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SARDAR VALLABHBHAI PATEL NATIONAL POLICE ACADEMY
(Ministry of Home Affairs, Government of India)
HYDERABAD - 500 052.

Atul Karwal, IPS
Director
Tel: 040-24015180
Fax: 040-24015179
email: director@svpnpa.gov.in

Foreword

The Criminal Law Review is the premier journal of Sardar Vallabhbhai Patel National Police Academy to promote legal research relevant to police officers. It is published each year to mark the occasion when officer trainees leave the environs of the Academy and take their first steps into the real world with the aim to serve the people of the nation. This journal encompasses the thoughts, expertise and perspectives of the officer trainees, faculty, field officers as well as legal luminaries and academicians, making it a truly diverse source of knowledge for all.

This year, the Journal has focused on varied topics like Marital rape, judiciary's approach to policing, community service as alternative form of punishment, technological developments in the judiciary, insights into Maldivian law etc. I am confident that these articles will be of interest to everyone involved in the criminal justice system of the country and beyond.

I would like to congratulate the members of the Law Society for their efforts in bringing out this volume of the Criminal Law Review. I extend my gratitude to all contributors and advisors from the academic and legal fraternity for their immense support. I would also like to thank the Publication Section for their hard work without which this Journal would not have been possible.

(Atul Karwal)
Director

Date: Nov 5, 2021

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Breaking the Shackles: Community Service as Punishment in India

SONAKSHI SAXENA*

Introduction

In March 2021, the Delhi High Court passed an unusual order. Hearing an attempt to murder case where a 21-year-old was accused, the court ordered the offender to do one month community service at the Gurudwara Bangla Sahib and later show a compliance certificate.[1] These orders are not completely new for India. Despite not being present in any law, any statute book or any authoritative legal pronouncement, courts often give out such orders for minor offences to first time offenders. Courts in Delhi have ordered community service at Government hospitals, NGO's, charitable institutions etc. as alternatives to imprisonment and fines.[2]

*IPS (Probationer) 73 RR, Madhya Pradesh Cadre

[1]*PTI, 'Delhi HC directs Accused to do Community Service' (The Times of India, 13 March2021)<https://timesofindia.indiatimes.com/city/delhi/delhi-hc-directs-accused-to-do-community-service-at-gurudwara-quashes-fir/articleshow/81485727.cms> accessed 31 October 2021.*

[2]*Ayesha Arvind, 'Delhi's petty criminals work off their Debt to Society' (Mail Today, 7 October 2013) <https://www.dailymail.co.uk/indiahome/indianews/article-2447171/Delhis-petty-criminals-work-debt-society-courts-catch-community-service.html> accessed 31 October 2021.*

Community service is a form of non-custodial punishment that involves offenders being mandated to do unpaid work which benefits the society at large, as an alternative to being put in prison. Various kinds of jobs like teaching, working in community kitchens, tree plantations etc. are assigned based on the skill and the suitability. These are mostly awarded to first time offenders in less serious offences. Most developed countries of the world like USA, UK, New Zealand, Singapore etc. have a comprehensive community service programme which has shown good results.[3] However, India does not have a formal mechanism for the same.

This article seeks to explore the necessity, benefits and the possible mechanism for community service as a punishment in India.

Why do we Punish?

The purpose of punishment is a timeless academic debate in criminal justice systems all over the world. As per the social contract theory, state gets the power to punish people for violations so that the society is safe. This is demonstrated directly in criminal law where the State takes up the responsibility to conduct the trial and penalize the criminal.[4]

The retributive theory believes that the punishment is to make the criminal suffer for what they have done. It is not concerned with future offending, but with giving just desserts to an individual for past action. However, other theories are more forward looking and focused on crime prevention. The deterrence theory believes that the purpose of punishment is to stop people from committing crimes. The fear of punishment will make them averse to doing any

[3] *Herbert J. Hoelter, 'Sentencing Alternatives – Back to the Future', [2009] 22(1) FEDERAL SENTENCING REPORTER 53.*

[4] *Katerina Hadjimatheou, 'Criminal Labelling, Publicity and Punishment', [2016] 35(6) LAW AND PHILOSOPHY 567.*

unlawful activity. The reformation theory believes that criminals can be educated to realize the wrong they have done and be converted back into law abiding citizens.[5]

In light of these, most countries have adopted incarceration as the most common form of punishment. It removes the offender from the society so that he cannot commit the offence (specific deterrence) and also creates enough trepidation in the minds of others to not break the law (general deterrence). The system also believes that criminals will get reformed in this process and will join back the society as fully functioning members.[6]

However, over the years, it has been realized that this is not happening in practice. While not completely ineffective, imprisonment is creating its own problems. Nowhere is this better seen than in India.

Problems with Incarceration

As of the latest Prison Statistics India report, over 4,78,600 prisoners are currently housed in Indian jails with an occupancy rate of 118.5%, which is the highest level of overcrowding in 10 years. And this is just the national average, many states have an occupancy rate as high as 175%.[7] The bottom line is that India does not have the capacity to handle the number of people it is putting in prisons.

The problem is further compounded by the deplorable prison conditions. The living conditions are terrible, the infrastructure is lacking, health and sanitation standards are not followed. Physical and sexual violence is also common. All this severely affects the

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[5] *Julian V. Roberts, Criminal Justice: A Very Short Introduction (1st edn, Oxford University Press, 2015)*

[6] *Id.*

[7] *National Crime Records Bureau, Prison Statistics in India 2019 (2019).*

prisoners and reduces the chances of them living a normal life after release.[8]

The fact that prisons can help in reformation is not really borne out in practice. The IPC provides for smaller prison terms for less serious offences, as a proportionate response to the crime committed. However, once people enter prisons, they become embroiled in prison culture, come in contact with hardened criminals and lose their link to society. They are surrounded by negative influences and hence even after being released, turn to crime again. Society also accelerates this by attaching stigma to released prisoners and not giving them a chance to integrate back into normal life. All this is especially detrimental to first time offenders and convicts of minor offences, who often commit more aggravated offences after prison stints.[9]

Rather than reforming prisoners and preventing crime, incarceration is leading to deterioration of a section of criminals who have the potential to be reformed and wasting their productive capacities.

Community Service: The Need of the Hour

The above discussion points to the need of creating alternatives to incarceration. Community service can be a step in the right direction.

From an economic standpoint, it is cost effective. Community service will decongest prisons and will reduce the burden on the exchequer. As resources get freed up, it can lead to improvement in

[8] *Basanth Rath, 'Why we Need to Talk about the Conditions of India's Prisons,' (The Wire, 26 July 2017) <https://thewire.in/uncategorised/india-prison-conditions> accessed 31 October 2021.*

[9] *Supra note 8.*

the conditions of prisons with more attention being paid towards health, living standards and functioning.[10]

The goals of reformation and crime prevention are also met by community service much better than incarceration. Studies show that offenders sent to community service are less likely to reoffend than offenders who were sent to jail for similar offences.[11] There are many reasons for this. Community service sentences hold offenders directly responsible for their acts by asking them to do labour. It develops awareness about their wrongs, in people. It allows convicts to learn new skills, develop affinity with the community and contribute to productivity in society which increases their self-worth. Such sentences do not disrupt lifestyle and family life. They separate first time offenders from hardened criminals, thus protecting their future.[12]

Community Service: Legal and Judicial Trends

In India, there has been a long debate about the introduction of alternate sentencing and non-custodial punishments. A concrete effort was made in the Indian Penal Code Amendment Bill, 1978 which provided for community service to be provided as punishment for offences with imprisonment of less than three years. According to the Bill, any adult offender could be ordered to do unpaid labour for a requisite number of hours, provided the offender agreed and the court was satisfied about his suitability to

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[10] *Vera Institute of Justice, 'The Potential of Community Corrections to Improve Communities and Reduce Incarceration', [2013] 26(2) FEDERAL SENTENCING REPORTER 128.*

[11] *Signe Hald Andersen, 'Serving Time or Serving the Community? Exploiting a Policy Reform to Assess the Causal Effects of Community Service on Income, Social Benefit Dependency and Recidivism', [2015] 31(4) JOURNAL OF QUANTITATIVE CRIMINOLOGY 537.*

[12] *Mitali Agarwal, 'Beyond the Prison Bars: Contemplating Community Sentencing in India', [2019] 12(1) NUJS LAW REVIEW 119.*

do the said work.[13] However, this was not taken up and the Bill lapsed due to dissolution of the House. As of now, the only provision for community service exists in the Juvenile Justice Act which allows the Juvenile Justice Board to award supervised community service to children in conflict with the law.[14]

Various commissions have considered the idea of community service. The Law Commission in its 156th Report on the Indian Penal Code disapproved of community service as an option, citing lack of suitability to Indian conditions.[15] However, this form of punishment was looked upon with favour by the Malimath Committee Report which suggested it as an alternative to default sentence.[16]

The mantle of community service has been taken up by the judiciary in India. The Courts have said in various cases that a non-productive prison population is a burden on the finances of the nation[17] and that innovative methods of restorative justice like community service should be thought about.[18]As seen in the introduction, many courts have ordered first time offenders to do unpaid labour in the hope that reformation will follow. In recent times, this was also seen as a fitting punishment for violation of COVID guidelines.[19]

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[13] *Indian Penal Code Amendment Bill 1978.*

[14] *Juvenile Justice Act 2015, s 18(1)(c).*

[15] *Law Commission of India, 156th Report on Indian Penal Code (Law Com No 14, 1997).*

[16] *Ministry of Home Affairs, Report of Committee on Reforms of Criminal Justice System (Vol 1, 2003).*

[17] *Pappu Khan v State of Rajasthan [2005] CriLJ 4732.*

[18] *Babu Singh v State of Uttar Pradesh [1978] 1 SCC 579.*

[19] *Sohini Ghosh, 'How Gujarat HC came to order Covid-19 Community Service for Mask Violators', (The Indian Express,4 December 2020) < https://indianexpress.com/article/explained/explained-how-gujarat-hc-came-to-*

However, with no specific provision, these efforts remain adhoc at best. Moreover, most orders are passed under inherent powers of the High Court or as a condition under Probation of Offenders Act, which creates a legal grey area. There is therefore a need to institutionalize the process.

Comparative Analysis of International Scenario[20]

Country	Hours of Community Service	Procedure Before Court Order	Supervision	Results
Australia	Between 40-750 hours awarded not exceeding 5 years.	Probationary officers decide suitability before sentencing and advice the court	Probationary officers supervise	Increased use of community service as punishment – 40% increase over 10 years between 2009 to 2019. In 2019, 79134 people undertaking this punishment. Studies show decline in recidivism.
Finland	Between 14-240 hours can be awarded. Mostly used in cases of drunken	Criminals Sanction Agency makes assessment on request of prosecution,	Criminal Sanction Agency supervises such sentence.	About 3600-3700 sentences imposed yearly of which over 80% completed. Lower

order-covid-19-community-service-for-mask-violators-7092024/> accessed 31 October 2021.

[20] *Supra* note 12.

	driving.	pre sentence report prepared based on sentencing guidelines.		recidivism seen. Suitable for people who have never gone to prison.
Singapore	Between 40-240 hours awarded for offences not exceeding 3 years imprisonment	Community Service Officer submits suitability report	Community Work Officer supervises.	90% offenders complete successfully. New skills shown to be learnt.
United Kingdom	Between 40-300 hours of work awarded along with curfew, electronic tagging.	Ministry of Justice assesses suitability and chance of reformation.	Ministry of Justice supervises.	In 2018, about 83,022 orders passed. While education, training done, high frequency of breach.
Uganda	Maximum 6 months of work can be awarded.	Pre Sentence Report made.	Dedicated Directorate of Community Service with National and District committees	Estimated savings of about $3.7 million since 2001 due to decreased prison population. Reduced recidivism.

Formalizing the Process: Role of Police

Based on the experience of other countries, a good community service program should judge the suitability of the offender and then award work which preferably has a link with the crime committed, so that it can help the prisoner realize wrongs and assimilate into society. The work must be commensurate with the punishment without violating basic rights of the offender. There also needs to be a monitoring mechanism to oversee work done and revert to custodial punishment in case of breach.[21]

It would not be wrong to say then that the police will have to play an extremely important role in the process. The police is also well suited to involvement in community service programs as they are the ones who deal with the crime and its consequences first hand, whether its interacting with victims, investigating the accused or looking at the effect of the crime on society.

In this light, an amendment to Section 53 IPC can be considered to be made to include community service as a punishment for offences with less than 3 years imprisonment and also for first time offenders for offences with up to 7 years imprisonment as punishment. At the time of sentencing, if a judge is so inclined, he/she should ask for a suitability report from the police. This report should contain the background of the offender, his conduct during the investigation process, the impact of crime on the victim and society and the possibility of reform of offender. Based on this, the court can order community service as punishment. Special supervisory officers should be appointed to oversee the work being done by the offender. In case the offender does not follow the terms of community service, an application should be made by police to

[21] *Supra note 12.*

court to cancel the present punishment and award imprisonment to the offender.

Conclusion

Community service is an idea whose time has long come. It will lead to conservation of scarce resources, utilization of talents of population as well as meet the goals of reformation much better than existing methods of punishment. For this to be effective, there needs to be concerted effort from the police as well as the judiciary to push for this change so as to develop a fair and effective criminal justice system.

