THE HARYANA POLICE JOURNAL

Published By
HARYANA POLICE

October 2017 *Volume 1 No. 1*

EDITORIAL BOARD

Editorial

The police as we know it today was created in England in the second quarter of the nineteenth century. England was relatively more developed as an industrial and urban society than many others at the time. The police around the world, including the US, developed on similar lines. Similar structure of police was put into place by the Police Act of 1861 in India. The police were primarily responsible for maintenance of public order, prevention and detection of crime, and to achieve voluntary compliance of law in the community. However, rapid pace of development threw up new challenges and opportunities for the police. The police responded by entering the professional era in the beginning of twentieth century as it laid emphasis on preventive patrols, rapid response and scientific investigations. This paved the way for the community policing era in the 1980s which relied on decentralized organizational structure, closer ties to the community, problem oriented policing, and focused on prevention.

There can be no doubt that the transformation of police in the West has come about in large part due to systematic research on the subject. The rigor of social science research was applied to police organizations and practices, which was apt as police research is mostly behavioral rather than jurisprudential. The methods included not only ethnographies and qualitative work by the likes of Skolnick and Manning, but also surveys, participant observations, and randomized controlled trials such as the Kansas City preventive patrol experiment.

The state of Haryana has made rapid strides in development since its creation in 1966. It is one of the highest per capita income states and is a hub of industry and education. The Haryana Police Act, 2007 introduced significant changes in the police administration towards making it more professional, responsive, capable, and humane. As Haryana celebrates its

Golden Jubilee of creation in 2016 with yearlong activities where we take a look back and prepare ourselves for the future, a felt need has been fulfilled with the launch of the Haryana Police Journal. This is a peer reviewed journal where presentation, discussion and scrutiny of issues relevant to policing will be offered. Here police officers come together with academicians and analyze the challenges faced by the Indian Police. They cogitate about issues as diverse as community policing, hostile witnesses, counter terrorism and deradicalization, information technology, victim compensation, organizational commitment, and cyber security challenges. Haryana police is in the forefront of adopting latest technologies, evident from it being one of the first states to launch *Harsamay*, the 24 by 7 portal of Haryana Police, where citizen services such as RTI, free copy of FIR, lost property reports, and complaint registration are available at the click of a mouse. All women police stations launched by the state have become hugely popular spurring similar demands in other states. Numerous schemes have been launched including the Mahila Police volunteer scheme, community liaison groups, Police cadet corps on the lines of NCC, and schemes for women safety.

There is a need to study all the above-mentioned initiatives and more like them for their effectiveness and fine-tuning them subsequently, if need be. We hope that the intellectual capital of the society will channelize through the Haryana Police Journal to achieve the dream for which a modern, progressive, and resilient society of Haryana and India strives for.

Dr Hanif Qureshi

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Shri Manohar Lal, Hon'ble CM of Haryana

Speech of Hon'ble CM of Haryana at the occasion of the 3rd Counter Terrorism Conference held at New Delhi on the 14th of March, 2017

Let me at the outset, on behalf of more than 25 million people of Haryana, and on my own behalf, extend a very warm welcome to the delegates from different parts of the world who have come to participate in the Third Counter Terrorism Conference.

I congratulate India Foundation for taking the initiative to organize this meet and appreciate its decision to make Haryana which is celebrating its Swarn Jayanti year, a partner. It is our proud privilege to co-host the conference.

India has been and remains a victim of international terrorism. In fact, India became a victim long before the menace bared its global fangs, and posed a grave threat to peace and security in a large number of countries. Today, it has snowballed into a full-blown, multi-dimensional and multi-headed global security threat.

My state, Haryana, suffered the brunt of terrorism during the days of militancy in Punjab. There could be no better time than this to put our heads together and work out strategies to counter terrorist activities effectively and decisively.

Indian culture and we the people are devoted to the philosophy of "Vasudhaiv Kutumbakam" (The whole world is one family). It was in the spirit of this message, given by Lord Krishna in Gita, that India proposed the Comprehensive Convention on International Terrorism (CCIT) in 1996. The aim

was to secure the global community against the scourge of terrorism and let people breathe in the air of liberty, safety and security.

Our Prime Minister, Shri Narender Modi Ji, at the G-20 Summit held at Antalya in Turkey, gave a call to the global community to unite against terrorism without making any distinction between individuals and nations and adopt the Convention proposed by India in 1996. Our Foreign Minister, Smt Sushma Swaraj, in her speech at the UN General Assembly in September 2016, also made an appeal to the world to adopt the Convention.

I am of the firm conviction that if the Convention is adopted, it would make the world a terrain hostile for the terrorists, and more habitable for the people. It would lay ground for the signatories to coordinate and calibrate their actions to deny the terrorist groups access to weapons, funds, manpower and safe heavens. The need for this can hardly be over-emphasized. For, life, growth and prosperity hinge on peace, safety and security, something the terrorists all over the world are out to disrupt.

It is indeed an irony, and a matter of grave concern, that even though no corner of the world today is free from the curse of terrorism, the international community does not appear any closer to evolving a united stand and strategy against terrorist activities. We have failed to make cross-border terrorism an extraditable offence world-wide which has made several countries safe heavens for terrorists.

We have also not been able to agree on banning all terror groups and shut down terror camps. Some countries are still allowing terrorist sanctuaries on their soil. They use terrorism as an instrument of state policy. What is most unfortunate is that some of us are still busy debating what is good and what is bad terrorism.

So much so, we have not been able to work out and agree on a universally accepted definition of ‘terrorism’. All these issues need thorough deliberations and meeting of minds so that an

effective global counter-terrorist strategy could be developed and accepted. Not delving into these details, I leave it to the delegates to discuss and define 'terrorism' in comprehensive and universally acceptable terms.

International terrorism has many dimensions. Gone are the days when terrorism could be defined merely in terms of acts of violence and mass murder. Today's the world is facing terrorist threats in the form of cyber terrorism, terrorism through social media, terrorism in outer space, and issues related to maritime security. The list goes on and on.

We need to work together to identify these challenges and devise protocols and norms to take them head-on. We should not stop short of bringing all countries on the same page and show a strong resolve to combat terrorist activities in a collaborated and coordinated manner.

Lot of factors are fuelling global terrorism. These include religious fundamentalism, poverty, historical baggage, policies of socio-economic exploitation, desire to colonize economic resources, unemployment, unprincipled use of social media, unethical practices in cyber space, sectarian interest of different kinds and quest for political hegemony.

Such youths as suffer from identity crisis or feel alienated on account of one reason or the other from the mainstream society, get radicalized easily and bite the bait thrown by the protagonists of terrorist ideology.

It would also be timely and relevant for this conference to figure out the root causes of international terrorism. And while doing so, let us not forget that terrorism breeds terrorism.

We need to brainstorm thoroughly and devise a comprehensive counter- terrorism strategy that would make the world an inhospitable place for the sinister practitioners of terrorism in all forms. I am confident that this conference, representing various stakeholders having required knowledge and

experience from all over the world, is uniquely placed to work out a workable and effective global counter terrorist framework.

I would like to conclude by quoting our Prime Minister Narender Modi Ji, who said, “Let us rise above politics, divisions, discrimination and distinction between good and bad terrorists and adopt the Comprehensive Convention on International Terrorism proposed by India.”

Once again, I welcome you all and thank India Foundation for giving Haryana the opportunity to be the co-host of this conference.

Jai Hind!

2
Community Policing

Loknath Behra, IPS

Abstract

Policing service is an important part of Indian administration since inception. Initially it functioned in an autocracy. But gradually breaking away from the tradition of working in isolation it started working with people. The initiative of working together with public was defined as Community Policing or Neighbourhood Policing. Community policing involves responsible participation of the citizens in crime prevention at the local level, conservation of resources, in fighting against crimes which threaten the security of the community. The article highlights different components of community policing. It also showcases different practices undertaken in Community Policing, which has led to a paradigm shift in policing in tandem with the changing social and cultural realities. Community Policing Project in Kerala was able to empower citizens to become responsible and accountable to a great extent. The usage of portal to reach out to the public transformed Kerala into a welfare state and reduced the crime rates to negligible.

Key words

Community policing, criminal justice system, crime, legal punishment, police, community, proactive policing

Policing in a Democracy

The Police have been an integrated part of Indian administration ever since its inception and since then it has restricted itself to functioning as an autocracy. As a self-governing organization, the

police force's main objectives were to capture criminals and prevent further crimes by exercising fear of the police among the public. There was a clear distance and mutual distrust between the police and the people. However, over the years, the police have changed its methods of preventing crime by seeking the cooperation of the public; the law enforcement realized that the only way crime can be reduced is by receiving the cooperation of the citizens. The government and the people have begun to understand that the police are a part of the economic and social development of society. The police had to break the tradition of working in isolation to working with the people as people form the back bone of any democracy. Accordingly, law enforcement in a democracy is a process by which public security is ensured by securing and enlisting the willing co-operation of people who are simultaneously the beneficiaries of such enforcement. Citizens are subject to the law which they themselves create by means of established legislative processes; therefore they also need to proactively participate in the process of preventing violations of enacted law.

Need for Customer Orientation in Police

The Police is the first window into the Criminal Justice System. Any changes in service quality to citizens approaching the Criminal Justice System primarily depend upon the quality of Police Service. G.V. Rao (1982) quotes Mahatma Gandhi's views about Police force: "My idea of Police force is that, the Police of my conception will, however, be a wholly different pattern from the present-day force. They will be servants, not masters, of the people. The people will instinctively render them all help, and through mutual co-operation they will easily deal with the ever-increasing disturbances." The Police perform one of the core functions of any Government - maintenance of peace and order in the Society. This requires effective control of crime and maintenance of law and order. Over a period of time, occurrence of crime has increased manifold. Newer forms of crime have emerged with the advancement of technology. Crimes with implications for internal security are also on the increase. Results point to the fact that methods adopted by police in controlling crime arc rarely good enough to satisfy the civil society. Public invariably wants better performance albeit, whatever

be the level already achieved. Even when cases are detected and offenders are arrested, the success rate in securing conviction against the offenders is alarmingly low. This is partly due to the fact that the general public does not come forward enthusiastically to cooperate with the Police or with the prosecution, which results in either the crime remaining undetected or it not getting convicted in a court of law. Mistrust in Police leads to non-reporting of crimes as well as to lack of willingness to be witnesses in a trial. This results in further deterioration of performance by Police in tackling crime, leading to greater public dissatisfaction. This is indeed a vicious circle. Public trust and cooperation are essential if crime is to be controlled effectively in a democracy. Thus developing a symbiotic relationship between the police and the communities built upon mutual trust, benefit and participation is what is needed and community policing aims to restructure policing activities towards customer orientation. Primary focus shall be on developing and sustaining productive customer relations.

Community Policing Defined

Community Policing or Neighbourhood Policing seeks the responsible participation of the citizens in crime prevention at the level of the local community, conserving the resources, both of the community and of the police, in fighting against crimes which threaten the security of the community. Experience shows that by seeking the active co-operation of the public in performance of police duties, the process of Law Enforcement becomes far more effective. Community policing, in essence is establishing meaningful partnerships with the community in the grass root level to ensure societal partnership and involvement in devising and implementing strategies for the safety of our citizens. The synergy developed between the police and the community goes a long way towards identifying and solving problems related to crime control and preventions, thereby enhancing the safety and quality of our neighbourhoods. Community policing, thus, is a philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime. It is policing with the

community as opposed to policing of the community and it aspires to improve the quality of life for those within that community.

Origin and Evolution of Community Policing

Sir Robert Peel, known as the father of modem policing rationalised that 'the police are the public and the public are the police'. In his role as the first leader of the service, Peel cited his nine principles of policing which continue to have validity for the delivery of Community Policing today (FOI, 2012). They were:

> 1) to prevent crime and disorder, as an alternative to their repression by military force and severity of legal punishment,
>
> 2) to recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour and on their ability to secure and maintain public respect,
>
> 3) to recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in the task of securing observance of laws,
>
> 4) to recognise always that the extent to which the co-operation of the public can be secured diminishes proportionately the necessity of the use of physical force and compulsion for achieving police objectives,
>
> 5) to seek and preserve public favour, not by pandering to public opinion; but constantly demonstrating absolutely impartial service to law, in complete independence of policy, and without regard to the justice or injustice of the substance of individual laws, by readily offering individual service and friendship to all members of the public without regard to their wealth or social standing, by ready exercise of courtesy and friendly good humour; and by ready offering of individual sacrifice in protecting and preserving life,

6) to use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public co-operation to an extent necessary to secure observance of law or to restore order, and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective,

7) to maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police, the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of the community welfare and existence,

8) to recognise always the need for strict adherence to police-executive functions, and to refrain from even seeming to usurp the powers of the judiciary of avenging individuals or the State, and of authoritatively judging guilt and punishing the guilty,

9) to recognise always that the test of the police efficiency is the absence o crime and disorder, and not the visible evidence of police action in dealing with them."

In the 1970s, Chief Constable John Alderson argued that the traditional authoritarian model of policing was proving inadequate and inappropriate in a plural and libertarian society with increasing levels of crime. Alderson cited the objectives of the Community Policing as:

1) to contribute to liberty, equality and fraternity,

2) to help reconcile freedom with security and to uphold the law,

3) to uphold and protect human rights and thus help achieve human dignity,

4) to dispel criminogenic social conditions, through co-operative social action,

5) to help create trust in communities,

6) to strengthen security and feelings of security,

7) to investigate, detect and activate the prosecution of crimes,

8) to facilitate free movement along public thoroughfares,

9) to curb public order, and

10) to deal with crises and help those in distress involving other agencies where needed.

Through the leadership of his police force, he sought to deliver these objectives. Years later, in the present era, a summary of the benefits of Community Policing perceived in the International context were as follows:

1) Mobilisation and empowerment of communities to identify and respond to
2) concerns
3) Improved local physical and social environment
4) Increase in positive attitudes towards police
5) Reduced fear of crime Police-specific benefits
6) Improved police-community relationship
7) Improved community perception of police 'legitimacy'
8) An increase in officer satisfaction with their work Shared benefits
9) A decreased potential for police-citizen conflict
10) A reduction in crime rates
11) A better flow of information between the police and the community
12) Better implementation of crime prevention and crime control activities, as a result of both parties working towards shared goals.

Community Policing, today, around the democracies in the world has emerged as one such creative response to transform Police into an instrument of public service, in tune with the legitimate aspirations of citizens in a democracy.

Preventive Policing—An Outcome of Community Policing--Alderson Perspective and Implementation

The proactive policing is an outcome of Community Policing which is a paradigm shift in policing in tandem with the changing social and cultural realities. Proactive or preventive policing demands involvement of societies and has its derivative in the idea that a fusion of social policing and legal policing stand a better chance of success than either would enjoy separately. The necessary change must begin in police culture, attitudes and habits and these changes should reflect and be reflected in policies. Police efforts to harness 'society against crime' would exhibit care, education, persuasion and ultimately enforcement. From the concept of 'proactive policing', Alderson evolved a system of `Community Policing' which he put into practice in Devon and Cornwall, a relatively low crime predominantly rural area but with three substantial urban centres. That system consisted of a model and a method. The model was based on a local officer dedicated to a local area patrolling on foot. At the divisional or force level, there were specialised units including crime prevention, a juvenile bureau tasked with diverting young people away from crime, a schools liaison and a community relations team focused on relations with and within ethnic minority communities. The method of work started with an analysis of a community problem and then engagement with the community to find a solution. Community consultative groups were established to facilitate communication. The delivery of policing fell into 3 categories; primary or proactive policing which engaged the whole community to diminish anything forbidden by the criminal law; secondary or preventive policing which considered of foot and mobile patrols in the locality providing crime prevention advice; tertiary which involved response and detection. These still form the modus of Community Policing today.

Major Components of Community Policing

Community policing comprises of 3 major components:

1) Community partnerships: Police rarely can solve public safety problems alone. Hence, there should be interactive partnerships with relevant stakeholders. The range of potential partners is large and there

should be collaborative partnerships between the law enforcement agency and the individuals and organisations they serve, to develop solutions to problems and increase their trust in police. The public should play a role in prioritizing and addressing public safety problems. Other Government agencies, community members/groups, NGOs, media, businesses all should work in unison in addressing and finding workable solutions for ensuring security and rule of law in our communities.

2) Organisational Transformation: The success of Community Policing largely depends on sensitization and organization of the police force in all levels from management to the grass root level. This could be achieved through training, awareness and capacity building, application of technology, strategic planning, effective management and leadership, decentralizations, organizational evaluations, pooling and utilisation of resources and finances and increased transparency.
3) Problem Solving: Community Policing emphasises proactive problem solving in a systematic and routine fashion. Rather than responding to crime only after it occurs, community policing encourages agencies to proactively develop solutions to the underlying conditions contributing to public safety problems and crimes. This can be achieved by solving problems in a structured and disciplined way i.e. SARA (scanning, analysis, response and assessment). Problem solving must be infused into all police operations and decision making efforts. Tailor-made preventive measures shall be devised to suit the needs of a particular community or a geographic locality to remove or resolve the causes which are at the root of crime and disorder. This is akin to treating the disease rather than its symptoms.

Community Policing in Kerala - An Evolution

Kerala, one of the most literate states of India with high level of political consciousness has many informal civil society oversight mechanisms. At the time of independence, the legacy inherited by the Police system in the state contained many undesirable characteristics. The basic sub-cultural approach of Police is society had elements of hostile and anti-people tendencies. With passage of time, result of the processes of democratization of the society, traditional ways and methods police came under growing criticism. Now and then a critical incident such as a custodial death or a critical law and order incident brought to focus all that was wrong with traditional Police attitudes and methodology. On such occasions, police and political leadership were compelled to respond and isolated attempts to renovate the system were thought of. However, such responses were mainly internal and lacked systematic structural institutionalisation; they could not be sustained, despite the initial enthusiasm.

In the meantime, individual police officers attempted co-operating with social organisations and NGOs in a limited way to promote police-public relations. This occurred mainly in traffic related matters. Such initiatives also depended largely upon the attitude of the Superintendents of Police/Commissioners of Police as well as that of the office bearers of the organisations concerned. Very rarely such initiatives led to lasting and sustained improvement.

Growing urbanization created new problems to be tackled by Police. Gradually Residents' Associations started to emerge in cities like Kochi, Thiruvananthapuram, Kozhikode and in big towns. Residents' Associations which have remained largely non-political in character were keen to co-operate with police in the cities for solving the problems faced by them. This phenomenon started taking root in the late 1990's particularly in big cities/towns. Police and citizens collaborated in many joint initiatives in the urban areas. Such co-operation extended to a range of activities from traffic-related problems to crime control, including security of senior citizens. This period coincided with the popularity of the principles of Community Policing as a panacea to all the ills of Policing. There were also individual initiatives in experimenting with different models of Community Policing in some parts of the state in urban and rural areas by different Officers.

The initiatives in Kerala in which both civil society groups and local Police leadership have played their part contributed to the creation of a favourable environment in initiating even more significant endeavours. The new initiatives in Police--public collaboration--gained wide publicity and evoked keen interest in the society. Often media played a crucial role in highlighting such initiatives. However, it needs to be mentioned here that not all stakeholders were equally enthusiastic about these new initiatives. There were many sceptics to all these efforts within the Police Organization and among the civil society.

Introduction of Community Policing in an institutionalised manner with the support of the Government marked a giant stride towards reforming the policing system in Kerala. It is pertinent to note that a Committee to review the working of Police headed by Justice K.T. Thomas, former Judge of the Supreme Court of India, had also recommend LA introduction of Community Policing.

This decisive step was taken with firm conviction and clarity about the philosophy of Community Policing. For achieving the basic objectives of policing in a democratic society, co-operation between the law abiding public and the law enforcement agency was unavoidable. In a democracy, by definition, laws were created by the people, for the people. It followed that police being the chief law enforcement agency, ordinarily there was no logical justification for conflict between the public and police. On the other hand there was every justification, if not compulsion, for active co-operation and collaboration between the Police and public by promoting Police public partnership in achieving the most fundamental objectives of policing. The whole society stood to gain by this. Perhaps, the only possible losers were those individuals who broke the law and those policemen who nourished ulterior motives.

Though there was clarity about the philosophy and principles of Community Policing, the road map to translate the philosophy and principles into reality in the field had to be clearly charted out. The possibility of perceiving the new initiatives by attributing partisan motives on one hand and by an overdose of cynicism on the other had to be reckoned with. A favourable and receptive climate had to be created for introducing this initiative.

With this end in view, a State Level Consultative Workshop was conducted in Thiruvananthapuram, the capital city of Kerala on 18th September 2007. This workshop was attended by the representatives of all the Political parties of Kerala, many Chiefs of Municipalities/Corporations, Public Intellectuals, Academics, Journalists, Judicial Officers, Bureaucrats, Police Officers, Office bearers of Residents Association, Office bearers of many NGOs including those representing women and children, etc. `besides the State Home Minister and the Leader of Opposition. At this State Level Consultation on Community Policing, presentations were made by Police Officers from various states on Community Policing schemes implemented by them. There were thorough discussions by the participants on the various steps to be taken for evolving and implementing the Community Policing program for Kerala. In this workshop, cutting across all political and social ideologies, the concept was widely welcomed by one and all. However, many cautioned that the manner in which the program was to be implemented in the field had to be planned and executed with great caution. A draft Community Policing Plan was prepared for the state, by incorporating thoughts and ideas generated in the State Level Workshop. Following this, the District Level Consultative meetings were held throughout the State. These meetings also served to explore the conceptual as well as the practical aspects of Community Policing further.

Preparing the Police Department for implementing the program required extensive training and non-training interventions. The State Level Community Policing plan was cussed thoroughly in a conference of senior police officers. Many practical ideas for implementation evolved in this meeting. Extensive training programs were conducted at Police Training College and Kerala Police Academy in which all Police personnel involved in the implementation of Community Policing participated. All police officers from police constables to sub divisional police officers took part in this training program. Initially, Janamaithri Suraksha Project (JSP), the community policing venture of Kerala state was set into motion and in March 2008 in 20 police stations the project was implemented.

The project was structured in such a way facilitating closer community involvement in ensuring security and safety within the communities of Kerala. With active support of the local communities, the project envisaged to achieve the following objectives:

1) to prevent crime through proactive policing with public contribution.
2) to ensure mutual co-operation of the police and public in security matters
3) to ensure mutual co-operation of members of the public in the domain of security.

Janamaithri Suraksha Project (JSP): Methodology of Implementation

Transforming the philosophy of Community Policing into practice involved active consultation with the community for identification of policing problems in the area and participation of local people in addressing the roots of crime and disorder. The approach was to involve the lower ranks of Police in strategizing priorities. In the conventional approach, priorities were dictated by higher echelons and were mechanically carried out by the subordinates at the field level. This was changed with active participation and communication of community members as well as officers of all ranks.

