to identify suspects and what weapons they might be carrying.

- **Crime scene investigation**

Drones can help crime scene investigation in a variety of ways. They can be used to collect evidence that may be difficult to reach from the ground. Two drones can survey a crime scene and provide maps and 3D images within minutes. They can be used to provide lighting at night or low-light conditions. They can manually capture 60+ frames per second from a still camera, or record 4k video as needed. All this can be done in a fraction of the time it takes a ground unit to conduct this same investigation.

- **Cars, planes and boating accidents**

It is becoming more common now to use drones for 3D reconstruction of accidents. This is useful for multiple reasons. the police can send a drone to the sky to collect evidence from angles that were previously impossible without an expensive helicopter.

- **Traffic management and flow**

Drones are incredibly useful in managing traffic during rush hours or crowded events. Ground units may have a difficult time trying to assess reasons for backed-up traffic. With a drone overhead, they can immediately assess the situation, figure out the solution, and then radio to the traffic light authorities to change the rate of red-green lights to better manage the flow. These same drones could also be used to monitor vehicle speeds and notify ground units of violators.

- **Search and Rescue**

Drones can be used for search and rescue, or for locating missing persons and animals. They are often used to find lost hikers and elderly people who wander away from their homes.

They can even be used to find crash victims who have been thrown from their car. Drone rescues are becoming more and more common each year. They are particularly useful at night when fitted with thermal cameras that pick up heat signatures.

- **Support for Fire Department**

In many cases, large fire departments are purchasing their own drones; however, the expense may not be feasible for smaller towns or cities. Police departments with drone units have found that they can help the local fire department by collaborating to locate the fire, identify potential victims, and aid the firefighters in directing their resources accordingly.

- **Disaster relief**

After hurricanes, tornadoes and other natural disasters, it can be quite difficult to get ground units to affected areas. It can also be difficult to get manned aircraft into hazardous areas without risking the pilots. Law enforcement agencies often use drones to survey disaster sites and identify areas and people that need help.

- **Seizing illegal drones**

Police drones can help to identify illegal and unregistered drones that may be hazardous to the surrounding environment. Many private drone operators do not have the proper training and licensing necessary to fly their drones on public property. In fact, if you don't understand the images below, then you probably should not be flying a drone. Once an

illegal operation has been identified, a ground unit can be sent to find the operator and give them a choice between education about the laws or arrest and fines if they refuse to cooperate

**Use of drones during lock down**

'Cops are using drones to keep track of people and prevent the buildup of crowds during the lockdown. Police forces across the country are deploying a new anti-crime weapon in their armoury—to fight the coronavirus. Police forces are increasingly turning to drones or unmanned aerial vehicles (UAVs) to surveil populations and prevent the buildup of crowds during the three-week lockdown.

➢ It has become a regular part of policing. In the current lockdown, we are flying drones over places where we suspect violations of the lockdown can occur. We identify those places and ensure that police is deployed and those who violate the lockdown are booked. It is a great tool in situations where physical contact is to be avoided or minimized.


➢ In the national capital, police now rely on drones as a key surveillance instrument to keep tabs on people's movement during the lockdown.

➢ Drones were used in the Nizamuddin Markaz late in March to identify spots where the Tablighi Jamaat attendees had been staying in order to sanitize and seal those areas.

➢ Drones are being used for monitoring purposes. Pickets have been set up along main roads and other arterial carriageways. But there are reports we get of citizens defying the lockdown. The police can't be everywhere, so remote monitoring is also needed.

➢ Drones give us a bird's eye view of who is defying the lockdown in the narrow alleys and lanes where a PCR van cannot go in.

➢ Delivering medical supplies to hot spots and disinfecting public spaces using sprayers without risk of contamination for personnel are among other uses of drones.

**Conclusion and Way Forward**

Just like every other technological advancement, witnessed by humankind, drones also come across as a blessing while being a threat. It is up to us to create a regulatory mechanism that can keep misuse at bay. Many states in India are now passing laws regarding drone use wherein misusing this technology can land a person into

jail. However, if used for good purposes, drones can open up a new area of technology having wide implications on our day to day life.

A great success story comes from the New York City Police Department (NYPD). The NYPD is one of USA's largest police force which took a big technological leap by adding drones to its crime-fighting arsenal. More than a dozen unmanned aerial vehicles (UAV) have been used for search and rescue, to investigate hazardous materials, to monitor fires and to access crime scenes in tall buildings of New York. These have enabled trained cops to be even more responsive to the people they serve, and to carry out the NYPD's critical work in ways that are more effective, efficient, and safe for everyone.

The move is particularly significant benchmark for U.S. law enforcement agencies because smaller police departments often follow the lead of larger, big city forces like the New York Police Department (NYPD). By appreciating the NYPD's success for better law enforcement, the US government believes that if they balance the utility and privacy of the drones, it will surely prove not less than a major boon for the police department.

Hence, now is its high time that Indian Government shall start utilizing drones in a serious manner. By following example of NYPD, many states like Telangana are now using drones as an integral part of conventional policing. Given the utility of drones in law and order situation and the necessity to intercept hostile drones, the Indian government must inculcate this technological aspect into its security architecture by developing the necessary physical, technical and Human resource infrastructure required for effective use of Drones in the country.

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# Status of Cyber Crime in India and Suggestions for Strengthening Cyber Laws Enforcement

VIKAS KUMAR*

## Introduction

In recent past, India has witnessed an enormous increase in Cyber Crimes in India. Majority of these crimes are the result of increased usage of Internet in India. The recent data about Cyber Crimes shows an average increase of 40% every year. Also the penetration of internet in the country is 35% which will increase in the near future. The Government of India program 'Digital India Campaign' and digitization of government work in its entire sphere will make the cyber space more prone to attacks. The Government schemes like 'Direct Benefit Transfer' and 'Jan Dhan Yojna' has connected every person to digital world and made people prone to cyber-attacks and cyber-crimes. In this scenario, it is important to have stringent laws and their effective implementation so that secured cyber space can be provided to the citizens. It is also important to bring violators of law to punishment. Present paper focuses on trends seen in Cyber Crimes special reference to State

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of Uttar Pradesh as the author explored and worked in the field of Cyber Crimes during District Practical Training in the State of Uttar Pradesh.

## Meaning of Cyber Crime

Cyber-crime is not defined in any statute or rulebook. For understanding purpose, "cyber-crimes" are offences relating to computers, information technology, internet, communication devices and virtual reality. Also, Cyber- crimes can be defined as the unlawful acts where the computer is used either as a tool or a target or both.

## Classification of Cyber Crimes

Cyber Crime can be classified into four major categories. They are as follows:

1. **Cyber Crime against individuals-** Crimes that are committed by the cyber criminals against an individual or a person. A few cyber-crimes against individuals are:
    a. **Email spoofing-** This technique is a forgery of an email header. This means that the message appears to have received from someone or somewhere other than the genuine or actual source. These tactics are usually used in spam campaigns or in phishing, because people are probably going to open an electronic mail or an email when they think that the email has been sent by a legitimate source.
    b. **Spamming-** Email spam which is otherwise called as junk email. It is unsought mass message sent through email. The uses of spam have become popular in the mid-1990s and it is a problem faced by most email users now-a-days. Recipient's email addresses are

obtained by spam bots, which are automated programs that crawls the internet in search of email addresses. The spammers use spam bots to create email distribution lists. With the expectation of receiving a few number of respond a spammer typically sends an email to millions of email addresses.

c. **Cyber defamation-** Cyber defamation means the harm that is brought on the reputation of an individual in the eyes of other individual through the cyber space. The purpose of making defamatory statement is to bring down the reputation of the individual.
d. **IRC Crime (Internet Relay Chat)-** IRC servers allow the people around the world to come together under a single platform which is sometime called as rooms and they chat to each other. Cyber Criminals basically uses it for meeting. Hacker uses it for discussing their techniques. Pedophiles use it to allure small children. A few reasons behind IRC Crime: Chat to win one's confidence and later starts to harass sexually, and then blackmail people for ransom, and if the victim denied paying the amount, criminal starts threatening to upload victim's nude photographs or video on the internet. A few are pedophiles; they harass children for their own benefits. A few uses IRC by offering fake jobs and sometime fake lottery and earns money.
e. **Phishing-** In this type of crimes or fraud the attackers tries to gain information such as login information or account's information by masquerading as a reputable individual or entity in various communication channels or in email.