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Comparative Analysis: Investigation done by Police in Maldives and India

ABDUL HAFEEZ IBRAHIM * & NEETHIPUDI RASHMITHARAO**

Investigative power in Maldives is given to Maldives Police Service (MPS) in Chapter 9 under Article 244 (c) of Constitution of Republic of Maldives that states - "to investigate crime, conservation of evidence and prepare cases for disposition by the courts…"

Details of how the power of investigation is in Criminal Procedure Code of Maldives 12/2016 and Police Act 34/2020

According to Police Act, there should be a separate department for investigation. MPS is structured in a way that it has a separate Directorate solely for the purpose of investigation, namely, Criminal Investigation Directorate.

Criminal Investigation Directorate is divided into many departments. They are: 1) Major crime Department, 2) Drug Enforcement Department, 3) Serious and Organized Crime Department, 4) Family and Child Protection Department and 5) Property and Commercial Crime Department.

* *IPS (Probationer) 73 RR Maldives Police Service, Cadre*
** *IPS (Probationer) 73 RR, Maharashtra Cadre*

If a crime is reported to any of the Police Stations, the investigation will be forwarded by the first responders to the concerned department in the aforementioned list, through Police communication centre. This set up is prevalent in the capital city of Male where one third of the population of Maldives is concentrated. As Maldives is an island country which consists of islands and atolls, each atoll has more than one police station where small departments are established for criminal investigation. If any major crime occurs in any of the atolls, a special team from the concerned department related to the crime would go to the scene of crime and take charge of the investigation in that atoll.

According to Article 93 of Police Act 34/2020, General Rules in Criminal Procedure Act 12/2016 and Regulations, formed for Police on procedures done during investigation, should be applied in all criminal investigations. In Article 99 of Police Act 34/2016, it is stated that investigation is something that is done under that Act or any other to find the truth of what is reported or found by police daily routine and it should be done by an officer who is certified to conduct investigation. In MPS, a police officer is not authorized to conduct investigation unless he undergoes a specialized training to be qualified for the same.

Reporting of Crime

There are five ways in which a crime can be reported to MPS as mentioned in Procedural Regulation for Police investigation which is formulated under CrPC, Maldives.

1. Through a phone call to a Police Station,
2. After being physically present at a Police Station,
3. To report to a Police officer on Duty,
4. In Non Emergency cases through MPS website,

5. Through letter, Fax, or email in Non Emergency cases,
6. And in case of emergencies calling 119 or 3322111.

Other than these, any other agencies which are legally allowed to investigate criminal cases can forward the same to MPS. Prosecutor General can also direct MPS to take up an investigation. Any case which is reported to MPS, whether it can be investigated by Police or sent for Prosecution or filed because of insufficient evidence should be given in writing to the victim or to the person who reported the case.

Initial crime report or information can be categorized into two: **messages** and **incidents**.

Messages are information related to a crime and incidents are information which states that a crime has occurred, is occurring, or will occur. Among the incidents and messages, the Duty Officer who is on duty in Police Communication Centre will decide whether it has to be registered as a criminal offence or not with the help of relevant criminal department. If the Duty officer decides that it has to be registered as a criminal offence then it will be forwarded to the concerned investigation department. Duty officer is a senior officer who is in charge of taking immediate decision on anything that happens throughout Maldives and if required he/she will communicate with executive officers before taking any critical decision.

Investigation and Questioning

For investigation, police can summon any person by sending them a chit to cooperate in an investigation. If he does not cooperate, he can be apprehended for 4 hours (not counted as arrest) for investigation under Article 50 of CrPC, Maldives. Every part of the interrogation should be recorded by Audio and Video

tools. Any person who is accused of a criminal offence can be arrested for up to 24 hours and presented before a relevant Judge and his custody could be extended. All the basic human rights like the Right to Remain Silent, the Right to a Legal Counsel and so on, should be provided to the arrested person just like in most democratic countries.

There are certain criminal offences where bail cannot be granted. They are heinous crimes like Homicide, Terrorism, Drug Trafficking and Sexual Offences against Children. Bail can be given to other offences which are not mentioned in any other law unless stated that bail cannot be granted.

Crime scenes are processed by a special department established in MPS as Forensic Directorate Department. There are Crime Scene Officers who collect evidences which are taken to the forensic lab on the same day after completion of paper work such as requisition and chain of custody. Panch Witnesses are NOT required at any stage of investigation in any of the investigative cases in Maldives.

At the trial stage, there are very few instances where questions are raised about evidence tampering or falsification of evidence during investigation. In Maldives, Prosecutor General carries the full responsibility for filing charge sheet in Court. So before doing that it is made sure by the Prosecutor General that the Police have not made any documentational lapses or incomplete documents. If there are any such lacunae the whole file is sent back to Police to correct the same before filing charge sheet so as to make sure that there is least probability of documentation errors.

Audio and Video recording should be done during any part of investigation. If the accused tells the court that the statement given to Police is taken by force then the audio/video recording is

presented to nullify this claim only, since the statement given to police does not have much evidentiary value by itself. So this recording does not have a direct impact on the case except to nullify claims of custodial torture by accused.

Prosecution

After the investigation is completed all the documents are sent to Prosecutor General's Office to file Charge sheet or prosecution in court. The limitation for criminal investigation in Maldives is that charge sheet should be filed within 30 days of registering a crime if the suspect is in custody whereas 45 days if the suspect is not in Police custody. All the relevant documents should be included and no additional charge sheet can be filed after that. In case any document or report is getting delayed it should be mentioned in Charge sheet itself.

During the trial process, Prosecutor presents the case and relevant experts and witnesses are summoned to court. Only in a few cases, Investigating Officers are asked to be present in the court of law for questioning. Statements which are taken by the Investigating Officers have no evidentiary value if the accused denies the statement in court. If the accused confesses to the crime and gives statement to the police then such statement of confession is admissible in court as primary evidence. The rest of the trial process is quite similar to democratic countries which follow adversarial system. Maldives being a Muslim country follows the Shariah concept also. Thus, mainly the trial is conducted under a mixed system where common law concepts are applied too.

Differences in investigation and Prosecution in India and Maldives

In investigation Maldives Police Service has a separate Investigation directorate specifically established for the purpose

and specifically trained officers which are given the permit by the Head of Police who have the exclusive authority to conduct criminal investigation. On the other hand, in India unless otherwise mentioned in any Special Law like POCSO Act, the norm is that as per Section 156 of CrPC any officer who is in charge of a police station may investigate a cognizable offence without Magistrate's order.

The senior most officer present in the police station at any point of time (SHO or his subordinate above the rank of constable) is the officer-in-charge or the duty officer. If the SHO or Inspector is not present, then the Sub-Inspector or Head Constable will be the officer-in-charge and are qualified to take complaints, take cognizance and lodge FIRs. Therefore, the powers conferred upon Indian police in investigation are relatively wide and unfettered compared to Maldives police, as in India there is no need for a separate specialized training to be qualified for investigation.

Processing of crime scenes is done by the forensic experts who are officers from MPS itself and forensic laboratory is a directorate of MPS in Maldives where as in India the Central Forensic Science Laboratory, for instance, is under the Ministry of Home Affairs and it recruits scientists specialized in the different branches of forensic science. CFSL undertakes analysis of crime samples not only sent by police department but also other agencies like NIA, DRI, Indian Railways, and Narcotics Control Bureau etc.

In India there is a requirement of minimum of two Panch Witnesses to process a crime scene and they have to give a Panchanama (a written and signed report). Nowhere in CrPC there is mention of the word Panchanama, but it can be construed from the language of certain provisions of CrPC, such as Section 100 and 174. On the other hand, in Maldives this is not required at any

stage of the investigation of any kind of offence. Instead, evidences are packed and taken by Crime Scene Officers and handed over to the Investigating Officer with chain of custody. The IO then fills the requisition form and sends to Forensic laboratory.

Prosecution is a separate entity established under the Constitution of Maldives where after completion of investigation MPS forwards all the documents to Prosecutor General's office. He will then decide whether to prosecute or not depending on the evidence and witness statements. In India, Assistant Public Prosecutor Officers, working under the overall supervision of the Directorate of Prosecutions, scrutinize charge sheets prepared by the investigating agency and submit discharge/ acquittal. They evaluate the evidence in each case and make their recommendations for filing revision petitions or appeals against impugned orders and judgments, as well as conduct cases in Courts of Metropolitan Magistrates. There is also a public prosecutor who acts in accordance with the directions of the judge. Normally, the control of entire trial is in the hands of the trial judge.

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Sardar Vallabhbhai Patel
National Police Academy
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E- Judiciary

AYUSHVIKRAM SINGH* & DR. DARPAN AHLUWALIA**

A disaster or pandemic cannot be stopped, but one can arm oneself with its knowledge and preparedness. The current pandemic, COVID-19, has created global distress in all the spheres of life; the judicial system is also not an exception to this. The COVID-19 lockdown blockaded the helm of the judicial system. Courts across the nation were shut and no hearings were being conducted, except for the most pertinent ones. This novel coronavirus has severely impeded the global justice system. Several nations like Indonesia, Malaysia, the United Kingdom, Singapore, and many others have started switching to online hearings and trials, and it shall be reasonably expected that India would not be lagging behind.[1]

On 6 April 2020, the Supreme Court of India issued guidelines for courts to switch to video conferencing during the pandemic for both future and past cases. A three-judge bench of Chief Justice S. A. Bobde, Justices D. Y. Chandrachud and L. Rao directed the courts to restrict entry and maintain social distancing, besides other measures for combating the spread of COVID-19.[2]

* *IPS (Probationer) 73 RR, Uttar Pradesh Cadre*
** *IPS (Probationer) 73 RR, Punjab Cadre*

But these courts are only dealing with important matters through video conferencing. Even the limitation period has been suspended and general guidelines have been issued on the use of video conferencing. Is this not a legal conundrum? The second wave of the lockdown has brought many hurdles in human lives. If such a vital organ of the government stops functioning or is reserved only for the urgent matters, how will there be access to justice? Accessibility to justice should not be infringed upon, irrespective of the COVID-19 pandemic. The judiciary has made efforts to construct e-Courts since 2004. However, the option of live streaming is not being made use of. There is no reason for the judiciary to refrain from ultilising such a crucial measure to access justice, since live streaming is now easily available to the ordinary citizen. This pandemic could be the best time to bring in video conferencing for the access to justice and speedy disposal of cases.[3]

In most criminal or civil trials (as distinct from procedural hearings and appeals), the individual parties (or, in criminal matters, the prosecutors and accused) and their lawyers normally appear physically in person before the Court. The same is true when a person arrested or detained on a criminal charge is first brought before a judicial authority within the first hours or days after arrest. However, in response to the COVID-19 outbreak, many courts are making available an option, or imposing a requirement, that individuals and their lawyers appear at such hearings only by video-conferencing or similar substitutes for physical presence.[4]

Several Countries have adopted virtual means for hearings:

England and Wales

HM Courts and Tribunals Service (HMCTS) is working to reform the way justice is administered in England and Wales by leveraging technology and process efficiency, with investments of about £1bn over a span of six years. They are also testing out concepts related to fully video hearings (tax tribunals), online resolution of cases (social security), intelligent questions to facilitate early settlements for civil money claims, as well online criminal justice systems where there are online plea systems.

New South Wales

NSW is implementing services such as online registry, digital court results, in-hearing orders, eSubpoenas, and updated online courts. At present, parties may request adjournment of the proceeding, interlocutory orders, fixing of a trial date, online referral of matters to a directions hearing before a magistrate for certain subset of cases like small claims hearing at local courts, all lists in land and environment court, etc.

Singapore

Singapore is a small island nation, albeit with highly developed ICT ecosystem. At present the emphasis is on online hearings. Singapore has leveraged digital courts in the Criminal Justice Division by using various features in the Integrated Case Management and Filing System (ICMS) to deal with interlocutory applications, and has maximized use of video-link for criminal cases. It uses a system of e-filing, e-negotiation, e-mediation of Small Claims in the Community Justice & Tribunals Division. It also provides chat-bots to provide help to litigants online with their queries. Further, it maintains a Sentencing database for case statistics on sentencing information.

US

Many States are choosing to proceed in a staggered manner—for example, Alaska which has adopted virtual hearings for all types of cases; California which uses Online Dispute Resolution (ODR) for bad debts and has initiated judicial process simplification prior to ODR. In family matters, ODR has led to 27% fewer hearings in a month, 22% more resolutions, and 36% fewer monthly warrants. In small claims and taxes, ODR has led to over 93% parties reaching agreements from a previous metric of 46%. In traffic and criminal cases, over 92% of those surveyed said that they would recommend ODR and 87% believed that it is fair to all.

China

China is emphasizing on a combination of ICT enabled initiatives toincrease transparency. China has increased infrastructure to connect courts using private network and provided an online portal to disseminate orders through litigation services. There is also a litigation service center to help with filing of cases in 76% of the courts, as well as a hotline that caters to 75% of all courts for queries.

It has now provided various litigation models including e-courts, internet courts and mobile courts; and also an intelligent adjudication system aiming to increase the efficiency of judges with a smart trial platform, fax-in system, alerts system for conflicting judgments, etc.