An important step towards introduction and implementation of Community Policing project in the jurisdiction of a Police Station was the formation of a People's Committee which represented all major social segments and stakeholders. This committee was constituted after careful scrutiny and selection. Special care was taken to ensure that the local administration such as Municipality/ Panchayath, Residents' Associations, NG0s, Senior Citizens, Weaker/ Vulnerable sections, Educationists, Socio Cultural Organisations were all represented. The main consideration in the selection was that the person should be known for responsible citizenship and social commitment, besides being able to devote adequate time for this work. Obviously, nobody with any taint of involvement in a criminal offence was inducted. Nobody was either included or excluded merely on the basis of polite al affiliation. The selection was

approved by the District Police Chief on the basis of recommendation by the Station House Officer and scrutiny by supervisory officers. The committee ordinarily had about 25 members.

During the committee meetings, one of the members would preside over the meeting on the basis of consensus, while the Inspector of Police served as the Convener and the Station House Officer as the Secretary. An Assistant Sub Inspector was designated as Community Relations Officer playing a key role in assisting the Station House Officer in implementing the project successfully. The committee was to be reconstituted once in two years.

This committee was expected to meet once in a month at a public place within the Beat area. General Public belonging to the Beat were also expected to be present and take part in the deliberations. One of the indicators of success of the Community Policing program was the extent of participation of local people in the meetings. The minutes of the meeting were accurately recorded by the Station House Officer and copy forwarded to Officers up to the District Superintendent of Police. The Sub Divisional Police Officer mandatorily attended this meeting at least once in a quarter and the Superintendent of Police once in a year.

In the working of the committee, it was expected that decisions were arrived at in an atmosphere of consensus and cordiality. Ordinarily, decisions were taken either unanimously or with the support of overwhelming majority. Where there was opposition from more than 20% of the members, such decisions were either avoided or deferred for evolving better consensus.

In the social, cultural and political context of Kerala, constitution of such committees for implementation of Community Policing and meetings of the committee, which members of the public could also attend, was an effective mechanism for consultation with the people for identifying the policing issues and for jointly exploring solutions. The high level of literacy and better political and social awareness of the people were conditions which were favourable for meaningful participation of members of the community in the meetings. The police officers present in the meetings with the community were specially trained on the principles and practices of Community

Policing. They were expected to encourage the people to come out freely with their concerns and ideas pertaining to promotion of peace and order in the neighbourhood. All the stakeholders got adequate opportunity for projecting their problems and to voice their expectations from the police.

The Community Policing committee (Janamaithri Suraksha Samithi or JMSP Committee) in its public meetings identified the policing issues of the area, prioritised problems and identified solutions. Consensus was reached on implementation of related schemes in the community. Depending on the specific features of crime disorder in each locality, some of the programs which evolved were as follows:

1) Joint patrolling along with local members of the community, particularly during night,
2) Programs for identification of strangers and new residents,
3) Programs for ensuring safety of Senior Citizens,
4) Programs for establishing counselling centres for dealing with family problems, alcoholism, etc,
5) Programs for enhancing road safety by associating NGOs,
6) Schemes for creating a safe and healthy environment in and around schools and other educational institutions,
7) Programs for creating awareness among vulnerable groups, such as women, weaker sections, etc. on their constitutional and legal rights and mechanisms for enforcements,

After identifying specific programs for the community, sub committees were constituted for implementation of the same.

Thus, through these public meetings conducted as part of the program for implementing Community Policing initiatives, held regularly under the auspices of the Station House Officer, an effective forum was created where socially conscious and responsible citizens and police officers who were positively motivated and oriented towards serving the society were brought together. The synergy that

arose out of this police-public partnership itself acted as an effective deterrent against anti-social and criminal elements. As a result, it was expected that when the committee for implementation of the Community Policing project worked effectively, the impact created by it was far greater than the sum total of the output generated by the specific programs evolved and implemented separately.

Beat Patrolling in JSP

Beat Patrolling was the most crucial activity in the implementation of the Community Policing Project in Kerala. If Beat Patrolling activity failed, then every other activity for implementing the project was bound to fail. Most other activities towards implementation were either directly or indirectly connected with the activities of the Beat Officer. The professional competence, dedication and commitment of the Beat Officer mattered a lot. Selection of the Beat Officer was undertaken by exercising, a very high degree of care art:' caution. Police personnel with any record of involvement in any crime or serious official misconduct were completely excluded. Those personnel with known tendencies towards undesirable traits of highhanded behaviour, corrupt practices, drinking habits while on duty, etc. were also kept out. Police personnel who were generally enthusiastic in helping the people in need, good in communicating with people, good in professional competence, having_ required knowledge of law and procedure, crime and criminals, etc. were selected. Beat Officers were imparted intensive training on various aspects of Community Policing including development of professional skills and behavioural competencies.

Geographic area of a Police Station, selected for implementation of the project was divided into convenient number of beats. The major criterion adopted for this division was to limit the number of houses in one Beat area to be approximately 1000. The number of houses may increase, in densely populated areas.

An Officer of the rank of Assistant Sub Inspector or Head Constable was made the Beat in-charge. He would be assisted by another officer. Women Police Officers were also deployed for this purpose. The Beat Officers were expected to move around the Beat

area and familiarize with the jurisdiction thoroughly. He would maintain a diary in which all essential details of the Beat including major junctions, establishments, etc. were recorded. The Beat Officer was expected to meet the residents in their houses and familiarize with them. Particular care and caution was exercised during house visits, especially in the initial stages, to ensure that the visits were not perceived as unwanted intrusion into the privacy of the inmates. He was also to identify a public place within the Beat area where he could meet the people, receive their complaints and suggestions on matters of relevance.

The Beat Officers were expected to meet the people in uniform and to maintain a Beat Register in which details of daily activities were accurately recorded. While vehicles could be used for covering relatively long distances in an area, as far as possible the Beat Officer performed foot patrols in the Beat area in uniform. The Beat Officer in uniform conducted himself as a model citizen constantly at the service of the people in the area.

The Beat Officers were thus able to inspire confidence among the people over a period of time. The public became comfortable in bringing to the notice of the Beat Officer any policing issue to which the beat officer was able to respond quickly and effectively with the help of the Station House Officer and other officers. Experience showed that people tend to bring to the notice of the Beat Officer even those issues which were not directly related to the police. Even in such instances, the Police response remained positive and helpful in solving the problem for the community, to the extent possible.

Beat Officers were trained in such a way that they were able to work with the people instantly keeping in mind the requirements of preventing crime and promoting peace d order in the neighbourhood. He also ensured that the public meetings held in the beat area on Community Policing was well attended and actively participated by the people. He was trained to possess skills to identify policing problems, the problems of particularly vulnerable groups, etc. As such, role of beat officers in Community Policing was paramount.

Success of Community Policing venture- Janamaithri Suraksha Project (JSP) in Kerala

Janamaithri Suraksha Project, the Community Policing initiative of Kerala has been a huge success and the project which kick started in 20 police stations in 2008 was executed in 267 police stations in 2014 and presently, it is proposed to be implemented in all the police stations (460) in Kerala. Successful implementation of the project throughout the years has greatly bridged the gap between the public and the police and the project was monumental in working out solutions to the myriad issues of the society. Be it in combating drug abuse, raising the status of women and children, creating awareness in gender sensitivity, raising traffic awareness, addressing the issues of tribal population; the activities of the community policing initiatives have been in tune with the needs of the society and have yielded qualitative results. Our Community Policing project has indeed metamorphosed into a multi-dimensional agent for change.

A number of studies were conducted on the influence and resultant outcome of JMSP on communities since its inception in the year 2008. The effectiveness of the project was analysed in terms of extent of overall reach, success of the activities in relation to the minimization of social problems and the change in attitude of community members towards the police and their activities. The perceptions of the community members regarding their sense of security, their accessibility to police services, and the behaviour of individual police officers were taken as indicators of Quality of Service Delivery. Besides, attitude of community members, especially the weaker sections of the society like women were considered as indicators of change in service quality, apart from the community members' perception about the helpfulness and performance of police.

In an independent impact assessment study conducted by Sociology students of Feroke College, Calicut, in 2009, a random survey of a sample of 1101 people in Chemmangad and Panniyankara police stations was carried out. Of the sample surveyed, 85.8% knew about the project; 80% was through direct contact. For a government programme on every count, this was a laudable achievement in the beginning. Majority of the people perceived police as courteous. Significantly, they gave a rating of over 4/7 the police on performance. Keeping in mind the general negative mind-set that

people had of the police, such a good rating was clearly an indicator of the strides the project had made.

Impact studies done in 2011 in 10 Janamaithri police stations by Rajagiri College of Social Sciences, Kalamasseri, Kerala, indicated that the female population was showing an increased trust in the police and that the public displayed a clear-cut transition in their perception on the working of the police. JMSP has resulted in creating a community with increased presence of police. It clearly enhanced the feeling of safety/security in the communities with an improved family atmosphere and a positive attitude towards the police and their activities. JMSP thus played a vital role in creating awareness among the public against social evils and it brought about considerable decrease in sexual harassment at public places, robbery/snatching, goonda menaces, brewing of illicit liquor etc. in the project areas.

It was at this juncture, with the rapid growth and popularity of JMSP, Kerala government in the year 2013 decided to widen the JMSP project into tribal areas too. Even after 60 years of formation of the state, tribal communities of Kerala remained to be marginalised and deprived. The policies and schemes implemented by successive governments at the central and the state fail to reach them and their customary rights over natural resources such as forests, their cultural identity and traditional knowledge including intellectual property rights, their civil, political, social, economic and educational rights were at stake due to the interplay of various factors and forces. Extremist groups including Maoists began to capitalise on their frustration and to protect and uplift the tribal people in the state, Kerala Government turned to the aid of JMSP. In 2013, 50 tribal police stations were converted to Janamaithri police stations and within a short period, the project successfully implemented many developmental schemes in the tribal colonies. In 2014, the Research Institute of Rajagiri College of Social Sciences, Kalamassery, Kochi, Kerala conducted a study on the role of Janamaithri Police in preventing crimes in tribal colonies and it was revealed that the project made significant changes on the tribal communities. The study revealed that the activities organised by JMSP in the tribal areas helped in preventing anti-social activities, controlling alcoholism,

drug and tobacco related problems, bringing improvement in police-people relationship, reducing crime and complaints, fostering education among tribal population, improving medical facilities, hygiene etc. and so on. The role of beat officers was found exemplary in co-ordinating other stakeholder departments in attending to the issues faced by the tribes for suitable workable solutions.

Another impact study undertaken by KPMG in 2015 on the Community Policing initiative of Kerala has revealed that JMSP has been able to achieve the below objectives a large extent:

1) know each and every family and business establishment in the locality and ensure co-operation for policing,
2) community co-operating in all activities where there is no contradiction between
3) the communities' need for security and the polices' responsibility to provide it,
4) people and policing mutually interacted as individuals--not merely as witnesses, victims and accused,
5) developed a positive attitude to the law within the community and to recognise that compliance with the law is the need of the people and not of the police,
6) built the conditions conducive for the flow of information from public to police,
7) supported in the reduction of corruption levels in the society,
8) detected minor crimes thereby reducing the chances of occurrence of major crimes,
9) ensured that the types of crimes that remained unreported earlier are reported to the police,
10) increased the confidence of the public in the police,
11) people got accustomed to the idea of joint activity to enhance security,
12) enabled the community to identify potential and actual security threats and to make note of unusual occurrences which can endanger one or all,

13) facilitated (indirectly) better investigation of cases by better co-operation with the investigating officer.

Over a period of 8 years, the Community Policing initiative of Kerala, JMSP has effectively penetrated into the communities where the project has been implemented. The journey of JMSP with the intent of creating ripples in the ocean of police-people partnership has now reached a commendable distance. The momentum needs to be maintained with continuous activities and monitoring and increased participation of community members. It has to borne in mind that an effective and sustained social change would require years to accomplish.

To aid in the publicity of JMSP and to attract more and more people into its ambit, extensive use of social and print media is also relied upon. The web site www.democraticpolicing disseminates information to the public on JMSP. There is also a Facebook page www.facebook.com/Janamaithri.kerala for the pubic to comment on Ls Janamaithri activities in general. In addition, plenty of pamphlets and booklets and other printed materials are circulated in each beat area providing information on various projects of JMSP, police telephone numbers, services available with the police etc. A docu-drama used to be staged for the purpose of spreading the message and mission of the project among the general public. Presently, the drama team of JMSP has been conducting short street dramas among the public and in schools to create awareness in the general public and students against the use drugs, liquor etc., raising traffic awareness etc. Along with these, many audio-visual clippings, short films, and sponsored programmes are aired through radio and television to maximize reaching out to the public. Besides, JMSP undertakes publications of a journal of international accolade viz. 'Janamaithri', A Journal of' Democratic Policing', which has ISSN certification (serial no: ISSN 2394-8078). It includes articles on various contemporary policing topics by renowned authors around the world. The project also brings out a bimonthly magazine `Janamaithri Varthapathrika' in local language for circulation among the public.

Conclusion

Today, Community Policing around the globe takes many forms and serves many purposes. Departments that have implemented community policing have had the courage to change their traditional service delivery methods. All over the world, democratic governments have accepted and successfully implemented Community Policing concept with palpable results. The policing agencies have been able to establish closer ties with its citizens through this, and it has equipped them with the capability to identify threats within the community and outside the community that create fear and social disorder. Though criticisms exist, the ideology put into motion has helped in reaping benefits and achievements by being able to serve the public better, by being able to fulfil the task 'To Protect, Serve and Transform' which forms the core of any policing. Further, it has gained us legitimacy and confidence in the eyes of public. Though the challenges are many and are evolving rapidly, Community Policing is the window through which we can empower our citizens to become responsible and accountable law abiding citizens. It is the portal to reach out to the public in attempts towards transforming Kerala into a welfare state where crime is negligible and where (Jadhav, V., 2016), 'police are the public and the public are the police.'

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3

Hostile Witness: Legal and Judicial Contours in Indian Laws

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Abstract

Witness is an indispensable aid in the justice dispensation system in any civilized society. A witness is a person who testifies under oath before a court of law. It is, however, a reality that cooperation and support from public and independent witnesses are hardly available. Very few independent witnesses come forward voluntarily to assist the police in investigations. And the Court is at liberty to test the capacity of a witness to depose by putting proper questions. The paper examined the legal and judicial contours relating to hostile witnesses in Indian Laws to understand the reasons of the witnesses turning hostile in Indian Courts. A hostile witness is not always a dishonest or an unreliable witness.

Keywords

Witness, court of law, justice, examine, evidence

Witness is an indispensable aid in the justice dispensation system in any civilized society. Bentham said, "Witnesses are the eyes and ears of justice. That is why the citizens (The Criminal Procedure Code, 1973, Act No 2 of 1974) were made legally and morally liable to give information to police about crime and criminals as per section 39 of the Criminal Procedure Code 1973 (called Cr.PC hereafter). It is, however, a reality that cooperation and support from

public and independent witnesses are hardly available. Very few independent witnesses come forward voluntarily to assist the police in investigations. It would be imperative to examine the legal and judicial contours relating to hostile witnesses in Indian Laws.

A witness is a person who testifies under oath before a court of law. As per Section 118 of the Indian Evidence Act (Act No. 1 of 1872)all persons are competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, because of tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind (Chakrabarti). The competency of a person to testify as a witness is a condition precedent to the administration to him of an oath or affirmation and is a question distinct from his credibility when he had been sworn or affirmed. The Court is at liberty to test the capacity of a witness to depose by putting proper questions. Even lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding (Explanation to Section 118, The Indian Act, 1872)the questions put to him and giving rational answers to them (Importance of a witness law essays, 2013). The question whether a witness has intelligence enough to understand the import and significance of questions or to give rational answers is not the same as the competency to testify. The Court has discretion to form its own opinion whether a child witness has sufficient understanding to be qualified as a witness (AIR 1959 Cal 306).

The witness performs an important public duty of assisting the court in deciding on the guilt or otherwise of the accused in the case. He sacrifices his time and takes the trouble to travel all the way to the court to give evidence. He submits himself to cross-examination and cannot refuse to answer questions on the ground that the answer will in-criminate him. He incurs the displeasure of persons against whom he gives evidence. He takes all this trouble and risk not for any personal benefit but to advance the cause of justice (A committee on Reforms of Criminal Justice System, 2003). The witness should, therefore, be treated with great respect and consideration as a guest of honour (Criminal Jusice Reports).

The Supreme Court in Makham Lal Bengal (AIR 2001) has very rightly observed that witnesses attend the court to discharge the sacred duty of rendering aid to justice. They are entitled to be treated with respect and it is the judge who has to see that they are in fact confident in the court. Commenting on the harassment of witnesses in the Court the Supreme Court further observed that the examination of the witnesses should not be protracted and they should not feel harassed. The cross examiner must not be allowed to bully or take unfair advantage of the witness.

Hostile Witness

A witness has the first hand knowledge about the matter relevant to the case. Witnesses give evidence in the criminal courts after they are administered oath or affirmation under The Oaths Act, 1969 (Act No. 44 of 1969). Section 8 of the Oaths Act provides that the witness is legally bound to state the truth on the subject. The sanction behind the oath is supposed to be the fear of God and the fear of eventual punishment by God, the supernatural dispenser of justice (Criminal Jusice Reports). An expert witness testifies based upon the qualification or expertise in his filed. A hostile witness is one who retracts from his statement given to police during investigation, at the time of deposition on oath before the Court of law.

It is a ground reality that witnesses are turning hostile with predictable regularity in cases involving heinous crimes, dreaded criminals and high profile personalities, for various reasons. The term 'hostile', 'adverse' or 'unfavourable witness' is not defined in the IEA. The concept however, is known in English law. Under the common law, a hostile witness is described as one who is not desirous of telling the truth at the instance of the party calling him (Hostile Witnesses - a Menace to the Criminal Justice Administration). In a criminal trial the testimony of the hostile witness cannot be treated as washed off the record altogether. It is for the court to consider in each case whether as a result of such cross-examination and contradiction the witness stands discredited or can still be believed in regard to any part of his testimony (Hostile Witness:Emerging Issues and Challenges, 2014). A witness is not necessarily hostile if in

speaking the truth as he knows and sees it, his testimony happens to go against the party calling him. That is why the (Desmukh).

Section 154 of the IEA provides that a party can with the permissions of the Court, cross-examine his own witness in the same way as the adverse party. Ordinarily, a party calling his witness is not allowed to cross examine his witness but this ordinary rule is relaxed in Section 154 in case of a hostile witness. The purpose of such relaxation can only be to find out the truth. But that is far from saying that a witness is hostile whether his testimony is such that it does not support the case of the party calling him. Such a view would seriously undermine the independence, integrity and dignity of a witness in a Court of law (Tulsiram v. Pal Ltd. AIR 1953 Cal 160.). The Proper inference to be drawn from contradictions going to the whole texture of the story is not that the witness is hostile to this side or that, but that the witness is one who ought not to be believed unless supported by other satisfactory evidence (Kalachnd v. R., 13 CAL 53)

To understand the meaning of hostile witness, we have to understand the process by which a witness becomes "hostile". Chapter XII of the Cr.PC deals with the police powers to investigate. Section 161(3) of the Cr.PC vests in police officers the power to record statement of witnesses. However, these statements are not admissible in court by virtue of Section 162(1) Cr.PC. The aim of section 162(1) is to protect accused persons from being prejudiced by the statements made to police officers who may coerce the witnesses. So, what happens is that during the trial the witness has to restate what he said to the police. Here, the statements recorded by the police constitute a reference to which the veracity of the witness can be tested. If the witness deviate from his/her earlier statement written by police he/she may have turned hostile. In this way, the statement written by police under section 161 Cr.PC becomes a reference mark. In a country like India, where police is infamous for recording statements u/s 161 of Cr.PC untruthfully to prove the prosecution story, making statement u/s 161 Cr.PC a reference mark to test the veracity of the witness would be a very dangerous proposition.

In adversarial system of Criminal Justice so many ground realities are to be looked into in the context of hostile witness.

Sometimes, a party may call a witness that is either unwilling or reluctant to testify. If such a witness gives evading answers or treats the attorney of the party who had called the witness with contempt, the attorney takes no time to declare the witness hostile. It is not correct understanding of the concept of a hostile witness. Sometimes, witnesses are reluctant to speak in the intimidating environment of courtroom. Many a times, police does not record the statement of witness under section 161 Cr.PC truthfully. The actual statement given by the witness is distorted, modified and doctored by the investigating officers to suit to the story of the prosecution cases, even without the knowledge of the maker of the statement. The statement u/s 161 Cr.PC is doctored intentionally and, quite often than not, is not true account of what the witness has stated before the Investigating Officer. In this situation, contradictions in the statement of the witness recorded by police during investigation and the deposition of the witness before the court during trial are bound to occur. Making such contradictions the basis for declaring a witness hostile by the prosecution does not seem proper. The accused party is generally economically strong and socially influential. The prosecution witnesses face threats of various kinds, including that of physical elimination, and may be coerced not to dispose against the accused persons. Such witnesses are vulnerable and often turn hostile in the court of law due to fear for life or due to some other pressure. Another major reason of witness turning hostile is protracted trials. The working of judicial process is very slow. Several dates are fixed for examination of witnesses (Kejriwal). It is a fact that several summoned witnesses go back from Court unexamined. At times, this frustration takes its toll, and the witness may decide to turn hostile to get rid of the harassment (Hostile Witness:Emerging Issues and Challenges, 2014) (Shaikh).

Concept of Perjury Laws in India

There is a statutory sanction against the witnesses making false statements in the Court. Perjury is a penal offence (Act No. 45 of 1860) under sections (Criminal Jusice Reports)193 to 195 of the Indian Penal Code (called IPC hereafter) for which adequate punishment is prescribed (Importance of a witness law essays, 2013). Section 195(1) (b) of the Cr.PC provides that no court shall take

cognizance *inter-alia* of the offence of perjury under sections 193 to 195 except on the complaint in writing of that court or of the court to which that court is subordinate. A witness or any other person on his behalf may also file complaint in relation to an offence of Perjury under section 195A of IPC (New Section added in Indian Penal Code by Cr.PC Amendment Act 5 of 2009). (Shaikh) of the Cr.PC prescribes the procedure to be followed for making a complaint contemplated by section 195 IPC. It requires the Court to hold a preliminary enquiry to record a finding that it is expedient in the interest of justice that an enquiry should be made into any offence referred to in section 195(1) (b) IPC. Thereafter, it has to make a complaint in writing and send it to the Magistrate Ist Class having jurisdiction (Importance of a witness law essays, 2013). The order under section 340 Cr.PC is appealable under section 341 of the Cr.PC. Section 343 Cr.PC prescribes the procedure to be followed in dealing with the case of perjury (Criminal Jusice Reports). "Section 344 however prescribes an alternate summary procedure. It provides that if the court of sessions or magistrate Ist Class at any time of delivery of judgment in the case expresses an opinion that the witness appearing in such proceeding had knowingly or wilfully given false evidence or fabricated false evidence for use in the proceeding, the court may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily, take cognizance after giving reasonable opportunity of showing cause, try such offender summarily and sentence him to imprisonment which may extend up to 3 months or to fine up to Rs. 500/- or with both (Criminal Jusice Reports)". It is a fact that this provision is rarely resorted to. The court's response to the serious problem of perjury is rather, one of utter indifference. Moreover the sentence prescribed for perjury is quite lenient. As the menace of perjury is shaking the very foundation of the criminal justice system, it is necessary to curb this menace (A committee on Reforms of Criminal Justice System, 2003) and the sentence prescribed should be enhanced (Importance of a witness law essays, 2013).