2. **Cyber Crime against property-** These types of crime includes vandalism of computers, Intellectual (Copyright, patented, trademark etc.) Property Crimes, Online threatening etc. Some of them are discussed below:

    a. **Software piracy-** It can be described as the copying of software in an unauthorized manner.
    b. **Copyright infringement-** It can be described as the infringements of an individual or organization's copyright. In simple term it can also be describes as the using of copyright materials unauthorized such as music, software, text etc.
    c. **Trademark infringement-** It can be described as the using of a service mark or trademark unauthorized.
    d. **Forgery**: Forgery means making of false document, signature, currency, revenue stamp etc.
    e. **Web jacking-** The term Web jacking has been derived from hi jacking. In this offence the attacker creates a fake website and when the victim opens the link a new page appears with the message and they need to click another link. If the victim clicks the link that looks real, he will be redirected to a fake page. These types of attacks are done to get entrance or to get access and controls the site of another. The attacker may also change the information of the victim's webpage.

3. **Cyber Crime against organization-** Cyber Crimes against organization are as follows:

    a. Unauthorized changing or deleting of data.
    b. Reading or copying of confidential information unauthorized, but the data are neither being changed

nor deleted.

c. DOS attack: In this attack, the attacker floods the servers, systems or networks with traffic in order to overwhelm the victim resources and make it infeasible or difficult for the users to use them.
d. Email bombing: It is a type of Net Abuse, where huge numbers of emails are sent to an email address in order to overflow or flood the mailbox with mails or to flood the server where the email address is.
e. Salami attack: The other name of Salami attack is Salami slicing. In this attack, the attackers use an online database in order to seize the customer's information like bank details, credit card details etc. Attacker deduces very little amounts from every account over a period of time. In this attack, no complaint is filed and the hackers remain free from detection as the clients remain unaware of the slicing.

## Status of Cyber Crime in India

The fast growth of internet use in world has been accompanied by substantial surge in cybercrime. Smart phones, social media, cloud computing and many other smart devices have increased the demand of Internet, but at the same time have increased the vulnerability to crimes which can harm a person, a society or even a nation. Among all Internet users, 49.85% are located in the Asia region. China has the most Internet users in the Asia and India, is second largest and, is followed by Japan.

**TABLE 1.1 – Internet Penetration in Asian Countries**

| S. No. | Country | Population (2017 Est.) | Internet Users, (Year 2000) | Internet Users 31-Mar-2017 | Penetration (%Population) | Users % Asia |
|---|---|---|---|---|---|---|
| 1 | China | 1,388,232,693 | 22,500,000 | 731,434,547 | 52.7 % | 39.0% |
| 2 | India | 1,342,512,706 | 5,000,000 | 462,124,989 | 34.4 % | 24.7% |
| 3 | Japan | 126,045,211 | 47,080,000 | 118,453,595 | 94.0 % | 6.3 % |

The rate of increase of internet users is high in India; hence the rate of cyber- crimes have also increased at proportionate rate. The study of cyber-crimes in India shows the continuous increase in number of cyber-crimes year by year. The following Table depicts this increase.

**TABLE 1.2 – Cyber Crimes in India (2016-18)**

| STATE/UT | 2016 | 2017 | 2018 | Percentage share of State/UT | Rate of total cyber crimes |
|---|---|---|---|---|---|
| UTTAR PRADESH | 2639 | 4971 | 6280 | 28 | 2.8 |
| INDIA | 12317 | 21796 | 27248 | 100 | 2.1 |

For better understanding the split of cyber crimes is shown in following table with reference to other laws.

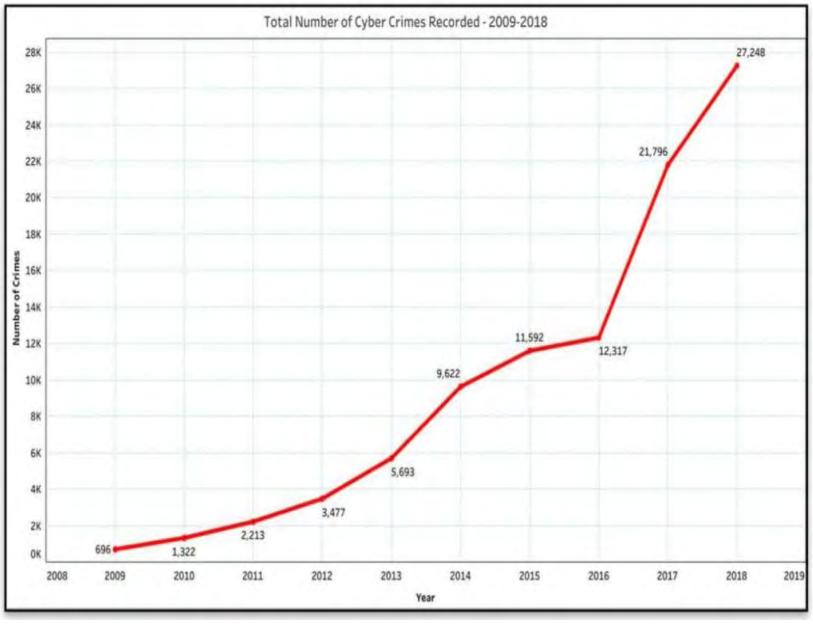
**Table 1.3 - Cyber Crimes - IT Act Cases (Crime Head-wise & State/UT wise)**

| S.No. | State/ Region | Offences under IT Act | Offences of IPC r/w IT Act | Offences of SLL r/w IT Act | Total IT Offences |
|---|---|---|---|---|---|
| 1 | Uttar Pradesh | 5513 | 758 | 9 | 6280 |
| 2 | India | 18495 | 8647 | 106 | 27248 |

## Rate of Increase in Cyber Crime in India

The rate at which Cyber Crimes in India is increasing is alarming. The increasing rate shows that immediate intervention is required from all stakeholders for better results. The following Graph shows the rate of increase of cyber cases in India.

**Table 1.4**



## Issues being faced in Cyber Crime

1. **Under Reporting of Cyber Cases-** Cyber Cases reported in India is not the exact count of actual cyber-crimes happening in India. There is under reporting of cyber cases in Indian Criminal Justice system. Following are the reasons for under reporting of cyber cases.
    a. **Lack of knowledge and expertise of police about cyber crimes**- Police Personnel do not understand cyber-crimes effectively and they believe that it is because of mistake of the person and not a crime. Also, Inspector being the investigating officer tries to avoid the registration of FIR under IT Act. Inspector being the SHO has the authority to register FIR and he uses his discretion arbitrarily for cyber cases.
    b. **Lack of cordial relation between police and public-** Image of Police among masses is not good and hence cyber-crime victims try to avoid going to Police Station. They blame themselves for their loss and do not report the crime to Police.
    c. **Less financial implication involved-** Quantum of amount of cyber frauds are generally low and people do not take pain in reporting such small cyber-crimes and also Police do not give importance to petty amount cases. Hence, low reporting of cyber crimes
    d. Lack of awareness among citizens about cyber-crime.
    e. **Expanded coverage of cyber crimes-** Cyber Crimes are spread over distant geographical location. The following diagram depicts the scenario of a most common cyber fraud.

