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Articles

JUDICIAL INTERVENTIONS IN COMBATING OF ACID VIOLENCE AND REHABILITATION OF VICTIMS IN INDIA

Sathiyamurthy L S*

ABSTRACT

The intentional use of corrosive substance as a weapon against the person, who rejects the diktats has been recognised as acid violence. It causes debilitating burn injuries and permanent scars upon the victims. This heinous crime rate has been alarmingly increasing all over the world, and more particularly against women. The victims of such acid violence occurrences are not only suffering from immediate physical pain and financial constraints but a long time psychological consequences, trauma and negative attitudes from their peers and family members. The Courts in India often intervened to provide immediate and necessary reliefs to the sufferers of acid injuries and also endeavoured in the task of combating acid violence by strengthening the legal framework and imposing restrictions on easy availability of acid. This paper critically examines the 'judicial interventions' in India in the criminalisation of non-accidental acid pouring incidents and its prevention, treatment of victim and granting of compensatory reliefs.

KEY WORDS

Acid violence, Burn injuries disability, Judicial intervention, Victims of acid attack, Vitriol.

Introduction

"You hold the acid that charred my dreams
Your heart bore no love.
It had the venom stored
There was never any love in your eyes
They burn me with caustic glance
I am sad that your corrosive name will always
be part of my identity that I carry with this face.
Time will not come to my rescue
Every surgery will remind me of you
You will hear and you will be told that the face
You burned is the face I love now.
You will hear about me in the darkness of confinement
The time will be burdened for you
Then you will know that I am alive
Free and thriving and living my dreams".[1]

This poem by a valiant victim of vitriol would depict the physical pain, mental agony, social neglect, stigma and other sufferings perpetually experienced by her, aftermath the acid attack occurrence. The intentional acid pouring, a grave crime that causes perennial scars on the body of the victims and make them to suffer with agony. It has been recognised by the jurists, medical professionals and people from all walks of life as a vicious act of attack.[2] The Supreme Court has described that an act of causing grievous hurt by use of acid, by its very nature, is a gruesome and horrendous one, which, apart from causing severe bodily

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[1]Ms Laxmi, a survivor of acid attack reads out this poem while receiving the honour from the first lady USA Michelle Obama at the International Women of Courage Award in Washington D.C on March 5, 2014. She pioneered for grant of mandatory compensation to acid attack victims, by filing a Writ Petition before the Supreme Court of India. Details available in https://www.buzzfeednews.com visited on October 8, 2019.

[2]The terms "acid attacks" and "acid violence" are used interchangeably. The former refers to specific crime occurrence and the latter refers to a broader context. The word "vitriol" used refers to the attack in which sulfuric acid used as a weapon.

pain, leaves the scars and untold permanent miseries for the victim.[3] The burn injuries caused by the non-accidental throwing of acid is a major cause of mortality, morbidity and disability. This gruesome crime puts the victim in a miserable living condition or even it results in death. In most of the cases, the victims are women. The dreadful act of attacking women with acid has been taking place across different parts of the world. In India, the legislature has responded only after the geared-up measures initiated through Public Interest Litigation (PIL) and directions given by the judiciary in cases pertains to acid crimes. This paper demonstrates the judicial interventions and its effects in the treatment of acid attacks victims, combating the acid violence and introduction of victim redressal mechanisms in India.

I) 'SURVIVOR' - A PREFERRED PSEUDONYM

The person suffering with scars or burn injuries caused by acid attack prefers to claim or identify by a pseudonym 'survivor' rather than victim. Both in English and non-English speaking countries they have avoided use of the term "victim" to denote a person injured by acid violence. The Non–Governmental Organizations (NGO) that extend humanitarian aid to the sufferers of acid attack have also been functioning in the name and style of '*Acid attack Survivors*' in United Kingdom, Bangladesh, Pakistan and India. A cursory view of the painful narratives of the women suffered by acid attack injuries hosted in the websites of the volunteers and Non-Governmental Organizations (NGO) serving to help the acid attack victims in India, United Kingdom, Bangladesh reveals that it is like a 'phoenix bird' the victims of acid attacks take rebirth as it were and rebuilding their life aftermath acid violence without adequate support from peers and relatives.[4] Further, they demand love from the society and expect justice from the institutions. *Per contra,* in the pragmatic contexts the victims of vitriol are forced to encounter with hostilities from their relatives, neglect from the society or community they belong to and poor response from the government machineries.[5] As narrated in a compilation, unlike other victims the acid violence victims are forced to face psychological damage, negative or unsympathetic behaviour from family which leads to breakdown of familial relationship, loss of economic surety and sense of remoteness which leads to stigmatization.[6] Despite of all these adverse factors after the tragedy of acid attack they attempt to survive and succeed in the life and that makes the victims often preferred to be identified as survivors rather than victims. The nomenclature 'survivor' opted by the acid burned victims reflects the wish and endeavours to survive with scars and fight for justice but not expecting undue sympathy or mercy from their peers and society.

II) ACID: THE LETHAL LIQUID

The acid attack is an act of intentionally pouring, spraying, throwing of chemical substances such as hydrochloric, sulfuric or nitric acids on the person to maim, disfigure or to make blind. The corrosive chemical substances being used for cleaning purposes dissolve skin tissues, fat and muscle when they come into contact with the body when handled carelessly in day-to-day life. Whereas in the acid violence occurrences the perpetrators throw, or pour acid onto the victims' faces and

[3]Omanakuttan vs State of Kerala (Criminal Appeal No: 873 of 2019) Judgement dated 9 May, 2019, Supreme Court of India.
[4]https://www.thebetterindia.com/114606/acid-attack-survivor-resham-khan-india/
https://www.asti.org.uk/ and
https://acidsurvivors.org/ in these websites the word victim has been conveniently avoided but the term survivor is opted by the organisations.
[5]The word 'community' is synonymous to mean social group, sharing common characteristics or interests and not refer to a caste or other discriminating factors in Indian context.
[6]Kerry McBroom & Salina Wilson, Burning Injuries, Human Rights Law Network, New Delhi, (2014) P 29.