It has also put in place an intelligent enforcement system, enforcement enquiry system, progress monitoring system to streamline the enforcement process; as well as a national warehouse of all cases to improve decision making using Big Data. All courts are also monitored using a monitoring platform for efficiency and security.[5]

Situation in India

Court virtual hearings are becoming more and more common by the day. Normally, virtual proceedings were being conducted in the pre-COVID-19 crisis era in criminal cases where the accused could not be produced physically before the court due to security reasons. However, due to the strict COVID-19 crisis safety protocols, courts have started hearing even normal cases through video-conferencing. To quote some recent examples, 'High Court stays regular selection of medical faculty,' stated a newspaper headline besides giving other details about the case.[6]

The Parliamentary Standing Committee (PSC) of the Department of Personnel, Public Grievances and Law and Justice recently tabled its 103rd report on the functioning of Virtual Courts and Digitization of Justice Delivery in Parliament. Before delving into the key findings and recommendations of the PSC, one question considered by it is of immense importance. Is a court a place or a service? If a court is indeed a service, then it is simpler for it to function online. On the other hand, if a court is a place, more than a service, then that may bring nuances and complications of its own as far as the digitization of courtrooms is concerned.

There are multiple definitions of a 'court.' But here is what the Committee said:

"As far as India is concerned, neither the Civil and Criminal Procedural Codes nor the General Clauses Act embodies the definition of the term 'Court'. However, as per the legal glossary of the Legislative Department, Ministry of Law and Justice, 'Court' is a place where justice is administered. From the above, it is clear that although the definition of Court varies across jurisdictions, they all seem to have two elements in common that a Court is a Government entity comprising one or more judges and that Court

deals with the administration of Justice thus making it clear that Court is more of a service than a place."

As far as the legal sanctity of virtual courts or videoconferencing is concerned– it was provided for by the Supreme Court in its April 6, 2020 order invoking article 142 of the Constitution. This order covered all the High Courts— they were in fact endowed with the discretion of adopting such a technology based on their own needs, customized in view of the evolving pandemic scenario in different states. Model rules were drafted and circulated as well amongst all the High Courts while the District or lower courts were to adopt rules as prescribed by their parent High Courts.[7]

Justice D.Y. Chandrachud, in a recent interview, admitted that virtual courts increase the productivity of young lawyers, particularly women.[8] Not only this, in a letter addressed to Chief Justices of High Courts across India by Justice D.Y. Chandrachud, Supreme Court Judge and Chairperson of the e-Committee of the top court put forth suggestions elaborating the urgent need of having accessible infrastructure, including digital ecosystems and enabling physically challenged lawyers and litigants to participate in the legal profession on equal footing.

"The creation of accessible infrastructure, including digital infrastructure, and an appropriate support system in the judiciary for lawyers and litigants with disabilities is imperative in order to create a level playing field. This obligation is a natural corollary of the right to equality guaranteed to lawyers and litigants with disabilities under Article 14 of the Constitution of India and the right to practice a profession of one's choice under Article 19(1)(g) of the Constitution of India," the letter states.

E-judiciary in India and the COVID-19 Crisis: Issues and Challenges

1. Increase in pending cases:

Due to COVID, all courts, including the Supreme Court, High Courts and District Courts, have been operating in a highly restricted manner. Mostly courts have already decided to persist with the restricted functioning."[9]

Further, "Limited benches presiding over select matters daily, cases pending before Constitution Benches have been put on the back burner. In the entire month of April, 82,725 cases were filed in India's courts, while 35,169 cases were disposed of. Compare this to 2019, when the average number of cases filed per month was around 14 lakh (1.4 million)… while the average number disposed of per month was 13.25 lakh (1.325 million)."[10]

2. Reservations of the Bar:

The Bar had its own reservations and did not seem to welcome such new technological changes in court functioning with open arms. Expressing concerns, the representatives of the Bar argued before the Parliamentary Panel that the virtual proceedings favor tech-savvy advocates besides depriving lawyers of an opportunity to present their case and change the course of arguments based on the changing dynamics of a case.

The Bar maintained that "An advocate gets to understand the mood of the judges and stands a better chance at convincing them during physical hearings. However, online hearing creates a psychological pressure on both the advocates as well as the judges. Evidence recorded by means of video conferencing may distort non-verbal cues such as facial expressions, postures and gestures."

Lawyers maintained that virtual hearings deprived them of the opportunity to alter the course of argument based on the "changing dynamics of a case during a hearing," as "an advocate gets to understand the mood of the judges and stands a better chance at convincing them during physical hearings. However, online hearing creates a psychological pressure on both the advocates as well as the judges. Evidence recorded by means of video conferencing may distort non-verbal cues such as facial expressions, postures and gestures."

Even the Parliamentary Panel admitted that over 50 per cent of advocates, mostly at the district and lower courts did not have either a laptop or a computer and lacked skills required for virtual proceedings. Nonetheless, it was of the view that "in coming times, technology will emerge as a game-changer and advocates would be required to use technological skills in combination with their specialized legal knowledge and, therefore, they should keep up with the changing times."[11]

3. The question of access:

The report details how representatives of the Bar testified that large number of litigants and advocates lack Internet connectivity, requisite infrastructure and means to participate in virtual hearings and the associated process. This has serious implications. The obvious one being that a large chunk of our citizenry is vulnerable to being excluded from the process of justice delivery owing to factors beyond their control.[12]

Moreover, such issues are likely to hit lower courts the worst. This would have ramifications of its own since district or subordinate courts are the first port of call for a vast majority. In view of this, the committee recommended that the Ministry of Communications should fast track the implementation of the

National Broadband Mission, with the aim of providing reliable and consistent connectivity infrastructure to all districts and lower courts across India.[13]

4. The idea of open courts:

Regarding this, the representatives of the bar went to the extent of stating that virtual courts "threaten the constitutionality of court proceedings and undermine the importance of Rule of Law which forms a part of the basic structure of the Constitution." Expressing concern over the opaqueness of such hearings, they stated that virtual courts are antithetical to the open court system given the limited access that they allow for. The Committee was then informed that there are laws in a number of countries that mandate open access for the public to open court hearings.

Commenting on a separate but related aspect of this issue, a committee member stated how India is an outlier. We are one of the very few democracies wherein Court proceedings are neither recorded nor widely live-streamed for anyone to access.

The report states how in *Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Ors*, the Supreme Court stated - "… Public trial in open Court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice."[14]

5. The question of privacy and data security:

The Committee noted how courts across the world have had instances of intrusion, data privacy or security concerns while adapting to an entirely virtual mode of conducting hearings. It also

took note of the fact that most virtual court proceedings in India currently take place using third-party software or platforms and a few of them have already been rejected earlier on grounds of being unsafe to use.

The Committee opined that such third-party platforms pose a security hazard and are prone to hacking and misuse. It recommended that the Ministries of Law and Justice and IT develop new software for India's judicial system to use and to handle virtual court hearings. It also recommended that blockchain technology be leveraged to make the transaction of data safer and more secure while putting in place proper security standards as well.

Finally, the Committee recommends that there are a large number of legal technology start-ups working in this space and that their innovations be harnessed to develop modern capabilities and capacities for India's judicial system.[15]

Conclusion:

Virtual courts ensure easy and affordable access to justice for all the sections of society. The experience of an e-court will be much more personalized and private as opposed to theatrics involving public-speech based system. Thus e-Judiciary can play critical role in creating level playing field.

The proliferation of e-courts will make litigation faster, given that the required logistics are provided. In India, there is a massive backlog of cases in every court. As of April 2018, there were over three crore cases pending across the Supreme Court, the High Courts, and the subordinate courts (including District Courts).

The judiciary m in India with the help of e-courts can overcome the challenges and make the service delivery mechanism

transparent and cost-efficient. The e-courts will also benefit the judicial system and will provide flexible retrieval of stored information. This will allow judges to view the proceedings of a previous case or to retrieve other important documents at the click of a button. Data sharing between different courts and various departments will also be made easy as everything would be available online under the integrated system.[16]

The virtual courts seem necessary; however, it goes without saying that at present there are a whole lot of glitches and shortcomings in its execution, which is clearly highlighted by the Committee in the following extract,

"The Committee understands how poor quality audio/video, frequent loss of connection, disruptions and high latency affects judicial assessment of demeanor, emotions and other nonverbal cues and the changing communication dynamics, which are also important variables in deciding a case. The Committee is of the view that improving the quality of Courtroom technology is a necessary pre-condition for virtualization of Court proceedings."[17]

To address the aforementioned challenges, the first and foremost step is to draw up a policy for encouraging the setting up of e-courts. It is critical to draw up a well-defined and pre-decided policy framework as it can help in laying a concrete roadmap and direction to the e-courts scheme of India. Another important step is the need to upgrade the present state of infrastructure. The government needs to identify and develop the infrastructure that would be required to support the e-court project.

One aspect that needs to be focused on is the deployment of a robust security system that provides secure access to case information by appropriate parties. The security of e-courts infrastructure and system is of paramount importance. Also, a user-

friendly e-courts mechanism, which is simple and easily accessible by the common public, will encourage litigants to use such facilities in India. The government must make dedicated efforts in the training of personnel to maintain e-data. These include maintaining proper records of e-file minute entries, notification, service, summons, warrants, bail orders, order copies, e-filing etc. for ready references. Conducting training sessions to familiarize the Judges with the e-courts framework and procedure can give a huge impetus to the successful running of e-courts.

Creating awareness around e-courts through talks and seminars can help bring to light the facilities and convenience of e-courts.[18] As the technology is here to stay, finding mechanisms to make it better will be the step in the right direction.

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Sardar Vallabhbhai Patel
National Police Academy
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The Long Road to Police Reform: Judicial Role

SHRUTI SRIVASTAVA*

As we are well aware, Indian democracy is based on the interplay of the three different organs of our government-the legislature, executive and the judiciary. "Police" falls squarely within the sphere of the executive. At the same time, it derives its powers from the laws made by the legislature, and is guided by the judiciary.

A common complaint made by the advocates of police reforms is that the police isn't guided *enough*. The *Prakash Singh* judgment of the Supreme Court noted that the police derives its powers from the Indian Police Act, 1861 and that the "structure and organization of the police" has "basically remained unchanged all these years." Over the years, the Supreme Court's stance towards the police has ranged from criticism to outright admonishment. In *Prem Chand v Union of India* the Court stated:

"Who will police the police? Police methodology with sinister potential to human liberty deserves strong disapproval and constitutional counteraction by this court."[1]

*IPS (Probationer) 73 RR, Uttar Pradesh Cadre
[1]*Prem Chand v Union of India, AIR 1981 SC 613.*

And yet, this tension between the Court and the police is embedded within the structure of the Constitution itself. The Supreme Court is the guardian of Fundamental Rights; the police is the chief actor when it comes to "reasonable restrictions." When critics in the Constituent Assembly argued that there were too many restrictions placed on Fundamental Rights, Dr. Ambedkar directly quoted the US Supreme Court in *Gitlow vs. New York*:

"That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime or disturb the public peace, is not open to question."[2]

The simplistic stereotype is that the police and the higher judiciary work at cross- purposes—one is interested in public security, the other in individual liberty. However, the following paper suggests that both the police and the courts *work together* to ensure that the twin goals of public security and individual liberty are realized. Judicial interventions have the potential to improve and humanize policing. In this context, the paper will look at Supreme Court interventions that have actually improved police functioning; it shall look at the efforts made by the Court to safeguard individual liberty against police excesses; and finally, at the efforts made by the Court to bring about police reforms.

I. Improving Investigation: ***State of Gujarat v Kishanbhai***

Supreme Court judgments point out the lapses occurred by the police during an investigation and by doing so, mark the way towards effective policing. A prime example of this is *State of*

[2] *Ambedkar B, and Moon V, Dr. Babasaheb Ambedkar, Writings And Speeches (Education Department, Government of Maharashtra 1993)*

Gujarat v Kishanbhai, in which justice was denied to the family of a six year old girl who was raped and brutally murdered. In this case, the guilt of the accused was based on circumstantial evidence. Unfortunately, the prosecution failed to establish a complete chain of events from the evidences presented by the police. The Supreme Court pointed out several lacunae in the police investigation including failure to produce important prosecution witnesses, failure to perform DNA profiling using blood samples collected as evidence and failure to record crucial details in station house diary. The judgment clearly highlights the need for **careful handling of forensic evidence, production of key witnesses during trial and proper documentation for effective prosecution.**[3]

Judgments such as *Kishanbhai* serve as a checklist for the police, as they are replete with details of **what to do and what not to do during investigation**. Further, in *Kishanbhai* the Supreme Court also directed the Home Department of every state to set up a procedural mechanism to examine all orders of acquittal and to record reasons for the failure of each prosecution case. The Court suggested the **creation of a training programming in which police personnel are made aware of scientific tools of investigation.** Further, it states,

"Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes… This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses."[4]

[3] State of Gujarat vKishanbhai, [2014] 5 SCC 108.

[4] Supra note 3.

The Supreme Court directives in *Kishanbhai***lay the ground for effective investigation and prosecution.** However, implementation of these directives falls solely in the jurisdiction of the executive.

II. Towards Humane Policing:

Recently, the Chief Justice of India deplored the prevalence of custodial violence in police stations in India.[5] This attitude is also reflected in the Supreme Court's judgments and, to a certain extent, the Court has attempted to provide judicial remedies to the problem.