Judicial Appreciation of the Concept of Hostile Witnesses

In a number of decisions, the Supreme Court has stated that because a witness was declared hostile his entire evidence should not

be excluded or rendered unworthy of consideration. A Bench comprising Mr. Justice K.T. Thomas and Mr. Justice R.P. Sethi observed, “There appears to be a misconception regarding the effect of the testimony of a witness declared hostile.” (SC ruling on hostile witness, 2000)The Bench reiterated the position that “by giving permission to cross examine nothing adverse to the credit of the witness is decided and the witness does not become unreliable only by his declaration as hostile”. The court further said that in a criminal case where a prosecution witness was cross examined and contradicted with the leave of the court by the party calling him for evidence, could not as a matter of general rule, be treated as washed off the record altogether. It is for the court of fact to consider in each case whether as a result of such cross examination and contradiction the witness stands discredited or can still be believed in regard (Gura Singh v State of Rajasthan, AIR 2001 (SC 330))of any part of his testimony (Hostile Witness:Emerging Issues and Challenges, 2014). Witness allowed to be cross-examined under Section 154 cannot be dismissed as person giving false evidence (AIR 1966 Mys 248 (in re Saibanna)). Hostile witness can corroborate (Babu Lodhi v state of UP AIR 1987 SC 1268), partly. Portion of the testimony of hostile witness corroborated by other evidence can be relied upon (Keshoram Bora v State of Assam, AIR 1978 SC 1096). Evidence of a witness cannot be discarded merely because he is declared hostile (Ram Swaroop v state of Rajasthan, AIR, 2004 SC 2943). (Placeholder1)Entire evidence of a hostile witness need not be discarded and reliance as any part of the statement of such a witness by both the parties (Sat Paul v Delhi Administration, AIR 1976 SC 294) is permissible (Hostile Witness:Emerging Issues and Challenges, 2014). The mere fact that a witness is declared hostile by the party calling him and allowed to be cross-examined does not make him an unreliable witness (Rabindra Kumar Dey v State of Orissa, AIR 1977 SC 170). There is no legal bar to base conviction on the testimony of hostile witness if corroborated by other reliable evidence (Pandappa Hanumappa Hanamar v State of Karnataka AIR 1997 SC 3663). Evidence of hostile witness does not get wiped out into (R. Parkash v State of Karnataka, AIR 2004 SC 1812). Evidence of hostile witness can be relied upon to the extent it corroborates the prosecution version (Balram Prasad Agrawal v State of Bihar, AIR 1997 SC 1830). Merely because a witness turned hostile, his/her evidence

cannot be discarded (Katar Singh v State of Delhi Administration AIR 1988 SC 1883). Hostile witness can not dilute the prosecution case if, otherwise credible, corroborated and without any intrinsic infirmly (Daryao Singh v State of M.P. (1991)2 SCC 588). Mere witness turning hostile is no general grounds for acquittal. It is enough to peruse the statements of all prosecution witnesses and ascertain whether their testimony inspire confidence for holding the accused guilty (Section 113 A). The same ratio has been decided in several other cases also (Bhola Ram Kushwaha v State of MP, AIR 2001 SC 229. Lilla Sriniwas Rao v State of AP AIR 2004 SC 1720, State of Rajasthan v Teg Bahadur (2004) 13 SCC 300., Santosh Kumar v State of M.P. AIR 2006 SC 3098).

The circumstances in which a witness may be cross-examined by the party calling him are not laid down in Section 154 which leaves the matter entirely to the discretion of the Court and there is no legal objection to such permission being freely granted. The mischief begins when the grant of permission itself is considered to be equivalent to an adjudication or to an expression of opinion by the Court adverse to the veracity of the witness instead of being treated merely as a permission to test veracity of a witness, a permission which can hardly be refused when any witness makes an unexpected statement adverse to the case of the prosecution (Sachidanand v. R., AIR 1933 Pat 488). Even if a witness is declared hostile and is cross-examined under Section 154 IEA, the value of his evidence would depend upon all the circumstances and should not merely because of the cross-emanation, become suspect (AIR 1964 M.P. 31 (In re Kalusingh Motisingh)). It is not correct to say that when a witness is cross-examined by the party calling him (Hostile Witness:Emerging Issues and Challenges, 2014), his evidence cannot be believed in part and disbelieved in part but must be excluded from consideration altogether. The correct rule is that either side may rely upon his evidence and that the whole of the evidence so far as it affects both parties favorably or unfavorably must be considered for what it is worth (AIR 1959 Ori 19). It merely amounts to a declaration by the party that the witness is adverse or unfriendly and not that he is untruthful. Either party may rely on the evidence of such a witness. The Court can come to a conclusion after considering the whole of his evidence (AIR 1959 Pat 66, AIR 1933 Pat 517).

Conclusion

Witnesses are friends of the courts and their safety, security and dignity need to be upheld. It is important to understand the reasons why witnesses turn hostile in Indian Courts. A hostile witness is not always a dishonest or an unreliable witness. It is not safe to presume the statement recorded by police u/s 161 Cr.PC as reference point to declare a witness hostile. The concept of hostile witness in Indian laws, therefore, should be understood in the limited context of Section 154 IEA and not beyond it. It is neither safe nor correct appreciation of law to prosecute a witness declared hostile by party calling him without the leave of the court.

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4
Exercise of Police Discretion within Criminal Procedure

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Abstract

The existence of an efficient police system imparts a huge sense of security to society at large. The reason for, this is that it is the police and not any other state agency, which is approached in the event of serious, criminal emergencies. To this extent the role of the police seems to be paramount in criminal procedure. The police is not an ordinary state agency whose scope of activities is routine like and foreseeable and therefore can easily be circumscribed by a statute book. Its activities are diverse and often unforeseeable legislators. In such a situation it is mandatory to accord to them wide discretionary powers. The other side of the argument pertains to the abuse of these same discretionary powers. The paper is an attempt to understand the various types of discretionary powers vested by police and its significance in handling investigation and crime.

Keywords

Arrest, police, discretionary powers, investigation, seizure

The police are an integral arm of any state agency. In any society or country, mere existence of laws can hardly be said to be enough, one needs a body, which will enforce these laws. The police forms an essential part of this law enforcement scheme. In the field of

criminal law, the scope and functions of the police are vast. In a field as important as criminal law, the significance of the police can hardly be overestimated. Indeed the idealistic conception that we have is of the police as the watchdogs of society. The existence of an efficient police system imparts a huge sense of security to society at large. The reason for, this is that it is the police and not any other state agency, which is approached in the event of serious, criminal emergencies. To this extent the role of the police seems to be paramount in criminal procedure. The police also play a major if not supreme role in the field of criminal investigation. In fact it is that agency of the state, which plays a manifestly active role in the investigation of crime. In this regard it draws several of its powers from the Code of Criminal Procedure (Act II of 1974). We are indeed fortunate to have a well codified body of criminal laws and procedures.

Discretion of Police

The discretionary power of the police is an issue, which seems to open a Pandora's box in criminal procedure. One must realize that there are two viewpoints to this matter, both of which conflict and contradict each other severely. Firstly we must understand that certain discretionary powers must be vested upon the police. Taking into consideration the diverse roles, which the police are called upon to play, and the emergent situations in which it may find itself, it is impossible to restrict its options completely. To give it no discretion of action would effectively imply, asking it to function with its hands tied behind its back. The police is not an ordinary state agency whose scope of activities is routine like and foreseeable and therefore can easily be circumscribed by a statute book. Its activities are diverse and often unforeseeable legislators. In such a situation it is mandatory to accord to them wide discretionary powers. The other side of the argument pertains to the abuse of these same discretionary powers. Through recent times, the police has gained an image of being a draconian body which consistently violates human rights, by abuse of its discretionary powers. To a certain extent the police itself is to blame, yet it cannot be denied that the media has played a large role in creating and maintaining this image. It is true that Indian Criminal law does have provisions to prevent illegal abuse of power. E.g. Corrupt or malicious arrest is punishable under Section 220 of

the IPC. Yet the fact remains that instances of abuse of police discretion continues to loom large over our criminal procedure.

Definitions

Having thus briefly introduced the debate with regard to the discretionary powers of the police, it becomes essential to define certain terms in their legal perspective. Although most terms have been defined in the Cr.P.C., certain terms have been given judicial interpretation and should be understood accordingly:

1) Police Officer - The word 'police officer', not -being defined in the Code, has been interpreted to refer to a member of the Indian Police Act, 1861.[2] When a Police officer is placed in charge of a police station, he is referred to in the Code as an 'officer in charge of a police station' Sec.2 (o), and vested with additional powers.
2) Arrest - As Sec.46 (1) of the Cr.P.C. says, an arrest means the taking of a person into custody so that he may be held to answer for a crime, this is affected by actual restraint or submission to custody. If the arrest is effected without due compliance with the provisions of the Code or other relevant law, it would amount to wrongful confinement (Sec.342, IPC)

Credible Information, Reasonable Suspicion

These would confer a wide discretion upon police officers and must therefore be strictly construed. These limitations have been imposed to prevent abuse of power. What is 'credible' information or 'reasonable' suspicion must, of course depend upon the circumstances of each case, but there must be definite facts or averments, as distinguished from vague surmise or personal feelings. The materials before the police officer must be sufficient to cause a bonafide belief that an offence has been committed or is about to be committed (Criminal laws and constitution of Bangladesh, 2016), necessitating the arrest of the person concerned.

Having thus introduced the project report, it would be pertinent to proceed to the substantive body of the draft.

Police Discretion to Arrest

Since the project deals specifically with the Code of Criminal Procedure, it is of extreme importance to know the relevant provisions of the Code which vest discretionary powers on the Police force with regard to Arrest, Search and Seizure. Further one must know the circumstances in which these powers may be exercised.

Arrest

"Arrest means apprehension of a person by (Athwani, 2015) legal authority resulting in deprivation of his liberty. It must be noted that every compulsion or physical restraint is not arrest but when the restraint is total and deprivation of liberty is complete, that would amount to arrest".

Arrest of a person may be necessary in the following circumstances:

1) For securing attendance of an accused at trial- When a person is to be tried on the charge of some crime, his attendance at the time of trial becomes necessary. If his attendance is not likely to be ensured by issuing a notice or summons to him, his arrest and detention is the only effective method of securing his presence at the trial.

2) As a preventive or precautionary measure- if there is imminent danger of the commission of a serious crime (cognizable offence), arrest of the person intending to commit such a crime may become necessary as a preventive measure. There may be other circumstances where it is necessary as a precautionary measure to arrest a habitual offender or an ex-convict, or a person found under suspicious circumstances (Athwani, 2015).

3) For obtaining correct name and address- Where a person, on being, asked by a police officer, refuses to give his name and address, then under certain circumstances, it would be up to the police to arrest

such a with a view to ascertain his correct name and person address.

4) For removing obstruction in the execution of his duty

5) For retaking a person escaped from lawful custody

Decision to Arrest

We now know the circumstances in which arrest of a person is essential or at least desirable. "The determination to the extent of such circumstances and due regard to the liberty of the consequent decision to arrest should be individual and in the interests of the society, a judicial officer is best suited to decide such issues with a fair measure of Judicial impartiality and detachment. Therefore, basically it is for a magistrate to make an arrest decision on the information generally obtained from the police or the complainant. If the magistrate makes a decision to arrest he would issue a warrant of arrest. A Warrant of arrest is a written order signed, sealed and issued by a magistrate and sent to a police officer or some other person specially named and commanding him to arrest the body of the accused person named in it" (Athwani, 2015).

"It would also be seen that there might be circumstances where prompt and immediate arrest is needed and there is no time to approach a magistrate and obtain a warrant from him. For instance, in a case where a dangerous person has perpetrated a serious crime and there is every chance that the person may abscond unless immediately arrested, it would be, certainly unwise to insist on the arrest being made only after obtaining a warrant from a magistrate" (Athwani, 2015) - There may be occasions where preventive action may be necessary in order to subvert the danger of sudden outbreak of crime, and immediate arrest of the trouble-maker may be an integral step in such preventive action (Athwani, 2015). In such cases it is the investigating agency, which has discretion to effect arrests. In exercising its discretion it may sometimes arrest some individuals whereas their co-accused are not arrested or detained. The Delhi high Court in Binoy Jacob v. CBI opined that in a

country governed by rule of law, the discretion of the investigating agency does not mean whim, fancy or wholly arbitrary exercise of discretion (Sabharwal, 1993). Thus it would be seen that the Code contemplates two types of arrests: (a) arrest made in pursuance of a warrant issued by a magistrate (b) arrest made without such a warrant but made in accordance with some legal provision permitting such an arrest (Athwani, 2015).

Arrest Without a Warrant

Section 41 of the Code of Criminal Procedure deals with arrest by the Police without a warrant. “The Section confers very wide powers on the police in order that they may act swiftly for the prevention or detection of cognizable offences without the formality and delay of having to go to a magistrate for order of arrest. Courts should therefore be particularly vigilant to see that the powers are not in any way abused or lightly used for the satisfaction of private feelings or of designing complainants” (Kumar Singh, Eakramuddin, & Khan, 2013). As observed in a case, the arrest of and detention of persons without warrant are not matters of caprice but are governed by rules and principles clearly laid down by law. To arrest persons without justification is one of the most serious encroachments upon the liberty of a subject (Kumar Singh, Eakramuddin, & Khan, 2013). “The duty of the police when they arrest without warrant is, no doubt to be quick to see the possibility of crime, but equally they ought to be anxious to avoid mistaking the innocent for the guilty. Where there is no danger of the person who has aroused their suspicion, that he probably is an offender attempting to escape they should make all presently possible enquiries from persons present or immediately accessible who are likely to be able to answer their questions forthwith” (Kumar Singh, Eakramuddin, & Khan, 2013). The police are required to act on the assumption that the prima facie suspicion may be ill founded." When a constable has taken into custody a person reasonably suspected of committing a crime, it is his duty to act reasonably. Whether he acted reasonably is a question for the Judge, not the jury (Kumar Singh, Eakramuddin, & Khan, 2013).

The power is discretionary and must not be used in simple bailable offences unless there is reasonable ground for absconding. When there is 'reasonable suspicion' or `credible information' of the

commission of a serious offence or such an offence is about to be committed, arrest should no doubt be made. In ordinary cases the complainant should be directed to go to a Magistrate for a warrant. The Police officer may without arresting keep watch, and then arrest, if subsequent events justify such action. But, no restraint can be lawfully exercised over a person so long as he is not arrested. “The police cannot pursue their investigations by defying the provisions under the colourable pretention that no actual arrest has been made, when (Sarshar, 2009) to all intents and purposes a man has been in their custody or in detention”"? The idea of free detention is unknown to law.

Need for Circumspection

In exercising power of arrest it is necessary to be cautious and circumspect. The limitation is the requirement of reasonability and credibility to prevent the misuse of powers. There can be no legal arrest if there is no information or reasonable suspicion that the person had been concerned in a cognizable offence.I8 Even if in any case there is a power of arrest without a warrant, that power is to be exercised in such cases where the obtaining of a warrant from a Magistrate would invoke unnecessary delay (Kumar Singh, Eakramuddin, & Khan, 2013) and defeat the purpose.I9 Wilful excess or unjustifiable use of powers under Sec.41 is punishable (Sec.220 IPC).

Reasonable Suspicion

It is no "reasonable suspicion" merely because a police officer has been informed by another police officer that the latter thinks there is information of commission of a cognizable offence. Credible and reasonable must have reference to the mind of the person receiving the information. It must be based on definite facts rather than mere suspicions.

Arrest by Police Officer In-Charge of a Police Station

While S. 41(1) empowers any police officer to arrest a person without warrant under the circumstances mentioned therein, sub-sec. (2) of S. 41 permits only a police officer in charge of a police station to arrest without warrant the persons specified in Sections 109 and

110. Persons specified in S. 109 are those found taking precautions to conceal their presence with a view to commit cognizable offences: and persons specified in S.110 are habitual robbers thieves (Athwani, 2015), house breakers, forgers, dealers in stolen property, kidnappers, abductors, extortionists, cheats, desperate and dangerous persons etc. This long list of persons would show the wide sweep of the powers given to a police officer in charge of a police station to arrest without warrant, persons within his local jurisdiction. These powers would enable the station-house officer to take immediate steps against dangerous characters found within his jurisdiction before there is time to go to a magistrate and seek preventive orders against such characters under Sec.111. The words "in like manner" refer to sub-sec. (1) of Sec.41 and arm the station-house officer to arrest without an order from a magistrate (Athwani, 2015) and without a warrant, any person specified in Sections 109-110.

SECTION 42- if a person commits a non-cognizable offence in the presence of a police officer and refuses to give his name and address when demanded by such officer, such officer can arrest him in order to ascertain his name and residence. However, if his name and address were previously known to the police officer, he cannot be arrested and detained under this section (Athwani, 2015).

Having thus discussed at length the extent of available police discretion with regard to arrest, let us move on to the scope of police discretion with regard to search and seizure.

Police Discretion for Search & Seizure

Police discretion also extends to search and seizure, which once again form an integral part of any investigation process. It becomes necessary to accord to the police, discretionary powers in this regard so that it may deal with emergent situations at hand. Particularly where there are chances of evidence being tampered with or removed altogether.

Search

A coercive search of any place is an encroachment upon the rights of the occupant of the place. But even in a free society like ours, such encroachments will have to be tolerated in the larger interests of the society. The provisions in the Code strive to strike a balance between the interests of the individual and of the society by providing certain safeguards in favor of the individual. It has been observed, "An Indian citizen's house, it must always be remembered, is his-castle, because next to his personal freedom comes the freedom of his house. Just as a citizen cannot be deprived of his personal liberty except under authority of law, similarly, no officer of the State has a prerogative right to forcibly enter a citizen's house except under the authority of law..."

Search by a Police Officer During Investigation

A citizen should have in his house a full and free life undisturbed by executive action22. However, in the larger interests of the administration of justice it becomes necessary that public officers engaged in investigations and inquiries relating to offences or suspected offences should be afforded fair and reasonable facilities for searches. The decision as to whether a search of a citizen's house is essential in the larger interests of society ought to be basically a judicial decision. Therefore the duty of balancing the two conflicting considerations in diverse circumstances has been vested in the Magistrate or Court issuing search warrants under the provisions of the Code. But “Sec.165 of the Code has been enacted as an exception to this general law of searches because it is recognized that in certain exceptional emergencies it is necessary to empower responsible police officers to carry out searches without first applying to the courts for authority”. The Legislature has however attempted to restrict and limit the powers of the police under this section, and has provided the concerned citizens with safeguards in order to prevent the abuse of these powers.

SECTION 165- An analysis of Section 165 shows that:

1) The power to search a place under this section can be exercised only by a police officer in charge of a police station or other police officer (Role of police in administration of criminal justice system, 2011) authorized to

investigate into any offence and making such investigation. Such police officer may however, instead of conducting the search himself, require a subordinate officer to conduct the search in the circumstances mentioned in sub-sec. (3) and thereupon the subordinate officer shall have authority to conduct the search.

2) The search under this section must be for particular things or documents, or specified materials, necessary for the purposes of the investigation. The section does not permit a general search For instance, where the police officer searches a house for stolen articles generally and not for any articles mentioned by a complainant as having been stolen from him, the search would be considered as a general search and therefore not having legal authority under this section. The word "thing" does not include a configuration or wall, or the inspection of any place inside a house for the purposes of investigation. A promiscuous entry into houses is not permitted to an Investigating officer simply to satisfy himself as to the truth of an allegation made by a complainant or an accused person or a witness.

3) The Police officer must have reasonable grounds for believing that- a) any specific thing necessary for the purposes of the investigation may be found in the place within the limits of his police station, and b) such thing, in his opinion, cannot otherwise be obtained without undue delay i.e. in his opinion it would be too late before a search warrant is obtained from a magistrate. Where lack of time is not a consideration, search without warrant is not proper and the recovery itself would come under suspicion. The section gives power to the police officer to search without warrant if he has "reasonable grounds for believing" and not just "reasonable suspicion" as in S.41 (1). The expression "reasonable grounds for believing" is equivalent to "has reason to believe" in S.93. It means a belief based on some definite facts. This provision is intended to ensure that the searches made by the police officers are not arbitrary and are

genuinely required in cases where there is no time to approach a magistrate for a search warrant.

4) A good procedural safeguard against arbitrary searches and against general or roving searches is provided when the section insists that the police officer before proceeding to search a place must record the grounds of his belief as to the necessity of such search and must also specify in writing the things for which the search is being conducted. The recording of reasons is an important step in the matter of search and to ignore it is to ignore the material part of the provisions governing searches. The non-recording of the reasons for search would make the search illegal. An illegal search may entail punishment of the provisional officer who may be asked to pay compensation to the person whose house has been searched."

5) Sub-section (5) requires that the copies of record made under Sub sec. (1) or sub-sec. (3) shall be sent forthwith to the nearest magistrate (Role of police in administration of criminal justice system, 2011). This would ensure that these records are not conveniently fabricated after the search to enable the police to justify their conduct suitably.

6) Sub-section (2) directs that the police officer, as far as far as practicable, is to conduct the search in person. However the rule is to be interpreted reasonably. Some subordinate officer was making where a police officer remained outside the house while the search inside, the search was not held to be illegal.

Search Of Arrested Person (Sec. 51)

Though the section does not require the search to be conducted in the presence of witnesses, the rules made by the Police Act direct that the search should be made in the presence of witnesses. The witnesses should be independent and respectable. It will be seen that the power to search under S.51 is available only if the arrested person is not released on bail. After search all the articles other than necessary wearing apparel found upon the arrested person

may be seized, and it has been made obligatory to give to the arrested person a receipt showing the articles taken in possession by the police. This would ensure that the articles seized are properly accounted for. In case the arrested person is a woman only a female can make the search with strict regard to decency. But simply because there was some irregularity in making such search that in itself will not make the search-evidence inadmissible.

Seizure

Section 102 of the Code deals with the powers of a police officer to seize certain property. The provision is particularly useful where the search is under a warrant for a general search. The section has a wide sweep and is not restricted to recoveries during the search alone, nor is it confined only to cases in respect of cognizable offences. The words any offence' show unmistakably that even though there may be commission of a non-cognizable offence, a police officer may seize any property found under suspicious circumstances. As a non-cognizable offence cannot be investigated by a police officer without an order of a magistrate and as the police officer is not required to approach and inform a magistrate on the seizure of property in respect of the commission of a non-cognizable offence, it is rather difficult to understand the significance of the power of seizure of property in respect of a non-cognizable offence. Therefore the wide power given to a police officer, to seize property under this section should be availed only in those cases, where he has the power to investigate into offences conferred by the Code or by other laws. The word 'seize' has to be construed to mean taking physical possession as in case of taking actual possession of movable property. It has been held that prohibiting a bank with which an accused has an account and a locker, not to pay any amount out of the account to the accused and not to allow the accused to take away property from the locker, is not seizure under Sec.102. Nor does the police have any authority under Sec.102 to order stoppage of operation of the bank account of the accused. This question whether in exercise of powers under Sec.102 a police officer could order stoppage of operation of accounts of an accused came to be answered in the affirmative by the Supreme Court albeit contrary decisions by the High Courts of Karnataka, Allahabad, Guwahati and Delhi.