bodies which quickly burns through the flesh and bone. The basic intention is not to kill but permanently disfigure and cause extreme physical and mental suffering to the victims. It causes devastating health consequences for victims and short-term effects which includes immense physical pain, while long-term effects can include blindness, loss of facial features and severe mental agony. At first contact, acid feels like water on the body, but within seconds, it causes a burning sensation that quickly becomes increasingly intense.[7] If not washed off immediately with water, acid can melt away a victim's skin and flesh, going as deep as to dissolving bones.[8] When thrown at the face, acid quickly burns and destroys victim's eyes, eyelids, ears, lips, nose, and mouth.[9] It takes five seconds of contact to cause superficial burns and 30 seconds to result in full-thickness burns. After the attacks, victims are at risk of breathing failure due to the inhalation of acid vapors which cause either a poisonous reaction or swelling in the lungs. In the weeks or even months after the attack, acid burn victims may suffer from infections, which can also cause death if not treated with proper cleaning techniques and antibiotics.[10]

Victims must endure painful surgical procedures just to prevent further harm and suffering. As mentioned, if not washed off immediately, acid continues to burn the skin, and may eventually cause skeletal damage and organ failure.[11] If the dead skin is not removed from an acid violence victim's body within four or five days, the new skin may grow together with the old to cause further facial deformities. Therefore, acid is considered as a highly dangerous weapon of crime.

III) ACID CRIMES AND CLEMENCY

In India, offenders who have committed grave and heinous crimes and languishing in prisons as death row convicts or life convicts can avail the benefits of clemency from the powers vested with the executives. The President has the power to grant pardons, reprieves, respites or remission of punishments or commute the sentence of any person convicted of any offence.[12] The Governor of the State can also exercise such powers in the State.[13] The Code of Criminal Procedure, 1973 also conferred power upon the State to commute the sentence of death or any other imprisonment awarded by the competent courts.[14] But the Supreme Court was of the opinion that the acid attack cases have to be exempted from the domain of such post-sentencing pardons and remissions. In *Ravada Sasikala vs State of Andhra Pradesh*[15] it had an opportunity to dealt with a victim of acid attack and set a new trend for the treatment of the convicted person without leniency even in the post-conviction stage. In this case the Supreme Court made a humane approach towards the young woman victim whose family refused the marriage alliance

[7]See Md. Shahidul Bari & Md. Iqbal Mahmud Choudhury, Acid Burns in Bangladesh, 14 ANNALS OF BURNS & FIRE DISASTERS 115, (2001).

[8]Sital Kalantry & Jocelyn Getgen Kestenbaum, Combating acid violence in Bangladesh, India and Cambodia, (2011), https://www.ohchr.org/Documents/HRBodies/CEDAW/HarmfulPractices/AvonGlobalCenterforWomenandJustice.pdf. visited on 13 January, 2020

[9] See Law Commission of India, Report Submitted to The Hon'ble Supreme Court of India for Its Consideration in The Pending Proceedings Filed by One Laxmi in W.P (Crl.) No. 129 of 2006 On "The Inclusion of Acid Attacks as Special Offenses in The Indian Penal Code and A Law for Compensation for Victims of Crime" 10 (2009) (No. 226), available at http://lawcommissionofindia.nic.in/reports/report226.pdf.

[10]Ibid.

[11]See, e.g., Acid Attack Victim Succumbs to Burns, THE HINDU, April. 12, 2010, http://www.hindu.com/2010/04/12/stories/2010041262981000.htm (last visited July 3, 2018).

[12] Article 72, Constitution of India.

[13] Article 161, Constitution of India.

[14]Section 433, Code of Criminal Procedure, 1973.

[15](2017) 4 SCC 546.

proposal, was attacked with acid by the accused. He trespassed into her house and poured acid on her head; it has been observed by the Supreme Court that it is individually as well as collectively intolerable. The pain and sufferings undergone by the victim also reflected in the judgment as follows:

"Indeed, it cannot be ruled out that in the present case the victim had suffered an uncivilized and heartless crime committed by the respondents and there is no room for leniency which can be conceived. A crime of this nature does not deserve any kind of clemency. This Court cannot be oblivious of the situation that the victim must have suffered an emotional distress which cannot be compensated either by sentencing the accused or by grant of any compensation."

The Supreme Court has approached this case in the victimological perspectives and the pain and sufferings undergone by the girl was duly understood by the court and it reflected in the observation made in the judgment. In addition to upholding of the conviction and sentence awarded against the accused person, the court has opined that the acid attack offences have to be exempted from clemency jurisdiction. This observation would sensitize the executives and serves like an eye opener to the State or prison authorities while exercising their powers to commute the sentence.

IV) ACID ATTACK - AN ATTEMPT TO MURDER

Prior to the amendment and insertion of Sections 326A and 326B IPC (amendments introduced in 2013 in IPC and Cr P C analyzed separately in this study) the acid attacks were registered as an offence under Section 326 IPC, which dealt with voluntarily causing grievous hurt by dangerous weapon. The Supreme Court felt that using of acid as a weapon and causing grievous injury is a most endangering act to the life of a human and it can be seriously viewed for imposing stringent punishment upon the accused. In *Sachin Jana vs State of West Bengal*[16] which was decided by the Supreme Court in the 2008, the accused had used acid to attack the victim which caused disfigurement. The Supreme Court considered the gravity and magnitude of the crime and it applied Section 307 IPC instead of 326 IPC read with Section 34 IPC. It has held that to justify a conviction under Section 307 it was not essential that 'bodily injury capable of causing death was inflicted'. It was further clarified that the penal section made a distinction between the act of the accused and its result. Therefore, it was not necessary that the injury actually caused to the victim should be sufficient under ordinary circumstances to result in death. The court is only required to see whether the act, irrespective of its result, was done with the intention or knowledge mentioned in Section 307 IPC. It was sufficient if there was intent coupled with an overt act in execution thereof. The views expressed by the Supreme Court would show that the apex judiciary sensitized itself and dealt the acid attack cases with iron hands to impose severe and appropriate punishments to the offenders, when there were no specific penal sections for acid attacks cases in India. This judgement served as a judge made law and filled the lacunae in the penal law prior to amendments inserted in 2013.