**FIGURE 1.5 – Geo Spatial Distribution of Cyber Crime**


f. **Modus Operandi-** The modus operandi used in these crimes is different from the one involved in traditional crimes. Following are special features of some of the cyber crimes which make their investigation difficult:

   i. Mobile SIM card are issued and used by using fake identity proof. This makes it very difficult to track the real offender who is doing the cyber- crime.
   ii. Pseudo Bank accounts in the name of poor people are opened by the cyber fraudsters and it makes very difficult to reach to the real culprit.
   iii. Internet connections provided by the ISPs without

thoroughly verifying the identity of the person, and this makes very difficult to trace the person.

iv. Lack of knowledge of investigating officer about Information Technology, Internet and communication devices.

v. Use of Dark Web to commit sophisticated crimes like illegal arms trade, Drugs trade, immoral human trafficking etc.

g. Lack of IT Infrastructure and IT Tools for Police: IT Infrastructure includes the availability of IT devices such as computer, laptops, tracking devices, hard drives etc. which are essential for solving the cyber-crimes. IT Tools includes computer software which are essential for cyber investigation. Following are the short comings in this regard-

i. The Non-availability of Cyber Forensic team in each police district to aid in cyber-crime investigation.

ii. Lack of computer experts in police, for cyber investigation in effective way.

iii. Lack of IT infrastructure and IT Tools to grass root cyber investigators.

iv. Lack of training regarding cyber investigation.

h. Low Charge sheet rate of cyber crimes: The charge sheet rate is known as the ratio of the cases in which police have filed charge sheet with respect to number of FIR registered. It is found that the rate of charge sheet for cyber cases is very low in comparison other grave crimes.

**TABLE 1.6 – Charge-sheet Rate of different crimes**

| S. No. | Crime Head | Total Cases for Investigation | Charge Sheet Rate |
|---|---|---|---|
| 1 | Murder | 49,891 | 84.2 |
| 2 | Rape | 47,139 | 85.3 |
| 3 | Rioting | 91,799 | 85.4 |
| 4 | Hurt | 6,80,868 | 89.4 |
| 5 | Cyber Crime | 22,610 | 41.6 |

**Suggestions for Amendment in Law**

After studying the data of the cyber crime, following are the proposed suggestions for amendment in the law-

1. **Amendment in Section 79 of IT Act, 2000**- The Investigation of IT Cases should be given to qualified sub-inspectors by amending the section 79 of IT Act, 2000. This amendment will provide a large pool of young and tech-savvy investigating officers for investigation of cyber- crimes. The inspectors are comparatively older than sub-inspectors and most of them are not very comfortable with IT and Communication devices and quotient of learning for IT is low in them as compare to younger generations.

**FIGURE 1.7 – Pictorial representation of the proposed amendment**


**Justification for Amendment**

Following are the justifications for the proposed amendment-

a. Pendency of IT Cases – As per 2018 crime data following is the number of pending cyber cases in India.

**TABLE 1.8 – Pendency of IT Act Cases (2018)**

| S. No. | State/ Region | Cases pending from previous years | Cases Reported during the year | Total Pending Cases |
|---|---|---|---|---|
| 1 | Uttar Pradesh | 3227 | 6280 | 9507 |
| 2 | India | 22610 | 27248 | 49880 |

b. Increasing the number of pool of Investigators – The status of number of pending cases shows that it is required to have more number of investigating officers to reduce the pendency. Hence, it is justified to amend the section to have a large pool of investigators.

c. Low rate of charge-sheet – To improve the charge sheet rate we need scientific investigation which can be done by younger generation tech-savvy sub-inspectors effectively.

The following Table shows low rate of charge sheet–

**TABLE 1.9 – Rate of Charge-sheet and Pendency of IT Act Cases (2018)**

| S. No. | State/ Region | Total cases pending for investigation at end of year 2018 | Total cases pending for investigation at start of year 2018 | Charge sheet Rate | ıdency Rate |
|---|---|---|---|---|---|
| 1 | Uttar Pradesh | 4327 | 3227 | 44.9 | 45.5 |
| 2 | India | 32482 | 22610 | 41.6 | 65.1 |

**2**. **Amendment in Section 467 of IPC**- To include the word "Electronic Record" along with the word "document" in the section. Following are the justification for the amendment –

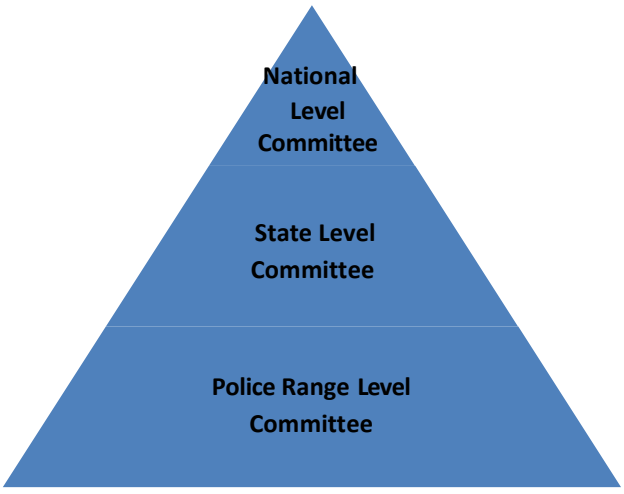
a. Now-a-days, every document is going to be digital. All educational certificates are digitally delivered; Stamp paper is digital. Hence, valuable security document can be digital and should be included in the section.
b. Fraud in online Trade – Online trade is increasing day-by-day, hence safety of transactions should be ensured and persons doing fraud should be dealt under this section of IPC. Example – OLX (where valuables can be sold or purchased)
c. Receipts of Sale and Purchase are delivered online and there are chances of fraud in these receipts.

Banking FDs are also delivered electronically. Hence, amending the section is important for safeguarding the interest of citizens.

**3**. A new system of Monitoring in the IT Act, 2000: It is required

to establish a three tier coordinating and monitoring committee to tackle cyber-crimes i.e Police Range Level Committee, State Level Committee and National Level Committee. This is to counter distant geographic location of a cyber-crime. A cyber-criminal sitting in State A, commits a cyber-fraud with a person of State B, using computer infrastructure of State C and by utilizing the financial institutions of State D. Hence, Police Range Level Committee will work for the catching such criminals in their area based on the request of different police force around the country. This will create a fear in the mind of cyber-criminals for the law of land. This will also analyze the framework of countering such crimes and suggest recommendations to the higher level committee. The supervision of the same will be done by State Level Committee and National level committee based on the bottom to top approach will bring necessary policy decisions required for a safer cyber world.

**FIGURE 1.10 – Pictorial representation of proposed three tier structure**



Explanation of the system is below-

1. Police Range Level Committee – It will be headed by DIG/IG of Police Range. It will consist of two bodies-
    a. Monitoring Committee – Headed by DIG/IG
        i. Members - All Concerned District SPs
        ii. Monitors and Coordinates the cyber cases of entire country originating from the Police Range area.
        iii. A team at Range office – To supervise and coordinates with each district for cyber cases.
    b. Steering Committee – Headed by DIG/IG
        i. Members - All Concerned District Magistrates, District SPs, Lead Bank Officials of the districts, Financial Institutions representatives, Financial Intermediaries representatives, Software Professionals etc.
        ii. To figure out guidelines to tackle cyber-crime and misuse of cyber space.
        iii. To discuss the ongoing patterns of cyber-crimes and suggest measures for preventions.
2. State Level Committee – It will be headed by a DG level Officer. It will also consist of two bodies –
    a. Monitoring Committee – Headed by DG level Officer
        i. Members – Police Range DIG/IG
        ii. Review of coordination for different cyber cases of entire state

iii. Solving the issues raised by different states for cyber frauds originating from the state

b. Steering Committee – Headed by DG level officer
   i. Members – Commissioners, Police Range DIG/IG, Heads of Banks in the State, State heads of Financial Institutions etc.
   ii. Discuss the report submitted by the different Police Range level committees
   iii. Prepare guidelines for entire state which needs to be approved from DGP
   iv. Submit its report to National Level Committee

**3.** National Level Committee – It has also two wings –
   a. Coordinating Committee – Headed by Director, CBI
      i. Members - All DGs of state level committee
      ii. For effective coordination among states with respect to cyber cases
   b. Steering Committee – Headed by Home Secretary, GOI
      i. Members – Secretary of concerned Ministries, Director CBI,
         DGs of State Level Committee, Heads of Financial Institutions
      ii. Meeting Frequency – Once in a year
      iii. Secretariat – CBI Secretariat
      iv. Review the existing polices.
      v. Make suggestions to the government for changes in the rules and laws based on

experience from bottom to top approach

**4**. **Amendment in Section 161 Cr.P.C**- Authorize the police officials to record the statement u/s 161 to record through video conferencing. Justification for the proposed amendment-

a. This will save time, energy and resources of police to solve cyber-crimes where witnesses are located in distant geographic locations.
b. The witness will be called to local police station where he resides and he will be examined by investigating officer of another police station through video conferencing.
c. This helps in quick enquiry of Cyber Crime cases.
d. This will create fear in the mind of cyber law violators and help in securing digital space to an extent.