Remedies for Abuse of Police Power

Various remedial as well as preventive provisions lie in the Constitution as well as the IPC in order to restrict the abuse of discretionary powers by the Police. These are being discussed as follows:

1) Article 22, Constitution of India & Sections 56, 303 CrPC

"Clauses (1) and (2) of Article 22 confer four rights upon a person who has been arrested. Firstly, he shall not be detained in custody without being informed as soon as may be, of the grounds of his arrest" (Criminal laws and constitution of Bangladesh, 2016). If information is delayed, there must be some reasonable ground justified by the circumstances. Secondly, he shall have the right to consult and to be represented by a lawyer of his choice. This right too is not lost if he is released on bail (Bhatia). Thirdly, "every person who has been arrested has the right to be produced before the nearest Magistrate within 24 hours of his arrest. In computing this period of 24 hours, the time spent on the journey from the place of arrest to the court of the Magistrate" (Criminal laws and constitution of Bangladesh, 2016) is excluded. This requirement is dispensed with if the person arrested- is admitted to bail. Fourthly "he is not to be detained in custody beyond the said period of 24 hours without the authority of the Court" (Bhatia). Even if an accused was initially illegally detained, the detention became unlawful when subsequently he was arrested and produced before a Magistrate within 24 hours. But where the Police obtain remand orders from the magistrate or a judge without producing the arrested person before such magistrate or judge within 24 hours, Article 22(2) is violated. An under trial prisoner need not be separately arrested for every criminal case pending against him. A subsequent

lawful detention is not vitiated by the earlier illegal detention. In Joginder Kumar v. State of U.P., emphasizing that the right not to be arrested except for heinous offences and to have someone informed of the arrest and to consult privately with lawyers is inherent in Articles 21 and 22(1) of the Constitution and required to be recognized and scrupulously protected, the Court issued necessary directions for the recognition and protection of these rights. Clause (2) of Article 22 provides the next and most material safeguard that the arrested person must be produced before a magistrate within 24 hours of such arrest so that an independent authority exercising judicial powers may without delay apply its mind to his case. The CrPC contains analogous provisions in Sections 56 and 303, but the Constitution makers were anxious to make these safeguards an integral part of Fundamental Rights. Thus once it is shown that the arrests made by the police officers were illegal, it is necessary for the State to establish that at the stage of remand the magistrate directed detention in jail custody after applying his mind to all relevant maters.

2) Articles 32 & 226 Of The Constitution

"The writ of Habeas Corpus is an ancient English Writ, which evolved as an answer to illegal imprisonment and detentions by the Crown or Executive. The writ is, in form, an order issued by the High Court calling upon the person by whom a person is alleged to be kept in confinement to bring such person before the court and to let the court know on what ground the person is confined" (Writ of HabeasCorpus of Indian Constitution, 2016). "If there is no legal justification for the detention, the person is ordered to be released. However the production of the body of the person alleged to be unlawfully detained is not essential before an application for a writ of habeas corpus" (Bhagwati,

1973) can be finally heard and disposed of by the court. Kanu Sanyal v. D.M. Bhagwati J. held that the production of the body of the person alleged to be wrongfully detained is ancillary to the main purpose of the writ in securing the liberty of the subject illegally detained (Writ of HabeasCorpus of Indian Constitution, 2016). "The broad and general principles that regulate the exercise of jurisdiction to issue a writ in English Law do not require that the body of the person detained must be produced before the legality of the detention can be enquired into and determined by the court. In the United States the same practice is followed in an application for a writ of habeas corpus" (Bhagwati, 1973). Broadly speaking, a detention is not prima facie illegal if the following conditions are satisfied:

i. The detention should be in accordance with the procedure established by law (Bhatia). The expression "procedure established by law" means that there must be a valid law permitting the detention of the accused and the procedure laid down by that law should have been strictly followed. Also the procedure must be reasonable, fair and just as required by Art.21
ii. It must not infringe any of the conditions laid down in Art. 22. Thus a person who is not produced within 24 hours (excluding the time spent in journeying) of his arrest before a magistrate is entitled to be released on a writ of habeas corpus.
iii. The legislature, which enacts the law depriving a man of his personal liberty, must be empowered to make that law (Writ of HabeasCorpus of Indian Constitution, 2016) under Art. 246 relating to the distribution of legislative powers. A person is not entitled release on a petition of habeas corpus if there

is no illegal restraint (Bhatia), "The question for a habeas corpus court is whether the subject is lawfully detained. If he is, the writ cannot issue, if he is not, it must issue".

3) Section 220 IPC

The section punishes executive abuses in confining an innocent person knowing that in so doing he is acting contrary to law. The section prevents abuse of power by a person holding an office, which authorizes him to commit persons for trial or to confinement. For instance, Section 41 of the CrPC, 1973 authorizes a police officer to arrest a person without a warrant (Role of police in administration of criminal justice system, 2011) in certain cases. But the person arrested must be brought before the magistrate within 24 hours. Failure to do so without a reasonable cause will make the person liable under this section for imprisonment, which may extend to seven years, or fine, or both.

INGREDIENTS- To constitute an offence under this section the following must be proved:

i. That the accused held an office, such as Magistrate or a police officer, which gave him legal authority to confine a person
ii. That in the exercise of the authority, the accused kept that person in confinement
iii. That the accused did so corruptly and maliciously
iv. That in so doing, the accused knew that he was acting contrary to law.

Where in the exercise of an authority a person is confined wrongfully, which to his knowledge is contrary to law, this section is attracted. The keeping of a person in confinement on suspicion

by an authority, knowing that in doing so he is acting contrary to law attracts this section. It should be alleged and proved that the person in office corruptly or maliciously confined a person. The offence under this section is non-cognizable, bailable, non-compoundable and triable by a Magistrate of first class (George, r Bhardwaj, & Srivasatava, 2015).

Conclusion

Having dealt with the substantive portion of the project it becomes pertinent to restate what it originally set out to establish. It cannot be denied that immense discretionary powers have been vested upon the Police a far as arrest without a warrant is concerned as under See. 41 and Sec. 42. However the legal justification for these provisions of law must also be kept in mind before one critiques them. The fact remains that the police can invoke these powers only in certain emergent situations, where it would be completely impracticable and illogical to wait for the issuance of an arrest warrant by a magistrate. Sec.41 is very much justified by its existence and would cause no controversies, if used in the proper sense as intended by the legislators. The discretionary powers of search and seizure too are integral for an investigation process. As society becomes more and more complex, the nature of crimes too has progressed towards greater complexities. In such a situation the availability of evidence in an untampered form is of paramount importance to the success of any investigation. To do away with these powers would handicap the police almost completely in their investigative processes and the collection of evidence. Lastly, the maturity of the Indian legal system must be appreciated, for its provisions safeguarding the individual from executive excesses. Art. 22, Art. 32 etc. all of them provide liberal rights to an accused person and severely curtail the discretionary powers of the police from committing any excesses against the citizens of the State. These rights also establish the standpoint of the law, which though understands the need for police discretion, remains firm as regards their misuse. Effectively from the legal standpoint, there does not appear to be any flaw with the statutory provisions of Law in this area. The real problem arises with implementation of these laws. However it must be realized that the

police is a protective state agency. It is all well to argue for the abolition of its discretionary powers, but in reality their abolition can actually expose society to the vicissitudes of criminals, throwing open a far greater danger.

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5

Improving Organizational Commitment in the Police through Structured Human Resource Strategy

Dr Hanif Qureshi, IPS

Unless commitment is made, there are only promises and hopes...but no plans.

Peter Drucker

Abstract

In view of the fast-paced changes taking place in India, the role of the police has assumed greater importance. It is important to uphold the law without fear or favour and for this police officers must be committed to the organizational goals. This study examines the nature of organizational commitment and its antecedents. It scrutinizes the effect of organizational structure on organizational commitment. The multivariate technique of ordinary least squares regression was used to examine the effects of the four dimensions of organizational structure on organisational commitment among Haryana police officers. The four dimensions were organization support, formalization, instrumental communication, and input into decision making. It was found that these four variables had a positive and significant relationship with organizational commitment. The ways in which the police administrators and planners can work towards enhancement of organizational structure are discussed.

Suggested directions for future research are also mentioned in the light of these findings.

Keywords

Haryana, police, organizational structure, organizational commitment

The police are called upon to perform a variety of jobs which are carried out by trained personnel. Heavy investment of time and money is made to train police officers. Thus, police personnel are an expensive and an important resource for police organizations. The behaviour and skills of police officers have a great effect on the organizational performance. Specifically, it is important for police officers to be committed to the organizational goals to achieve organizational objectives.

Considering the importance of human resource management in police, it is desirable that adequate attention should be devoted to the study of practices which affect performance of police officers. According to Guest (1997), human resource strategy is intricately linked with the performance of employees in any organization. Organizational structure is an important part of the overall human resource management in an organization.

Organisational structure includes the way tasks are allocated and supervision is effected to achieve organizational goals. It is a lens through which employees look at the organization and their environment. There are very few studies which have studied the effect of organizational structure on organizational commitment especially in the police, and most of them are based on western nations. This study examines how a sound human resource strategy involving organizational structure can help improve organizational commitment among police officers in India.

Organizational commitment is generally defined as having the core elements of loyalty to and identification with the organization (i.e., pride in the organization and internalization of its goals) and a desire to belong (Mowday, Porter, & Steers, 1982). This represents a bond not only to the job or the work group but a bond to the organization. Organizational commitment has been equated to the strength of involvement in and identification with the organization.

Meyer and Allen (1991) have proposed a three-component model of organizational commitment. The first is affective commitment which reflects a desire to stay in the organization. The second component is continuance commitment which reflects the need to stay with the organization. The third component is the perceived obligation to maintain employment with the organization and may be called normative commitment.

Affective commitment is the emotional attachment to an organization. The employee enjoys the relationship with the organization and is likely to stay employed with it. She stays because she wants to stay. It is an emotion based component. For instance, if some of the best friends of an employee work in the organization or she likes the atmosphere and feels relaxed, then the employee would have a high affective commitment. The network bonds with co-workers are significant in this component of commitment. Thus, affective commitment is emotion based.

If an employee stays with an organization because she needs to due to some reason, then that component will be continuance commitment. For instance, if a promotion is due soon, the employee may likely want to stay as it is not known whether she will be promoted as quickly in a new organization. An employee may also continue employment just to complete the number of years needed to get a pension. In such situations, the employee does not continue employment because of the love for the job or the organization, but rather to avoid the costs of leaving the organization. Thus, continuance commitment is cost based.

In a study of correctional officers in Kentucky, Culliver, Sigler and McNeely (1991) concluded that organizational commitment was correlated with pro-social work efforts among

Correctional officers: Specifically, they wrote that “it is probable that these correctional officers are motivated in their work behaviour by what they perceive to be best for the organization” (p. 283). Similarly, organizational commitment has been reported to result in greater support for community-oriented policing practices (Ford, Weissbein, & Plamondon, 2003). While there is a growing body of research, there is a need for additional research because there are other

workplace factors which have not been studied, particularly among officers in non-western nations.

This preliminary study examined the relationships among perceptions of organizational structure and organizational commitment. Organizational structure of an organization can be ascertained by examining the way it is assembled and operated. The dimensions of organizational structure are organizational support, formalization, instrumental communication, and input into decision-making (Lincoln & Kalleberg, 1990). Several studies have reported that when a police officer perceives positive organizational structure he or she has enhanced feelings of organizational commitment and job satisfaction (Currie & Dollery, 2006).

In the current study, the influence of four variables of organizational structure, namely, perceptions of organizational support, formalization, instrumental communication, and input into decision-making on organizational commitment was explored among police officers in Haryana. This study is unique in several ways. First, little research has examined how perceptions of organizational structural variables are associated commitment among police officers. Different types of organizational structural variables could have different effects on organizational commitment. Second, most of the studies to date on how the work environment affects these salient concepts have been conducted in Western nations, particularly the United States (Buker & Dolu, 2010). There is an urgent need to explore how work environment factors may relate to organizational commitment of police officers in Non-western nations particularly India.

Overview of the Haryana Police

The present study was conducted in the northern Indian state of Haryana. Haryana is the region where along the banks of the epic river Saraswati, the ancient Vedic civilization originated and prospered. It is said to be the land where the Aryans settled and the Vedas were written (Qureshi, 2015). After India gained independence from the British in 1947, Haryana continued to be part of the larger state of Punjab. The people of Haryana demanded their own separate state to fulfil their aspirations and needs of development. In response

to this the Government of India commissioned a study to examine the feasibility of this demand. The modern Indian state of Haryana was accordingly created on the recommendations of the Shah Commission on Nov 1, 1966 (Qureshi, 2015).

The state has an area of 17, 070 square miles and a population of 25.4 million (Census of India, 2011). Haryana is adjacent to the national capital of New Delhi, and is considered a relatively well-developed state with a literacy rate of 77% and life expectancy of 66 years (Census of India, 2011). However, it suffers from an adverse sex ratio (877 women for every 1000 men) and a widespread existence of caste based social stratification system (Rudolph & Rudolph, 2012).

The Haryana Police are a force of about 56, 747 officers headed by a Director General of Police, and are divided into 21 districts. The present study has been conducted in Sonepat and Rohtak districts, which have a police force of about 3000 officers who serve a population of about 2.51 million (Census of India, 2011). A Superintendent of Police (SP), who is assisted by about four Deputy Superintendents of Police (DSP), heads the district police. The two districts are divided into 21 police stations each headed by a Station House Officer (SHO) of the rank of Inspector of Police (urban areas), or a Sub Inspector (rural areas). The sample for the study was drawn both from executive police officers (involved in investigations and patrolling), as well as from administrative police officers (who mostly deal with clerical work).

The majority of Indian police officers are of the rank of constable this is the entry level for most officers and is a line position, which can be a demanding experience (Lambert, Qureshi et al., 2015). In the present study, of the 3,000 officers in the Sonepat and Rohtak districts, 59% were Constables. Of the remaining 21% were Head Constables, 14% Assistant Sub-Inspectors, 4% Sub-Inspectors, and 1% Inspectors. The number of the Deputy Superintendent of Police and Superintendent of Police were 13 and two, respectively. However, these two ranks were excluded from the survey sampling of this study.

Organizational structure

Organizational structure has been considered to be comprised of organizational support, formalization, instrumental communication, and input into decision-making in the present study. Employees are more likely to feel that they are respected and valued when organizational support is high; otherwise they are likely to feel stressed which may further make their work difficult (Garland, 2004). Thus, perceived organizational support was hypothesized to be positively related to organizational commitment.

According to Taggart and Mays (1987), formalization may be defined as "the use of well-defined rules and regulations to govern the behaviour of individuals so that actions within the organization become standardized" (p. 186). The level of perceived codification and enforcement of rules can vary among employees (Pandey & Scott, 2002). When there is a lack of formalization, it may lead to frustration. Accordingly, high levels of formalization were expected to result in greater commitment.

In a large organization, it is relatively more difficult to convey information to all the employees at various levels. In a hierarchical organization like the police, the flow of information becomes a crucial factor. Information that employees receive about their tasks, jobs, organizational processes, organizational issues, and concerns in general is called instrumental communication (Price & Mueller, 1986). It provides clear information about what is happening and what is to be done in the organization. Providing important work-related information is a sine qua non for officers to be more productive and effective. A lack of information, on the other hand, can be hampering, making officers to feel that they are "in the dark" about their jobs and unimportant in the organization (Lincoln & Kalleberg, 1990). This situation may lead to feelings that the organization does not care about its employees and they are not needed. Thus, increases in perceptions of instrumental communication were hypothesized to lead to greater commitment.

Input into decision-making deals with how far are employees consulted or are asked about organizational matters (Price & Mueller, 1986). It means people feel that they have a voice in the process

(Lincoln & Kalleberg, 1990). It provides a sense of belonging and control within the organization. Taking feedback is important both for employees and for the organization. Celuch and Robinson (2016) have studied the relationship of feedback and affective commitment in institutions of higher education. They found that higher levels of feedback resulted in greater commitment among employees. However, lack of input into decision-making may make the organization seem to be non-caring and dehumanizing. This can make employees feel frustrated. Therefore, increases in perceptions of input into decision making were postulated to result in higher levels of commitment.

Method

Participants

A survey was administered to 1,000 of the 3,000 police officers in the Sonepat and Rohtak districts of Haryana. There were about 1,500 officers in each district. A systematic random sample procedure was used where every third officer on the employment roster for each district was selected (i.e., 500 officers were selected from each district). The selected officers received a packet consisting of a cover letter, a consent form, a survey, and a blank envelope to return the survey. Prior to the creation of the survey, police officials were asked for their input to make sure the survey questions and concepts were understandable by officers. The packet materials were in Hindi. The officers received an unmarked survey packet during morning roll call. A total of 829 officers returned surveys in the blank envelopes provided, representing a response rate of 82.9%. Table 1 reports the descriptive statistics for the officers in our sample.

Variables

The control variables used in the study were gender, marital status, educational level, position, age and tenure. The descriptives for the variables used are depicted in Table 1.

Table 1: Univariate statistics

Variable	Min	Max	Med	Mean	SDev
Age	21	57	34	36.53	9.46
Gender	0	1	1	0.88	0.33
Married	0	1	1	0.88	0.33
Tenure	0	30	1.5	2.44	3.05
Edn Level	0	1	0	0.42	0.49
Organizational Support	2	10	6	6.45	1.95
Formalization	2	10	8	6.76	1.83
Instrumental communication	5	25	17	17.37	5.29
Input in decision making	3	15	11	10.66	5.29
Organizational commitment	4	20	16	14.94	3.24

Control variables

As depicted in Table 1, the mean age was 34 years, with a minimum of 21 and a maximum of 57 years. <ales were coded one, and the sample had 88% male respondents. The average tenure was 1.5 years at one place of posting. The respondents having a college degree were coded 1, and as can be seen, 42% respondents had a college degree.

Dependent variable

The only dependent variable used in the study was organizational commitment. Organizational commitment is of several types including continuance commitment, affective commitment and normative commitment. Of these three, affective commitment is seen

as a more powerful force and more important for an organization to develop (Lambert, Qureshi et al., 2015).

The index used to measure it consisted of four items from Mowday et al. (1982), which measured the respondents' affective/psychological bond to the police department. The four items had a Cronbach's alpha value of .68, and all the items loaded on one factor. The factor loading scores were .66 to .74. As predicted, all four organizational structure variables had a significant correlation with perceived organizational commitment.

Ordinary least squares (OLS) regression equations were estimated with organizational commitment as the dependent variables. The independent variables for the OLS regression equations was age, gender, marital status, position, tenure, educational level, organizational support, formalization, instrumental communication, and input into decision-making.

Multicollinearity (also collinearity) may occur sometimes in statistical analysis when two or more predictor variables in a multiple regression model are highly correlated. This means that one can be linearly predicted from the others with a considerable degree of accuracy. Multiple regression models which are affected with collinearity can indicate how well the entire bundle of predictors predicts the outcome variable, but it may not give usable results about any individual predictor. The four variables of organizational structure were tested for multicollinearity. It was found that multicollinearity was not a problem among any of the exogenous variables, as the variance inflation factor (VIF) scores were between .20 and 5 (Tabachnick & Fidell, 1996). The other usual problems related to the issues of outliers, influential cases, normality, linearity and homoscedasticity of residuals, and independence of errors in the regression analysis were also examined (Tabachnick & Fidell, 1996). None of these issues was found to affect the results.

Independent variables

The four independent variables used in this study were perceptions of organizational support, formalization, instrumental communication, and input into decision-making. The variables were

measured with multiple questions which were used to arrive at a composite score. The questions along with factor loadings (.62 to .89) are mentioned in the appendix.

It has been reported that employees need support from the organization in various forms to have better commitment to the goals of the organization. The concept of organizational support mirrors employees' perceptions regarding the level of support they receive from the organization for performing their job duties. Eisenberger, Huntington, Hutchison & Sowa (1986) have used two items to measure organizational support in their work. The same measure has been adopted in the present study. The factor loadings for the two items showed that they loaded on a single factor.

Formalization was measured by a scale consisting of two questions as mentioned in the appendix. The two items used loaded on one factor. The factor loadings are mentioned at the end of each item.

Perceived instrumental communication was measured using five questions which have been used in a study by Curry et al. (1986). Formalization has been measured by Oldham and Hackman (1981), using two items. The same scale has been used in the present study. The two items loaded on one factor. Input into decision-making was measured using a three-item index which had a Cronbach's alpha of .61, with factor loading scores ranging from .62 to .83. Input into decision-making is a variable which has been measured variously by scholars. For instance, Lambert and Hogan (2009) have used this variable in their study. The present study used a measure which consists of three items derived from them. The items were tested for convergent validity and they had a Cronbach's alpha of .61. The factor loadings of the three items were sufficient to ensure unidimensionality.

Discussion

The results are presented in Table 2. The independent variables in the organizational commitment model were found to have an R^2 of .31. Thus 31% variance in organizational commitment was explained by the independent variables. As predicted, all four of the

perceived organizational structure variables significantly influenced officers' commitment to the organization. Specifically, increases in perceptions of organizational support, formalization, instrumental communication, and input into decision-making were significantly correlated with increases in commitment to the police organization.

Table 2: Ordinary Least Squares Regression Results

Variable	Org Commitment	
	B	β
Control Variables		
Age	.01	.04
Gender	-.06	-.01
Married	-.08	-.01
Tenure	-.06	-.06
Ed Level	-.21	-.03
Independent Variables		
Organizational Support	.22	.13**
Formalization	.41	.22**
Instrumental Communication	.08	.13**
Input in decision Making	.19	.13**
F Value (df)	22.21** (13,658)	
R-Squared	.31	

B as referred to in Table 1 represents the unstandardized regression coefficient, β is the standardized regression coefficient, and df is the degrees of freedom. The total number of participants was

827. With list wise deletion, the number of participants in the organizational commitment regression equations was 671. The double asterisk on coefficients indicates that significance p <= .01.

Organizational support was found to be positively and significantly associated with organizational commitment. The coefficient .13** indicates that for every unit increase in the organizational support, commitment increases by .13, provided all other variables are held constant. Similarly, the other variables can be interpreted.

The results obtained in this study suggest that organizational structure influences the organizational commitment of police officers. The outcomes indicate that positive perceptions of organizational structure should be increased if organizational commitment is desired. Each of the four relationships of the variables of organizational structure with commitment is examined here in context of Haryana police.

The study revealed that perceived organizational support was an important factor in improving the organizational commitment of officers. Support from the organization is especially valuable as police is a stressful occupation and an employee is answerable to multiple agencies and individuals including the courts, media, citizens and her own superior officers. There are many ways organizational support can be increased. One way to provide support is to conduct informal inspections of police units where senior officers visit the units and interact with the officers and know about their problems. Recognizing and rewarding the good work done by officers also improves perceptions of organizational support (Qureshi et al, 2016). Treating officers with dignity and respect is also a step towards providing organizational support.