V) ACID ATTACK VICTIMS: THE INDIAN SCENARIO

The acid violence has become a global phenomenon and occurs in many countries, including Uganda, Ethiopia,[17] UK and the United States.[18] However, a significant

[16] *(2008) 3 SCC 390.*

[17] *See Amber Henshaw, Acid Attack on Woman Shocks Ethiopia, BBC NEWS, Mar. 28, 2007, available at http://news.bbc.co.uk/2/hi/africa/6498641.stm*

[18] *Gaillan Jarocki, Four Acid Attacks in Chicago This Year, EXAMINER, June 16, 2010, available at http://wwww.examiner.com/x-19453-Cook-County-Nonpartisan-Examiner~y2010m6d16-Four-acid-attacks-inChicago-this-year*

number of attacks occur in South and Southeast Asian countries, where the cheap and easy availability of acid gives access to this dangerous weapon. In India, a liter of hydrochloric acid costs between Rs.16 and Rs.25. The acids used by perpetrators to commit attacks include hydrochloric, sulfuric, and nitric acids and are the same substances used in industrial applications by many businesses. Moreover, many Indians use acid at home as a common cleaning agent. The sulfuric acid and nitric acid are easily available in Asian Countries. A bottle of sulfuric acid sells in Dhaka, Bangladesh for as little as TK.15 ($0.15 USD). A liter of the same in Phnom Penh, Cambodia sells for about 3,000 Riles ($0.72 USD), and battery acid costs only 500 Riles ($0.12 USD). In India, a liter of hydrochloric acid costs between Rs.16 and Rs.25 ($0.37 to $0.57 USD).[19]

In India acid attacks are occurring in open places and the data on reported cases reveal that at least an attack takes place every alternate day. The following Quinquennial Report of (2011–2015) of acid violence cases registered in India would show that it has been a perpetual crime and depict a dismal trend.

States	*2011*	*2012*	*2013*	*2014*	*2015*	*Total*
Andhra Pradesh	8	6	4	6	14	38
Arunachal Pradesh	0	0	0	0	0	0
Assam	0	1	13	0	3	17
Bihar	3	10	1	4	19	37
Chhattisgarh	0	0	0	1	0	1
Goa	0	1	0	0	0	1
Gujarat	2	4	5	6	0	17
Haryana	8	6	6	13	12	45
Himachal Pradesh	0	0	1	1	1	3
Jammu and Kashmir	2	3	2	2	2	11
Jharkhand	0	1	0	3	0	4
Karnataka	3	2	4	3	2	14
Kerala	1	2	0	4	10	17
Madhya Pradesh	5	6	11	20	19	61
Maharashtra	6	3	9	5	8	31
Manipur	0	0	0	0	1	1
Meghalaya	0	1	0	0	0	1
Mizoram	0	0	0	0	0	0
Nagaland	0	0	1	0	0	1
Odisha	1	2	3	10	8	24
Punjab	9	4	5	17	7	42
Rajasthan	0	6	0	6	1	13

[19]*Combating Acid Violence in Bangladesh, India, and Cambodia, A Report by the Avon Global Center for Women and Justice at Cornell Law School and the New York city Bar Association, 2011, P12 (The price of the acid of the year 2010 & 2011 are referred to).*

States	*2011*	*2012*	*2013*	*2014*	*2015*	*Total*
Sikkim	0	0	0	2	0	2
Tamil Nadu	0	1	6	13	10	30
Telangana	0	0	0	1	1	2
Tripura	0	1	0	4	4	9
Uttar Pradesh	14	11	18	43	61	147
Uttarakhand	2	3	0	0	0	5
West Bengal	13	22	8	41	41	125
Andaman and Nicobar Island	0	0	0	0	0	0
Chandigarh	1	0	1	0	0	2
Dadra and Nagar Haveli	0	0	0	0	0	0
Daman and Diu	0	0	0	0	0	0
Delhi UT	28	9	18	20	21	96
Lakshadweep	0	0	0	0	0	0
Puducherry	0	1	0	0	0	1
Total	106	106	116	225	249	798

Source: Acid Survivors Foundation of India (2015).

The Crime Report of the National Crime Records Bureau (NCRB) published in 2018 reveals that there are 223 acid attacks and 60 attempts to acid attacks reported in 2016. Further, the reported cases are 244 acid attacks – 65 attempts to acid attacks and 228 acid attacks - 55 attempts to acid attacks respectively in the year 2017 and 2018.[20] Every such attack begot at least one victim, in some cases two persons suffered with burn injuries.

There are many causes cited for acid attacks and they differ from region to region and also differ on factors including political and religious ideologies. The attack in USA in 2019, a white man threw acid on a Hispanic man's face was charged hate crime and causing reckless injury.[21] In November, 2008, men on motorcycles squirted the acid from water bottles on the school going girls and teachers to prevent them from getting access to education, as per the reason revealed later in the media.[22] The corrosive substances were used as a weapon in the matrimonial disputes, dowry demands and for other trivial issues also, as per the report of the Cornell Law School proves it.[23] The Bangladeshi men throw acid on women's faces as a mark of their masculinity and superiority, to keep women in their place.[24]

In India many reasons such as gender, economic, and class inequalities, the culture of

[20]*Crime in India, 2018 published by the National Crime Records Bureau available in https://ncrb.gov.in visited on 07 April, 2020.*
[21]*https://www.cnn.com visited on 01 April, 2020.*
[22]*See the Report by the Avon Global Center for Women and Justice at Cornell Law School, the Committee on International Human Rights of the New York City Bar Association, the Cornell Law School International Human Rights Clinic, and the Virtue Foundation, 2011 for further details of Taliban attack in Afghanistan against the women education.*
[23]*Ibid*
[24]*Supra note 17.*

revenge and silence misogyny.[25] Further, there are family disputes, dowry, education levels and emotional level of people. The mentality of the people is one such big reason for such offence. If for instance a person is rejected by a girl, he instead of accepting the refusal, takes it as an opportunity to take revenge for not accepting him.[26] Therefore, the acid attacks occur at high rates in India, Bangladesh, Pakistan, and Cambodia and the victims are sufferings with many disadvantages.