## Conclusion

Today, almost every crime has some connotation with the Internet, Information Technology or communication devices. Hence, time has come to realize that there is no different between Digital and physical world and this is applicable for dealing with crime. If it is required that no criminal should underestimate the power of state (i.ean investigating officer) and cyber laws should be deterrence for cyber criminals. This can happen only when the certainty of conviction is ensured. To ensure conviction in cyber-crime cases, old archaic system of investigation and processes for supervision needs to be changed. The change should prove that police is acting united when it comes to create a safe and secure cyber world. This can only ensure a healthy developmental environment for the country.

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# Crypto currency: A new Paradigm of Crime

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Cryptocurrency has become a fancy term these days. It is something that everyone wants to talk about but no one really knows what they are and how they work. This article is therefore an attempt to help the reader understand the basics of cryptocurrencies and the mechanisms associated with it. It is also an attempt to look at the legal framework that is evolving around this disruptive technology and specifically the what's and how's of the same for government agencies esp. the police.

## Cryptocurrency: A ready reckoner

Since man evolved currency had been really important in our lives. In the caveman era, they used the barter system which involved exchange of goods and services amongst each other. This was simple exchange where a caveman named Safin would give his apples to another caveman named Kundan and would in return get oranges. The system worked fine for some time. But with passage of time the system fell out of use because of its glaring flaws like 1. It required coincidence of wants among

*IPS (Probationers) 71RR, Madhya Pradesh Cadre & Himachal Pradesh Cadre

exchanging parties; 2. There was no common measure of value; 3. Not all goods were divisible; 4. The currency i.e. goods made it difficult to trade across large distances.

After several iterations and centuries later it was only in 1700 AD that modern currency as we know it became a reality. Today we see it in form of paper currencies, coins and also increasingly in credit cards, debit cards, digital wallets like apple pay, pay pal etc. The next logical question that arises is whether cryptocurrencies are same as the digital wallets, some of which are mentioned above. The short answer is NO, but let us try to understand the difference between a cryptocurrency and digital wallets and fiat currency from an analogy.

Now imagine that Aanchal wants to send money to Riti who had payed for their lunch. Riti insists that she would not take cash. Aanchal therefore initiates the transfer of the amount from her bank account in Bank A to Riti's account in Bank R. Once Aanchal has initiated this transaction, Bank A verifies the credentials provided by Aanchal and looks for Riti's account in Bank R. Aanchal's bank also verifies whether she has the requisite balance for making this payment and once this is verified it debits the amount from Aanchal's account in Bank A and credits the same to Riti's account in Bank R. All these transaction details are recorded in ledgers that is maintained by both the banks as well as with central regulatory authorities. Not only this before opening their accounts, banks A and R have undertaken a rigorous process of verification of details of both Aanchal and Riti which makes the whole system safe and transparent to the agencies. Thus in this whole process banks and regulatory agencies are the keystones which regulate & keep the system up & running.

Imagine what if we remove the banks and regulatory agencies from the above process. Someone might feel that the whole system would collapse and transactions would become impossible. Voila, here comes the new disruptive technology of cryptocurrencies. Let us see what the same transaction would look like in the world of virtual cryptocurrencies.

Now Aanchal wants to transfer money from her cryptocurrency wallet to Riti's wallet. Aanchal opens the cryptocurrency wallet application in her phone, puts in Riti's details and initiates the transfer. The question now is who and how would the transaction be validated because their is no centralised agency. The answer lies in blockchain. Blockchain is nothing but a decentralised publicly held passbook which records all the transactions that happen over a particular cryptocurrency network. Let's take example of Bitcoins, one of the most popular cryptocurrency. Once Aanchal initiates the transfer of bitcoins from her wallet to Riti's wallet the information is first verified by majority of the members of the blockchain. These are called nodes. Once the nodes verify that the transaction follows the bitcoins rules and protocols the information is relayed to every member of the network. Then comes the role of miners. Miners are another species that are critical for the smooth and secure functioning of blockchains. Miners pick the information, that Aanchal wants to transfer her bitcoins to Riti. They after picking up this information from nodes perform a special process of mining on it i.e. validating the transaction using special processors called Application specific integrated Circuits (ASIC). Miners also convert this information into unique 32 character length string called hash which makes the whole system secure. After hashing a transaction the miners link it with the immediate preceding hash and thus creates a chain of transactions. After regular intervals

miners take all the transactions, that have been initiated in the meantime and club them together to form a block. The block is then hashed and linked to the chain, thus completing the transfer. Once this new block is added in the chain every node in the network will know that Aanchal had transferred money to Riti and it is this peer to peer verification that excludes the need for any centralised agency (see figure for a simple diagrammatic explanation).

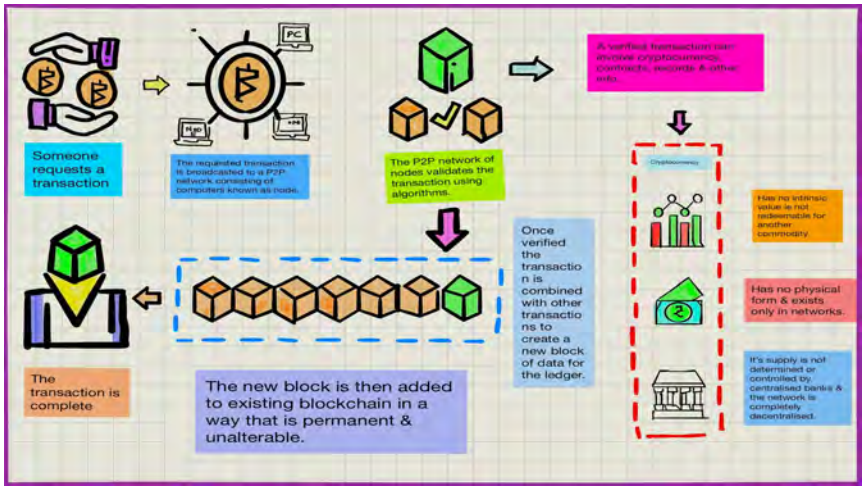
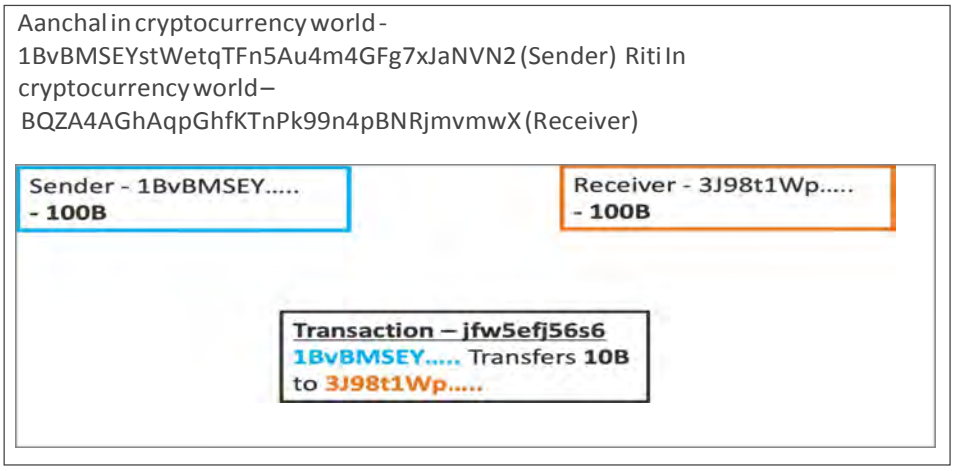



Fig: Blockchain technology explained; Ref Blockgeeks



## Cryptocurrency: Nightmare for Governments and Investigative agencies

Every disruptive technology often creates ripples in the established systems. Same is the case with cryptocurrencies. Today most governments, financial institutions and corporates are talking about cryptocurrencies. The challenge lies in not only understanding the seemingly complex technology but also in creating a sustainable and effective regulatory framework so that potential of misuse of the cryptocurrencies is reduced. As was discussed in the preceding paragraphs by their very nature this decentralised peer to peer systems promote anonymity and dilutes control of governments and regulatory agencies. It is these characteristics which make these cryptocurrencies a favourite of criminals and hence are widely being used in trafficking, smuggling, terror financing, cyber crimes, financial frauds, tax evasion, money laundering etc. In the following sections we would discuss the unique challenges posed by cryptocurrencies in relation to investigative agencies.