Functional formalization has emerged to be a significant variable which affects organizational commitment. Higher perceptions of formalization had a positive effect on commitment of officers. Formalization refers to the specific rules and procedures which are laid out to achieve specific tasks. Positive perceptions of functional formalization were found to positively affect organizational commitment. Previous research has also shown results

which are consistent with the present findings. Officers need to be made aware of the rules and the need to adhere to them.

The police perform multifarious jobs and it is not possible to have all possible situations in the Police Act or Police Rules. Therefore, there is a procedure for issue of standing orders and circulars for clarifying the actions to be taken in specific circumstances. There are many examples where functional formalization has sought to be increased by Haryana police in such situations. For instance, welfare activities have increased in Haryana police in the recent times. The DGP Haryana has issued standing orders to regulate the welfare activities in various units of Haryana police. These orders also specify the roles and responsibilities of various ranks of officers who are the stakeholders in welfare sphere. This has resulted in clarity about the use of welfare funds and the manner of administering the fund.

However, too much of rules and regulations may hamper effective functioning in the organization. Bozeman and Scott (1996) have cautioned against reduction in efficacy because of red tape, or excessive bureaucracy. However, red-tapism mostly refers to outdated or ineffective rules which hamper work. Functional formalism represents rules which provide for a smoother and effective work flow within an organization. Therefore, there is a need to achieve a balance between excessive rules on one hand and a set of guidelines which provide clear directions to employees to maximise organizational commitment.

The finding that instrumental communication significantly affects organizational commitment is important for police administrators. Instrumental communication includes flow of information both ways from the officer to the organization as well as from the organization to the officer. Thus, listening to employees about work areas which need clarification is a part of functional communication. Police officers have been called street level bureaucrats; they have much discretion and only limited supervision (Lipsky, 1980). Concerns have been raised that discretion leads to its abuse and therefore needs to be controlled (Qureshi, 2015). Therefore, it may be desirable to effectively communicate information about any grey areas that may become visible from time

to time. Similarly, clarifying the goals and objectives of the organization to employees is equally important. In view of the overworked environment in which most police officers function, it is important that regular instrumental communication in the form of roll calls in police stations, crime/welfare meetings or other means of communications are used regularly and effectively to keep up the commitment level of employees.

An important part of instrumental communication is feedback. Police administrators can get a fair idea about the issues being faced on the ground through appropriately designed feedback strategies. They could also get feedback on the barriers to effective communication and the ways suggested to improve the same. This kind of feedback becomes essential in a highly hierarchical organization like the police. The usual information flow may be hampered at times due to multiple levels of police hierarchy. The finding of improved organizational commitment with better instrumental communication is a good news for police planners as the needed changes can be introduced in the police department.

Input into decision making was the fourth structural variable examined in the study. This variable was found to significantly predict organizational commitment. When officers have a voice in decision making they feel valued. The decisions which are taken by the police department after consulting the concerned police officers are likely to be enforced with more zeal and commitment. As such there is a feeling of ownership of the organization by the employees. For instance, 'A' level welfare meetings are held by the DGP Haryana annually in which police personnel from all ranks from constable to Director General and Group IV employees also participate. Each decision is taken after consulting the personnel present. This practice has resulted in not only greater acceptability of decisions but also an increased sense of belonging which translates into higher organizational commitment among police personnel. However, it may be noted that the consultation process does not bind the department into accepting all suggestions made by the personnel. Some of the suggestions are forwarded to the government, while others may be dropped if not found to be feasible or desirable.

However, officers are duly communicated about the fate of their suggestions or demands.

Conclusion

This exploratory study examined the effect of a structured human resource strategy, specifically, organizational structure on organizational commitment. It was found that perceptions of organizational support, formalization, instrumental communication, and input in decision making significantly and positively affect organizational commitment. Therefore, if higher organizational commitment of police officers is desired, then efforts should be made towards enhancing perceptions of organizational structure as outlined above.

The study also discovered that none of the individual officer characteristic, i.e., age, gender, tenure, marital status, or educational level significantly affects organizational commitment. This is an important result as it indicates that the personality of an employee is not a factor which affects his or her commitment to the organization. This is good news for police administrators as it is difficult to change the personality of an officer. However, the organizational structure is relatively easier to modify as discussed above. Thus, efforts can be made at the organizational level to create an atmosphere where organizational commitment flourishes.

It is hoped that this study will encourage police departments in India to consider organizational structure as an important determinant of organizational commitment. The need of the hour is to have police officers who are committed to the goals of the police department as laid down in law and rise above the considerations of caste, gender, religion, region, or other extraneous considerations. Further research is desirable to find other determinants of organizational commitment so that a step is taken in the direction of further strengthening the rule of law.

Limitations

This study has several limitations. The study was conducted in Haryana. Police and law and order being a state subject, there is variation in the nature of police organizations across the country.

Therefore, to improve generalizability of the study more studies in different states are required. Secondly, the Cronbach's alpha was relatively low for several variables. To increase its value, more items could be added to the measures. Though convergent validity was established, there is a need to explore other workplace factors which could affect organizational commitment (Lambert, Qureshi, & Frank, 2016).

Organizational commitment comprises several components including affective, continuance, and normative commitment. Only affective commitment was examined in this study. Other aspects of organizational commitment also need to be examined in future studies. Finally, the combined R squared for the independent variables was .31, which means that only 31% of the variation in the dependent variable was explained by the chosen independent variables. Future studies should investigate other factors which may affect organizational commitment among police officers.

Appendix

The scales used to measure the variables are presented here. All variables were measured using Likert scales. The items were coded 1 (strongly disagree) to 5 (strongly agree). The questions or items which comprised the scale are shown below. Factor loadings appear at the end of each item in parentheses.

Organizational Commitment:

1) I am proud to tell people that I work for the Haryana Police (.74);
2) I tell my friends that this is a great organization to work for (.74);
3) I find that my values and the Haryana Police values are very similar (.66);
4) The Haryana Police really inspires the best in me in the way of job performance (.72).

Organizational Support:

1) At this posting, management usually does the right thing in supporting officers (.84);

2) For the most part, management at this posting takes care of its workers (.84).

Formalization:

1) At my current position, there is a written manual that helps me do my duties (.78);
2) The job description for my position is accurate for what is really required for the job (.78).

I**nstrumental communication:**

1) How informed are you by Haryana Police management about the following aspect of your job: What is to be done (.81);
2) How informed are you by Haryana Police management about the following aspect of your job: What is most important about the job (.83);
3) How informed are you by Haryana Police management about the following aspect of your job: How the equipment is used (.86);
4) How informed are you by Haryana Police management about the following aspect of your job: Rules and regulations (.86);
5) How informed are you by Haryana Police management about the following aspect of your job: What you need to know to do the job correctly (.89);

Input into Decision-Making:

1) When there is a problem, management frequently consults with employees on possible solutions (.83);
2) Management routinely puts employee suggestions into practice (.81);
3) Management often asks employees their suggestions on how to carry out job related tasks and assignments (.62)

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6

Cyber Security Challenges: Some Reflections on Law & Policy in India

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Abstract

The cyberspace has revolutionised the globalised world like never before. The nation has invested hugely to set up information and communication technology infrastructure to get more citizens online and benefit them from the facilities online. With the tremendous growth of cyberspace also comes along challenges of cyber security. Especially after demonetisation and Digital India Programme, where the use of digital payments have grown rapidly the threats to cyber security has come under scrutiny. The current paper is an attempt to reflect upon the cyber crimes, current law and policies of the country over the issue of Cyber security. It discusses the kinds of cyber security threats and the Information Technology Act in detail. The paper concludes with the guidelines and suggestions that are helpful in dealing with the threats to cyber security.

Keywords

Cyber security, Information Communication and Technology, Information Technology Act

The global cyberspace encompassing the whole range of information and communication technology (ICT) networks, computer systems, mobile networks and invented sophisticated

devices connected with the Internet having boundary less nature. The information technology invented internet which has revolutionized the globalised world. The nation states have made huge investments to create the necessary ICT infrastructure in order to benefit more citizens from social and economic development opportunities by utilizing the internet services. This can be well reflected in the in the Report published by the International Telecommunications Union (ITU) that nearly 52.3 per cent of the world population using the internet. While in the developed countries over 83.8 per cent of the people use the internet and in developing countries only 41.1 per cent use the internet. This kind of rapid expansion of cyberspace for different purpose is leading to greater threats in the form of Cyber Security for the countries. The challenges of Cyber Security have consequently acquired much importance today than in the recent past. The Edward Snowden revelations have exposed the whole secret cyber surveillance was hegemonized by a single U.S. based Internet Corporation for Assigned Names and Numbers (ICANN) which violates the basic human rights and pose a serious threat to the online privacy as well as of dignity of people and sovereignty of nation states. At national level, India also confronted with growing menace of cyber crimes and cyber security in contemporary scenario. Recently, Ministry of Home Affairs Government of India informed the Lok Sabha that more than 700 websites of various Central and State government departments have been hacked in the past four years. Keeping in view the global and national developments in the field of information technology the government of India enacted the *Information Technology* Act, 2000 and later it amended by the *Information Technology (Amendment*) Act, 2008. Of late, the National Cyber Security Policy was also formulated in 2013 to create a secure cyber ecosystem in the country. Under this background the present article wishes to analyze the potentiality and importance of the said Act and policy in order to make our criminal justice system effective for the realizing the safety and security of the nation as well as to achieve the sustainable development goals 2030.

Concept of Cyber Security

The word 'cyber security' is yet to be defined in a comprehensive manner because of the complex and fact changing

nature of information and communication technology at global and national level. One of the most concise ones can be found on the Techtarget website and it states: 'Cyber security is the body of technologies, processes and practices designed to protect networks, computer, programs and data from attack, damage or unauthorized access.

The term cyber security incorporates both the physical security of devices as well as the information stored therein. It covers "protection from unauthorized access, use, disclosure, disruption, modification and destruction".

According to the *Information Technology* Act, 2000 cyber security means "protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorized access, use, disclosure, disruption, modification or destruction."

Advocate Prashant Mali trying to define the cyber security as "cyber security means the processes & technologies designed & implemented to protect devices, networks and data from unauthorized access, vulnerabilities and incursion into IT infrastructure via any network or the cyber space (internet) by a malefactor with any intent".

Cyber Security Issues and Challenges

In the wake of the Digital India Programme and demonetization by the Government of India in the recent past to encourage and adopt the digital payments by using information and communication technologies galvanized to face up the cyber threats in coming future. According to one estimate, crimes in cyberspace, now cost the global economy $ 445 billion a year. Cyber insecurity is now a global risk and is more dangerous than the climate change and other forced displacement. The vulnerabilities in one device or platform affect the whole I T ecosystem and makes risk difficult to assess and measure.

Cybercrimes are crimes specifically dealt with computers and networks, such as hacking, phishing and processing traditional crimes through the use of computers (such as child pornography, hate crimes,

telemarketing/internet fraud). Some common cybercrimes are briefly discussed below:

Hacking: Hacking in simple terms means an illegal intrusion into a computer system and network. There is an equivalent term to hacking i.e. cracking, but from Indian legal perspective there is no difference between the term hacking and cracking.

Child Pornography: The internet is extensively access and used for sexual abuse of children's. While children access and used internet become the victim of Paedophiles. Paedophiles (a person who is sexually attracted to children) lure the children by distributing pornographic material and then pursue them for sexual exploitation.

Cyber Stalking: This term is used to refer to the use of the internet, e-mail, or other electronic communications devices to stalk another person. Cyber stalking can be defined as the repeated acts of harassment or threatening behavior of the cyber-criminal towards the victim by using internet services.

Denial of Service: This is a technology driven cyber intrusion, where by the influencer floods the bandwidth or blocks the user's mails with spam mails depriving the user, access to the internet and the services provided there from.

Data Diddling: It involves altering raw data just before it is processed by a computer and then changing it back after the processing is completed.

Dissemination of Malicious Software (Malware): Malware is defined as software designed to perform an unwanted illegal act via the computer network. It could be also defined as software with malicious intent and it can be executed through virus, worms, Trojans horse programme, hoax and spyware.

Web Jaking: Web Jaking occur when someone forcefully takes control of a website (by cracking the password and later changing it)

Phishing: It lures users to a phony web site, usually by sending them an authentic appearing e-mail. Once at the fake site,

users are tricked into divulging a variety of private information, such as passwords and account numbers.

Credit Card Frauds: it is theft and security of data of cardholder facing the payment problem.

Password Sniffing: Password Sniffers are programs that monitor and record the name and password of network users as they login, jeopardizing security at a site. Whoever installs the Sniffer can then impersonate an authorized user and login to access restricted documents.

E-Mail Bombing/Mail Bombs: E- Mail bombing refers to sending a large number of E-Mails to the victim to crash victim's E-mail account (in the case of an individual) or to make victim's mail servers crash (in the case of a company or an E-Mail service provider).

Identity Theft: Identity theft is a fraud involving another person's identity for an illicit purpose.

Data Related: It encapsulates the data interception, data diddling and data theft etc.

Network Related: It includes Network interference, Data Security Network sabotage.

International Dimension

The international institution was established by United Nations as a specialized agency in form of International Telecommunications Union (ITU). It was formed to normalize the information and communication technologies (ICT) at international level. "It allocates global radio spectrum and satellite orbits, develop the technical standards that ensure networks and technologies seamlessly interconnect, and strive to improve access to ICTs to underserved communities worldwide. ITU is committed to connecting the entire world's people -wherever they live and whatever their means. Through our work, we protect and support everyone's fundamental right to communicate. At present ITU have 193 Member States. With the help of our membership, ITU brings the benefits of

modern communication technologies to people everywhere in an efficient, safe, easy and affordable manner." Of late, the UN General Assembly by its Resolution 56/183 (21 December 2001) endorsed the holding of the World Summit on the Information Society (WSIS) in two phases. The first phase took place in Geneva from 10 to 12 December 2003 and the second phase took place in Tunis, from 16 to 18 November 2005. The objective of the first phase was to develop and foster a clear statement of political will and take concrete steps to establish the foundations for an Information Society for all, reflecting all the different interests at stake. The objective of the second phase was to put Geneva's Plan of Action into motion as well as to find solutions and reach agreements in the fields of Internet governance, financing mechanisms, and follow-up and implementation of the Geneva and Tunis documents. The UN Internet Governance Forum (IGF) was held first time in 2006 and it renewed by the UN General Assembly in 2015.

Again in 2010 UN General Assembly by its Resolution 64/211, March 2010 for the creation of a global culture of cyber security and taking stock of national efforts to protect critical information infrastructures. After that the NETmundial (Multi Stakeholders meeting for future internet governance) was held in 24th April 2014.

Apart from the UN based international institutions the global internet governance has been regulated by the US based independent body Internet Corporation for Assigned Names and Numbers (ICANN), Organizations for Economic Corporation and Development (OECD), World Intellectual Property Organisation (WIPO), Council of Europe and European Union that played a very vital role in internet governance at global level.

National Law and Policy

1) The Information Technology Act, 2000

In India, the *Information Technology* Act, 2000 received the assent of the President on 09th June, 2000 in itself. The whole basis of this Act was the resolution adopted by United Nation General Assembly in 1997, the Model Law on Electronic Commerce adopted by the UN

Commission on International Trade Law. Under the said resolution it is also to promote efficient delivery of Government services by means of reliable electronic records. This legislation is basically meant to address the matters related to the regulation of electronic commerce.

The *Information Technology* Act, 2000 consists of thirteen (XIII) Chapters, 94 Sections and Four Schedules. This Act was amended by the *Information Technology (Amendment)* Act,2008, came into force 27th October 2009 focus on information security and added several new sections on cyber terrorism and Data protection. As far as the security aspect are concerned firstly I find that in Definitional part of Act itself encapsulates the security provisions under Section 2 (1) (ze) (zf) of the Act.

> *1) (ze) "secure system" means computer hardware, software, and procedure that—*
>
> (a) are reasonably secure from unauthorised access and misuse;
>
> *(b) provide a reasonable level of reliability and correct operation;*
>
> (c) are reasonably suited to performing the intended functions; and
>
> *(d) adhere to generally accepted security procedures;*
>
> 2) "security procedure" means the security procedure prescribed under Section 16 by the Central Government;

The Chapter -V of the Act wholly devoted on security dimensions. “The language of this Chapter prescribes that where any security procedure has been applied to an electronic record at a specific point of time. Then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.” The Act also discusses about the secure digital signature and it provides that the Central Government shall for the purposes of this Act prescribe the security procedure having regard to commercial circumstances. The Act further provides the provision that the Certifying Authority shall have to follow certain procedures. That are

secure from intrusion and misuse; adhere to security procedures to ensure that the secrecy and privacy of the digital signatures. The Certifying Authority's also have the private key or security system was compromised in a manner materially affecting the Digital Signature Certificate's reliability. “Further, the Chapter VIII of the Act, where any Digital Signature Certificate, the public key of which corresponds to the private key of that subscriber which is to be listed in the Digital Signature Certificate has been accepted by a subscriber, then, the subscriber shall generate the key pair by applying the security procedure.” By the amendments also the Act also provides penalties and compensation for damage to computer, computer system and also inserted provision to protect sensitive personal data or information possessed, dealt or handled by a body corporate in a computer resource which such body corporate owns, controller operates. If such body corporate is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, it shall be liable to pay damages by way of compensation to the person so affected.

Moreover, as per the *Information Technology Amendment* Act, 2008, a host of new sections have been added to section 66 as sections 66A to 66F prescribing punishment for offenses such as obscene electronic message transmission, identity theft, cheating by impersonation using computer resource, violation of privacy and cyber terrorism. Section 67 of the old Act is amended to reduce the term of imprisonment for publishing or transmitting obscene material in electronic form to three years from five years and increase the fine thereof from Indian Rupees 100,000 (approximately USD 2000) to Indian Rupees 500,000 (approximately USD 10,000). A host of new sections have been inserted as Section 67A, 67B and 67C. While Section 67A and B insert penal provisions in respect of offenses of publishing or transmitting of material containing sexually explicit act and child pornography in electronic form, section 67C deals with the obligation of an intermediary to preserve and retain such information as may be specified for such duration and in such manner and format as the central government may prescribe. In view of the increasing threat of terrorism in the country, the new amendments include an amended section 69 giving power to the state to issue direction for interception or monitoring of decryption of any information through

any computer resource. Further, section 69A and 69B, two new sections, grant power to the state to issue directions for blocking for public access of any information through any computer resource and to authorize to monitor and collect traffic data or information through any computer resource for cyber security.

Apart from that the Section 70 (3) of the Act (1) the appropriate Government may, by notification in the Official Gazette, declare that any computer, computer system or computer network to be a protected system. (2) The appropriate Government may, by order in writing, authorise the persons who are authorized to access protected systems notified under sub-section (1). (3) Any person who secures access or attempts to secure access to a protected system in contravention of the provisions of this section shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Further, the Act empowers the State Government to make rules under section 90 to deals the emerging issues with the development of the information technology relating to cyber crime and cyber security in India.

After enactment of the *Information Technology* Act, 2000 the major Acts which got amended such as the *Indian Penal Code,* 1860, the *Indian Evidence Act,* 1872, the *Banker's Books Evidence* Act,1891 by inserting the word 'electronic' thereby treating the electronic records and documents on a par with physical records and document.

"There are now enough writings in the Indian context to show as to how the IT Act falls short of expectations. With the passage of times number of issue has been identified for effective implementation of this Act." Therefore, the inadequacies of India Internet regime must not be confined only to the IT Act alone that needs a holistic approach to arrest the emerging problems in the area of information technology such as cyber crimes and cyber security in future.

2) National Cyber Security Policy – 2013

In the light of growth of IT sector in the country, an ambitious plan for rapid social transformation and inclusive growth

for creating secure computing environment and to protect information and information infrastructure in cyberspace, of late, the Government of India has formulated a new National Cyber Security Policy, 2013 with some very important objectives.

The main objectives of the policy are bellows:

1) To create a secure cyber ecosystem in the country, generate adequate trust & confidence in IT systems and transaction in cyberspace and thereby enhance adoption of it in all sectors of the economy.
2) To create an assurance framework for design of security policies and for promotion and enabling action for compliance to global security standards and best practices by way of conformity assessment (product, process, technology & people).
3) To strengthen the Regulatory framework for ensuring a Secure Cyberspace ecosystem.
4) To enhance the protection and resilience of Nation's critical information infrastructure by operating a 24 x 7 National Critical Information Infrastructure Protection Centre (NCIIPC) and mandating security practices related to the design, acquisition, development, use and operation of information resources.
5) To develop suitable indigenous security technologies through frontier technology research, solution oriented research, proof of concept, pilot development, transition, diffusion and commercialization leading to widespread deployment of secure ICT products/processes in general and specifically for addressing National Security requirements.
6) To enable effective prevention, investigation and prosecution of cyber crime and enhancement of law enforcement capabilities through appropriate legislative intervention.

7) To create a culture of cyber security and privacy enabling responsible user behavior & action through an effective communication and promotion strategy.
8) To enhance global cooperation by promoting shared understanding and leveraging relationships for furthering the cause of security of cyberspace.

Apart from the above objectives of the policy also have certain strategies that are as follows:

1) Creating a secure cyber ecosystem
2) Creating an assurance framework
3) Creating an assurance framework
4) Creating an assurance framework
5) Creating mechanisms for security threat early warning, vulnerability management and response to security threats
6) Securing E-Governance services
7) Protection and resilience of Critical Information Infrastructure
8) Promotion of Research & Development in cyber security
9) Reducing supply chain risks
10) Human Resource Development
11) Creating Cyber Security Awareness
12) Developing effective Public Private Partnerships
13) Information sharing and cooperation
14) Prioritized approach for implementation

3) Cyber Security-Strategic Approach under XII Five Years Plan

Cyber Security requirement are quite dynamic that change with the threat environment. Threat landscape needs to be updated regularly to prevent emerging attacks. Collaboration among various agencies is needed to share information regarding emerging threats and vulnerabilities, which would help in effective protection and prevention of cyber attacks.

It is necessary to take a holistic approach to secure Indian Cyber Space. While the cyber security initiatives of the XI plan period will be continued and strengthened, new initiatives will be put in place consistent with emerging threats and evolving technology scenario. The following cyber security strategies are proposed to be adopted during the XII Five Year Plan:

1) Enhancing the understanding with respect to factors such as dynamically changing threat landscape, technical complexity of cyber space and availability of skilled resources in the area of cyber security.

2) Focus on proactive and collaborative action in Public-Private Partnership aimed at security incidents prevention, prediction, response and recovery actions and security assurance.

3) Enhancing awareness and upgrading the skills, capabilities and infrastructure to protect the county's cyber space, to provide rapid response to cyber attacks, to minimize damage and recovery time and to reduce national vulnerabilities to cyber attacks.

4) Improving interaction and engagement with various key stakeholders such as Govt. and critical sector organizations, sectoral CERTs, International CERTs, service providers including ISPs, product and security vendors, security and law enforcement agencies, academia, and media, NGOs and cyber user community.

5) Carrying out periodic cyber security mock drills to assess the preparedness of critical sector organizations to resist cyber attacks and improve the security posture.