VI) GENDER PERSPECTIVES TO ACID ATTACKS

The financial dependence of women on men can cause problems and resentment in times of financial stress. Deteriorating economic conditions, high unemployment rates among men, the increasing number of landless households and the lack of agricultural work for male labourers,[27] are all reasons for their frustration.[28] Thus, women who are burdened with the onus of earning for the family are often victimized by their husbands when they fail to live up to their expectations as homemakers in their conventional gender roles.[29] About 80% of all acid attack victims in the Indian subcontinent are women. In light of this fact, it would be foolhardy to suggest that acid attacks are not gender-related.[30] This analysis applying to India as well, as there is a strong patriarchal culture running through the veins of Indian society too. The Law Commission of India has stated that the majority of acid attack victims are women:

"Though acid attack is a crime which can be committed against any man or woman, it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women for spurning suitors, for rejecting proposals of marriage, for denying dowry etc. The attacker cannot bear the fact that he has been rejected and seeks to destroy the body of the woman who has dared to stand up to him".[31]

The 226th Report of the Law Commission of India adds that acid attacks "are used as a weapon to silence and control women by destroying what is constructed as the primary constituent of her identity."[32] The overemphasis on the physical appearance of the fairer sex in patriarchal societies is responsible for the increased incidence of acid attacks. Families of young women are very concerned with the preservation of their daughters' marriageability.[33] Vindictive lovers, on being turned down for marriage by women or their families, resort to acid attacks to destroy the woman's appearance and relegate her to a terrible fate.[34] In a case decided by the Calcutta High Court in 2007, the accused had thrown a bottle of acid over the victim outside her house.[35] The victim succumbed to the extensive acid burns that the victim received. The motive for the attack was a personal grudge held by the accused against the victim, as the latter had snubbed the proposals of the accused. Property disputes are another cause of acid attack on women.

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[25] *Siddharth Baskar, "A Summary of the report on Acid Attacks in India", The World Journal on Juristic Polity, March, 2018, http://jurip.org/wp-content/uploads/2018/03/Siddharth-Baskar-1.pdf.*
[26] *Ibid.*
[27] *Afroza Anwary, Acid Violence And Medical Care In Bangladesh: Women's Activism as Carework, 17 Gender & Society 305–313 (2003), http://journals.sagepub.com/doi/10.1177/0891243202250851 (last visited Jul 12, 2018).*
[28] *Nehaluddin Ahmad, Weak Laws against Acid Attacks on Women: an Indian Perspective, 80 Medico-Legal Journal 110–120 (2012), http://journals.sagepub.com/doi/10.1258/mlj.2012.012020 (last visited Jul 6, 2018).*
[29] *Ibid.*
[30] *Ibid.*
[31] *Law Commission of India, 226th Report, Proposal for the inclusion of acid attacks as specific offences in the Indian Penal Code and a law for compensation for victims of crime, July 2009.*
[32] *Ibid.*
[33] *Supra note 16.*
[34] *Supra note 17.*
[35] *Ramesh Dey v. State of West Bengal, 2007 (3) CHN 775.*

The acid attacks can be described as one of the grossest violations of human rights of women in Indian society today. Women have the right under International Human Rights Law, specifically the Convention on the Elimination of All Forms of Discrimination against Women 1980 (CEDAW), to be free from such violent attacks. Moreover, the United Nations General Assembly passed the Declaration on the Elimination of Violence against Women in 1993. Furthermore, numerous rights guaranteed under the Indian Constitution are violated when acid attacks are perpetrated against women. Article 14, equal protection of the law, is routinely violated when police fail to conduct a timely investigation and harass the victims instead of investigating the crime. Article 15(3) obliges the state to make special provisions for protection of women and children but the Indian government has failed to do so by not making any provisions or arrangements for the welfare of acid attack victims and their children.

VII) PARADIGM SHIFT IN GENDER PERSPECTIVES

While dealing with the gender perspectives in the acid violence, a development that has taken place in 2019 has to be taken into consideration. A PIL by a male survivor of acid burn injuries alleging that the discriminations against male survivors came up before the Supreme Court.[36] The petitioner claimed relying upon the National Crime Records Bureau (NCRB) that 30-40 percent of victims are male. On September 8, 2011, *Mishra*, a Meerut resident, was attacked with a bucket full of acid by his landlord's son, whom he allegedly prevented from molesting a woman a day before. Therefore, acid was poured on his face and he suffered nearly 40 per cent burns with his head, face and hands worst affected. As a small-time businessman, with financial difficulties, he spent thirty lakhs Rupees and underwent several surgeries and also treatment for reconstructing his face through plastic surgery. Though Supreme Court had ordered a compensation of Rs 3 lakh for all victims, the reading of the state government authorities was that only woman victims are entitled to it. The Apex Court took cognizance of the gender biased interpretation and agreed to probe it.[37] Therefore, the NCRB data regarding male victims of acid attack occurrences relied upon in the aforesaid PIL, before the Apex Court and the refusal to pay compensation to the victim citing the gender as a reason has opened a new dimension more particularly the gender perspectives for research and sensitization.