1. **Fast, Irreversible Transactions-** The speed of transactions in virtual currencies are significantly faster as compared to centralised banking system. This puts investigative agencies at a huge disadvantage in comparison to criminals as faster money transfer across wallets and subsequent withdrawal hardly leaves any trail for the investigators to nab the culprits.
2. **No Centralised Control-**Decentralised networks cannot be controlled by any single entity hence governments and regulatory agencies find it almost impossible to freeze accounts and reverse transactions.

3. **Anonymity by design-**Cc accounts are opened without following any due KYC checks and hence it is very easy to open a cc account merely by having an email I'd. Although every cc transactions in the blockchain does contain information about source, address, destination, amount of transaction but these are just alpha numerical unique chains with no way to associate these with real life identity. In analogy used above their is no way to associate Aanchal's alpha numerical public key with her real identity.
4. **Inadequate Transaction Records and Regulation of Exchanges-** As had been discussed above absence of centralised administrating authority leads to huge regulatory challenges. In any centralised banking system their is proper records that are maintained including details of customers, source of funds, records of past transactions etc.
   Similar is the case of regulatory loophole with respect to cc exchanges. These exchanges allow the persons to buy or sell cc without KYC checks. Also their is no comprehensive law which regulates these exchanges and hence puts the investigative agencies at a disadvantage.
5. **Complex Transaction Pattern with no Funding Limits-** The disassociation of cc accounts from real world identities together with ease with which new accounts can be created means that a single individual can have multiple accounts which he/she can use to effectively layering the funds.

**Crypto currency and regulatory framework in India**

Crypto currency is not new for India. it has been in use since it'a beginning. Platforms have been established for selling, buying and exchange of crypto currency. Then news started pouring in about crypto currency being misused for illicit purposes because of

its anonymity, the prominent being use of bitcoins to trade drugs in virtual market named Silk Road.

Because of this and many other challenges associated with the use of crypto currency, Mr. Vijay Pal Dalmia and Mr. Siddharth Dalmia Giles civil writ petition 1071 of 2017 on June 02, 2017 also known as "Dalmia Petition". The grounds mentioned in the states petition was based on (i) Anonymity associate with transactions which makes it ideal option for funding terrorism, corruption, money laundering, tax evasion etc. (ii) violation of the constitution as private parties have started producing crypto currency without the intervention of the government, (iii) Use of CC was violating the laws like FEMA, PMLA, 2002 (iv) Using crypto currency for ransom ware attacks (v) crypto currency provides safest way to park the illegal money and wealth (vi) Crypto Currency exchanges facilitates 'benami' transactions making it difficult for government authorities to track (vii) it also violates KYC norms Another similar kind of civil petition was filed by Dwaipayan Bhowmik through civil writ petition 1076 of 2017 on November 03, 2017. ("Bhowmik Petition").

Meanwhile RBI issued a circular in April 2018 with respect to Crypto Currency. Although it did not ban the use of crypto currency pers se but banned the banking services to any person who dealt with crypto currencies. This resulted in hampered functioning of exchanges dealing with crypto currency.

The said circular of RBI was challenged in the SC in Internet and Mobile Association of India vs Reserve Bank of India. The Supreme Court in its judgement observed that although the RBI has the power to regulate virtual currencies, the prohibition imposed by the order of April 2018 is

disproportionate. This resulted in regulatory vaccum with respect to crypto currencies in India.

However, Banning of Crypto Currency and Regulation of Official Digital Currency Bill, 2019 is the proposed bill to regulate the virtual currency. It prohibits mining, holding, selling, trade, disposal and use of cryptocurrency in India. The draft bill also allows the government, in consultation with the RBI, to issue doshi tak rupees as legal tender. It is desired that the regulatory framework should be set as soon as possible.

## Investigation Framework: An Investigators guide to Cryptocurrencies & related cases

As was discussed at length in the preceding sections having possession of cryptocurrency in not per se illegal in India. But Virtual currencies, by their very nature, may be related to a range of criminal activities. Possible offences include theft of sums of virtual currency, or the fraudulent obtaining of virtual currency. Such acts may or may not include conversion of these cryptocurrencies to real currency as part of the offence. Virtual currencies may also form part of the modus operandi of a separate offence, such as when used for the purchase of illicit goods, such as weapons, drugs or child abuse material, as well as for the payment of services that may be regulated or criminalized, such as online gambling. In this sense, virtual currencies may form instrumentalities of crime. Also virtual currencies are used for the conversion or transfer of property, knowing that such property constitutes proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property. In light of the electronic nature of virtual currencies, in almost all of these possible offence types, a close relationship with ‘cybercrime’ offences may exist. With respect

to criminal offences involving virtual currencies, 'core' cybercrime offences may be ancillary to the offences. And now growing popularity of cryptocurrency means that law enforcement agencies are faced with the challenge of finding the links of these technologies in various crimes. Investigators, most of times are ill equipped to establish the role of these in criminal activities and are also not adequately trained in dealing with criminal activities involving the cryptocurrencies.

**Some of the steps involved in investigation in crime involving cryptocurrencies are:**

1. When examining a suspects computer systems, there can be various indicators of the use of virtual currencies like presence of software associated with use of cryptocurrency for example the presence of a wallet file, often called wallet.dat is stone indicator of presence of virtual currency. Presence of bitcoin wallet software like Bitcoin Core46, MultiBit4 7, Hive4 8, Bitcoin Armory Electrum5 etc. are indicator to use of cc.
2. Going through browsing history of the suspect as all cc need not require wallets and software, and the trading of virtual currencies on virtual currency exchanges is typically carried out in a web browser. Therefore, the bookmarks, browsing history and cache of a suspect computer may provide valuable indicators of use of virtual currencies.
3. Looking of remote storage devices, analysis of mobile devices, presence of credential storage software etc are other avenues to look for whole tracing the virtual currencies.
4. Forensic analysis and correctly gathering relative evidence is essential to building a case and evidence in cases involving virtual currencies may be available in many places. There may be evidence in the form of credentials, visits to websites,

emails, etc. that establish the suspect's relationship with a virtual currency administrator or virtual currency. Identification of particular bitcoin addresses that are in the control of the suspect, the IP address of the computer associated with transactions, evidence of the use of remote storage services upon which virtual currency value may be stored, passwords or other credentials that may be used to unlock virtual currency accounts or value etc. are some of the digital evidence that would help to build a case and would establish a link to the accused. Engagement with Administrating Authorities/Currency Exchanges can be other step to get KYC though there is lot of data security and very slow response from these.

5. After identifying the cc, very important part is seizure of the cc as case property. To seize a cc, the first step is to know the credentials like private key, public key, passwords, recover phrase etc. of the wallet/ cryptocurrency account of the accused. It can be found in forensic analysis of the digital files of accused like credentials stored in some software, computer device, written in some file form etc. This cane be effectively used to take control of the account. Other case can be where details are known to accused only and he/she reveals it during interrogation, this can be admissible in court of law as recovery under section 27 of IEA.
6. After taking control of wallet/ account, since cryptocurrency are very volatile, and accused might have credentials in another form, the viable option at the moment is taking control over virtual currencies by using the regular transaction mechanisms to transfer the currency to the account (wallet) of the law enforcement authority. In absence of more detailed info (very few cases) this seems to be a preferred method in those very few cases that have used

seizure and confiscation of virtual currencies. Namely, in the already noted Silk Road case, the US Government manages the largest Bitcoin wallet in the world comprised of currency seized from the mastermind of the Silk Road.