In *Nilabati Behera v State of Orissa*, the court considered the writ petition of Nilabati Behera, who stated that her son had died in police custody. In her petition, Behera prayed that award of compensation be made to her, for contravention of the fundamental right to life under Article 21 of the Constitution. After analyzing the circumstances of the case, the Court came to the conclusion that Behera was eligible for compensation from the Court, given that her socio-economic status prevented her from going through the long-winded route of private law proceedings. The Court also quoted Article 9(5) of the International Covenant on Civil and Political Rights, 1966, which reads as follows:

"Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."[6]

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[5] *'Threat To Human Rights Is Highest In Police Stations: CJI' (The Indian Express, 2021) <https://indianexpress.com/article/india/custodial-torture-still-prevails-nationwide-sensitisation-of-police-officers-needed-cji-7444413/> accessed 2 November 2021*

[6] *Nilabati Behera v State of Orissa, AIR 1993 SC 1960.*

The judgment makes it clear that **sovereign immunity does not apply in case of custodial deaths and holds the police accountable for its treatment of persons in custody.** Thus, the judgment serves as a check again police excesses.

Similarly, in *D.K. Basu v State of West Bengal*, the Court laid down what are known as the **"eleven commandments against custodial violence."** These include, among others, conduct of medical examinations of the person in custody, preparation of an arrest memo and the right to inform a friend or relative of the arrest.[7]

Following these Supreme Court guidelines **greatly enhances the credibility of investigations conducted by the police, in addition to inculcating a sense of professionalism in the police staff.**

III. Systemic Police Reforms

Finally, we have the *Prakash Singh* judgment in which a police officer himself filed a PIL seeking systemic police reforms. The petition pointed out blatant violations of the law and examples of police inaction. It sought that the Union of India be directed to redefine the role and functions of the police and frame a new Police Act on the lines of the model Act drafted by the National Police Commission.

Accordingly, the Court came out with a list of directives including: fixing the tenure and selection of the DGP, setting up of Police Establishment Boards to decide postings and transfers, setting up a Police Complaints Authority to address public grievances against the police, and separating of law and order and investigation functions to improve the quality of policing.[8]

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[7] *D.K.Basu v State of West Bengal, AIR 1997 SC 610.*

[8] *Prakash Singh v Union of India, [2006] 8 SCC 1.*

Implementation of these directives has generally been poor and has varied from state to state. It is now understood that quite apart from Court directives, public pressure is also needed to reform the police.

Conclusion:

Through this article, we can see that **Court judgments often serve as an impetus to bring about improvements in everyday policing**. However, in order to be effective, they must be accompanied by strong political will and an aware citizenry. It is hoped that all stakeholders will come together and work towards making the police force effective and efficient.

Sardar Vallabhbhai Patel
National Police Academy
Criminal Law Review 38 - 44

Witness Protection Scheme 2018 and Role of Police

PANKAJ LAMBA*

'Witnesses are the eyes and ears of justice'- Jeremy Bentham

Witness is considered a crucial pillar of criminal justice delivery system. Witness in a court of law is called to be a friend and companion to the cause of justice. In ***Swaran Singh v State of Punjab***[1], Justice Wadhwa opined that by being evidence, a witness is performing a sacred duty in the discovery of truth. Witness turning hostile is a major problem impeding the trial process in general and conviction rate in particular. When a witness backtracks on statements which he initially gave to police or any competent authority and thereby negates the notion of party producing him, such witness is termed as 'hostile witness'. Bombay high court in ***Saraswati w/o Ganpat Landge v State of Maharashtra***[2] termed hostile witness to be cancerous to justice.

Why witness Turn Hostile

Keys reasons why witness turn hostile include frequent adjournments[3] leading to frustration among witnesses, influential

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accused which often induce[4] the witness and thereby influence their deposition before court, low witness allowance, frequent usage of stock witness by police who are prone to being hostile, grant of easy bail by court thereby allowing the other party to meet witness and put them under some sort of undue influence, coercion.

What Constitutes witness Protection

Witness protection essentially is based on the threat perception i.e., the degree of vulnerability of the witness. It can include, but is not limited to-

- Simple court escort by police
- Video conferencing to record statement of witness
- Providing anonymity, new identity, relocation to unknown safe place etc.

Thus, witness protection is something which is assessed on case-to-case basis.

Need for witness Protection

As per National Law Institute University, Bhopalabsence of witness protection is a chief reason behind low conviction rate in country[5].

The requirement of fair trial as postulated by hon'ble supreme court in ***Zahira Habibullah Sheikh vs Gujarat***[6] is also indicative that a witness who is forced to give fabricated evidence or coerced to do something is antithetical to justice and fairness.

Law Commission through its various reports [7]has discussed the issue of witness safety and in a dedicated report[8] (198th report of Law commission) had called for a dedicated witness protection program and recommended witness identity protection draft bill in 2006.However, in view of lackadaisical approach of state

governments, the same could not materialize until Witness Protection scheme[9] 2018 was notified.

Why Police's Role is Crucial?

India follows an adversarial legal system where it is the prosecution who on behalf of state brings a criminal case against the accused. Prosecution and police work in tandem to bring sufficient evidence before the honorable court so as to prove the guilt of the accused beyond all reasonable doubts. Since witness are crucial component of any criminal case, their safety and protection rests with police and other civil authorities of state.

Role of Police Viz Witness Protection Scheme 2018

Witness protection scheme notified by Ministry of Home affairs and endorsed by Supreme court in ***Mahender Chawla and Ors v/s Union of India***[10], provides for the entire procedural framework for witness protection in India.

The application for witness protection is submitted by the witness to 'competent authority' which as per Witness Protection Scheme2018 is a standing committee in each district headed by District and sessions Judge.

COMPOSITION OF STANDING COMMITTEE
• District and sessions Judge (Chairperson)
• SP/SSP of district
• Head of prosecution in district (Member Secretary)

Thus, firstly the police is represented in the competent authority through District police head.

Once application is submitted to competent authority through its member secretary, he orders for a THREAT ANALYSIS REPORT (TAR) from ACP/DySP of concerned sub-division.

Police has a crucial role in preparing this threat analysis report. Following things are required to be kept in mind while preparing threat analysis report viz-

- Ensure full confidentiality.
- It should be expedited.
- Submitted within five days of receipt of the order.
- To include categorization of threat perception.
- Shall include measures of protection.

Threat categorization, as per scheme is

WITNESS THREAT CATEGORIZATION[11]	
Category A	Threat to life of witness/family members
Category B	Threat to safety, reputation or property of witness/family members
Category C	Harassment or intimidation to witness/family

Once the competent authority passes the order, overall responsibility of implementation of such order lies with District police head (SP/SSP) except in matters of identity change/ relocation, where duty lies with home department of concerned state/UT.

Thus, at implementation level too, responsibility lies with police department.

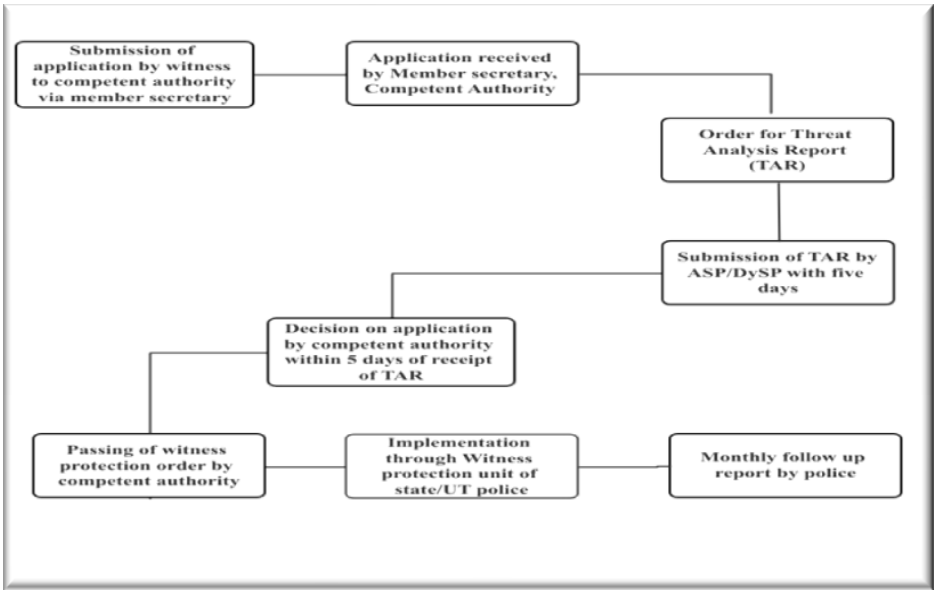

FIG:1, Schematic of Witness protection scheme and role of police.

Witness protection cell, a dedicated unit of state or UT police for implementation of protection order is required to file a monthly follow up report mandatorily before the competent authority.

Hence, as a matter of feedback too, police is required on monthly basis to report the status of witness protection back to competent authority.

In case, a review of witness protection order is required by competent authority, either *suo moto* or on application by witness, a fresh threat analysis report shall be sought from ACP/DySP.

Conclusion

Witness protection awareness is still lacking and the notified scheme also calls upon state governments for its wide publicity. Supreme court in recent Lakhimpur Khiri[12]incident also pulled up state government to secure protection of witnessesand state counsel

agreed that state should have a proper witness protection program in place.

Police can't shy away from its role to ensure safety of witness in the interest of justice. The need of the hour is to put witness protection in forefront with sufficient funds so as to ensure that criminal justice system is able to secure justice for all.

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Sardar Vallabhbhai Patel
National Police Academy
Criminal Law Review 45-52

Scope of Judicial Intervention in Investigation

SAMBHAV JAIN* & CHIRAG JAIN**

Introduction:

The scheme of criminal code in India provides for independence of police officers in the process of investigation of the offences and non interference of the judiciary in the investigation process. In order to maintain a fair balance between independence of investigation and preventing misuse of power by police as well as to protect rights of accused, certain intervening powers are vested in judicial magistrates also. The Magistrate does not interfere with the investigation but at the same time may supervise it to ensure fairness in the investigation and collection of the evidence by the police.

1. Ordering investigation under 156(3) and 202, CrPC

The Magistrate is authorized under Section 156(3) and Section 202 of the CrPC to order investigation by the police authorities when a complaint is made by the complainant aggrieved by the action or inaction of the police authorities or the complaint brings

*IPS (Probationer) 73 RR, West Bengal Cadre
**IPS (Probationer) 73 RR, Uttar Pradesh Cadre

out a case of non cognizable offence. The scope of this power was made clear by the Supreme Court which held that investigation ordered under Section 156(3) is at the pre-cognizance stage and the inquiry and/or investigation ordered under Section 202 of the CrPC is a the post-cognizance stage[1]. While the order u/s 156(3) results in FIR further leading to investigation, the order u/s 202, CrPC need not have FIR prior to investigation. Further, the scope of this power is made conditional on prior application under Section 154(1) and Section 154(3) which is required while filing a petition under Section 156(3)[2].

2. Post FIR registration

The criminal justice system is set into motion by registration of FIR. Section 157 mandates sending of a report to the jurisdictional Magistrate to bring the matter to scrutiny. The Magistrate at this stage may call for reasons to be explained in case of non-compliance or delay in sending of copy of FIR[3].

Further, during the course the investigation in case of arrest of the accused person, the Magistrate has the duty to protect the rights of the arrested person.

When the arrestee is brought before the magistrate u/s 167, the magistrate has to power to authorize the detention of the accused person either in police custody or judicial custody. This judicial discretion has to be exercised with due caution. The magistrate shall scrutinize all the documents including the case dairy before authorizing the detention of the accused in custody.

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[1] *RameshbhaiPanduraoHedau Vs. State of Gujarat [(2010) 4 SCC 185]*

[2] *Priyanka Srivastava & Another Vs. State Of U.P. & Others [(2015) 6 SCC 287 : AIR 2015 SC 1758]*

[3] *Tulsi Ram Bhanudas Kambale v/s State of Maharashtra [2000 CRLJ 1566]*

The Magistrate also holds role in granting bail. While granting of bail to the arrested person accused of committing non bailable offence, the Magistrate has to make sure that no order of release of arrested person is made if he has committed an offence punishable with death or imprisonment for life. In such cases, the magistrate has to send notice to the public prosecutor to enable him to put forward his objections.

3. Aid in investigation

The Magistrate executes some responsibilities that are part of the investigation process, such as sending seized goods to forensic laboratories, obtaining specimen signatures and handwriting of suspects for transmission to experts for analysis under Section 311A, and so on. The objective of handing such tasks to the Magistrates is to improve the credibility of scientific evidences.
While recording the confession and statement under Section 164, CrPC, the Magistrate has to ensure that the confession is made by the accused voluntarily and without any inducement or coercion.
Further under Section 176 (1A), the Magistrate empowered to hold inquest, makes inquiry into the cause of death and rape committed during the custody of the police.

The Magistrate is also involved in recording of dying declaration and conducting of Test Identification Parade which are admissible evidence during the trial u/s 32 and 9 of IEA respectively.