VIII) LAWS DEALING WITH ACID ATTACK

The Laws dealing with acid attacks may be conveniently classified into Laws enacted before and after the passing of the Criminal Amendment Act, 2013. Prior to amendment, the acid attacks were governed by the provisions of Indian Penal Code (IPC) and treated as either simple hurt or grievous hurt.[38] The persons accused of acid attack were not punished with imprisonment for one year in case of simple hurt. Moreover, they were also released on bail easily as the provisions of law simplified the offence as a mere hurt. Adequate compensation was also not paid to the victims. The following decisions would highlight how the laws and courts had dealt with the crimes committed by using acid and other corrosive substances.

In *Ravinder Singh vs. State of Haryana*,[39] acid was poured on a woman, who had extra-marital affair and he wanted to dissolve the marriage, but lawfully wedded wife, refused to give her consent for divorce, from the court

[36] *https://www.indiatoday.in/mail-today/story/supreme-court-to-look-into-male-acid-attack-victims-woe-1166957-2018-02-11 visited on 25 January, 2020.*
[37] *Ibid.*
[38] *Sections 319 and 320 IPC are dealing with the offences of hurt and grievous hurt, respectively.*
[39] *Ravinder Singh v. State of Haryana, AIR 1975 SC 856*

of law. The husband used acid as a weapon and attacked the victim. She suffered multiple acid burn injuries on her body, which later led to her death. The accused was charged under Section 307 of the IPC. However, life imprisonment was not imposed even though the victim succumbed to acid burn injuries.

In *Syed Shafique Ahmed vs. State of Maharashtra*,[40] a personal enmity with his wife was the reason behind a gruesome acid attack by the husband. It caused disfiguration of the face of both the wife as well as that of the other person and loss of vision of right eye of the wife. The accused was charged under Sections 326 and 324 of the IPC and was awarded Rs.5000 as fine and 3 years' imprisonment. This case again shows that the punishment that is often awarded does not take into account the deliberate and gruesome nature of the attack and rests on the technicalities of injuries.

On 16 December 2012, a 23-year-old female physiotherapist intern '*Nirbhaya'* was gang raped in Delhi and the victim succumbed to injuries on 29 December, 2012. Aftermath, in response to the public-outcry of civil society a committee was constituted by the government of India under the chairmanship if Justice J S Verma, former judge of the Supreme Court of India, to look into possible amendments in the criminal law to suggest ways and means for quicker trial and enhance punishments for offenders committing sexual assault of extreme nature against women.[41] In the Report, Verma Committee has dealt with the acid attacks and recommended as follows:

"We recommend that acid attacks be specifically defined as an offence in the IPC, and that the victim be compensated by the accused. However, in relation to crimes against women, the Central and State governments must contribute substantial corpus to frame a compensation fund. We note that the existing Criminal Law (Amendment) Bill, 2012, does include a definition of acid attack."

In view of the recommendation the amendments were brought in the Indian Penal Code (IPC) and Sections 326A and 326B inserted with a definition for the term acid attack and punishment also enhanced which shall not be less than ten years and may extend to imprisonment for life with fine. The amendment also made it a mandatory that the fine amount shall be just and reasonable to meet the medical expenses of the treatment of the victim. It is an important aspect on victim-oriented Justice that the fine imposed under Section 326A shall be paid to the victim.[42] Previously, the eighteenth Law Commission of India proposed a new section 326A and 326B in the India Penal Code and section 114B in the Indian Evidence Act. The Criminal Law (Amendment) Act, 2013 resulted in insertion of sections 326A and 326B for specifically dealing with acid violence. The new Sections 326A and 326B read as follows:

326A. *Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine;*

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim: Provided further that any fine imposed under this section shall be paid to the victim."

326B. *Whoever throws or attempts to throw acid on any person or attempts to administer*

[40]*Syed Shafique Ahmed vs. State of Maharashtra,CriLJ 1403 (2002).*
[41]*Justice Leila Seith and Mr Gopal Subramanian senior advocate of Supreme Court are the other members of Justice J S Verma Committee. It has submitted its report on 23 January, 2013 within 30 days of its constitution.*
[42]*Sections 326A and 326B in IPC inserted by Act 13 of 2013 (w.e.f. 03 February 2013).*

acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.

After insertion of Section 326A IPC, the offence of acid attack has been considered as a separate kind of grievous hurt by the investigating and law enforcing agencies. The investigation agencies are guided to focus on the magnitude of the acid attack and collect pertinent materials to prove the short term and long-term consequences of the crime, upon the victim's life and career.

In addition to these efforts, enhancement of punishment by prescribing minimum sentence of imprisonment for term not less than ten years is a deterring effect on the sentencing side. Further, fine has been made as a mandatory penal sanction against the offender. One of the victim restorative measure introduced in Section 326 A IPC is that the entire amount to be paid to the victim only and the court need not deposit in the State exchequer. But in other cases if the guilty is proved and fine is imposed as a part of punishment, only a portion of fine amount can be ordered to be paid to the victim.[43] Consequent to insertion of Sections 326A and 326B in the penal statue two special benevolent provisions have been correspondingly incorporated in the Code of Criminal Procedure, 1973. Accordingly the acid attack victim is entitled to claim compensation under section 357A CrPC in addition to the fine under section 326-A IPC.[44] This is an important development in the victim compensation jurisprudence The amendment has impliedly paved a way for offender to bear the cost or at least a portion of the medical expenses incurred by the victim. It also makes the offender to realizes the gravity and consequences of the crimes committed by him. The 226th Law Commission Report stated that compensation to victims of acid attacks is of vital importance as huge medical costs are often involved. The victims of acid attacks need both short term as well as long term specialized medical treatments and plastic surgeries. The provisions in the Indian law for giving compensation to the victims are very insufficient.[45] The National Commission for Women (NCW) has also suggested the inclusion of Section 357A in the Code of Criminal Procedure 1973 for the purpose of defraying of expenses, in order to deal with the matter of compensation better. Section 357B has been newly inserted in Criminal Procedure Code, 1973 which reads as follows:

"The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code."