6) Supporting and facilitating basic research, technology demonstration, proof of concept and test bed projects in thrust areas of cyber security through sponsored projects at recognized R&D institutions

Conclusion

From the above analysis it is well established, that ICT brings the socio-economic changes in all sphere of human lives of 21st century. In which there is enormous growth in access to cyberspace and e-commerce became very easy for every person to connected to each other and sharing information which is susceptible to cyber crimes and created numerous cyber threat before the global community. Hence, to ensure its safety, security and confidentiality, cyber security has become one of the most compelling priorities for the global nations. There is no doubt that the international organizations like (ICANN), (OECD), and UN based institution ITU dealing with the cyber related issues and continuously trying to establish global internet governance for global commons. To deal with such kind of emerging problems like cyber crimes and cyber security before the country the Indian Parliament has passed the *Information Technology* Act, 2000 and later amended by Information Technology (Amendment) Act, 2008 as well as the National Cyber Security Policy, 2013 with aim of protecting information infrastructure. Further, technological innovations in the area of information technology have generated security threat day by day in recent past. This has resulted in large scale denial of basic human rights and information security challenges. In spite of the potentiality of the above existing legislation and policy the problem has not arrested in effective manner. It is high time for policy makers to relook the existing law and policy to shift their focus on strengthening the internet governance to combat the Cyber Security Challenges in contemporary scenario.

The following suggestions can be given that may be useful for dealing the cyber security challenges in India:

1) The effective implementation and enforcement of IT law is an urgent need.
2) A Cyber Crime Cell/Police Station should be developed to handle cases dealing with computer offences.
3) A Cyber Forensic Laboratory with all updated technologies should be endorsed to detect computer related crimes.
4) Public Awareness Programmes should be carried out to sensitized public and particularly police officers about the Information Technology Act, 2000/2008.
5) Sensitization programmes on cyber crimes and cyber security should be organized by the Police Commissionerate in educational institutions to spread awareness about computer abuse among students. Students should also be updated about the provisions of the Information Technology Act, 2000 and 2008.
6) Community Policing Programmes should also be initiated to check cyber offences. The people's participation can be of great help in combating cyber crime and cyber security.

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7

Religion: Its Paradoxical Nuances under the Electoral Law

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Abstract

In the Abhiram Singh case (2017), a reference was made to the 7-Judge Constitution Bench on the interpretation of Section 123(3) of the Representation of the People Act, 1951, which, inter alia, forbids an election candidate to appeal to the voter on ground of "his religion". The short question to be decided was, whether the pronoun "his" refers to the 'religion' of the election candidate alone or includes the religion of the voter as well. Three Justices took the restricted view on the basis of literal interpretation and past precedents, whereas the other four Justices preferred the broader view on the basis of purposive interpretation.

On relative evaluation of the majority and the minority opinions of the 7-Judge Bench of the Supreme Court, we raised two critical questions. One, whether the strict interpretation by the minority court of Section 123(3) precludes the possibility of any abuse of religion of the electorates by the election candidate, notwithstanding the fact that he is merely espousing the collective cause of the targeted community. Two, whether the liberal interpretation of the same provision by the majority court excludes the possibility of accommodating the role of fundamental right to religion, notwithstanding such categorical statement as "the encroachment of religion into secular activities is strictly prohibited." Our own response in both the cases is in the negative.

In our own view, invocation of religion in electoral matter per se is not prohibitive. The true test for determining the admissibility of religion is, whether on evidence the appeal made by the election candidate on ground of religion is destructive of the 'secular' character of our democratic social order, regardless of the religion of either the contesting candidate or of the electorate. From this perspective, both the opinions tend to converge rather than deviating.

The very purpose of constituting the larger Constitution Benches is to enable the Supreme Court to explore the foundational values of the Constitution. As an axiomatic principle, on we venture to state: 'the more you move unto the Constitution Benches of greater strength, the more you enter the rarefied realm of foundational values of constitutional law by liberating yourself from the traditional inertia.'

Introduction

Soon after gaining our political independence from the colonial rule, in order to readily redefine the complexion of our polity India opted for the complex of constitutionalism – a system of governance in which sovereignty lies, not in any King or Queen but, in the Constitution itself. Accordingly, "We, the people of India," adopted, endorsed and presented ourselves the Constitution – *The Constitution of India* – in the Constituent Assembly on November 26, 1949. The Constitution was drafted with a solemn resolve "to constitute India into a Sovereign, Socialist, Secular, Democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the Nation." This, indeed, is the perambulatory statement based on the "Objective Resolution" adopted by the Constituent Assembly on January 22, 1947. From this summing statement, it is evident that 'secularism' is one of the guiding foundational values that would enable us to restructure our polity and its governance.

Secularism and the Electoral law

For establishing the inclusive democratic social order, the electoral law is sought to be premised on the values of secularism that prohibits us to create institutions of governance on the basis of religion, race, caste, etc. According to the enactment of the Representation of the People Act, 1951, the law regulating elections to the legislative bodies, appeal on grounds of religion, race, caste, etc., came to be treated as "corrupt practice", voiding the election of the candidate who violated these prohibitions. "Sub-section (3) of Section 123 of the said Act, prior to the amendment of 1961(the amendment with which we are concerned in the present critique) read as follows:"

> "The *systematic* appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting on the grounds of caste, race, community or religion or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election."

In order to curb communal and nationalist tendencies in the country, the scope of the corrupt practice was widened by further adding amendments to the Sub-section (3) of Section 123 of the said Act. The Act of 1951 was further amended by the amending Act of 1961(40 of 1961). The amended Section 123(3) reads as follows:

> "The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of ***his*** religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate."

> "(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of that candidate or for prejudicially affecting the election of any candidate."

A bare comparative perusal of the pre- and post-1961 amendment provisions of Section 123(3) of the Act of 1951 betrays at least two highlighted changes: the deletion of the word "systematic" on the one hand, and the addition of the pronoun "his" on the other, in addition to the cognate provisions of sub-section (3A). It is about the purport of the deletion and addition of the two words respectively that has caused the problem of interpretation. Most seemingly, the dropping of the word "systematic" widens the ambit of 'corrupt practice' under Section 100 read with Section 123(3) of the Act, inasmuch as even a stray or single appeal on ground of religious affiliation would amount to 'corrupt practice'. On the other hand, the scope of 'corrupt practice' is considerably diluted if the appeal is made by the election candidate in the name of religion other than "his" own religion. There had been an acute conflict of judicial opinion about the resultant effect of deletion and addition, which was needed to be resolved. It is this conflict of opinion that has resulted in making a reference to the Seven-Judge Bench of the Supreme Court in the case of *Abhiram Singh (2017)*.

Specific reference-issue in *Abhiram Singh (2017)*

Reference to be responded in *Abhiram Singh (2017)* relating to the interpretation of Section 123(3) of the Representation of the People Act, 1951 has its origins at least in three decisions of the Supreme Court: *Abhiram Singh v. C.D. Commachen* (3-Judge Bench); *Narayan Singh v. Sunderlal Patwa* (5-Judge Bench); and *Kultar Singh v. Mukhtiar Singh* (5-Judge Bench). The issue specifically to be responded is, whether the pronoun "his" occurring in the sub-section (3) of Section 123 of the Act of 1951, as amended by the Act of 1961, refers only to the candidate's own religion, or whether it is also intended to include the religion of the voter. The implication of

this amendment is: it appeared that a corrupt practice for the purposes of the Act prior to the amendment could cease to be a corrupt practice after the amendment of 1961. Prima facie, it looked quite strange that when the avowed object of the said amendment by the deletion of the word "systematic" was clearly for curbing the communal and separatist tendency in the country by widening the scope of corrupt practice mentioned in sub-section (3) of Section 123 of the Act, how come the addition of a word "his" by the same amendment could be construed to have the opposite effect! This reference has now been answered by the 7-Judge Bench on January 2, 2017, albeit with a deeply divided court.

Our central concern in this article is to present a juristic critique of the 7-Judge Bench decision by critically examining the difference of opinion. Since the divided opinion, in our view, tends to weaken the rule of law in general, and secular complexion of the electoral law and its processes in particular, we wish to explore further, whether the sharp cleavage of opinion can be abridged to declare 'the law', which the Supreme Court is otherwise commanded to accomplish under Article 141 of the Constitution.

Majority and Minority opinions in *Abhiram Singh (2017)*

Majority opinion

[a] Location of the conflict

With a view to locate "the apparent cause of conflict," which needed to be resolved by the 7-Judge Bench, they made an excursion into various decisions hitherto rendered by "the Supreme Court in the matter of interpretation of Section 123(3) of the Act of 1951 as amended by the Act of 1961. In their perusal, they have deciphered two lines of interpretation of Section 123(3) of the said Act. On the one hand the 'narrow' view taken in *Jagdev Singh Sidhanti v. Pratap Singh Daulta*, *Kanti Prasad Jayshanker Yagnik v. Purshottamdas Ranchhoddas Patel*, and *Ramesh Yeshwant Prabhoo (Dr.) v. Prabhakar Kashinath Kunte*was that Section 123(3) barred an appeal by a candidate or his agent or any other person with the consent of the candidate or his election agent to vote or refrain from voting for any

person on the ground of his religion i.e. the religion of the candidate. On the other hand the 'broad' view taken in *Kultar Singh v. Mukhtiar Singh*, and *S.R. Bommai v. Union of India* was that in enacting Section 123(3) of the Act the Parliament intended to provide a check on the 'undesirable development' of appeals to religion, race, caste, community or language of *any person,* including that of the candidate, as that would vitiate the secular atmosphere of democratic life."

However, persistence duality of interpretation of Section 123(3) has been explained through comparative analysis of judicial decisions on the following counts:

(a) Non-consideration of the narrow view propounded in *Jagdev Singh Sidhanti* (1964) while expounding the broad view in the later decision of the Constitution Bench in *Kultar Singh (1965)*, giving currency to two different interpretations of Section 123(3).

(b) While giving a narrow and restricted interpretation to Section 123(3) of the Act in *Kanti Prasad Jayshanker Yagnik (1969)*, no reference was made either to *Jagdev Singh Sidhanti* (1964) or *Kultar Singh(1965),* giving impetus to persistent duality.

(c) *Ramesh Yeshwant Prabhoo* (1996), while giving "a narrow and restricted meaning to the provision by an apparent misreading of Section 123(3) of the Act," inasmuch as the Constitution Bench wrongly disregarded the broad view taken in *Kultar Singh(1965)* by observing that the same was decided on the basis of the text of Sub-section (3) of Section 123 of the Act as it existed prior to its amendment in 1961, and not on the basis of the text after its amendment in 1961.

(d) The issue of the interpretation of Section 123(3) of the Act came up for consideration in *S.R. Bommai* (1994), and it preferred its 'broad' interpretation seemingly on the ground that our electoral law is

premised on 'secularism' mentioned in the Preamble to our Constitution, which is undeniably "a part of the basic structure of our Constitution." However, since the issue of interpretation came up only indirectly, the observations made therein are of little assistance for construing the meaning and scope of Sub-sections (3) and (3-A) of Section 123 of the Representation of the People Act.

(e) This brief comparative analysis of the judicial decisions amply shows that owing to lack of coordinated judicial consideration or otherwise, the duality of interpretation of sub-section (3) of Section 123 of the Act of 1951, as amended by the Act of 1961, continued to persist. It is this duality that needs to be removed by the 7-Judge Bench by clearly and authoritatively laying down the correct interpretation in order "to avoid a miscarriage of justice in interpreting 'corrupt practice'."

[b] Mode of resolving the conflict

The 'narrow' and the 'broad' approach to interpretation of sub-section (3) of Section 123 of the Act of 1951, as amended, has been construed to correspond to the two distinct modes of interpretation, 'literal' and 'purposive' respectively. Both these modes have been taken as adversary to each other by stating "Literal v. Purposive Interpretation" and that such adversarial conflict between the two is "perennial." At first blush, it seems to imply that as if the court is eventually required to choose or adopt either of these two modes. However, with a little reflection, the court seems to suggest that the preference for the 'literal' approach is likely to succeed only "if the draftsman gives a long-winded explanation in drafting the law but this would result in an awkward draft that might well turn out to be unintelligible." Accordingly, the preferred approach of the Court in their interpretation should be "to consider not only the text of the law but the context in which the law was enacted and the social context in which the law should be interpreted."

The preferential approach to 'purposive' instead of 'literal' interpretation is reinforced in the light of the following abstracted propositions:

- 'Literal' interpretation encourages not only "immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise," but "may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute."

- The controversial provisions "should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

- 'Purposive' interpretation is not necessarily an anti-thesis of 'literal' interpretation, inasmuch as there is "no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking."

- The adoption of a purposive approach to construction of statutes "is one of the surest indexes of a mature developed jurisprudence," which does not "make a fortress out of the dictionary;" but reminds "that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning." In this respect, the Court has gone to the extent of emphasizing the sway of purposive interpretation by quoting Lord Millett: "We are all purposive constructionists now."

- Invariably, difficulties over statutory interpretation belong to the language, and not the purpose of the statute, which is till about remedying what is thought

to be a defect in the law. If so, it is emphatically stated: "Even the most 'progressive' legislator, concerned to implement some wholly normal concept of social justice, would be constrained to admit that if the existing law accommodated the notion there would be no need to change it." All this seems to imply that literal interpretation must yield to purposive interpretation.

- In a welfare State like ours, since "what is intended for the benefit of the people is not fully reflected in the text of a statute," the interpreter is required to take "a pragmatic view" and the law is "interpreted purposefully and realistically so that the benefit reaches the masses."

- In view of "the clear expression of opinion that the purpose of the amendment [with the deletion of the word 'systematic' from the ambit of Section 123(3) of the Act of 1951] was to widen the scope of corrupt practices to curb communal, fissiparous and separatist tendencies and that was also 'the sense of the House'," read with the contemporaneous amendment of Section 153A of the Indian Penal Code, and the accentuated possibility of fanning separatist tendencies through the usage/abusage of modern technology, it is imperative to go in for purposive interpretation.

- The practice principle of 'Purposive interpretation' of a statute is prompted by the ever changing social context, giving rise to the concept of, what is termed as, 'social context adjudication'. This is concept which has been developed by such eminent judges and jurists as Justice Holmes, Julius Stone and Dean Roscoe Pound to the effect that law must not remain static but move ahead with the spirit of times keeping in mind the social context. This concept is now well-received and has been duly recognized by our Supreme Court in their decision-making. "Like all

> principles evolved by man for the Regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for readjustment in a changing society, a readjustment of legal norms demanded by a changed social context," said the Supreme Court in *Raghubir Singh*. Likewise, the Supreme Court stated in *Maganlal Chhaganlal (P.) Ltd.: "*Law, if it has to satisfy human needs and to meet the problems of life, must adapt itself to cope with new situations." In *Badshah v. Urmila Badshah Godse* the Supreme Court yet again reaffirmed the need to shape law as per the changing needs of the times and circumstances by observing, "Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law."

Bearing in mind the broad determination of enacting and amending sub-section (3) of Section 123 of the Act of 1951, "it is absolutely necessary to give a purposive interpretation to the provision rather than a literal or strict interpretation." This interpretation has prompted the Court to take into account "the context of simultaneous and contemporaneous amendments inserting Sub-section (3A) in Section 123 of the Act and inserting Section 153A in the Indian Penal Code." "So read together, and for maintaining the purity of the electoral process and not vitiating it," "Sub-section (3) of Section 123 of the Representation of the People Act, 1951 must bring "within the sweep of a corrupt practice any appeal made to an elector by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate on the ground of the religion, race, caste, community or language of (i) any candidate or (ii) his agent or (iii) any other person making the appeal with the consent of the candidate or (iv) the elector."

To this extent, the earlier decisions of the Supreme Court limiting the scope of Section 123(3) of the Act in *Jagdev Singh Sidhanti*, *Kanti Prasad Jayshanker Yagnik* and *Ramesh Yeshwant Prabhoo* to an appeal based on the religion of the candidate or the rival candidate(s), have been accordingly overruled by observing: "we are not in agreement with the view expressed in these decisions." This interpretation in no way conflicts with any of the fundamental rights inasmuch as the various provisions of the electoral law, including those of Section 123(3) of the Act of 1951 (as amended), merely prescribe conditions which must be observed if anybody wants to enter the Parliament, and that outside these provisions there is no prohibition to exercise those rights. Nor does it "unsettle the long-standing interpretation given to Section 123(3) of the Act," because the very reason of making a reference before the 7-Judge Bench was that "there was some uncertainty about the correct interpretation of Sub-section (3) of Section 123 of the Act," and the same was required to be settled.

This is how the reference has been answered by Madan B. Lokur, J. (for himself and L. Nageswara Rao, J.) on the limited issue of the meaning of sub-section (3) of Section 123 of the Act of 1951, as amended by the Act of 1961.

S.A. Bobde, J., has concurred with Lokur, J. in respect of his eventual conclusion that the bar under the amended Section 123(3) of the Act, 1951 "to making an appeal on the ground of religion must not be confined to the religion of the candidate because of the word 'his' in that provision." He has also agreed "that the purposive interpretation in the social context adjudication as a facet of purposive interpretation warrants a broad interpretation of that section," inasmuch as it enables us "to maintain the sanctity of the democratic process and to avoid the vitiating of secular atmosphere of democratic life" by "checking appeals to religion, race, caste, community or language by any candidate."

Having thus concurred, Bobde, J. adds that the same conclusion is warranted solely on literal or textual interpretation of the same Section 123(3) of the said Act by realizing that the purposive interpretation does not exclude the literal interpretation.

Acting on this premise, he has held: "I am of the view that the language that is used in Section 123(3) of the Act intends to include the voter and the pronoun 'his' refers to the voter in addition to the candidate, his election agent etc." This construction is reinforced by stressing that it is in conformity with the intendment and the purpose of the statute, which is to prevent an appeal to voters on the ground of religion:

> "I consider it an unreasonable shrinkage to hold that only an appeal referring to the religion of the candidate who made the appeal is prohibited and not an appeal which refers to religion of the voter. It is quite conceivable that a candidate makes an appeal on the ground of religion but leaves out any reference to his religion and only refers to religion of the voter. For example, where a candidate or his election agent, appeals to a voter highlighting that the opposing candidate does not belong to a particular religion, or caste or does not speak a language, thus emphasizing the distinction between the audience's (intended voters) religion, caste or language, without referring to the candidate on whose behalf the appeal is made, and who may conform to the audience's religion, caste or speak their language, the provision is attracted. *The interpretation that I suggest therefore, is wholesome and leaves no scope for any sectarian caste or language based appeal and is best suited to bring out the intendment of the provision. There is no doubt that the Section on textual and contextual interpretation proscribes a reference to either*."

The approach to textual interpretation in an expansive manner is further supported by a string of precedents providing for emerging practice principles:

(a) The '*mens or sententia legis'* that is the intent, of the Parliament is of crucial concern in the interpretation of the statute. In the instant case, the intent of the Parliament in using the pronoun "his" was to prohibit

an appeal made on the ground of the voter's religion, and that such a construction is clearly within and not outside the mischief of the provision.

(b) In the matter of construction of a modern statute, the issue is neither of strict or of liberal construction, and that all statutes, whether penal or not, are now construed by substantially the same rules: "All modern Acts are framed with regard to equitable as well as legal principles"[*Edwards v. Edwards*: (1876) 2 Ch. D. 291, 297, Mellish L.J., quoted with approval by Lord Cozens-Hardy M.R. in *Re. Monolithic Building Co. Ltd*. (1915) 1 Ch. 643, 665]. Accordingly, amended Section 123(3) of the Act of 1951 must be construed now with reference to the true meaning and real intention of the legislature.

(c) "It is an overriding duty of the Court while interpreting the provision of a statute that the intention of the legislature is not frustrated and any doubt or ambiguity must be resolved by recourse to the Rules of purposive construction." This is what has been laid down by the Supreme Court in *Balram Kumawat v. Union of India*, by clearly observing that the courts will "reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used." Moreover, it is further emphasized that "Reducing the legislation futility shall be avoided and in a case where the intention of the legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result," and that the courts, "when Rule of purposive construction is gaining momentum, should be very reluctant to hold that Parliament has achieved nothing by the language it used when it is tolerably plain what it seeks to achieve." In the light of such decisions, the Supreme Court in *Balram Kumawat* conclusively states that these decisions "are authorities for the proposition that the Rule of strict

> construction of a regulatory/penal statute may not be adhered to, if thereby the plain intention of Parliament to combat crimes of special nature would be defeated."

Applying the above principles, Bobde J. concludes that "there is no doubt that Parliament intended an appeal for votes on the ground of religion is not permissible whether the appeal is made on the ground of the religion of the candidate etc., or of the voter." Accordingly, "the words 'his religion' must be construed as referring to all the categories of persons preceding these words".

T.S. Thakur, C.J.I., has also concurred with the conclusions drawn by Lokur, J., and supported the same by highlighting a couple of interpretative dimensions. He vehemently disputes the argument that if the purpose of 1961 amendment of Section 123(3) was to widen the scope of corrupt practice by deleting the word 'systematic' from its provision, the question of restricting the same at the same time by the addition of the word 'his' did not arise. On this count there is nothing to suggest "either in the statement of objects and reasons or contemporaneous record of proceedings including notes accompanying the bill." "Any such interpretation will artificially restrict the scope of corrupt practice for it will make permissible what was clearly impermissible under the un-amended provision." "Seen both textually and contextually the argument that the term 'his religion' appearing in the amended provision must be interpreted so as to confine the same to appeals in the name of 'religion of the candidate' concerned alone does not stand closer scrutiny and must be rejected."

The second interpretative dimension relates to resolving the duality of interpretation. "Assuming that Section 123(3), as it appears, in the Statute Book is capable of two possible interpretations, one suggesting that a corrupt practice will be committed only if the appeal is in the name of the candidate's religion, race, community or language and the other suggesting that regardless of whose religion, race, community or language is invoked an appeal in the name of anyone of those would vitiate the election." The question is which one of these two interpretations ought to be preferred by the Court?

Through his elaborate analysis Thakur, CJI has shown that our constitutional polity is essentially premised on the bedrock of 'secularism', which has been declared by the Supreme Court to be one of the basic features of our Constitution. Accordingly, that interpretation of amended Section 123(2) of the Act of 1951 should be adopted which is in consonance with secular character of our polity. "This necessarily implies that religion will not play any role in the governance of the country." An interpretation which has the effect of eroding or diluting the constitutional objective of keeping the State and its activities free from religious considerations, therefore, must be avoided. Indeed, the Court should always remain cognizant of the Constitutional goals and interpret the provisions of an enactment which would make them consistent with the Constitution. In other words, if two constructions of a statute were possible, one that promotes the constitutional objective ought to be preferred over the other that does not do so. In this respect, Thakur, CJI, goes even one step further when it is invoked, recalled and restated that in the background of the constitutional mandate, "the question is not what the statute does say but what the statute must say," and that "[i]f the Act or the Rules or the bye-laws do not say what they should say in terms of the Constitution, it is the duty of the court to read the constitutional spirit and concept into the Acts."

Foregoing analysis reveals the following propositions for eventual decision making:

A. "An interpretation that will have the effect of removing the religion or religious considerations from the secular character of the State or state activity ought to be preferred over an interpretation which may allow such considerations to enter, effect or influence such activities."

B. "Electoral processes are doubtless secular activities of the State, and that religion can have no place in such activities, for religion is a matter personal to the individual with which neither the State nor any other individual has anything to do.