7. Management and security of cryptocurrency is very difficult even after seizure. Thus court permission is usually taken to convert the sized cryptocurrency in local currency based on exchange rate and that is attached as case property.
8. In cryptocurrency cases, electronic evidence though secured through proper legal procedures, still needs to be processed properly in order to become legitimate, admissible evidence that can be presented in the courtroom to support the case. So Chain of custody is essential which in case of electronic evidence involves data integrity means to ensure no modifications in computer data, audit trail or keeping a trail of formal documents supporting the investigation process, and finally looking of specialist support as it is highly technical in nature.

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# Interstate Movement of Drugs and Narcotic Substance: A Study from Himachal Pradesh

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## Introduction

In recent times, India has become transit hub for illegally produced and trafficked drugs from the Golden Triangle and Golden Crescent. Additionally, various psychotropic substances and precursor chemicals produced domestically are also trafficked throughout the country. Amongst the worst affected states in India from drug trafficking and abuse, lies a small state cradled in the folds of Himalayas, Himachal Pradesh. As per 'Magnitude of substance use in India 2019', a report based on findings by AIIMS, Delhi and National Drug Dependence Treatment Centre,3.2% of the states' population uses charas and ganja- derivatives of cannabis. This is much above the national average of 1.2%. Cannabis cultivated in the state is in high demand both in India, as well as abroad and daily drug seizures and arrests are quite common in the state. In case of commonly abused drugs like chitta, it is seen that the drug abusers are actively involved in drug trafficking and dealing at various stages. They tend to procure

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drugs from places like Delhi and sell them at higher prices in Himachal thereby making money from this business while also abusing the same. Himachal Pradesh is placed fourth with 1.08%, trailing behind states like Arunachal Pradesh, Sikkim and Delhi in category 'harmful use of inhalants'. This again is much above national average of 0.21%. With one-third of Himachal's population being youth, the risk group most susceptible to drug abuse. The present Case Study has been undertaken by the author as part of District Practical Training for understanding the Modus Operandii of offences committed under NDPS in this region and also to carve out methodology to contain this menace.

**Modus Operandi followed for drug smuggling in Himachal**

Complete modus operandi can be separated into 3 parts namely, Pre-delivery, delivery of product and post delivery measures. Himachal Pradesh has a peculiar characteristic i.e being a state where cannabis products are naturally grown and cultivated. Despite this, the internal demand of heroine (chitta) is alarmingly very high. So, the overall drug business in HP work upon the inward movement of heroine, cocaine, MDMA, LSD etc and outward movement of charas, ganja etc. During investigation of NDPS cases, following modus operandi was found:

**Pre Delivery measures**

Before the delivery of the product, the party that wants the supply of charas contacts the supplier enquiring about the quantity and rate of product, thus making a prior deal before the movement. Half of the payment is made by transferring the amount in the account of the supplier and the other half is done after the delivery of the product.

**Delivery day**

Delivery of product is done in two ways-

1. Chain of peddlers are used for manual delivery of the drug to the desired location to hide the exact origin of the drug supplier and everyone part of the chain get their cut for safely smuggling the product . In the process, the drug peddler frequently changes the mode of travel like, for 1/3$^{rd}$ travel they will prefer cab for another 1/3$^{rd}$ will prefer local bus or Volvo etc.
2. This measure includes creating of cavity inside the vehicle for the transportation of the drugs, most frequently created space or cavities are in bonut, driver seat,gear box, mixing with in the goods in vehicle.

Recently,43 kg of charas was recovered from banjhar subdivision of kullu where charas was headed for chandigarh in van which was carrying vegetables, the drugs was concealed in of the bag of vegetable.

**Post Delivery Measure**

Once the drug supply reaches the destination, the peddlers become more cautious and observe any kind of suspicion movement of persons, which may indicate them presence of police. Once they are satisfied that police presence is not there, only then they deliver the product.

Through this process the supply of charas is managed throughout the country in a successful manner. Majority of concealment techniques which I came through were cavity in bonut, air filter, gear box, side door.

**How to identify-** We should have a basic knowledge of the mechanics of the vehicle and the kind of space provided, if

something unsual is observed then it can be searched for the presence of drugs.

**Modus operandi followed in smuggling of Heroine(chitta) inside the State**

Heroine is a kind of drug which has a large consumer base in Himachal Pradesh despite of being not available locally. The complete demand of heroine is satiated by smuggling it into Himachal through two routes i.e., chandigarh (20%) and Delhi(80%). Its smuggling in HP can be explained through the case study where we as a team went to arrest an accussed from nigerian origin u/S. 29 of the NDPS Act.

**Pre Delivery measures**

Customer of the particular drug makes a contact with the supplier through whatsapp message providing details about the quantity of the drug required and the cost per gram. Supplier accepts the demand and tells him when and where to reach. In addition he also asks him to make a whatsapp call, to take a snapshot of the person who is coming to buy the drug and to share the same for easy identification.

**Delivery Day**

As the customer reaches Delhi, he makes a contact with supplier and asks him where and when to come. On such request supplier of drug provides details of exact location. To ascertain whether the person is with a police team or not, supplier places his man around that location just to observe any suspicious persons or movement. If he senses anything fishy, he asks the customerto move to new location and then the dealer's deployed men clearly observe whether there was a movement of the other suspicious person too when the customer moved to new location. This way the

supplier completely satisfies himself that there is no danger, following which he comes on a bike and asks for money, collects the same and then after around 25-30 minutes delivers the product in same location. So in this scenario, there are only two situations in which the supplier can be arrested, that is, if identity has been established to connect him in Sec. 29 of NDPS Act, then at the time he comes to collect the amount he can be arrested or if not, then at the time of delivery of product.

**Post delivery measures**

Once the drug is collected by the customer, most important part is its safe and secure smuggling into state. For this, the various modus operandi followed are:

1. Customers will move in pairs till the time they collect the supply, after its collection they get separated and travel in different bus which has about an hour difference. Chitta is generally carried by person moving in second bus and the person in first bus provides information of police presence to the person carrying chitta in second bus.
2. If a person is alone, he can use some object to conceal the drug. For example, in one case accused purchased a new bicycle from Delhi and concealed 200gm of heroine inside it. He loaded that bicycle in the bus and smuggled the same to Kullu district.
3. Big smugglers use Volvo bus services for delivery of product, with connivance of the conductor and driver, the product is safely supplied.
4. If a person doesn't follow any of above measure then he travels with Volvo bus or other means of transport to the outer boundary of district and then take other alternative walking routes.

In Delhi majority of the drug suppliers are of African origin, most likely Nigeria, Ivory coast etc.

**Case study from Chandigarh**

All the steps are same as shared above, the only difference is the supply of drugs and cost. A raid was carried out at a supplier, Shiva sharma's house whereby, total 33gm of heroine and 1.82 lakh cash was recovered. On interrogation he confessed that his source of supply was from Chandigarh from an Indian origin person.

By following above measures, drugs are effectively smuggled inside the state. The same process is followed for other drugs like cocaine. Himachal is also one of the favourite destinations amongst foreign tourists. It has been seen that foreign tourists bringa large influx of MDMA and LSD with them which are commonly used in rave parties. Such drugs are sold to the hoteliers, which is then circulated amongst the other tourists. Such foreign tourists who bring MDMA, LSD with them, sell it in himachal, from the cash they purchase charas, conceal it and carry along with them. For instance, in one case, a Russian was arrested with 4.2 kg of charas concealed in the 13 vessels which he kept as a luggage in the Volvo while travelling from Kullu.