Therefore, the trail court cannot show any leniency in imposing the fine against the offender as it shall be reasonable to meet the medical expenses. The plea of impecunious often resorted to by the offender would be of no use under Section 326A IPC. Further, victim is entitled to claim compensation under the Victim Compensation Scheme (VCS) framed by the States in consonance with the amendment introduced in the Code of Criminal Procedure, 1973. The pecuniary compensation may be helpful to the victim to escape from the clutches of financial hurdles and constraints in the process of getting medical treatment.

Another salient feature of the above mentioned amendment is that it has defined that the acid includes any substance which

[43]*Section 357 Code of Criminal Procedure, 1973.*
[44]*Section 357 B Cr P C- The compensation payable by the state government under Section 357-A CrPC shall be in addition to the payment of fine to the victim under Section 326-A or 376-D of the Indian Penal Code.*
[45]*Supra note 20.*

has acidic or corrosive character or burning nature that is capable of causing bodily injury leading scars or disfigurement or temporary or permanent disability.[46] This definition about acid avoids unnecessary confusion in the interpretation before the court of in the trial and other justice dispensing process.

IX) ACID BURN INJURIES AND DISABILITIES: TOWARDS VICTIMS EMPOWERMENT

In most cases, acid attacks cause perennial disfigurement and many such attacks cause permanent disability too. India signed and ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2007, the process of enacting a new legislation in place of the Persons with Disabilities Act, 1995 (PWD Act, 1995) began in 2010 and after series of consultations and drafting process, the Rights of Person with Disabilities Act, 2016 (RPWD Act, 2016) was passed by both the houses of the Parliament in India. In its Schedule the disfigurement caused by acid violence is recognized as a disability.[47] As per section 2(zc) of the RPWD Act, 2016 a person disfigured due to violent assaults by throwing acid or similar corrosive substance is a person suffering from locomotor disability and entitled to the benefits extended by the government. The right to equality, life with dignity and respect equally with others, protection from cruelty, inhuman treatment, abuse, violence and exploitation are also guaranteed under the said Act, to the victims of acid violence. The acid victims can claim reservation in the government jobs and other institutions and it is made mandatory for the State to create such equality measures. It is an important facet of social empowerment of neglected acid attacks victims.

X) VICTIM ASSISTANCE – A CONSEQUENCE OF JUDICIAL INTERVENTION

In the *Parivartan Kendra* case[48] there are other directions regarding treatment of acid burn injuries also issued for acid attack injuries. The private hospitals are also brought under the direction. As per the said decision cited supra, private hospitals should not refuse treatment to victim of acid attack and that full treatment should be provided to such victims including medicines, food, bedding and reconstructive surgeries. The hospital, where the victim of an acid is first treated, should give a certificate that the individual is a victim of acid attack. This certificate may be utilized by the victim for treatment and reconstructive surgeries or any other scheme that the victim may be entitled to with the State Government or Union Territory as the case may be, in the event of any specific complaint against any private hospitals or government hospital, the acid victim will, of course, be at liberty to take further action. The direction of Supreme Court is an important step towards the journey of victim assistance. The mandatory direction to both public and private hospitals to provide first-aid or medical treatment for free of costs to the victims of acid attack is a substantial development in the victim assistance.[49] Further, a pilot programme was initiated in the year 2010 by the Ministry of Health and Family Welfare for Prevention of Burns Injuries in three Medical Colleges and six Districts Hospitals of three states. During the 12th Five Year Plan, this programme is continued with the name 'National Programme for Prevention and Management of Burns Injuries (NPPMBI)' for establishing burns units in 67 State Government Medical Colleges and 19 District Hospitals. Under this

[46] *Explanation 1 in Section 326B IPC*

[47] *Schedule of Specified Disability in Clause (zc) of Section 2, The Rights of Persons with Disability, Act, 2016.*

[48] *Ibid*

[49] *Section 357-C Cr P C, Treatment of Victims- All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment , free of cost, to the victims of any offence covered under section 326-A,376,376-A,376-B,376-C,376-D or Section 376-E of the Indian Penal Code (45 of 1860), and shall immediately informed the police of such incident.*

programme, the burns units are strengthened for managing burns injury cases including management of acid burns.

After a span of six years the Supreme Court geared up a follow up action as to whether this amendment introduced in 2013 have really caused impact and the Criminal Justice system was improved to cater to the basic needs of the sufferers of crime particularly after the *Nirbhaya* case and the amendments introduced as per the recommendations of Justice J.S.Verma Commission.[50] The *Suo motu review* of criminal justice system made by the Supreme Court in 2019 is a classic instance for the judicial intervention. It took stock of the situation prevailing in the criminal justice system in India expressed its concern as to whether the investigation agencies, prosecution, medico-forensics, rehabilitation, legal aid agencies and also courts are catering to the needs of the victim or not and further direction also issued for proper implementation of the victim welfare measures.

XI) BAN OF ACID SALE IN INDIA - A JUDICIAL INITIATIVE

One of the important reasons for use of the acid as a weapon by the perpetrator of crime is that the cost affordability and easy availability in the open markets. The reports of Acid Attacks Survivors in many countries also cited it as major causes for acid attack. The price of hundred milliliters is cheaper than a steel knife, as discussed in the previous paragraphs of this paper. The Supreme Court in a PIL was filed by a NGO to seek the intervention of the Supreme Court, to enhance the compensation to the two poor girls suffered by acid attack.[51] It was a case in which both the girls were sisters and while sleeping in their home, two assailants climbed upon the roof and one of them held the legs of the girl, another assailant poured acid on her body and face. The acid also fell on her sister's body and she also got burn injuries. The compensation of Rs. Three lakhs were not sufficient to meet the medical expenses. Therefore, enhancement of compensation was sought for, through a PIL. The Supreme Court took serious view of the delay in making the sale of acid as cognizable offence under the Poison Act, 1919 and to ensure the compliance of the following directions with immediate effect.