C. The relationship between man and God and the means which humans adopt to connect with the almighty are matters of individual preferences" "and choices, and the State is under an obligation to allow complete freedom for practicing, professing and propagating religious faith to which a citizen belongs in terms of Article 25 of the Constitution of India but the freedom so guaranteed has nothing to do with secular activities which the State undertakes.

D. The State can and indeed has in terms of Section 123(3) forbidden interference of religions and religious beliefs with secular activity of elections to legislative bodies."

Thus, "[a]n appeal in the name of religion, race, caste, community or language is impermissible under the Representation of the People Act, 1951 and would constitute a corrupt practice sufficient to annul the election in which such an appeal was made regardless whether the appeal was in the name of the candidate's religion or the religion of the election agent or that of the opponent or that of the voter's." "The sum total of Section 123(3) even after amendment is that an appeal in the name of religion, race, caste, community or language is forbidden even when the appeal may not be in the name of the religion, race, caste, community or language of the candidate for whom it has been made." "So interpreted religion, race, caste, community or language would not be allowed to play any role in the electoral process and should an appeal be made on any of those considerations, the same would constitute a corrupt practice."

Minority opinion

The view expressed by three Judges [Dr. D.Y. Chandrachud, J. (for himself, A.K. Goel, and U.U. Lalit, JJ.)] in comparison to four Judges [Madan B. Lokur, J. (for himself and L. Nageswara Rao, J.), S. A. Bobde, J. and T.S. Thakur, CJI. delivering separate but concurring with the judgment of Lokur, J.] is taken as minority opinion in *Abhiram Singh* (2017). According to minority, the expression 'his' is used in the context of an appeal to vote for a

candidate on the ground of the religion, race, caste, community or language of the candidate. Similarly, in the context of an appeal to refrain from voting on the ground of the religion, race, caste, community or language of a rival candidate, the expression 'his' refers to the rival candidate. This is how the expression “his” in the amended Section 123(3) of the Act of 1951 needs to be construed. In their view, “[i]t is impossible to construe Sub-section (3) as referring to the religion, race, caste, community or language of the voter.”

For the adoption of this view, the following rationales are being adduced:

(a) The restricted construction of Section 123(3) is “consistent with the plain and natural meaning of the statutory provision.”

(b) A strict construction of the provision of Section 123(3), being “quasi-criminal” in nature, is “mandated.”

(c) The restricted view of Section 123(3) is supported by “the legislative history.”

(d) The ambit of Section 123(3) is distinctly different from that of Section 123(3A) that does not use the word “his,” and, therefore, “Section 123(3A) cannot be telescoped into Section 123(3)” in supersession of its “plain and natural construction.”

(e) A change in legal position, which has held the field “through judicial precedent over a length of time, can be considered only in exceptional and compelling circumstances.” And in the instant case, “no case has been made out to take a view at variance with the settled legal position,” and that there is “merit in ensuring a continuity of judicial precedent.”

In view of the above, the minority opinion holds that the “interpretation which has earlier been placed on Section 123(3) is correct and certainly does not suffer from manifest error,” and nor that interpretation has been “productive of [any] public mischief.” In

their considered opinion, the pronoun 'his' in Section 123(3) "does not refer to the religion, race, caste, community or language of the voter." According to them, it is to be read as "referring to the religion, race, caste, community or language of the candidate in whose favor a vote is sought or that of another candidate against whom there is an appeal to refrain from voting."

A Critique

Why is the cleavage of opinion between the majority court and the minority court? Where does lie the point of deviation in the construction of pronoun 'his' used in sub-section (3) of Section 123 of Act of 1951? The opinion of T.S. Thakur, CJI concurring with the opinion of Locur, J. (who wrote the judgment for himself and L. Nageswara Rao, J.), gives us some clue, when it is candidly stated by him in his opening paragraph:

> "I have had the advantage of carefully reading the separate but conflicting opinions expressed by my esteemed brothers Madan B. Lokur and Dr. D.Y. Chandrachud, JJ. While both the views reflect in an abundant measure, the deep understanding and scholarship of my noble brothers, each treading a path that is well traversed and sanctified by judicial pronouncements, *the view taken by Lokur, J. appears to me to be more in tune with the purpose and intention behind the enactment of Section 123(3) of the Representation of Peoples Act, 1951*. I would, therefore, concur with the conclusions drawn by Lokur, J. and the order proposed by His Lordship with a few lines of my own in support of the same."

The italicized statement brings out the point of cleavage or deviation: the majority opinion has preferred the purposive expansive interpretation of Section 123(3) of the Act of 1951, whereas the minority opinion has chosen to restrict itself to its 'plain and natural' interpretation. Although the opinion of the majority court constitutes 'the law' declared by the Supreme Court for all intents and purposes under Article 141 of the Constitution, nevertheless in our critique we need to address ourselves at least on two major counts. This is

required for deciding the crucial issue, whether it is at all possible to make the two opinions reconciled, convergent or complementary to each other. The two counts are: one, whether there is any need to go in for purposive interpretation by making a departure from the literal construction of Section 123(3); two, if the departure is desiderated, whether it should be carried out through judicial construction or legislative exercise.

The singular reason opting for purposive interpretation is that confining the appeal to voters on religious grounds only to the religion of the candidate or his rival candidate and not extending to that of the voters militates against the principle of 'secularism', which is an inviolable feature of the constitution under the basic structure doctrine. To this extent, appeal on ground of religion requires to be prohibited. This, indeed, is the underlying purpose of enacting Section 123(3) read with the simultaneous enactment of Section 123(3A) of the Act of 1951, which prohibits the promotion of or attempts to promote feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language. This simultaneous addition augments the purport of Section 123(3) rather than diluting it.

If we are inclined to realize this underlying meaning of Section 123(3), the next question that comes to the fore is: how to fructify this objective? Minority opinion reveals that such a drastic departure should be accomplished only through legislation proper:

> "A change in the law would have to be brought about by a parliamentary amendment stating in clear terms that 'his' religion would also include the religion of a voter. In the absence of such an amendment, the expression 'his' in Section 123(3) cannot refer to the religion, race, caste, community or language of the voter."

Majority opinion, on the other hand, veers round the view that if the existing provisions are amenable to such an interpretation as would serve the underlying purpose, the same should be achieved by the Court through purposive interpretation by overriding the literal construction on the contrary. While doing so, the Court should not be

deterred by the precedents, even if those are binding in character. Constitution Bench of the Supreme Court has succinctly stated that "the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for readjustment in a changing society, a readjustment of legal norms demanded by a changed social context."

Moreover, the avowed objective of constituting the Constitution Benches of five or more Judges of the Supreme Court is essentially not to decide a *lis* (a controversy or dispute) between two particular parties to litigation. In the constitutional scheme of things, its singular purpose, as provided under Article 145(3) of the Constitution, is to resolve the 'substantial question of law as to the interpretation of constitution' so that the basic law of the nation becomes clearer, more certain and transparent. That alone would strengthen the rule of law with futuristic import.

The instant case before the 7-Judge Bench involved the appellant Abhiram Singh, whose election in the year 1990 to the Maharashtra State Assembly was successfully challenged by the respondent Commachen in the Bombay High Court. On appeal before the Supreme Court, the decision of the Bench after more than a quarter of century is not going affect either of the parties to litigation – the respondent-opponent is dead and the term of the appellant was over long ago. What is survived before the 7-Judge Bench is the fact-matrix of that case, presenting an opportunity to evolve the law for generations to come. The approach of the larger Constitution Bench, therefore, perforce has to be constitution-centric, resolving relatedness of the religion to the electoral law on the larger canvas of foundational value of democratic secularism, which is unarguably, as eloquently noticed by the majority court, an inviolable basic feature of our Constitution.

This wider constitutionally-purposive-modern-approach indubitably would override the narrow confines of such peripheral practice-principles as that of rule of strict or literal construction, uncritical adherence to past precedents by ignoring even the contemporaneous developments (as indicated by the introduction of sub-section (3A) in Section 123 of the Act and Section 153A of the IPC that make a person criminally liable if he made an appeal on the

ground of religion fanning communal, fissiparous and separatist tendencies), etc. Following the precept of Justice Oliver Wendell Holmes that "the law is forever adopting new principles from life at one end", and "sloughing off" old ones at the other, Justice Locur has commended that 'for maintaining the purity of the electoral process and not vitiating it', the word "his" in sub-section (3) of Section 123 of the Representation of the People Act, 1951 must be given a broad and purposive interpretation. Such an interpretation would bring within the sweep of a corrupt practice any appeal made to an elector solely on the ground of religion irrespective of the fact whether it is the religion of the candidate or of the voter. As an axiomatic principle on this count, we venture to state somewhat jurisprudentially: *'the more you move unto the Constitution Benches of greater strength, the more you enter the rarefied realm of foundational values of constitutional law by liberating yourself from the traditional inertia*.'

The minority court has resorted to the principle of strict construction or to that of binding precedents in construing the literal meaning of Section 123(3) of the Act of 1951 with some "rationale and logic underlying the provision." That rationale for the restricted interpretation of Section 123(3) is that the State, by not adverting 'to the religion, caste, community or language of the voter as a corrupt practice', is enabled to provide some space for recognizing "the position of religion, caste, language and gender in the social life of the nation." Pursuing this line of logic, Chandrachud, J., inter alia, observes: "The Indian state has no religion nor does the Constitution recognize any religion as a religion of the state. India is not a theocratic state but a secular nation in which there is a respect for and acceptance of the equality between religions. Yet, *the Constitution does not display an indifference to issues of religion, caste or language*. On the contrary, they are crucial to maintaining a stable balance in the governance of the nation. [Emphasis added]

This rationale is reinforced by citing a string of constitutional provisions, which, on the one hand, prohibit the State to discriminate "against any citizen only on grounds of religion, race, caste, sex, place of birth or any of them," and yet, on the other hand, encourage it to make "special provisions for the advancement of socially or educationally backward classes of the citizens or for the scheduled

castes and scheduled tribes." In view of this purport of the constitutional provisions, it is assertively stated by the minority court that "there is no wall of separation between the state on the one hand and religion, caste, language, race or community on the other." Premised on this proposition, it is further observed as a corollary that if the State is obligated to undo the injustices caused merely on ground of religion, race, caste, etc., the electoral politics, which is mode and medium of social mobilization, could not debar the election candidates of achieving the same objective by discussing those very issues of religion, race, caste, etc. for mobilizing the masses. It is on this count, minority court concludes:

> "…. Electoral politics in a democratic polity is about mobilization. Social mobilization is an integral element of the search for authority and legitimacy. Hence, it would be far-fetched to assume that in legislating to adopt Section 123(3), Parliament intended to obliterate or outlaw references to religion, caste, race, community or language in the hurly burly of the great festival of democracy. …"

Again:

> "…. Access to governance is a means of addressing social disparities. Social mobilization is a powerful instrument of bringing marginalized groups into the mainstream. *To hold that a person who seeks to contest an election is prohibited from speaking of the legitimate concerns of citizens that the injustices faced by them on the basis of traits having an origin in religion, race, caste, community or language would be remedied is to reduce democracy to an abstraction*. *…_Section 123(3) was not meant to and does not refer to the religion (or race, community, language or caste) of the voter.*" [Emphasis added]

This stand of the minority court seemingly represents the deviant view, which comes to the fore when it is contrasted in the light of some of the statements reflected in the opinion of the majority court. To wit, the following statements may be abstracted from the majority opinion:

(a) "When the State allows citizens to practice and profess their religions, it does not either explicitly or implicitly allow them to introduce religion into non-religious and secular activities of the State. *The freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life which is different from the secular life*."

(b) "One thing which prominently emerges from the above discussion on secularism under our Constitution is that whatever the attitude of the State towards the religions, religious sects and denominations, *religion cannot be mixed with any secular activity of the State. In fact, the encroachment of religion into secular activities is strictly prohibited*."

(c) The Constitution does not recognize or permit mixing religion and State power and that the two must be kept apart.

It is this seemingly absolute separation of religion from secular activities of the State is dissented by the minority court. T.S. Thakur, CJI, in his judgment concurring with Locur, J., is conscious of the two principal constitutional values; namely, secular functions of the State on the one hand, and citizen's fundamental freedom to profess, practice and propagate one's own religion on the other. However, in their inter se relationship and seeking correlation between them, CJI Thakur seems to accord primacy to State's secular activities over citizen's fundamental freedom. To wit:

> "The upshot of the above discussion clearly is *that under the constitutional scheme mixing religion with State power is not permissible while freedom to practice profess and propagate religion of one's choice is guaranteed.* The State being secular in character will not identify itself with anyone of the religions or religious denominations. This necessarily implies that religion will not play any role in the governance of the country which must at all times be secular

> in nature. The elections to the State legislature or to the Parliament or for that matter to any other body in the State is a secular exercise just as the functions of the elected representatives must be secular in both outlook and practice. *Suffice it to say that the Constitutional ethos forbids mixing of religions or religious considerations with the secular functions of the State*. This necessarily implies that interpretation of any statute must not offend the fundamental mandate under the Constitution. An interpretation which has the effect of eroding or diluting the constitutional objective of keeping the State and its activities free from religious considerations, therefore, must be avoided. This Court has in several pronouncements ruled that while interpreting an enactment, the Courts should remain cognizant of the Constitutional goals and the purpose of the Act and interpret the provisions accordingly."

In our respectful submission, it is this uncritical absolute acceptance of the primacy of the principle of secularism without seeking any accommodation or its correlation with citizen's fundamental freedom to religion that makes the majority opinion somewhat suspect. It is this factor that seems to have prompted the minority opinion to invoke the statement made by then Law Minister in the Lok Sabha while introducing the Bill that sought to add the word "his" in Section 123(3) of the Act of 1951. Chandrachud, J., speaking for the minority court, brings out clearly two nuances showing in respect of secular activity of the State what is prohibited and what is permitted in the name of religion. Seeking vote and support in the election campaign by making appeal merely on the ground of religion is prohibited; whereas, in the same campaigning if the election candidate urges the electorate to protect and promote your fundamental rights, the same should not be construed as violation of the principle of secularism. Such an accommodation of the fundamental right to religion within the ambit of election law, which indeed is the secular activity, is shown by Chandrachud, J. by abstracting the singular statement made by the Law Minister in respect of conservation of language, which is co-terminus with

'religion' in the expression "religion, race, caste, community or language" used in Section 123(3) of the Act of 1951:

> "...But if you say that Bengali language in this area is being suppressed or the schools are being closed, … because they bore a particular name, then, you are speaking not only to fight in an election but you are also really seeking to protect your fundamental rights, to preserve your own language and culture. That is a different matter.
>
> But, if you say, 'I am a Bengali, you are all Bengalis, vote for me', or 'I am an Assamese and so vote for me because you are Assamese-speaking men', I think, the entire House will deplore that a hopeless form of election propaganda. And, no progressive party will run an election on that line. Similarly, on the ground of religion."

The Constitution Bench of the Supreme Court in *Jagdev Singh Sidhanti v. Pratap Singh Daulta* had adverted to this correlation as early as 1964 by holding that the provisions of Section 123(3) must be read in the light of the fundamental right guaranteed by Article 29(1) of the Constitution, which protects the right of any Section of the citizens with a distinct language, script or culture of its own to conserve the same. In that case, it was alleged by the election Petitioner that the returned candidate had exhorted the electorate to vote for the Haryana Lok Samiti if it wished to protect its own language. The issue to be responded was whether such exhortations to the electorate fell within the corrupt practice of appealing for votes on the ground of the language of the candidate or to refrain from voting on the ground of the language of the contesting candidate. The Court concluded by observing, *inter alia*:

> "Therefore it is only when the electors are asked to vote or not to vote because of the particular language of the candidate that a corrupt practice may be deemed to be committed. Where however for conservation of language of the electorate appeals are made to the electorate and promises are given that steps would be taken to conserve that language, it will not amount to a corrupt practice."

Jagdev Singh Sidhanti has been overruled by the majority court in *Abhiram Singh*, but only in respect of 'religion' without saying anything with regard to an appeal concerning the conservation of language, because that issue has not arisen for consideration before the 7-Judge Bench. Since the issue of 'religion' is conterminous with 'language' in the expression "religion, race, caste, community or language" used in Section 123(3), whatever is held about 'language' should be equally applicable to 'religion' along with other attributes of 'caste' and 'community'. Be that as it may, an opportunity of considering the critical relationship between the fundamental rights and the electoral law, especially more when this issue is brought to the fore in precipitant form by the minority court on the touchstone of 'mobilization of masses' for fulfilling the constitutional goals, is lost.

Finally, on relative evaluation of the majority and minority opinions of the 7-Judge Bench of the Supreme Court, we may agitate and ask two critical questions. One, whether the strict interpretation of Section 123(3) of the Representation of the People Act of 1951 by the minority court precludes the possibility of any abuse religion of the electorates by the election candidate in the electoral secular matters, notwithstanding the fact that he is merely espousing the collective cause of the targeted community. Two, whether the liberal interpretation of the same Section 123(3) by the majority court excludes the possibility of accommodating the play of fundamental right to religion in the electoral secular matters notwithstanding such categorical statement as "*the encroachment of religion into secular activities is strictly prohibited*." Our own response in both the cases is in the negative.

We may expound our response to the first critical question first. In our view, the restricted interpretation of Section 123(3) of the Act of 1951 by the minority court does not necessarily preclude the possibility of abuse of religion if the prohibition is confined to the religion of the candidate who made the appeal and not to the religion of the voter. In this respect, we may do no better than to quote the instance envisaged by Bobde, J., in the exposition of the construction of Section 123(3):

> "… It is quite conceivable that a candidate makes an appeal on the ground of religion but leaves out any reference to his religion and only refers to religion of the voter. For example, where a candidate or his election agent, appeals to a voter highlighting that the opposing candidate does not belong to a particular religion, or caste or does not speak a language, thus emphasizing the distinction between the audience's (intended voters) religion, caste or language, without referring to the candidate on whose behalf the appeal is made, and who may conform to the audience's religion, caste or speak their language, the provision is attracted."

In our second submission we intend to propose that the liberal or purposive interpretation of the same Section 123(3) by the majority court does not necessarily exclude the possibility of accommodating the play of fundamental right to religion in the electoral secular matters. On this count we may abstract the fact matrix from a case decided by the Constitution Bench of the Supreme Court, namely, *Kultar Singh v. Mukhtiar Singh*. In this case, the appellant, admittedly a Sikh by religion and also a member of the Akali Dal Party, who had made speeches and circulated posters calling upon voters to vote for him as a representative of the Sikh Panth, was elected to the Punjab Legislative Assembly. His election was challenged by the respondent. The singular issue to be determined was whether the speeches and the posters made by him amounted to an appeal to the voters to vote for the appellant on the ground of "his religion" within the ambit of Section 123(3). Realizing the context in which appeal was made, the Constitution Bench conclusively held: "we are satisfied that the word 'Panth' in this poster does not mean Sikh religion, and so, it would not be possible to accept the view that by distributing this poster, the Appellant appealed to his voters to vote for him because of his religion."

Thus, essentially in all situations, "It is a matter of evidence for determining whether an appeal has at all been made to an elector and whether the appeal if made is in violation of the provisions of Sub-section (3) of Section 123 of the Representation of the People Act, 1951." This, indeed, precisely is the eventual conclusion of

Lokur, J., whose opinion is central to the opinion of the majority court. This implies invocation of 'religion' in the matters of election per se is not prohibitive. In all cases, "whether an appeal has at all been made to an elector" on ground of "religion" that vitiates the secular environ of election "is a matter of evidence." If so, then, where is the cleavage between the majority and minority opinions? The true test in both the cases is: whether the appeal made by the election candidate on ground of religion is destructive of the 'secular' character of our democratic social order, irrespective of the fact whether it is the religion of the contesting candidate or that of the electorate. Viewed from this perspective, the majority and the minority opinions tend to converge rather than deviating.

References

Virendra Kumar, "*Statement of Indian Law - Supreme Court of India Through its Constitution Bench Decisions Since 1950: A Juristic Review of its Intrinsic Value and Juxtaposition," Journal of the Indian Law Institute,* 189-233, at 190 [Vol. 58:2 (2016)].

Representation of the People Act, 1951

Abhiram Singh v. C.D. Commachen (Dead) By Lrs. & Ors., Civil Appeal No. 37 of 1992, with *Narayan Singh v. Sunderlal Patwa & Ors.,* Civil Appeal No. 8339 of 1995, per *T.S. Thakur, C.J.I., Madan B. Lokur, L. Nageswara Rao, S.A. Bobde,* A.K. Goel, U.U. Lalit and Dr. D.Y. Chandrachud, JJ., ILR2017 (1) Kerala 89: 2017 (1) SCALE 1. Hereinafter simply *Abhiram Singh.*

(1996) 3 SCC 665: In *Abhiram Singh,* a 3-Judge Bench of the Supreme Court, while hearing appeal against the judgment of the Bombay High Court in which the election of the appellant Abhiram Singh was successfully challenged by respondent Commachen. Since the content, scope and what constitutes a corrupt practice under Sub-sections (3) or (3A) of Section 123 of the Representation of the People Act, 1951 needed to be clearly and authoritatively, the three-Judge bench opined that the appeal be heard by a larger Bench of five Judges.

(2003) 9 SCC 300

AIR 1965 SC 141: (1964) 7 SCR 790.

This anomaly was noticed by the Constitution Bench in *Narayan Singh, supra* note 6.

Per Madan B. Lokur, J. (for himself and L. Nageswara Rao, J.), S. A. Bobde, J. and T.S. Thakur, CJI., delivering separate opinions but concurring with Lokur, J.; and Dr D. Y. Chandrachud, J. (for himself and Adarsh Kumar Goel and Uday Umesh Lalit, JJ.) dissenting.

See, *Abhiram Singh, per* Madan B. Lokur, J. (for himself and L. Nageswara Rao, J.), Para 5.

(1964) 6 SCR 750 (CB): **"it** is only when the electors are asked to vote or not to vote because of the particular language of the candidate that a corrupt practice may be deemed to be committed", cited in *Abhiram Singh*, Para 6.

(1969) 1 SCC 455

(1996) 1 SCC 130.

AIR 1965 SC 141: (1964) 7 SCR 790: "appeals to religion, race, caste, community, or language … made in furtherance of the candidature of any candidate … would constitute a corrupt practice and would render the election of the said candidate void," cited in *Abhiram Singh*, Para 7.

(1994) 3 SCC 1 [9-Judge Bench]

Abhiram Singh, per Madan B. Lokur, J. (for himself and L. Nageswara Rao, J.), Para 7:" However, it must be noted that *Kultar Singh* made no reference to the decision in *Jagdev Singh Sidhanti*." See also, id., Para 13.

Id., Para 12: "It is not all clear how this conclusion was arrived at since the paraphrasing of the language of the provision in Kultar Singh suggests that the text under consideration was post-1961." This inference was reinforced by observing: "Further, a search in the archives of this Court reveals that the election petition out of the which the decision arose was the General Election of 1962 in which Kultar Singh had contested the elections for the Punjab Legislative Assembly from Dharamkot constituency No. 85. Quite clearly, the

law applicable was Section 123(3) of the Act after the amendment of the Act in 1961," id.