**Reason Forthe Successful Business model**

The supply of chitta and cocaine is 80% from Delhi and 20% from Chandigarh. The reason for low demand from Chandigarh vis a vis Delhi is because of the rate at which this drug is available in the city. In Delhi the cost of 1gm of heroine is 900-1100 Rs and of cocaine is 3000-3500 Rs/gm, whereas in Chandigarh the cost of heroine is around 2200 Rs/ gm and cocaine is around 4500r Rs/gm. If we trace out the cost of drug it is as follows-

**Chitta-** Delhi (900-1100Rs/gm) Chd (2200Rs/gm) Kullu (HP) (4200/gm)
**Cocaine-** Delhi (3500Rs/gm) Chd (5500Rs/gm) Kullu (HP) (8000Rs/gm)

On every stage this drug almost doubles its price which makes it very cost effective for the users to continuously use this product. The reason for its continuous abuse can be understood by this following example:

A person X purchased the drug from Delhi at Rs1000/gm and bought total 100gms for Rs 1 lakh. He used to have three transaction of this kind in a month. He can consume personally 4gm/day. So for one visit he buys around 40-45 gms for himself, the rest is used for selling in market. The rate at which it is sold is 4200Rs/gm. So in one visit person X invested 1 lakh Rs, out of which he self-consumed around 45 gm costing Rs 45,000 and remaining he sells at 4200Rs/gm total amounting to 2.2 lakh. Overall profit of 1.2 lakh with zero input cost is made by him and the same thing is repeated by him many times in a month.

So for this business model to be a successful one, it totally depends upon the number of customers and the consumer base. This is the major reason why an increasing number of youth are being affected by the problems of drug abuse. These drug suppliers provide initial two doses of this highly addictive drug free of cost to the new consumer, and once they get them addicted, the affected person cannot control the withdrawal symptoms. So every person who is addicted by drug use tries to make many more addicted so that he can comfortably use the drug by selling them out and making money for procuring more drugs. When this whole exercise is joined with outward movement of charas through the same person then the profit margin is very high.Basically, a person carries charas from himachal and sells it in Delhi and procures

chitta from Delhi and sells it to consumers in himcahal.Its a win win situation for the drug supplier making profit from the both thesides.These activities can be brought down if the availability of drug itself is curtailed.

**Ways and Means used by Law enforcement Agencies**

1. Use of Mobile surveillance and Call data Record, use of voice logger is used for their conversation and then their language is decoded to get some useful information.
2. Live location is updated once the target is in motion and continuous overall monitoring is done.
3. Use of local source intelligence about the movement of person and goods (vehicle)
4. Deals made by our SIU(special investigation unit) with the Drug smugglers concealing their identity.
5. Destruction of the poppy and cannabis cultivation drive is carried out.
6. Surprise raid in the hide out where charas is concealed by police authorities.
7. Information from the app, 'Drug free Himachal' is also utilized.

**Difficulties faced by the Law enforcement agencies**

1. Cannabis growth is very natural to the hilly regions of Himachal, hence very difficult to regulate.
2. Cannabis cultivation is done on the barren lands or on the forest land where accountability is very difficult to set up.
3. Cannabis cultivation is done at very far flung areas which is not very easily accessible.
4. Support and information from local sources is difficult as it is a source of livelihood for them.

5. Layering made up by the drug peddlers make it difficult to reachto the main smuggler.
6. Leakage of information of a planned raid and movement of police personnel can be seen easily from a height.
7. Difficulty in nabbing the main supplier as jurisdiction changes from Himachal to Delhi.
8. Thorough interrogation needs to be done as there are some codes they use to indicate presence of police personnel which they share with each other in a series and if it is not implementedby any of them in the same way as required, it signifies danger and they alert themselves and safely hide away the drugs.
9. Poor coordination among State Narcotics officer and District police.

**Way Forward**

The widespread abuse of drugs had led to a detrimental impact on health, financial condition and social status of people. It has a direct correlation with the increase in number of crimes and violence incidents reported. So, to tackle the problem of drug menace, a multi-dimensional approach needs to be followed, suggested as follows:

1. Focus on building interstate coordination among various agencies entrusted with the responsibility of countering the drug menace, like Narcotics Control Bureau , State Police, Postal services and Central organizations.
2. Leaving behind the policy to work in isolation, a common platform for Sharing of intelligence amongst the enforcement agencies should be implemented.
3. Creating a database of the previous convicts under NDPS Act and persons under trial with all the necessary details including Name , Photograph ,Permanent address ,Mobile no., IMEI

no., Vehicle no. etc. at district level which should be shared with other districts, thereby creating a state wide database of suspected persons.

4. Special Investigation Unit should be created for investigation of NDPS cases. Also entrusted with the responsibility of database creation of suspected persons, it will help to monitor the movement of the suspected persons andalso in intelligence gathering.
5. Understanding the basic concepts and Modus operandi involved in smuggling of drugs, Creation of Intelligent Check posts at important trade routes which shall be equipped with drug detection kit , sniffer dogs and data of suspected persons
6. Building and investing in human intelligence gathering, i.e source creation. Such sources need to be protected and at the same time anonymity should be ascertained so as to create confidence and incentivise them.
7. Use of modern means of technical intelligence like Call data record , Internet protocol data record , Location sharing , Voice logger etc . and police personnel should be trained accordingly to acquire the desired skill sets.
8. Freezing of assets of the smugglers, acquired in last 6 years under Financial investigation as per section 68 of NDPS Act.
9. Sharing of recently used new modus operandi by the accused to all the police station.
10. Appreciation and commendation certificates may be awarded to the Investigating officer on making good seizure, which would motivate them.
11. Establishment of de-addiction centre with the help of state government at every district to help the victims of drug abuse be a part of main stream society.

**12.** Creating awareness among the people about the ill effects of drugs with the help of NGOs and promoting Nasha Nivaran Samities at police station level.

The above discussed strategies will not only help in curbing the illegal supply of drugs but also with the aid of financial investigation, will help in demotivating the suppliers to indulge in such acts. These measures will help in curbing the supply side aspect of the menace whereas demand side can be controlled through creating awareness by NGO , local administration etc. and establishing cost effective de-addiction centres.

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# Critical Analysis of Pehlu Khan Case (24/2019 - State of Rajasthan Vs Vipin and Others - Court of Sessions, Alwar)

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## Introduction

Investigation is the process of collection of evidence. This seemingly very easy task has various procedures and requirements to be followed as required by the law (CRPC, IEA etc.) and judicial precedents pronounced by the Honourable Courts. The material evidence presented by the prosecution shall follow the reliability, admissibility, and other such tests done by the court. Maintenance of intact chain of command, proper seizure, lawful arrest etc are duties of prosecution wing. Hence, one may argue that there are lot of difficulties. In spite of such difficulties, the state cannot absolve herself of the responsibility she has out of the social contract. A criminal case is not an ordinary dispute between two private parties. The outcome of a criminal case impacts the entire society. If an accused goes scot free, it shakes the faith of the people in the entire system. It not only encourages criminals but also frightens the law abiding citizens.

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On 1 April, 2017 a case was registered U/S 141, 323, 341, 308, 379, 427 of IPC on the basis of a statement given by Pehlu Khan while lying in the ICU ward of Kailasha Hospital, Behror, Rajasthan that on the same day, he along with his sons Arif and Irshad, were returning to their village on a pickup van with two cows for sale. On the way, at Behror, at about 7 pm some 200 people stopped their pickup van and assaulted the three of them. While assaulting, they were calling out each other's names – Om Yadav, Hukmchand Yadav, Navin Sharma, Sudhir Yadav, Rahul Saini, and Jagmal – and were also saying that they belonged to Bajrang Dal and Vishwa Hindu Parishad. On 03 April, 2017 section 302 was added as victim died on the same day, while in Kailash Hospital. After the investigation was conducted and charge sheet was filed in Alwar court.

In this article we are trying to highlight various mistakes done by prosecution and court in the Pehlu Khan case responsible for the acquittal of the accused.

The Law recognises FIR as that piece of document that sets the criminal law in motion and marks the commencement of investigation. The FIR is an important piece of evidence that can be used for corroboration and contradiction. Though it is not a substantive piece of evidence, it can surely diminish the value of another substantive piece of evidence.