(i) Sale of acid is completely prohibited unless the seller maintains a log/register recording of acid which contains the details of the persons to whom acid is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.

(ii) All sellers shall sell acid after the purchaser has shown:—

(a) a photo ID issued by the Government which also has the address of the person.

(b) Specifies the reason/purpose for procuring acid.

(iii) All stock of acid must be declared by the seller with the concerned Sub-Divisional Magistrate (SDM) within 15 days.

(iv) No acid shall be sold to any person who is below 18 years of age.

(v) In case of undeclared stock of acid, to confiscate the stock and impose fine on such seller up to Rs. 50,000/-

As discussed in the previous paragraphs the researchers have cited that the easy availability of acid to anyone without any control is one of the reasons for using it as a dangerous weapon to commit gravest crimes. Under the circumstances the control of sale of acid and ban of sale in some shops is an important step towards combating the acid violence and it is a consequence of judicial intervention.

[50] *In Re: Assessment of the Criminal Justice System in Response to sexual offences CDJ 2019 SC 1454.*
[51] *Parivartan Kendra vs Union of India CDJ 2015 SC 942.*

CONCLUSION

From the catena of decisions of the Supreme Court and High Courts it is clear that the acid attack cases have been comprehensively dealt within four important dimensions. They are:—

1) Severe punishments to the perpetrators with a suggestion to deny the pardon,
2) Compensation to the victims which includes enhancement to meet the medical expenses,
3) Treating the disfigurement as a permanent disability for social welfare and other benefits and
4) Restriction and ban on sale of acid

These are the tremendous achievements in combating the acid crime and treating the victims by providing judicial care. The PILs filed by NGO, aftermath attack on *Laxmi*, has opened an new era. The enhancement of punishments and compensation to the victims and ban on sale of acid are the extremely important developments in the acid violence jurisprudence that took place in India after the judicial intervention by the High Courts and Supreme Court. Further, presumption as to the statement of the victim as suggested by the 226th Law Commission to be inserted in the Indian Evidence Act and it would shift the burden upon the accused the task of proving of innocence.[52] A careful analysis of cases of acid attacks decided by the Apex court would suffice to conclude and hold that the judiciary sensitively dealt them and its integrated approach has started a journey in the victim justice.

The continued monitoring and issuance and further direction of the Supreme Court or appointment of a nodal agency under the supervision of apex judiciary would make India, a zero-acid attack country.

[52]*Amendment proposed in the Evidence Act, 1872 for insertion of Section 114B – Presumption as to acid attack: If a person has thrown acid on, or administered acid to, another person the Court shall presume that such an act has been done with the intention of causing, or with the knowledge that such an act is likely to cause such hurt or injury as is mentioned in Section 326A of the Indian Penal Code. When the question is whether a person has committed the act of throwing acid on the women the Court shall presume, having regard to the circumstance of the case the statement of the victim, that such person had thrown acid on the women.*

HATE CRIMES: AN ARGUMENT FOR ALTERNATIVE PENAL POLICY

Girjesh Shukla*

ABSTRACT

Hate crime is understood as manifestation of prejudice based on religious, caste, ethnic, gender or regional identities. Such crimes, apart from being violent in nature, poses threat to the core values of a given society. The hate motivated offender does not only confront with the rule of law but also, essentially, challenges the very existence of his victim. It is this characteristic of hate crime, which makes it barbaric and gruesome.

Societies, having diverse demographic structure, vis., multi-religious, multilingual, and cultural pluralism, are prone to violence based on prejudice and hatred. World history is full of such incidents, and India is no exception. However, until recent cases of 'mob lynching', the expression hate crime, per se, was little known to criminal justice system of India. With pronouncing measures for controlling mob-lynching, the Supreme Court of India, brought the 'hate crime' on the centre-stage in crime control discourse. A close look of these directives would suggest, firstly, that law enforcement agencies should always be immune from political influence, and secondly, that the problem of mob-violence needs to be addressed in the given socio-political contexts.

The present work intends to examine the expression 'mob lynching' from the standpoint of 'hate crime' and would try to provide criminological perspective thereof. It will further provide an explanation from established jurisprudential development and will argue for differential treatment in terms of crime control, penal policy and monitoring mechanism. Part-I of the work outlines the growing incidents of hate crime in India. Part-II has examined the definitional conundrum with respect to hate crimes. Part-III of the work briefly outlines the criminology of mob lynching with reference to culpability factors in hate crime. Part-IV of the work examines Hate Crimes under the present legal regime. Part-V concludes with an argument for alternative penal policy including enhance punishment and federal monitoring agency.

KEY WORDS

Hate Crimes; Mob-Violence, Mob-Lynching

I: INTRODUCTION

In the recent past, hate crimes, especially the 'mob-violence' and 'mob lynching' spilled onto the streets. These incidents of mob violence hit many, causing physical injuries, horrendous assault including death of unarmed men, young and old equally. Zoya Hasan narrated (2017) narrated the trauma of victims of these offences, and how the same percolated so deep that these victims started migrating away from the hate crime prone areas and started settling elsewhere in the country. Erstwhile political speeches with taste of hatred are being replaced now with unregulated social media, with full of bigotry and hate speeches. Hatred based on religion, caste, race, and place of birth are being advocated through electronic and social media. Hatemongers are using electronic media, social media including WhatsApp, Telegram, Instagram etc. to disseminate hatred. The age-old social solidarity is slowly replaced with hate, suspicion, anger, revenge, and retaliation. Thus, the vicious social atmosphere of hate is busting the social bonding amongst the fellow

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communities. Pushed with the socio-religious beliefs, the law enforcement agencies are also failing miserably in dealing with these hatemongers. State agencies, either end up in absolute denial or limit themselves to a mere criticism and blame-game. The act of lynching is often termed as 'ordinary offence' resultant of usual failure of law and order. In certain cases, even law enforcement agencies were allegedly found taking side of the perpetrators.