4. Monitoring investigation

The power to monitor the proceedings of investigation is a special power which has no where been explicitly mentioned in the law. Though, as per Section 156(3), when the magistrate receives an application that proper investigation has not been done or not done at all by the police authorities, the magistrate can order such

investigation and can further monitor it. The Supreme Court has also held that the magistrate can monitor an investigation but such an act should be for exceptional cases and such powers shall be exercised cautiously and judiciously[4].

5. Further investigation and reinvestigation

The Magistrate has also been empowered to order further investigation under CrPC when the Magistrate is not satisfied with the investigation done by the police. This power is used when some new information comes into picture. The power to order reinvestigation is an exceptional one and can only be ordered by Higher Judiciary which has the power to review its decision. The difference between further investigation and reinvestigation is made clear in the table.

S.No.	**Further Investigation**	**Reinvestigation**
1.	Mentioned in CrPC u/s 173(8)	Not clearly mentioned in CRPC however comes under power of SC/HC under article 32 & 226 of Indian constitution.
2.	It is continuum of investigation already done to obtain further evidences.	It refers to investigation de novo.
3.	It can be ordered by a magistrate or IO can do it himself/herself or Informant can file protest petition.	It cannot be done without permission of court.

[4]*Sakiri Vasu Vs State of U.P. and Others [(2008) 2 SCC 409]*

4.	It is generally done when new facts have emerged or investigation is to be done with different angle. It can also be done even after filing chargesheet.	It is generally ordered in special circumstances where court think that investigation is flawed or done with malafide intention.
5.	It is generally done by same police agency.	Court can hand over the investigation to another specialized agency like CBI.

6. Stopping Investigation

The magistrate in case of a summons case triable under his jurisdiction may order to stop the investigation if the investigation is not concluded within six months from the date on which the accused was arrested u/s 167(5). Further u/s 210 CrPC the magistrate has power to stay proceedings instituted otherwise than a police report. The Supreme court has held that thepower to stop investigation by police has not been mentioned in the CrPC. The power is an exceptional one[5].

7. Role in Defective investigation

The Supreme Court has held that if the acquittal is the result of defective investigation, the investigating and/or the prosecuting official responsible for such acquittal must be identified and the nature of lapses to be ascertained as innocent or blameworthy[6].

Appropriate actions must be taken against each erring official responsible for the acquittal depending upon the culpability.

8. Miscellaneous:

[5] *S.N. Sharma Vs Bipen Kumar Tiwari And Others [1970 AIR 786, 1970 SCR (3) 946]*

[6] *State of Gujarat Vs. Kishanbhai [(2014) 5 SCC 108]*

a) Quashing of FIR:

Under section 482 of CrPC High courts have been given power to quash FIR if it thinks that lodged FIR is false or filed with malicious intention to falsely implicate the accused. Apex Court has ruled that power u/s 482 should be exercised sparingly and to prevent the abuse of process of any Court or otherwise to secure ends of justice[7].

Supreme Court of India in the matters of Sundar Babu &Ors vs. State of Tamil Nadu and State of Haryana vs. Bhajan Lal has issued important guidelines as to the grounds and conditions for quashing of an FIR u/s 482 CrPC[8].

1. Where the allegations made in the FIR do not prima facie constitute any offence against the accused.
2. Where the allegations made in the FIR or complaint are absurd and inherently improbable.
3. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence.
4. Where FIR is lodged with malicious intention or ulterior motive for wreaking vengeance on the accused.

b) Transferring Investigation:

Supreme Court has ruled that the power of transfer of investigation is an "extraordinary power" to be used "sparingly" and "in exceptional circumstances"[9].. Court held that the factors which may be considered in transferring investigation are when it is imperative to retain public confidence in the impartial functioning of the State

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[7] *Madhu Limaye vs the State of Maharashtra*

[8] *Sundar Babu &Orsvs. State of Tamil Nadu & State of Haryana vs Bhajan Lal*

[9] *In K.V.Rajendran v. Superintendent of Police, CBCID South Zone Chennai and State of West Bengal v. CPDR, West Bengal*

agency and mere allegations against the police do not constitute a sufficient basis to transfer the investigation.

Court has held that it is the investigation agency who can only decide the course of investigation. If the investigation does not violate any provision of law, it is the investigating agency who has the discretion in deciding the course of investigation which includes nature of questions and manner of investigation[10]. Supreme Court also reiterated that courts must refrain from passing comments on an ongoing investigation to extend to the investigating agencies the requisite liberty and protection in conducting a fair, transparent and just investigation.

Conclusion:

Courts in normal course do not interfere with the investigative powers of the police. The Judicial Magistrate although present in picture at all the stages of investigation does not interfere with the proceedings of the investigation or direct the investigation agency about the manner in which the investigation is to be conducted[11]. Section 156(1) and 156(2), CrPC through the phrases "without the order of a Magistrate" and "No proceeding of a police officer in any case shall at any stage be called in question…" also implies that the investigation by police is independent of the Magistrate's interference. In landmark judgement by the Privy Council, it was observed that[12].:" The functions of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with due observance of law and order is only to be obtained by leaving each to exercise its own function". However, it does not prevent the Judicial Magistrate from supervising the investigation.

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[10] *P.Chidambaram v. Directorate of Enforcement*

[11] *41st Report of Law Commission of India, Vol.1, P.67 Para 14.2.*

[12] *King Emperor vs. Khwaja Nazir Ahmed AIR 1945 PC 18,*

The Magistrate does interfere when there is any injustice or the rights of accused are violated. There are many instances where the Police and the Magistrate interact before the trial begins. The CrPC provides for balance between the independence and fairness in the investigation. The power of police to investigate has to be balanced with the rights of the accused during the investigation stage.

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Sardar Vallabhbhai Patel
National Police Academy
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Addressing Domestic Violence: Focussing on the Victim

DEEPTI GARG*

What is domestic violence?

The United Nations defines it as *"a pattern of behaviour in any relationship that is used to gain or maintain power and control over an intimate partner. This includes any behaviour that frightens, intimidates, terrorises, manipulates, hurts, humiliates, blames, injures, or wounds someone. Domestic abuse can happen to anyone of any race, age, sexual orientation, religion, or gender. It can occur within a range of relationships including couples who are married, living together or dating. Domestic violence affects people of all socioeconomic backgrounds and education levels."*[1]

Nature of domestic violence punishable under Indian laws?

Domestic violence is the most common form of violence against women. It can be in the form of physical, sexual, emotional,

*IPS (Probationer) 73 RR, Haryana Cadre
[1]United Nations definition
From <https://www.un.org/en/coronavirus/what-is-domestic-abuse>

social, economic or psychological abuse. It might range from verbal abuse to simple hurt to even causing death or suicide.

As per Section 3 of Domestic Violence Act "any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

a. harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
b. harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
c. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
d. otherwise injures or causes harm, whether physical or mental, to the aggrieved person."

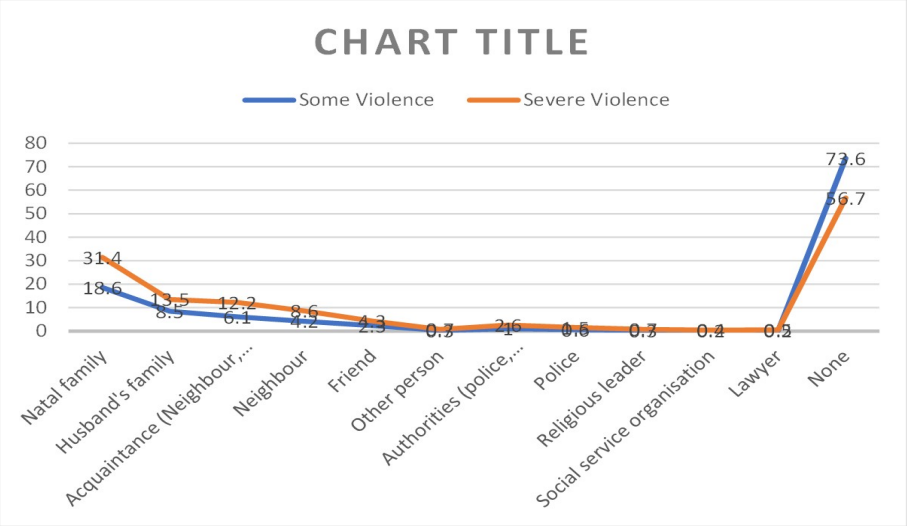
Besides, Section 498A of the IPC specifically defines cruelty against married women. For the purposes of the section, cruelty is defined as:

> "(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
> (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable

security or is on account of failure by her or any person related to her to meet such demand."

A serious issue with the domestic violence cases is that they remain under reported until it becomes severe in nature. **Thirty-one percent** of respondents in National Family Health Survey (Round 3, 2005) – a little over 20,000 women –reported that they experienced domestic violence. Shockingly, almost 75% did not seek help from anyone.

The following graphical representation presents details of assistance sought by the women.



Source: National Family Health Survey (NFHS), Round 3

"*Even when the violence is severe, only 1.5% of women go to the police. Many felt that the police were unreliable, not working unless bribed and that seeking police intervention would tarnish their reputation in the community*"[2].

[2] *From <https://thewire.in/women/domestic-violence-india-reporting>*

Why do Women keep silent[3]?

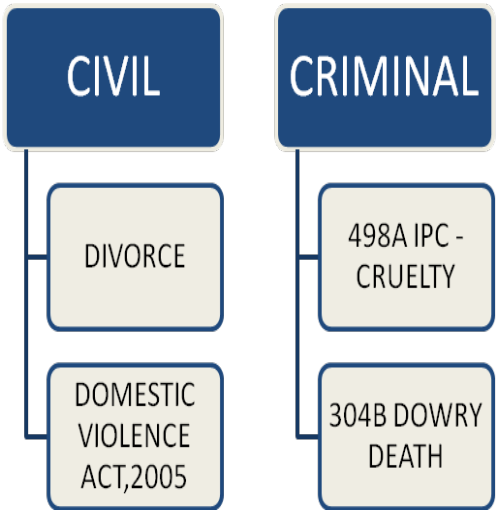
The reasons are varied including economic, social, psychological, or cultural. Some of them are as follows:

1. Economic dependence of women on their partners for survival and sustenance of themselves and their children.
2. Cultural values which are deep rooted does not sanction separation or divorce be it at cost of constant humiliation and harassment of women in a domestic household.
3. Perceptions in patriarchal society that men are superior to women and to run a household women have to sacrifice their voice and certain rights.
4. Lack of awareness of alternatives among the women is important reason that they continue in an abusive relations. legal options
5. Fear of society that how it will react if women comes out with family matters in open. This fear is also strengthened by the low acceptance of divorced women in the society.
6. Fear of authorities as there is low perception and trust in police. Rather they tend to believe that authorities will support the aggressor rather than the victim herself.
7. Some women often tend to believe that probably they deserve beatings because they might have done something wrong or that it is normal in households. Continued violence increases acceptance by the victim and raises bar of violence to 'new normal' for the aggressor
8. Fear of retaliation from partner or his family for revealing the actual truth. This may be in form of violence against herself or the children.

[3] *Indian journal of community medicine*
Addressing Domestic Violence Against Women: An Unfinished Agenda
from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2784629/>

Legal remedies addressing Domestic Violence?

There are both civil and criminal remedies depending on the nature of violence



In India, divorce can be availed under different grounds as per separate marriage acts for different religions. Some of the civil remedies under Domestic Violence Act are as following:

- right to reside in a shared household
- magistrate can issue a protection order
- residence order restricting respondent from removing the woman from shared household can be issued
- monetary relief
- temporary custody in favour of woman.
- freedom to move to any court, including a magistrate/family/criminal court for relief.

The criminal provisions as per Section 498A of IPC "*Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and*

shall also be liable to fine." And as per Section 304B of IPC "whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

Scope for change in approach

There is no bravery in keeping silent and bearing the sufferings. Any form of violence is unacceptable. An entire spectrum of remedies are available for tackling domestic violence, but the basic problem lies in lack of awareness about them. There is an issue with the response which a victim of domestic violence gets from police and other legal authorities.

There is a need to streamline the response which should be appropriate, comprehensive, and adequate as per the requirements of the victim. It includes assessing the safety of the victim, see if medical help is required, telling them about provisions of domestic violence act and the various provisions like protective orders, compensation, residing orders etc. A victim should feel secure in coming out to the police and revealing the details of a crime which might further harm her in four walls of her house, if not handled correctly. There is a need for a sensitized system which tries to understand the root cause of violence and goes an extra mile in not just responding swiftly but also taking preventive measures proactively.

In cases of domestic violence, women should be able to take an independent decision on what legal recourse she wants to take rather than keeping quiet or responding under societal pressures or lack of support- emotional, psychological, or financial. For that a collaborative

response with a multidisciplinary and multi-agency approach is required.

One such program called Second Responders program in Richmond, State of Virginia, USA was initiated. It was a collaborative effort of the Richmond Department of Social Services and the Richmond Police Department to ensure public safety against domestic violence. Second Responders' first task was to assess and ensure the safety of the victim. They provide the victims with information about services offered through the Department of Social Services and other agencies and assist in developing a plan to access these services.

A study was conducted under U.S. Department of Justice[4] to find efficacy of services provided by police and Second Responders, and change in attitudes toward police and Second Responders. The results were very positive in terms of satisfaction of victims to the services provided by the police and the second responders. Also there was a shift in attitude of people towards the responders. The study found that prompt response creates deterrence and prevents repeat victimisation.