In the present case the FIR suffered with several crucial flaws. As mentioned, the FIR was taken on a complaint given by the deceased Pehlu Khan while he was still in the hospital. In such a situation, medical fitness certification by the duty doctor is needed describing the mental state of the complainant and originality of complaint. But no such noting was made by the duty doctor on the complaint. The IO stated that the doctor refused to

give such a certification despite being asked. In that case, the IO must have given a complaint of such a refusal, in writing to the senior doctor. Another flaw was that the original complaint had multiple cuttings and overwriting. This reduced the credibility of the FIR contents.

Further, it is often asserted that applying the right sections of law in the FIR is of crucial importance. This facet came out even more starkly in this case. The original FIR applied Section 141, 323, 341, 308, 379, 427 of the IPC. FIR was taken after the victim was admitted to the hospital and medical had been conducted, as per medical records the deceased had multiple fractures. Such matter of multiple fractures surely cannot elicit section 323 of simple injuries. The defence during the trial highlighted this anomaly that since the FIR was under such section as 323, 143, 427 etc it is representative of the fact that the injuries were of a simple nature and hence approving the point of defence that victim did not die of the injuries caused upon him. Similarly section 379 (theft) was applied ignoring the fact that their mobile, money etc was taken by wrongfully restraining and causing hurt to the victim et al, which technically amounts to robbery and not theft. Role of Supervisory Police Officers in the process of investigation is also questionable. First supervisory officer Addl. SP, Jaipur district in his remarks concluded that the accusation against the six FIR named persons was proved and that there is requirement of further investigation to determine the culpability of the persons not named in FIR but found to be involved in the crime as per the investigation. After that he forwarded the case file to IG, Jaipur. Later Addl. SP, Crime Branch was made supervisory officer. He summoned all six FIR named accused, and after interrogation he concluded that they were not present at the scene of crime but at a place called “Rath Goshala”, based on their cell tower location,

corroborated by workers of Rath Goshala as well. The Additional SP, Crime Branch then exonerated those FIR named accused and concluded the case to be true against only seven subsequently arrested persons (not named FIR). If we plainly read section 11 of Indian Evidence Act, plea of alibi is an instrument to prove or disapprove the relevancy of a fact in question ( which in this case is the presence of six FIR named accused persons). And by its nature it shifts the burden to prove the alibi to those who are invoking it. And this relevancy of fact is a matter to be decided in court of law and not by Police. In United India Insurance Co. Ltd. Vs. Pawan Tikkiwal & Ors, Rajasthan HC opined that "One of the settled principle of the law of evidence is that the first version of an incident contains the kernel of truth. For, it is the tendency of human beings to speak the truth immediately. Subsequently, after due deliberations, the facts can be changed, the story can be embroidered and a fictional version can be created. Thus, while appreciating the evidence, the courts consider the initial statements as containing the substratum of truth." In this case court citing the above judicial precedent raised concerns and suspicion on the prosecution's theory.

The FIR states that the deceased and his sons were attacked by more than 200 other persons. Injuries were caused by lathi, danda, and fists. The immediate eye witnesses were Irshad and Arif (sons) and secondary eye witnesses (travelling in second van) Azmat and Rafiq. In cases of mob violence a Test Identification Parade is crucial to establish the identity of the accused but it was not conducted. In their Section 161 statements Irshad and Arif stated that there were 5 persons on two bikes, without taking any specific names, while in their statement before the court they said that there were 8-9 persons on 3-4 bikes and mentioned the names of the accused as well. In the absence of a TIP, the court noted that

it finds it unnatural that though the sons of the deceased could not identify the accused persons in court but they remember their names even after two years of the incident.

Collection of Evidence done diligently is considered half the investigation done. In this case the police faltered at multiple occasions during this step. Especially, with regard to electronic evidence. Integrity of the evidence is adjudged by its admissibility, maintenance of proper chain of command and authenticity certified by FSL. Proving the Authenticity and admissibility of the evidence is the responsibility of the police and prosecution.

Firstly, there was no Section 65B Certificate taken from the Nodal officer. This made the CDR records inadmissible. Secondly, the video recording of the alleged lynching was received by the IO. The IO did not seize the phone of the informant, and merely transferred the video to his phone and took printouts of the screenshots. Consequently, there was no proper seizure of digital evidence (no hash value calculation, no verification of timestamp). Court observed that IO stated that he received the video from a source, but he failed to declare the actual date and time of receiving the video and electronic mode of receiving and also failed to explain how he got to develop the photographs from the video. Another problematic facet was that even this video collected from the informer was also not sent to the FSL for analysis. The independent witnesses shown in the seizure memo of the mobile phone denied any knowledge of the entire procedure and stated that police took their signatures on a blank paper.

It is to be noted here that many a times in a desperate bid to prove the fact that the impugnable mobile and memory card etc were indeed owned by the accused the police resort to making fake receipts. This creates unnecessary problems as there are other ways

of proving ownership and possession of the phone like linked google account, photographs, messages, sim card and the SDR details etc.

It is an accepted principle of investigation that multiple witnesses should not be produced before the court to prove the same fact. This cardinal principle was not adhered to in this case. Statements of all attending doctors were taken and submitted on record despite discrepancy with the statement of PME doctor regarding the cause of death. All duty doctors from the Kailash Hospital where Pehlu Khan was admitted opined that death of Pehlu Khan cannot be caused by injuries suffered by him. While the doctor who conducted the PME observed that there were, several injury marks on the body of victim (neck shoulders, things face etc), heamatoma was found on opening the chest, multiple fractures in ribs of both sides, laceration on internal muscles of chest, laceration on both lungs, laceration on the base of spleen, on kidney, about 1000 to 1200 ml blood in the chest cavity and about 1200 -1400 ml blood in abdominal cavity (internal bleeding), multiple lacerations on muscle of abdomen, multiple haemorrhages on the surface of both small and large intestine.

As per the medical board cause of death was multiple injuries on abdomen and chest and internal bleeding. Upon cross examination PME doctor stated that he did not see the deceased's case history (bed ticket ) neither he was informed by the police or the relatives of the deceased about medical history i.e heart related ailment and asthma. And that he agrees that such injuries can also be caused by any cattle while uploading the same in the truck. And that patient of asthma may also have such lacerations. And that he was not informed that deceased was treated for heart attack related problem while in Kailash Hospital and died due to that.

Regarding SOC sketch, one prosecution witness stated in front of the court that it was made in thana not on the spot. Further the two accused were made witness to the scene of crime sketch which is clearly a wrong method. The seized lathis from accused were not sent to FSL neither there was any mention of blood on that. If victim's blood or accused's fingerprints could have been recovered from the lathi it could have been a decisive evidence. Similarly 161 statement should corroborate the facts given in the original complaint but the names of accused are not reflected in the 161 if the sons who are primary witness of the incident also there are discrepancies regarding the number of assailants.

**Mistakes of Prosecution**

Prosecution did not contest that cattle were bought or not from the alleged market and also that the cattle were being transported to their home in original FIR but in court witnesses mentioned another place. According to the available information from the office in animal fare that there was no animal sold by the persons as named by the victim party (failure of IO to collect and verify the information). Similarly, the person cited as photographer by the prosecution states that he did not remember that if he developed any photo or CD regarding this case, he did not go to the SOC neither he clicked any photo, and mobile phone was brought by the police person. Similarly, in a very bizarre manner it was observed in the court that the case diary had FSL report of the digital evidence analysis attached with it though IO clearly denied sending mobile phone to FSL.

**Mistakes of Court**

As 161 statements are not admissible in court of law, the court should not have given much credence to those statements so

much that it negated the statements of the primary witnesses given in court during trial.

## Conclusion

In the collective consciousness of the Indian public the Pehlu khan case seemed like and open and shut one, based on the brutality captured on video. The video was run repeated number of times by various media platforms igniting debates in many spheres. But the above analysis of the court judgment shows the long and tedious road that needs to be travelled by investigative and prosecution agencies to ensure the conviction in even cases that seem so obvious. This road is often fraught with thorns of vested interests, political affiliations, money power or simple negligence and dereliction of duty. The observation made by the court and author not only stands true to the impugnable case but also for other cases where similar instance of investigative technique and prosecution procedures arises. This becomes especially important because, as under the Indian criminal system victim is not allowed to hire a private lawyer, he is fully reliant on the organs of state for his cry of justice to be fulfilled.