See, *Mohd. Aslam v. Union of India*, (1996) 2 SCC 749, cited in *Abhiram Singh*, Para 10.

See the initial reference made by the 3-Judge Bench to 5-Judge Bench in *Abhiram Singh v. C.D. Commachen*, (1996) 3 SCC 665, cited in *Abhiram Singh*, Para 2.

See, *Abhiram Singh*, Para 36: "The conflict between giving a literal interpretation or a purposive interpretation to a statute or a provision in a statute is perennial."

Lord Bingham of Cornhill in *R. v. Secretary of State for Health ex parte Quintavalle* [2003] UKHL 13 (Para 8), cited in *Abhiram Singh*, Para 36.

Id., Lord Bingham of Cornhill in *R. v. Secretary of State for Health ex parte Quintavalle* [2003] UKHL 13 (Para 9), cited in *Abhiram Singh*, Para 36. This has been illustrated by Lord Bingham of Cornhill by extracting an example from *Grant v. Southwestern and County Properties Ltd.* [1975] Ch 185, where Walton, J. had to decide whether a tape recording fell within the expression "document" in the Rules of the Supreme Court

Per Lord Steyn in *Grant v. Southwestern and County Properties Ltd.* [1975] Ch 185, ibid.

"*Construing Statutes*," (1999) 2 *Statute Law Review* 107, at 108 quoted in Justice G.P. Singh's *Principles of Statutory Interpretation* (14th Edition, revised by Justice A.K. Patnaik) at 34, cited in *Abhiram Singh*, Para 37.

Bennion on Statutory Interpretation, [6th ed. (Indian Reprint)] at 847, citing *Heydon's Case* (1584) 3 Co. Rep 7a cited in *Abhiram Singh*, Para 37.

Abhiram Singh, Para 38. However, an exception is made to the purposive interpretation: "Of course, in statutes that have a penal consequence and affect the liberty of an individual or a statute that

could impose a financial burden on a person, the Rule of literal interpretation would still hold good." Ibid.

2003(7) SCC 628 (Para 26), cited in Abhiram *Singh*, Para 57

2003(7) SCC 628 (Para 36), cited in *Abhiram Singh*, Para 57.

Abhiram Singh, Para 58.

See, id., Para 69: "That India is a secular state is no longer *res integra*." See also the exposition made by the Supreme Court in cases cited in id., Paras 71-80

Id., Para 82, citing *Kedar Nath v. State of Bihar*, AIR 1962 SC 955, in which a Constitution bench of the Supreme Court declared that while interpreting an enactment, the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to address.

Id., Para 83. See also *State of Karnataka v. Appa Balu Ingale and Ors*. [1995] Supp. 4 SCC 469, wherein the Supreme Court has held that Judge's should be cognizant of the constitutional goals and remind themselves of the purpose of the Act while interpreting any legislation, id., Para 84.

Id., Para 85, citing *Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Ltd. and Ors*. (2015) 8 SCC 1 (Para 456).

Id., Para 131. See also, id., Para 99, citing In *Bipinchandra Parshottamdas Patel (Vakil) v. State of Gujarat* (2003) 4 SCC 642 (Para 31), wherein a Bench of three Judges referred to Read Dickerson's *The Interpretation and Application of Statutes* to the effect that the court "will not extend the law beyond its meaning to take care of a broader legislative purpose," and thereby "using the statute as a basis for judicial law-making by analogy with it."

Id., Para 132. The legislature has used the expression "his" in Section 123(3) "with a purpose" and "there is no reason or justification to depart from a plain and natural construction in aid of a purposive construction." Ibid.

Id., Para 133, citing Constitution Bench decision of the Supreme Court in *Keshav Mills Co. Ltd. v. Commissioner of Income Tax, Bombay North, Ahmedabad* (1965) 2 SCR 908. See also, id., Para 134 read with Paras 135 and 136, citing *Supreme Court Advocates on Record Association v. Union of India* (2016) 5 SCC 1.

Id., 69, per T.S. Thakur, CJI: "…. Secularism has been declared by this Court to be one of the basic features of the Constitution." See also supra note 76 and the accompanying text.

Id. Para 152. In the opinion of minority, if the narrow interpretation of "his", which in their view is "the settled legal position", is considered as one of the "imperfections", such "imperfections cannot be attended to by an exercise of judicial redrafting of a legislative provision

Constitution Bench of the Supreme Court in *Raghubir Singh (supra), cited in Abhiram Singh*, Para 43.

Oliver Wendell Holmes, *Common Carriers and the Common Law* (1943) 9 Cur LT 387, 388.

Abhiram Singh, Para 43.

Abhiram Singh, Para 104.

See, id., Para 106, citing a string of Articles 15, 16, 25, 29, 30, 41, etc. of the Constitution.

Article 15(1) of the Constitution.

Article 15(4) of the Constitution.

Abhiram Singh, Para 107.

Id., Para 74, per T.S. Thakur, CJI, citing Sawant J. speaking for himself and Kuldeep Singh J. in *S.R. Bommai v. Union of India* 1994(3) SCC 1 (Para 148) in the light of several provisions of the Constitution including Articles 25, 26, 29, 30, 44 and 51A in Para 145. Emphasis added.

Id., Para 75. Emphasis added.

Id., Para 77, per T.S. Thakur, CJI, citing Jeevan Reddy J. for himself and Agarwal J. in *S.R. Bommai v. Union of India* 1994(3) SCC 1 (Para 310).

Id., Para 81

See, id., Para 117, per Chandrachud, J.

This is evident from the Law Minister's very poser: "...But the problem is, are we going to allow a man to go to the electorate and ask for votes because he happens to speak a particular language or ask the electorate to refrain from voting for a particular person merely on the ground of his speaking a particular language or following a particular religion and so on? If not, we have to support this," cited in *Abhiram Singh*, Para 117, per

(1964) 6 SCR 750, cited in *Abhiram Singh*, Para 124, per Chandrachud, J.

Per Lokur, J. in *Abhiram Singh*, Para 49(2). See also supra note 48 and the accompanying text.

AIR 1965 SC 141, cited in *Abhiram Singh*, Para 125, per Chandrachud, J.

AIR 1965 SC 141 (Para 14), cited in *Abhiram Singh*, Para 125, per Chandrachud, J.

Abhiram Singh, Para 49(3), per Lokur, J.

8
Remission: A Correctional Therapy for Convicts

Malvika Singh

Abstract

Violation of criminal law attracts penal consequences. However, this general rule is relaxed in the larger public interest by ensuring the correction and rehabilitation of the offender. Remission is a corrective measure for the convicts to help them come out of the victim syndrome and facilitate them to realize their societal worth and enable them to reintegrate into the society. Both, in the Constitution of India and Criminal Procedure Code, there are several provisions for remitting the sentence of convicts but only in a few deserving cases. The power to remit the sentence under the Constitution of India is exercised by the head of the State, whereas under the Criminal Procedure Code the executive Government exercises it. These powers are distinct in nature, scope and procedures and thus it is imperative to analyze these powers in view of the distinct legal and constitutional provisions relating to them.

Introduction

The general rule of Criminal Jurisprudence is that violation of law attracts penal consequences as per the law established. This general rule is relaxed as an exception, in the laws itself in some deserving cases, based on certain objective considerations. The objective considerations entail public interest, justice, reformation, rehabilitation and reintegration of the offenders of the laws in the main stream of social life. The aim is to ensure that the larger public

interest is served by enabling the offender reintegrate as a member of the society.

Remission means reduction of the amount of sentence, wholly or partly without changing the form and type of the sentence. For example, a sentence of imprisonment for one year may be remitted to imprisonment for six months. The power to remit a sentence has been conferred on the Sovereign and the Executive in the Indian Constitution and the Criminal Procedure Code 1973.

The concept of remission has been introduced in the Criminal Procedures in Indian Criminal Justice System in order to facilitate the reformation and rehabilitation of the convicts, which is the ultimate objective of incarceration. It also reflects the magnanimity of the Criminal Justice System by which an offender of law is granted the status of victim of circumstances. Remission is a tool invented to help the convicts come out of the victim syndrome and give them an opportunity to realize their human worth. The philosophy behind the concept of remission for the convicts is a reminder to the social scientists that not only the victims of crime deserve attention of the State but the convicts also deserve therapeutic approach for their rehabilitation. In this background, it becomes imperative to study the concept of remission as an essential ingredient of correctional therapy for the convicts.

Constitutional and Legal Provisions

As per the Constitution of India the President and the Governor of the State, respectively, have unfettered power to remit the punishment of any person committed any offence. The "pardoning" power of the President under Article 72 entails the power to grant pardons, reprieves, respites or remission of punishment or to suspend, remit or commute the sentence of any person convicted of any offence falling within the following categories:

1. Cases of Court Martial
2. Offence under any law relating to a matter over which the Union has executive power
3. Cases where the sentence is death sentence

It is important to note that Article 72(2) of the Constitution of India empowers even the officers of the Armed Forces of the union to suspend, remit or commute a sentence passed by Court-Martial. More importantly this power of Officers of Armed Forces is independent of the power of the President.

Similarly, Article 161 of the Constitution of India empowers the Governor of the State to grant pardons, reprieves, respites or remission of punishment or to suspend, remit or commute the sentence of any person who has been convicted for an offence which relates to a matter over which the executive power of the State Government extends.

Under chapter XXXII E of the Cr.PC titled "Suspension, Remission and Commutation of sentence", section 432 Cr.PC titled as "Power to Suspend or Remit Sentence", the appropriate government is empowered to remit the whole or any part of the sentence, at any time, without condition or upon any conditions which the person sentenced except [Section 432(1)]. From the title of section 432, it is clear that the appropriate government has been given the power to remit sentence and not remission of the punishment. The difference between the words "to remit sentence" and "Remission of the punishment" shall be discussed under the sub-heading "Nature and Scope of Remission". It is also clear from the provisions of section 432 Cr.PC that the appropriate government does not have the power to grant pardons, reprieves or remission of punishment and as this power is exclusively vested in the President and the Governor.

Section 432(1) is an enabling section. The procedure to be adopted by the appropriate government while remitting the sentence is given in sections 432(2) to 432(7). Due to the enabling nature of Section 432(1), it cannot be read in isolation, and it is not independent of the provisions of sections 432(2) to 432(7). Further, Section 435 Cr.PC provides that state government is required to act after consultation with the central government, while exercising power conferred in section 432 and 433, in the following cases-

1. Where the case was investigated by the Central Bureau of Investigation or by any other agency which is empowered under a Central Act other than the

Cr.PC. This includes cases, which form subject matter of the local and special criminal laws dealing with matters under the Union List, wherein a separate scheme of investigation and prosecution, which is different from the one provided in Cr.PC., is provided. For instance the Prevention of Money Laundering Act, 2002, The Wild Life (Protection) Act, 1972 and the NDPS Act, 1985, entail different investigative procedure and scheme for prosecution; Or

2. Where the case deals with a matter relating to misappropriation and destruction or damage to any property that belongs to the Central Government, Or
3. The case deals with an offense committed by a person in the service of the Central Government during the course of acting or purporting to act in the discharge of his official duty.

Further it must be noted that this power of remission of sentence has been granted even to the officers of the Armed Forces of the union who in exercise of such power can to suspend, remit or commute a sentence passed by a court-martial. This is limited only to cases pertaining to a Court Martial.

Nature and scope of power to remit sentence

Several attempts have been made by the Supreme Court to examine the nature and scope of the power to remit sentence in *Maru Ram* (supra), *Kehar Singh* (supra), *Prem Raj* (supra) etc. In *Prem Raj* the Supreme Court maintained that remission is reduction of the amount of a sentence without changing its character. In the case of a remission, the guilt of the offender is not affected, nor is the sentence of the Court, except in the sense that the person concerned does not suffer incarceration for the entire period of the sentence, but is relieved from serving out a part of it. It was stated that section 432 confines the power of the Government to the suspension of the execution of the sentence of the remission of the whole or any part of the punishment. The conviction, under which the sentence is imposed, remains unaffected. The section gives no power to the Government to

revise judgment of the court. The following observations in *Prem Raj* remain unexamined till date-

> "Remission" originally meant a pardon under the great seal and release but latterly it came to mean the same as a reduction of the quantum of punishment (e.g. amount of the fine imposed or term of imprisonment awarded) without changing its character."

The above observations in *Prem Raj* (supra) strengthen the view of the researcher that "remission of punishment" and "to remit a sentence" are two different prepositions, having different purposes and meaning, as used in Article 72 and 161 of the Constitution of India. The missing of the words "remission of punishment", in the provisions of section 432 Cr.PC also indicate that "remission of punishment" and "to remit a sentence" are to be understood differently in the light of the provisions of the Prison Manuals of the States and other provisions of the Cr.PC contained in section 427 to 429, especially section 429. According to Section 429 of the Cr.PC, Sections 426 or Section 427 does not excuse the person from any part of the punishment for which he is liable as part of former or subsequent conviction. Thus, Section 429 makes it clear that a convict cannot be excused from any part of the punishment, which he is liable upon his former or subsequent conviction.

Here, another issue, which becomes relevant, is the difference between the meaning of punishment and sentence. The researcher is the opinion that sentence is for a case whereas punishment is for an offence. A case may contain several offences. Therefore, a sentence may contain several punishments. This difference needs to be examined in order to understand the correct nature and scope of the power of the appropriate government to grant remission of punishment and to remit the sentence. This difference can be understood more appropriately by reading section 429 of the Cr.PC together section 31Cr.PC. For the sake of clarity, the crux of Section 31 Cr.PC is that:

1. When a person is convicted at one trial for two or more offences, the Court may sentence him for such

offences and subject him to several punishments prescribed for these offences (however, this is subject to Section 71 of the Indian Penal Code). These punishments commence one after the expiration of other, unless the Court directs that these punishments shall run concurrently.

2. In the case of consecutive sentence, if the aggregate punishment for the several offences is in excess of the punishment that the Court is competent to inflict, then it is not necessary that solely because of the reason the offender has to be sent for trial before the high Court. However, the person should not have been sentenced for a longer period than 14 years or the aggregate punishment should not exceed twice the amount of punishment that the Court is competent to inflict for a single offence.

In order to understand the exact nature and scope of the power of the appropriate government to remit the sentence, and its procedure, it is imperative to examine the provisions contained in the Prison Manual of the States also. For instances in the Punjab Jail Manual, the following procedure is prescribed for forwarding the case of a convict for remission:-

1. Upon the expire of 14 years the following action can be taken:
    a. For a male above 20 years of age who has been awarded cumulative periods of rigorous imprisonment aggregating to more than 14 years or a single sentence of more than 20 years – provided he has undergone a period of detention in jail amounting together with remission earned upto 14 years, is a case fit to refer to the State Government. Such a case shall be submitted by the Superintendence of the Jail through the Inspector General of Prisons, Punjab for the appropriate orders by the State Government.

2. Upon the expiry of 10 years the following action can be taken:
    a. The case of a female prisoner and of a male prisoner under 20 years of age who are undergoing cumulative periods of rigorous imprisonment aggregating to more than 14 years, or a single sentence of more than 20 years – is a case fit to be referred to the State Government. The case shall Case shall be submitted by the Superintendent Jail through the Inspector General of Prisons, Punjab for the orders of the State Government when the prisoner has undergone a period of detention in Jail amounting together with remission earned to 10 days.

In order to understand the nature and scope of power to grant remission of punishment and to remit the sentence of a convict, discussion on the following sub-theme becomes relevant in view of the provisions of Article 72 and 161 of the Constitution of India, sections 432, 433, 433A, 435, 427, 428, 429 and 31 of the Cr.PC, section 53, 54 and 55 of the IPC and the provisions of the Prison Manuals of the States. Following issues for discussion emerge:-

(1) Power to grant "remission of punishment" and "to remit the sentence",
(2) Power to grant remission of sentence "at any time",
(3) Remission and commutation of sentence,
(4) Power to remit the whole or any part of punishment,
(5) Procedure for remission of sentence.
(6) Appropriate Government

Power to grant "remission of punishment" and "to remit the sentence"

While providing for clemency power of the President and the Governor under Article 72 and 161 respectively, it is declared that the President/the Governor has the power to grant pardons, reprieves, respites or remissions of punishment. In the same sentence, it is also provided that the President/the Governor shall have the power to

suspend, remit or commute the sentence of the any person convicted in any offence. These two different types of expressions in the same sentence deserve discussion. The terms "pardon", "reprieve" and "respite" are neither defined nor qualified anywhere in the Constitution as well as in the codified Criminal Laws in India. Therefore, there is no process/ procedure laid down in the laws for the exercise of these powers. On the other hand, the terms "suspension of sentence", "remission of sentence" and "commutation of sentence" are qualified in the Criminal Laws and well established procedures are prescribed for the exercise of the power to suspend, remit or commute of sentence of any convicted person. In the absence of any explanation/qualification, bringing out the objective and purpose for these two different types of expressions, there appears to be no other logic but to assume that the first expression, namely, "power to grant pardons, reprieves, respites or remissions of punishment" is a declaration that the President/the Governor have the clemency power which includes pardon, reprieve, respite or remission of sentence.

The second expression, namely, "power to suspend, remit or commute the sentence" indicates the procedure/ways and means for the exercise of the clemency power, as contained in the first expression above, by the President/the Governor. It becomes clear when we find the procedures prescribed for the suspension, remission and commutation of sentence in section 360, 432 and 433 Cr.PC respectively. Therefore, in view of the researcher, it can safely be concluded that granting pardon, reprieve, respite or remission of punishment is the substance, and, power to suspend, remit or commute the sentence is the way for the attainment of that substance.

In the provisions contained in section 432 Cr.PC, where the clemency power of the executive government in suspension or remission of sentence is prescribed, there is no mention of the terms like pardon, respite and reprieve etc. Here the power of the executive government is clearly laid down by prescribing procedures. An executive government has to act within the framework of the well defined rules and procedures and they cannot afford to act beyond what is prescribed in the codified laws and procedures. This explains the omission of the undefined and unqualified terminology like pardon, respite and reprieve in the provisions of sections 432 and 433 Cr.PC where clemency power of the executive government are laid down. Therefore, provisions of section 432 relating to suspension and

remission of sentence has very limited scope and cannot be assumed to have unlimited effects akin to pardon, respite and reprieve. In view of the researcher, it will be wrong to presume that the power to remit sentence of any type, in whole or in part, at any time, includes or have effect like pardon, respite or reprieve. If it is presumed to be so, then, it shall amount to giving unlimited and unqualified powers akin to pardon, respite and reprieve to the executive government, which does not appear to be the intention of the framers of the Constitution and writers of the Cr.PC. If it were so, then, the writers of the Cr.PC would have clearly written the title of section 432 as "Power to grant pardon, reprieve, respite or remission of sentence or suspend or remit sentence", instead of the short and limited existing title "Power to suspend or remit the sentences". In this background, the scope of the term "remission of sentence", in section 432 Cr.PC is to be understood in limited sense. This scope will be brought out in the discussion to be followed in this chapter.

Procedure for remission of sentence

Section 432 Cr.PC prescribed the procedure for remission of sentence by the appropriate government. Section 432(1) declares that the appropriate government has the power to remit the whole or any part of the punishment to which a convict has been sentenced. Section 432(2) makes it clear that the convict has to submit an application for consideration of remission of his/her sentence by the appropriate government. The appropriate government may require the presiding judge of the court to state his opinion on the application together with his reasons for such opinion. The appropriate government is also required a certified copy of the trial from the trial judge. The appropriate government may prescribe no/any condition for remission of the sentence. The remission of sentence is subject to the fulfilment of the conditions, if any prescribed by the appropriate government. If the convict violates any of the condition prescribed in the remission order, he may be arrested by the police without warrant and remanded to undergo the unexpired portion of the sentence.

A separate procedure for remission of sentence under section 432 Cr.PC, of those convicts who have to undergo more than 14 years of term imprisonment is given in the Jail Manual of respective States. The provisions of Punjab Jail Manual have been discussed in this

regard in above Para 3.324 in detail. Similar provisions included in J&K Jail Manual also under chapter LIV, titled Review of Sentences. The eligibility conditions for review of sentences by the J&K government of convicts serving term sentence as well as life imprisonment are given in Para 54.2. It is to be understood here that in the Jail Manual of J&K (supra), the term 'review of sentences' have been used for both remission and commutation of sentence. The scheme of remission of sentence has been prescribed in all the Jail Manual in different States.

The procedure for seeking and granting remission has been laid down in sections 432 & 435 of the Cr.PC. It is clear from the provisions in these sections that individual convict has to apply for grant of remission of the sentence. The Appropriate Government is under legal obligation to seek opinion of the trial Court and consider record of the trial before arriving at a decision regarding remitting the sentence of the applicant. The remission of the sentence is subject to no condition or some conditions to which the applicant has to convey his/her acceptance. If the applicant is found violating the conditions imposed for remission of sentence, the remission of sentence may be withdrawn and he/she may be arrested to undergo the unexpired portion of the sentence. Section 435 prescribes that in cases where the investigation was carried out by the Central Bureau of Investigation or where the offence involved the misappropriation or destruction of or damage to any property belonging to the Central Government or the offence was committed by a person in the service of Central Government while acting in discharge his official duties, the State Government shall not exercise the power to remit sentence of the convict except after consultation with the Central Government.

Appropriate Government

Section 432(7) of the Cr.PC explains the meaning or the expression "Appropriate Government", and stipulates that Appropriate Government is:

1. The Central Government in cases where the sentence is for an offence against, or an order under Section 432(6) is passed, under any law relating to a matter over which the executive power of the Union extends.

2. The State Government in other cases, i.e. the Government of the State within which the offender is sentenced or the said order is passed.

Section 435 Cr.PC prescribes further restrictions on the power of the State Government under sections 432 & 433 Cr.PC. In the following cases the State Government cannot exercise the powers to remit and commute sentence of a convict independently-

1. Those cases, which were investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or any other agency empowered to investigate under a Central Law. For instances money laundering cases which were investigated by the Enforcement Directorate
2. Those cases which relate to misappropriation or destruction, damage to any property belonging to the Central Government
3. Those cases which relate to acts committed by a person in the service of the Central Government while acting or purporting to act in discharge of his official duty.

In the above-mentioned cases the State Government has to exercise its power after consultation with the Central Government. Further, where persons are prosecuted for offences, some under laws in the State filed and some in the Union field and sentenced to separate terms of imprisonment to run concurrently, State Government sometimes remit the whole sentence without a reference to the Central Government, although legally the Central Government has to order remission in relation to offences in the Union field. A provision has been added requiring specifically that the person cannot be released unless the Central Government also remits the part of the sentence relating to an offence in the Union field.

Conclusion

Remission is a very important concept in the Indian Criminal Procedures, which signifies that the Criminal Justice System is alive

to the plight, social needs and correctional philosophy for the convicts. It will not be wrong to assume that remission is important victimological concept for the convicts to ensure their reformation and rehabilitation. Remission motivates the convicts to remain disciplined in the prison which help them in the process of reformation. This concept also reminds the family members of the convict that they are not forgotten entity in Criminal Justice System. By way of remitting sentence, the Criminal Procedure provides an opportunity to the convict to reunite with their family members in order to fulfil their social and familial obligations.

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