A similar collaborative project named 'Dilaasa'[5] was initiated in Mumbai where municipal corporation of Mumbai tied up with the centre for Enquiry into health and allied theme. Police departments across states need to come up with such collaborations with various agencies and institutions involved in the process of addressing domestic violence cases, for example district

[4] *The Second Responders Program: A Coordinated Police and Social Service Response to Domestic Violence By Erin Lane, Rosann Greenspan, and David Weisburd*

[5] *http://www.cehat.org/researchareas/project/1489666774*

administration, prosecution, NGOs, legal services authority, hospitals, etc. Community leaders may also be roped in to form community resource coordination groups to identify the service gaps and connect services of different departments with people.

Also, there is a need to standardise the quality and swiftness of response towards the victims. It may be in the form of a checklist to guide police response. An example of such questionnaire was given by the International Association of Chiefs of Police (ICAP) National Law Enforcement Leadership Initiative on Violence Against Women. Some of the questions in the checklist can be as follows[6]:

- How was the case received?
- Is the relationship of the parties identified?
- What is the history of the relationship? (include frequency of any violence, intimidation, and threats) etc.

Regular monitoring of investigation of domestic violence cases should be done by superior officers say at rank of SP in a district. A detailed checklist as mentioned above can be very handy in such review. Also, it is necessary to figure in victim's feedback at the review stage to increase responsiveness among police personnel.

Sensitizing authorities in the criminal justice system-police, prosecution, medical practitioners, judiciary is another important step required for changes to internalise. And last, but not the least, Awareness of women's rights

[6]*Domestic violence report review checklist from < https://www.theiacp.org/resources/policy-center-resource/domestic-violence>*

and knowing that it is not only a woman's issue. It reflects upon the whole society.

"*Awareness about the rights of women can be truly meaningful if that awareness is created amongst the younger generation of men.*"

- Justice Chandrachud Singh

Sardar Vallabhbhai Patel
National Police Academy
Criminal Law Review 62-78

Marital Rape: Resolving the Dilemmas of Police Administration

MANISH* & SWATI SINGH**

"Rape or sexual assault is not a crime of passion but an expression of power and subordination. No relation, including marriage, supplements an irrevocable consent of sexual activity"

-Justice Verma Committee (2013)

Introduction:

Rape as defined under Section 375 of Indian Penal Code is when a man commits sexual intercourse with a woman against her will and without her consent. Throughout the civilisations rape is considered as one of the most heinous offences. Rape completely violates the autonomy and bodily integrity of an individual. It is not just a crime against an individual, but against the ethos of a society. It deters the women from accessing the public space which belongs to all. As a result, the space becomes further gendered and women are further marginalised from the public sphere. Rape is a symbol

* *IPS (Probationer) 73 RR, Assam Meghalaya Cadre*
** *IPS (Probationer) 73 RR, AGMUT Cadre*

of worst form of inequality and injustice, as it is a symbol of the expression of power of one gender over another.

But marital rape is an entirely different story. One of the famous early commentaries on marital rape was made by Matthew Hale[1] in his work history of the Pleas of the crown (1736), where he mentioned that –

"The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract"

The sphere of family has always been seen through the prism of altruism. Early political thinkers like John Locke, Thomas Hobbes who emphasised on the values of equality, rights – created a distinction between the political and personal sphere. Personal sphere was considered as autonomous, where the state cannot intervene. The same philosophy was reflected when IPC was drafted in the 19th century. Thus, while making rape a criminal offence under Section 375 of IPC, an exception was added – ***"Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."***

Due to the above provision, marital rape is not recognised as a criminal offence in India. However, since then there are numerous legal and social changes in Indian society. Let us read a real case study:

Case Study:

The first time her husband raped her was on their wedding night. Only 18 years old and in an arranged marriage with a man she barely knew, she didn't think that he would demand sex on the night they got married. He did. She wasn't ready for it. It didn't

matter. For the six years that they were married, the husband would get drunk, beat her and demand sex. When she got pregnant with their first child, he insisted on sex even though her doctor had advised a brief period of abstinence. She had a miscarriage. Within two months she was pregnant again.

Three years into her marriage, she got a job; he would keep her salary. When she asked for money to pay for their child's playschool fees, he broke her nose and then raped her again. The doctor stitched her up, after which she walked into the nearest police station. "They were very sympathetic, gave me a cup of tea and told me to go back home and 'adjust', "she recalls.

Imagine this women coming to the police station with the complaint of marital rape against her husband. How should police react to such a victim? The literature instead of debating on criminalisation of marital rape, attempts to resolve the same dilemma faced by police in such cases.

Causes of marital rape:

The fundamental cause of marital rape is the notion of "implied consent" in a marriage. It is believed that there is permanent consent after marriage. In an essentially patriarchal society, the sexual intercourse is seen as one-way affair. Man commits the intercourse and the woman is a recipient of it. Analysing it more critically, Irene Hanson Frieze, in her work "Investigating the causes and consequences of marital rape"[2] has tried to understand the theoretical factors behind instances of marital rape. She classifies the two factors responsible to analyse the causes of rape – factors on the side of wife (society will blame women) and factors on the side of husband. Further categorisation is made into stable factors, uncertain factors and unstable factors. Stable factors imply long-term factors which will not change with time. It means

tendencies of marital rape will continue in future. Unstable factors imply short term factors, which will vanish over the time. These factors have inherently shaped our legal laws. For instance – if husband is in the effect of alcohol, like to use force/coercion then, history of committing sexual violence – then it is a stable factor on the side of husband. On the side of wife, women lacking love for the husband. There can be joint factors, such as different sex drives or issues in communication between wife and husband. Thus using these analytical factors, she devise a theoretical model to understand the phenomena of marital rape.

Hypothetical Causal Explanations for Marital Rape

	Stable Factors	Uncertain Factors	Unstable Factors
Wife is to blame	She was raped in the past. She is unresponsive sexually. She doesn't love him anymore. She doesn't like men.	She is not affectionate enough.	She refused to have sex with him. She was raped by someone other than her husband. She was unfaithful.
Joint responsibility	Their sex drives are different. They are not compatible. He does not respect her.	They have a communication problem.	
Husband is to blame	He has emotional problems. He enjoys using force. He is an alcoholic. He is a sex maniac. He feels it is his marital right.	He is insensitive. He needs to prove his manhood.	He was emotionally upset. He was drunk.

Marital rape in 21st Century:

With increasing awareness on gender issues, sexual violence in the domestic sphere is recognised and critically analysed. Since marital rape is committed within the four walls, it is difficult to quantify the correct estimate of sexual violence, yet, many institutions have made efforts. National Family Health Survey has revealed critical details.[1] The third National Family Health Survey mentions that only 9 percent of the women have reported sexual

assault, out of which 94 percent have reported sexual violence by the husband. The fourth National Family Health Survey has pointed out that nearly one-third of women in India are victim of Sexual violence by the husband, while 5.4 percent of women have experienced marital rape. Less than 1 percent of these offences are reported.

Today, many of the countries have criminalised marital rape. Only 36 countries have not recognised marital rape as an offence. Global institutions and treaties in the recent times have focussed upon ending sexual violence against women in the private sphere. The Declaration on the elimination of violence against women has created further wave in favour of criminalisation of marital rape. The declaration published by the United Nations High Commissioner for Human Rights, has sought to end violence in all sphere including family. Article 1 of the declaration recognise gender violence in both public and private life –"***For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."***

Article 2 of the declaration has specifically mentioned the elimination of sexual violence in the family, marital rape. India is also a signatory to the declaration.

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to

women, non-spousal violence and violence related to exploitation;

The Legal Dilemma?

Marital rape as an issue can be discussed from numerous perspectives. Since police as the first responders will deal with instances of marital rape, it is pertinent to resolve various challenges faced by law enforcement officials, be it the legal position and investigation clarity.

On the one hand, where some countries have criminalised marital rape, some countries consider recognition of marital rape as a threat to the family system. The exception under ***Section 375 of Indian Penal Code*** reads sexual intercourse by a man with his wife is not rape, provided the wife should not be less than 15 years. This provision is seen as legalisation of marital rape. Further immunity is provided by the ***Section 122 of Indian Evidence Act***. This section prevents any disclosure of communication during marriage between the two married parties, except when there is an offence committed. Since marital rape is not recognised an offence, any communication with regards to marital rape will not be admissible. Even there is a history of committing forced sexual intercourse by Husband, ***Section 53 and 54 of Indian Evidence Act*** limits it, as the provisions make clear that past character is not relevant in deciding the culpability.

The above provision has created certain dilemmas before police officers. How an officer-in-charge of a police station should respond, when a victim is accusing her husband of committing marital rape i.e. Sexual intercourse without her consent. A police officer faces a number of legal, procedural and social challenges while dealing with complaints of marital rape.

The social position:

The social challenge is the foremost. Criminalisation of marital rape is considered as the fundamental challenge to the institutions of family and marriage. Family is considered as a private sphere, where state has no legitimacy to intervene. While marriage is considered as a contract between husband and wife. Often the argument given against criminalisation of marital rape is that there is permanent consent to have sexual intercourse. Supreme Court in 2015 in Arnesh Kumar vs State of Bihar also held that – ***"social and family systems will collapse if marital rape is criminalised amidst the already existing biased laws."*** When the issue of criminalisation was widely debated the then Minister of Women and Child development (2017) Mrs. Menaka Gandhi opined that the Indian situation is completely different from the international scenario.

Investigating hurdles:

In a typical rape case, the general approach to the investigation of the investigating officers is a medical examination of the victim, gathering evidences like DNA linkages, physical injuries if any, victim statements and circumstantial evidence. However, in marital rape, the biggest issue is to distinguish between a consensual intercourse and forced intercourse. There can be injuries even in consensual intercourse. DNA linkages will have no relevance, as the culprit is already known. Since he is husband there would have been normal intercourse between him and his wife. Circumstantial evidence is also difficult to gather, marital rape is an offence which is strictly committed in private spaces, where the accused is living legitimately with the victim.

Solving the legal puzzle:

Section 498A:

As a protector of the justice, no police officer can ignore a plight of women who has come with a complaint of forced sexual intercourse against the husband. Studies have shown that there are numerous legal provisions used by the police for dealing with such complaints. The basic section to which police can resort to is Section 498A of IPC.[3] Section 498A says – "***Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine***." The term cruelty is also defined in the section –

(a) anywilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman
(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

Based on the provision, forced sex can be interpreted under this definition of cruelty. Yet this provision is supposed to deal with the offence of dowry. The definition of cruelty is also defined in terms of demand for dowry. Further, the punishment under this section is mere 3 years. Various studies have found that usage of this provision leads to acquittal by the judiciary.

Domestic Violence Act:

Section 3 of the Act defines domestic violence. As per the Act, the domestic violence is commission of :

> ***(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;……..***
>
> The term sexual abuse is the catch here. The explanation further defines sexual abuse as: "***includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman"***

Accordingly, studies have pointed out that the in forced sexual intercourse police has resorted to this penal provision. Study by Raveena Rao Kallakuru & Pradyumna Soni,[6] has concluded that domestic violence act 2005 is one of the most important available tool for the victim to get relief in sexual assault cases. But, the act is clearly limited in its scope to provide justice to the victim of marital rape. The act is civil in nature, it cannot provide punishment on its own, and it can only provide civil remedies. On commission of domestic violence, the act provides for protection order, custody order, monetary relief, compensation damages etc. Only the breach of court orders with respect to the above orders will be considered as an offence.

Section 377

Section 377 of IPC is another tool which is used rarely in cases of marital rape. The section has always been in the news with regards to LGBTQ, but not been acknowledged in cases of marital rape. The provision says – "***Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or***

animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine" Studies have mentioned[4] the says 377 has been used in cases when husband is resorting to anal sex or oral sex, as both are consider as unnatural. In Khanu vs Emperor (1925), the court held that any sex where there is a possibility of conception of human being is natural sex. It laid down the principle: ***"the natural object of sexual intercourse is that there should be the possibility of conception of human beings".*** In the Gujrat court judgement in Nimeshbhai Bharatbhai Desai v. State of Gujarat, the court has recognised Section 377 to be used against the husband for committing unnatural sexual acts.

However, recent judgement by the Supreme Court on Section 377, will curb its usage against cases of marital rape. In 2018, the constitutional bench decriminalised homosexuality after striking down Section 377. Thus to what extend anal sex or oral sex is criminalised, is yet to be deciphered.

POCSO:

POCSO Act is seen as a watershed in context of protecting children from sexual offences. It has also touched the dimension of marital rape. In the Section 2 definitions of the POCSO, a child is defined as: "any person below the age of eighteen years". Section 3 of the POCSO Act says: A person is said to commit "penetrative sexual assault" if**--** ***(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person;***

In the judgment Independent thought vs Union of India,[7] the court has criminalised sexual intercourse with wife below 18 years of age. The court in its judgment did not opine on marital rape cases dealing with women above 18 years of age. But it recognised the

distinction between married and non-married girl as arbitrary and against the constitutional principles of Article 15 and Article 21. As per the court, it violates the bodily integrity of girl child. Such distinction also needs to be diluted to curb the offence of human trafficking against the girl child.

Changing Social opinion:

Police does not operate in a vacuum. Law, inherently reflects the public opinion. Growing awareness on gender issues and advancement towards gender equity and justice will certainly build opinion in favour of criminalisation of marital rape. In the judgements of higher courts one can see the changing opinion on marital rape. In Nimesh Bhai Bharatbhai Desai vs. State of Gujarat (2019), the High Court of Gujarat made critical remarks on marital rape. "***He cannot be permitted to violate this dignity by coercing his wife to engage in a sexual act without her full and free consent. It is time to jettison the notion of 'implied consent' in marriage. The law must uphold the bodily autonomy of all women, irrespective of their marital status."***

Similar observations are made by Justice Verma[1] committee report, which argued that marital rape affects the right to live with dignity of married women. It symbolises assertion of power by one gender over another. In its opinion the relation between the victim and the accused should not matter in a heinous offence like rape. The report recommended deletion of exception under Article 375. ***172nd Law commission*** report has similarly recommended the deletion of explanation clause of the Section 375 of IPC.

The Kerala high court has also recently made marital rape a valid ground for defence. The landmark ***KS Puttuswamy judgement***[8] by the Supreme court, where right to privacy as a fundamental right is recognised, ***"The right to privacy includes***

"decisional privacy reflected by an ability to make intimate decisions primarily consisting of one's sexual or procreative nature and decisions in respect of intimate relations." It has further shunned the traditional notion of consent and bodily integrity of women.

Investigation guidelines:

There are numerous challenges mentioned by the scholars regarding investigation of marital rape. However, these challenges are similar to a crime of cruelty under Section 498A. The investigation of marital rape will not be fundamentally different from a crime under Section 375. Since here the identity of the accused is already established, it is easy to link the evidence to the accused scientifically.

The guidelines mentioned by the Central Forensic Science Laboratory (Ministry of Home Affairs) for Forensic Medical Examination in Sexual Assault[9] cases can be highly useful for sound investigation in marital rape cases. A Marital rape complaint can be filed at any stage – just after the incident, a few days after the incident or even after months after the incident. There can be multiple factors for delay in filing a complaint such as lack of courage, family pressure, lack of social support, social stigma. Thus, gathering different types of evidences based on the stage of filing complaint is key to sound investigation. When the complaint is filed immediately after the incident, all the evidences – physical, biological, circumstantial, witness statements, statement of the victim are relevant. When there is delay of more than four days, crucial biological evidence might be lost. Still physical, circumstantial, oral evidences are relevant. Given below is classification of the evidence to be gathered by the IO based on the

guidelines of CFSL, Guidelines by Ministry of Health[10],[11] on medico-legal evidence.

Procedure (If complaint is filed within 96 hours) to be followed:

- To begin with, the victim must be provided medical treatment (If physical injuries are evident) and psychological support.
- Examination of marital rape cases shall be conducted only by a registered female medical practitioner (RMP). If such a female medical practitioner is not present, then by any Registered medical practitioner (RMP), with the consent of the victim.

Collection of Physical and biological evidences:

- Clothings: Detection of blood, saliva, semen, vaginal secretions and any torn cloth due to violence
- Physical Evidences on the body: (If present)
- Evidence of struggles such as bruises, scratches etc on face, neck, thighs and genital areas.
- If bite marks are present, they should be photographed, after taking necessary swabs.
- Taking Vulval swab, Vaginal swab, cervical swab, anal swab, oral swab – for detection of seminal fluid and other evidences
- Penile swabs to corroborate Penovaginal contact between accused and victim.
- Nail scrapings of the accused and victim to be examined for blood, epithelial cells, fibres etc. This can establish the violent physical contacts between the accused and the victim.
- Blood and urine collection for detection of alcohol
- Hair from the pubic region.

Other evidences: As mentioned below

The guidelines on Medico-legal by Ministry of Health and Family welfare has clearly mentioned that the evidence of spermatozoa will be useful only if it is collected within 72 hours. Thus most of the above procedures are useful only when there is immediate complaint by the victim post assault.

Evidences to be gathered, when complaint is filed after 96 hours:

- Clothing: Detection of blood, saliva, semen, vaginal secretions and any torn cloth due to violence
- Evidence of struggles such as bruises, scratches etc on face, neck, thighs and genital areas.
- If bite marks are present, they should be photographed, after taking necessary swabs.
- Nail scrapings of the accused and victim to be examined for blood, epithelial cells, fibres etc. This can establish the violent physical contacts between the accused and the victim.
- Hair from the pubic region.

Evidences when there are no physical or biological evidence:

- It is clearly established that absence of injury does not indicate the absence of crime. There can be numerous factors due to which signs of injury are not present at all. At times delay in filing complaint can lead to destruction of such evidences. Absence of genital injuries can also be due to use of lubricants. Also there will be no signs of resistance when victim is under fear and threat.
- In such situations it is important to gather **Corroborative evidence** to support the statement of victim:

- Statements of witnesses such as family members, neighbours, doctors frequently visited by the victim can give a direct account of history of sexual violence or to whom victim has frequently narrated about the incidents of sexual violence. Witnesses hearing the cries of the victim.
- Electronic evidences such as Chat messages indicating threat of sexual violence, Photos captured by the phones etc.
- Linking the circumstantial evidence to the statement of the victim, for instance, destruction of any material object during sexual violence, ornaments worn by the victim – broken bangles. The manner in which bangles are broken can also indicate the presence of sexual violence.
- Clinical examination can accurately predict the history of sexual violence by examining long term body marks, deformities, even if there is reasonable delay in filing the complaint.
- Statement of Victim under Section 164 of Crpc (to be recorded in front of Judicial Magistrate): This can be the last resort when there is neither any circumstantial evidence nor any witness statements.

The above procedures can lead to sound and scientific investigation of marital rape, after it is made a criminal offence. Ethical debates and discussions on criminalisation of marital rape will continue to take place in the country. However, as the first responder to the every crises, it is important for the police to deal with the issue with utmost sensitivity and proceed with scientific investigation, without any preconceived notions. As mentioned in

the literature, there are multiple legislations providing legislative space to the police to provide relief to the victims of marital rape.

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National Police Academy
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Unlawful Assembly and the Role of Police

AYMAN JAMAL* & SHUBHANK MISHRA**

Police and people's Dynamics

The role of police has come under scrutiny and criticism for dealing with the crowd in case of agitations and protests. Police being the civil force of the state is entrusted with the prime responsibility of maintenance of peace and law-and-order in the society. There is a fundamental base of fundamental rights on

*IPS (Probationer) 73 RR, Tamil Nadu Cadre
**IPS (Probationer) 73 RR, Bihar Cadre

which the structure of democracy stands. Article 19(1)(b) of the constitution of India says that - All citizens have the right to assemble peacefully and without arms. This right is subject to reasonable restrictions in the interest of the sovereignty and integrity of India and public order. This hereby gives every citizen of this country the right to assemble peacefully and to express themselves about the matters that affect them. This expression, however, whether in form of public meetings, dharna or protests shall be peaceful in nature within the purview of reasonable restriction i.e. to maintain public order.

Crowd and it's elements

A crowd is a large gathering of people in close proximity with a tendency to develop a psychological interaction. Anonymity is a big factor that leads the member of the crowd to tap on the heightened emotions, heightened suggestibility, credulousness, irresponsibility and lack of moral inhibition. These attributes make crowds difficult to handle as compared to organized groups of people. In the situations where assembly of people show or use criminal force, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, the duty of police is to disperse such assembly by use of prescribed procedures while maintaining patience and discipline.

Different viewpoints and harmonious interpretations

Justice K. V. Krishna Iyar once said- "An unarmed, peaceful protest procession in the land of `salt satyagraha', fast-unto-death and `do or die' is no jural anathema." This shows the power and validity of the right to assemble and to express dissent in participative democracy.

On the other hand, police as a force have been entrusted to keep peace, prevent crime and maintain law-and-order within the country. According to the Police Act, 1861, the power of police extends to - Regulation of public assemblies and processions and licensing of the same; Powers with regard to assemblies and processions violating conditions of license; Police to keep order on public roads etc(The Kerala Police Manual, 1970 lays down a step-by-step procedure to deal with unlawful assemblies).

With changing world politics, India cannot afford to remain stagnant in terms of economy, politics and culture. This demands revolutionary changes and intense commitment from the side of the state and from the society at large. This churning can lead to ideological conflicts and chaotic politics. In recent times, we have seen mass protests and agitations with regards to new legislations, government's decisions and supreme court verdicts. To name a few –Citizenship Amendment Act, Farm laws, Decriminalization of Article 377, Triple Talaq judgement of Supreme Court etc. have created intensive dialogues and debates on such matters. While the peaceful protests sometime can transform into a law-and-order situation, the role of state becomes critical as there is oversight scrutiny of society, media and judiciary.

Controversies and pressure on police: legal status and judicial pronouncement

Recently, controversy emerged when a viral video surfaced in which a high-ranking public servant was found instructing policemen to "break the heads" of farmers during a protest. When a peaceful protest turns into a law-and-order situation, magisterial powers are used to declare it as an unlawful assembly under/section 141 of Indian Penal Code. After

declaring the unlawful assembly, prescribed standard operating procedures for crowd control and riot control parties are deployed and instructed to act abiding by such SOPs. Police action should not be seen as punishing the protestors. It is important for the crowd control party to show high quality order execution, exemplary discipline and patience on their part.

Procedure for crowd control is given clearly in "Model Rules for Use of Force by Police Against Unlawful Assembly" which was adopted by Inspectors General of Police Conference, 1964. It clearly says that minimum necessary force shall be used to achieve the desired objective. Force should be regulated according to the circumstances of each case. The object of such use of force is to disperse the assembly and no punitive or repressive considerations should be operative while such force is being used.

Various state manuals also outline the manner in which unlawful assemblies should be contained. The major provisions invariably outlines that the police must ensure the presence of the magistrate, use of force should be progressive, clear warnings to be given in a clear and distinct manner preferably in the vernacular language, an accurate diary of all incidents, orders and actions must be maintained etc. While using force like Lathi charge, or firing, minimum casualties shall be kept in mind and the ultimate aim shall be the dispersal of the unlawful assembly.

During the violent protests that took place on 26th January 2021 in Delhi at the Red Fort, the action of police came under severe scrutiny and it can be safely said that the manner in which the Delhi police acted showed high standards of discipline and courage. When the protests related to the Citizenship Amendment Act were taking place at Shaheen Bagh which

continued for months, a writ petition was filed in the High Court and subsequently at the Supreme Court.[1] While giving the judgement with regard to the writ, honorable Supreme Court in Amit Sahni Vs Commissioner of Police, noted that –

"We have, thus, no hesitation in concluding that such kind of occupation of public ways, whether at the site in question or anywhere else for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions."

"In what manner the administration should act is their responsibility and they should not hide behind the court orders or seek support therefrom for carrying out their administrative functions".

This observation of the Supreme Court reiterated the responsibility of the state to ensure that the fundamental right to assembly and right to freedom of expression is balanced with ensuring the safety and security of the people and property. Thus, there is a need to strike a balance between creating a space for peaceful protest and meaningful dissent vis-a-vis containing divisive forces with mala fide political intentions to create instability in the society.

List of legal provisions

Below is the list of legal provisions pertaining to unlawful assembly and the use of force for dispersal of unlawful assembly:

- Indian Penal Code:[2]
    1. Section 141 (Assembly of five or more persons)
    2. Section 142 (Being a member of unlawful assembly)

3. Section 144 (Joining unlawful assembly armed with deadly weapon)
4. Section 144-148 (Offence of rioting and its aggravated forms)
5. Section 149 (Every member of an unlawful assembly is guilty of an offence committed in prosecution of a common object)
6. Section 152-158 (Other provision related to unlawful assembly)
7. Section 186 (Obstructing public functionary in discharge of public function)
8. Section 188 (Disobedience to order duly promulgated by public servant)
9. Section 189 (Threat of injury to a public servant)

- Criminal Procedure Code:[3]

1. Section 129 (Dispersal of assembly by use of civil force)
2. Section 136 (Magistrate to use armed forces for dispersal of unlawful assemblies)
3. Section 144 (Power to issue order in urgent cases of nuisance or apprehended danger)
4. Section 149 (Police to prevent cognizable offences)
5. Section 150 (Information of design to commit cognizable offences)
6. Section 151 (Arrest to prevent the commission of cognizable offences)

- Police Act:[4]

1. Section 13: Additional police officers employed at cost of that individual

2. Section 14: Appointment of additional force in neighbourhood of railway and other works
3. Section 15: Quartering of additional police in disturbed and dangerous districts
4. Section 17: Appointment of residents of localities as special police officers
5. Section 30A: Power with regard to assemblies and procession in violation to the conditions of license
6. section 30: Regulation and licensing of public assemblies and procession
7. Section 31: Police to keep order in public road etc
8. Section 32: Penalty for disobeying orders issued under last three sections etc

Kerala Police Manual lays down a step-by-step procedure to deal with unlawful assemblies:[5]

- The police must invariably secure the presence of a magistrate where it anticipates a breach of peace
- The decision to use force and the type of force to be used is to be taken by the magistrate
- Once the order for the use of force is given by the magistrate, the extent of force to be used will be determined by the senior-most police officer
- The extent of force used must be subject to the **principle of minimum use of force**
- **Use of force should be progressive** i.e. firearms must be used as a last resort if tear smoke and lathi charge fail to disperse the crowd
- Common tear smoke which causes no bodily injury and allows recovery of affected persons should be used

- When the crowd is large and the use of tear smoke is likely to serve no useful purpose, the police may resort to lathi charge
- Lathi charge can only begin if the crowd refuses to disperse after suitable warning
- **Clear warning** of the intention to carry out a lathi charge should be given through a bugle or whistle call in a language understood by the crowd. If available, a riot flag must be raised. If the police officer in-charge is satisfied it is not practical to give a warning, s/he may order a lathi charge without warning.
- Lathi blows should be aimed at soft portions of the body and contact with the head or collarbone should be avoided as far as practicable.
- The lathi blows must not cease until the crowd is completely dispersed.
- If the crowd fails to disperse through the lathi charge, the magistrate or the competent officer may order firing.
- Full warning in a clear and distinct manner must be given to the crowd to inform them that the firing will be effective.
- If after the warning, crowd refuses to disperse, the order to fire may be given.
- Police are not allowed to fire on any account except on a command given by their officer.
- A warning shot in the air or firing over the heads of the crowd is not permitted.
- An armed force should maintain a safe distance from a dangerous crowd to prevent being overwhelmed, or increasing the chances of inflicting heavy casualties.

- Aim should be kept low and directed at the most threatening section of the crowd.
- Firing should cease the moment the crowd show signs of dispersing.
- All help should be rendered to convey the wounded to the hospital.
- Police officers must not leave the scene of disturbance before satisfying themselves beyond reasonable doubt about the restoration of tranquility.
- An accurate diary of all incidents, orders and action along with the time of occurrence should be maintained by the police. This will include an individual report by all officers involved in the firing.
- The number of fired cartridges and the balance of unfired cartridges should be verified to ensure ammunition is accounted for.

Balancing the rights and duties: way ahead

With the growth and evolution of democratic ethos, India as a country cannot ignore the dissenting power of the people with regard to politics, laws, rules, culturally sensitive issues pertaining to the fundamental rights and issues that affect their daily lives. With the reach of the internet to the grassroot public and social media penetration, even the most unheard voices are emerging as loud assertions. Twitter trends, viral Facebook and WhatsApp messages have become potential tools to create mass opinion, to express mass concern and even to propagate propaganda. In such times, the role of police has become all the more important.

When threat to public peace and order arises due to unlawful assemblies, a trained police force shall understand the need and

psychology of the crowd and shall be able to control and contain the crowd. Utmost priority shall be given to the negotiations, psychological methods and application of emotional intelligence and only in the situations when they fail, police shall resort to graded use of minimum possible force with an objective to disperse the crowd. The principles of the constitution and safety and security of all citizens shall always be kept in mind. We shall never forget that the police is a service not a force.

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The Banning of Unregulated Deposit Schemes Act, 2019

GARAD KARUN UDDHAVRAO*

Introduction –

In recent years, Financial Sector has seen a rash of financial frauds such as Ponzi schemes, chit fund scams, and other unregulated deposit programmes that have plundered individuals of their hard-earned savings.

* *IPS (Probationer) 73 RR, Tamil Nadu Cadre*

Entities that offer such fraudulent schemes/products are benefitted by regulatory gaps and an absence of stringent administrative and legislative procedures which leads to defrauding of a significant number of people. Many times in the past, demands were raised to bring in effective legislation to curb the menace of such schemes as most of the victims falling prey to lofty investment return claims of these schemes belong to underprivileged sections of the society. It is in this backdrop that The Banning of Unregulated Deposit Schemes Act was passed by the Parliament. Subsequently, Ministry of Finance notified the Banning of Unregulated Deposit Schemes Rules 2020 (Rules) on 12 February 2020 whichcame into force with effect from 12 February 2020.

Salient Features of the Act

The Act amends three laws, i.e., the Reserve Bank of India Act, 1934, the Securities and Exchange Board of India Act, 1992 and the Multi-State Co-operative Societies Act, 2002 and is broadly divided into eight chapters.

The Act defines a deposit as an amount of money received through an advance, a loan, or in any other form, with a promise to be returned with or without interest. Act also defines certain amounts which shall not be included in the definition of deposits.

The Act bans unregulated deposit schemes. It defines a scheme as unregulated if it is taken for a business purpose and is not registered with any one of the nine regulators listed in column (2) of the first schedule of the Act. The Act defines deposit takers as

(i) any individual or group of individuals,
(ii) a proprietorship concern;
(iii) a partnership firm (whether registered or not);

(iv) a limited liability partnership registered under the Limited Liability Partnership Act, 2008;
(v) a company;
(vi) an association of persons;
(vii) a trust (being a private trust governed under the provisions of the Indian Trusts Act, 1882 or a public trust, whether registered or not);
(viii) a co-operative society or a multi-State co-operative society; or (ix) any other arrangement of whatsoever nature, receiving or soliciting
(ix) deposits, but does not include—
    (i) a Corporation incorporated under an Act of Parliament or a State Legislature;
    (ii) a banking company, a corresponding new bank, the State Bank of India, a subsidiary bank, a regional rural bank, a co-operative bank or a multi-State co-operative bank as defined in the Banking Regulation Act,1949;

The Act provides for the appointment of one or more government officers, not below the rank of Secretary to the state or central government, as the Competent Authority and delegates certain powers to Police officers receiving information about offences committed under the Act including the power to enter, search and seize any property believed to be connected with an offence under the Act, with or without a warrant.

The Competent Authority has been vested with the powers of a civil court and may

(i) provisionally attach the property of the deposit taker, as well as all deposits received,
(ii) summon and examine any person it considers necessary for the purpose of obtaining evidence, and

(iii) order the production of records and evidence.

The Act also provides for the establishment of one or more Designated Courts which are required to be headed by a judge, not below the rank of a district and sessions judge, or additional district and sessions judge.

The Designated Court will have the authority to:

(i) make the provisional attachment permanent,
(ii) vary or cancel the provisional attachment,
(iii) finalise the list of depositors and their respective dues, and
(iv) order the Competent Authority to sell the property and equitably distribute the proceeds to the depositors.

After being contacted by the Competent Authority, the Court will try to conclude the process within 180 days.

It requires the central government to designate an authority whether already existing or newly constituted, to create, maintain and operate an online database for information on deposit takers operating in India, and competent authority may be required to share prescribed information about deposit takers to such authority. All deposit takers are mandatorily required to inform such central database authority about their business.

Offences under the Act

The offenses under this act are non-bailable and cognizable (except offences under Section 22 and 26). The police officer must inform the competent authorities of the default under this act. The Act defines the following types of offences.

S.N.	Offence	Relevant Sections
1	Running (advertising, promoting, operating or accepting money for) unregulated deposit schemes	Section 3, Section 21
2	Committing fraudulent default in the repayment or return of deposit on maturity or in rendering any specified service promised against such deposit	Section 4, Section 22
3	wrongfully inducing depositors to invest in unregulated deposit schemes by willingly falsifying facts.	Section 5, Section 23
4	Failure to give the intimation or failure to furnish information, statements as required	Section 10 (1) and (2), Section 26

Powers of Investigation, Seizure and Search

Chapter VII of the act details the powers of investigation, seizure and search for law enforcement authorities. All searches, seizures and arrests under this section are to be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

Under Section 29 of the Act, a police officer shall inform the competent authority on recording information about the commission of an offence under this act.

Section 30 states that on receipt of information under Section 29 of the Act, the competent authority shall refer the matter to Central Government for investigation by the Central Bureau of Investigation if

i. the depositors, deposit takers or properties involved are located in more than one State or Union territory in India or outside India; and
ii. the total value of the amount involved is of such magnitude as to significantly affect the public interest

Section 31 under this act is the most important section from the viewpoint of Law Enforcement Authorities. It provides for the procedure for search, seizure, detention and taking suspects into custody, freezes property, account, deposits or valuable securities maintained by any fraudulent deposit taker.

Following table lists down the prerequisites and rules for conducting the search.

Condition	**Action**
Rank	Not below the rank of an officer in-charge of a police station
Premise	Existence of reason to believe that anything necessary for the purpose of an investigation into any offence under this Act within jurisdiction of his/her police station
Written authorisation of an officer	Not below the rank of Superintendent of Police
Things for which search is to be made	To be recorded in writing
Time	Between sunrise and sunset
In case of resistance	to break open any door and remove any obstacle to such entry, if necessary by force, with such assistance as he considers necessary

However, if such officer believes that time required for such written authorisation may delay/hamper the investigation affording the opportunity to the suspect for concealing/destroying/tampering with the evidence or abscond, he/she may conduct the such without written authorisation provided he records such grounds in writing.

The officer may seize any record or property found during the search which is reasonably suspected to have been used in the commission of an offence under this act.
The officer also has the power to detain and search, take into custody and produce before Designated Court any such person whom he has reason to believe to be an accomplice/perpetrator under this act.

If it is not practicable to seize the record or property, the concerned police officer may make an order in writing to freeze such property, account, deposits or valuable securities and it shall be the responsibility of the concerned bank, financial institution, or market establishment to follow the given directive. However such an order becomes void after a period of thirty days unless the same is authorised by the Designated court.

Whenever an officer records his grounds for search without authorisation or makes an order to freeze property, account, deposits or valuable securities, he/she must send a copy of the same to the Designated Court in a sealed envelope *within a time of seventy-two hours*.

Review

Ministry's goal of enacting a particular and comprehensive law to prevent illegal deposit schemes from defrauding people of their hard-earned savings has been long overdue and is thus a commendable step in the right direction.

The Competent Authority plays a critical and vital role in the execution of the Act, with primary responsibilities being the attachment of illegal scheme operators' properties/assets and eventual realisation of assets for restitution to depositors. State Governments are required by the Act to appoint Competent Authorities for carrying out provisions of the Act, and to

designate Courts to try offences under the Act and oversee repayment to depositors. It is disheartening to note that many State/UTs have not notified the same and the pace of implementation is slow.

Despite the fact that facilities for depositor education exist, awareness of them is perhaps still not at the necessary level. The Ministry of Finance and organisations such as the Reserve Bank of India and the Securities and Exchange Board of India should effectively promote such provisions through different means, including advertisements in print and electronic media if appropriate. In order to encourage people to come forward and inform the authorities about any unregulated deposits schemes, state governments or competent authorities under the Act should consider including an Unregulated Deposits Schemes Informants' Award Scheme in the Rules themselves.

Takeaways for Police Officers

- With coming into existence of this act and subsequent notification of rules, all the unregulated deposit schemes are banned and no deposit taker can directly or indirectly advertise, promote, regulate or accept deposits under any such schemes.
- Barring offence under Section 22 and Section 26, all the offences under this act are non-bailable and cognizable which implies that police cannot refuse to register FIR once the information pertaining to such unregulated scheme is brought to attention.
- Since the investigation and prosecution under this act involves a major role of the competent authority and the Designated court which are to be notified by the State Governments, it would be prudent for the officers to identify such authority and court in their respective States to ensure that offenders are swiftly brought to justice.

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National Police Academy
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Spirit of Section 167(2) CrPC in Times of Covid

DARPAN AHLUWALIA* & AYUSH VIKRAM SINGH **

The barometer of the moral health of the country is dependent upon the level of crime and disorder in the society. The most crucial armor of the state and its people is the Police in this regard. The onslaught of this Black Swan event of COVID-19 has brought along a plethora of predicaments with itself.

Under Section 167(2) CrPC, an inalienable right to default or statutory bail, is proffered to accused if he is able to furnish bail, in case charge sheet isn't not filed within the stipulated period of 60/90 days.

The Challenge

The pandemic hasn't only increased the multitude of tasks, but also the obstacles in the way of a speedy and efficient investigation. Unforeseeable conditions, including the nationwide lockdowns have thrown challenges, forcing us to discuss on the reading of the

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said section during these unprecedented times, and also setting a precedent for any such events in the future.

Although cited to be an indefeasible right, it would simultaneously tantamount to miscarriage of justice, if the Courts reads it too technically, without getting into the genuine merits of the case, and time needed for its investigation.

In the similar vein, in S. Kasi v. State case (idol theft case with accused in custody beyond 90 days), Madras High Court stated that 60/90-day rule wouldn't be applicable during the lockdown period, which SC later cited to be a wrong interpretation of the said section.

Even if we maintain the grounds of the superiority of the written law, yet Delhi HC order (dated March 23, 2020) treated period between 23-03-20 to 04-04-20 as closure period under the ambit of Limitation act.

This differential interpretation has no tangible explanation, especially in a scenario where our nation has lost 377 police personnel in the past one year.

Without going even into the merits of this, interpretation of Section 167(2) ought to be done on an even keel as the suspension of the period of lockdown, while calculating under the Law of Limitation.

Hence, it is imperative to take these into account during such Black Swan events and extraordinary situations. Balance should be struck between the rights of accused, and the larger responsibility upon the shoulders of Police.

The Conclusion

The court's current stand is merely towing a straitjacket approach via a myopic reading of Section 167(2) CrPC, which is

akin to miscarriage of justice. In the new normal set up by the pandemic, expecting police to follow the old normal is blatant injustice, and anti-thetically to any logical justifications. It is time that the honorable courts make a constructive interpretation of this section in the light of COVID, albeit on a case-to-case basis.