However, fortunately enough, the Supreme Court of India took the cognizance of the unabated horrific lynching attacks going unbated in certain parts of the country in the *Tehseen S. Poonawalla v. Union of India*, (Writ Petition (Civil) No. 754 of 2016) and directed the central as well as all the state governments to frame policy/legislation in this regard. The Bench speaking through the then Chief Justice of India, narrated the very purpose and goal of law, and categorically said underlined the "*primary goal of law is to have an orderly society where the citizenry dreams for change and progress is realized and the individual aspiration finds space for expression of his/her potential. In such an atmosphere while every citizen is entitled to enjoy the rights and interest bestowed under the constitutional and statutory law, he is also obligated to remain obeisant to the command of law*." The observation clearly setting out the scope and the object of '*rule of law*' in term '*orderly society*', "*citizenry dreams for change and progress*", and above all, the entitlement of each citizen, irrespective of his religion, caste, gender or place of birth, '*to enjoy his and interest bestowed under the constitution*'. While sending a categorical message to the state, reprimanding their *continuous mood of denial* as to the unabated horrendous mob-lynching, , the Apex Court re-assured the ordinary citizen that '*no victim shall go unheard*' and '*no offender will go unpunished*'. Outlining the assurance, the Apex Court stated that "*hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated; lest it results in a reign of terror. Extra judicial elements and non-State actors cannot be allowed to take the place of law or the law enforcing agency*."

Regrettably, the message, though being loud and clear, coming directly from the Apex Court of India either failed to hit the eardrum of policy framers or even if it reached there, has not been decrypted properly. On each day, with new incident of mob lynching, new propaganda theories are being pressed into service by various media forums and champions of social media to justify the vulnerability of victims on the line of religious, caste and other identities.

Upsurge in in Hate Crimes

According to a report published (Rawat, 2019), in the year 2016-17 the National Human Right Commission registered one hundred and seventeen (117) cases of alleged victimisation and harassment of members of the minority community. With respect to harassment of Dalits, there was phenomenal increase of 33% in number of cases registered by NHRC. Thus, for the year 2016-17, NHRC registered 505 cases, whereas by 2018-19 this figure increased to 672. Between 2016 and 2019 (till June 15), NHRC registered 2,008 cases where minorities/Dalits were harassed.

In view of the data so recorded, certain fundamental questions are required to be examined empirically. These are those questions which will have direct impact on criminal justice system. To begin with, do we really need to see hate crime differently than any other ordinary crime? If so, what could be the basis thereof? Can a offender be punished differently because he possess different perceived character about the victim? Further, what could be reasons behind lackadaisical response of the state against hate crimes? Why the argument for stringent policy against hate crime is still looking illusionary? Does existing legal framework provides any solution to unabated menace of hate violence? These questions require in-depth deliberation and empiricism.

Methodology

In view of prevalent hate crimes, especially the recent incidents of mob lynching, this work is an attempt to examine the existing definitions of hate crimes in context of India. With the help of jurisprudence developed by various authors, it further delves into the criminology of mob lynching. Finally, by presenting a critical look into the Supreme Court's guidelines dealing with hate crimes, the author presents an alternative system to tackle hate crimes. Thus, the work is primarily doctrinal in nature. The work examines the expression 'mob lynching' from the standpoint of 'hate crime' and would try to provide criminological perspective thereof. It will further provide an argument for differential treatment in terms of crime control, penal policy and monitoring mechanism.

II: THE DEBATE ON DEFINITION

In India, the strangest thing about the hate crime and its concomitants like mob-lynching, is the very denial of its existence by the state. The denial is based on the premise that hate crimes, specially mob-lynching is '*unknown to Indian culture*' as the Indian society is known for its pluralistic existence since long. Constructing further argument from this premise, the state agencies dealing with law and order refer hate crimes similar to that of ordinary crimes, and thus refuse to recognise the distinct nature and characteristics of mob-violence.

For all academic purposes, the word lynching is said to have its origin in the United States of America in the 18th century. Charles Lynch, a Virginia planter, politician, and American revolutionary created and headed an irregular court in Virginia to punish Loyalist supporters of the British during the American Revolutionary War. The terms 'lynching' is believed to be derived from his name. Without going much into the etymology of 'lynching', it is the very phenomena of lynching, which need to be explored and examined. Harsh Mander (2019) suggests that that these words may have its foreign origin, but the trends of hate crimes and mob violence are not alien to India. Historian Romila Thapar (2018) has provides vivid detail of these violence in her seminal work. Killing of women by branded them as 'witches', violence against Dalits, transgender, religious or sectarian minorities are not unknow to Indian history.

Hate Crime: Definitional Concerns

Generally, the hate crimes connote an idea of violence propelled by hatred against the victim's perceived distinctive character such as religion, race, colour, caste, gender or place or origin. Heidi Hurd and Michael Moor (2004) defines hate crimes as "*criminal manifestation of prejudice*." They argue for differential treatment of offender in terms of punishment. Professor Heidi's argument (2001) is based on premise that "*hate crimes reflect significantly greater culpability on the part of their perpetrators*", worse than premeditated murders, and thus "*hatred and bias constitute uniquely culpable mental states that merit increased punishment*".

Phyllis B. Gerstenfeld (2004) defines hate crime as a "*criminal act motivated by the victim's personal characteristics, such as race, national origin or religion"*. Similarly, C. Petrosino (2003) suggest that hate crime is nothing but '*victimisation of minorities due to their racial or ethnic identities by the member of majority*." Other thinkers who contributed to the area of hate crime jurisprudence are Anthony M. Dillof (1997) Mohamad (2010), James B. Jacobs and Kimberly Potter (1998), Frederick M. Lawrence (1994), and Barbara Perry (2003). These authors have discussed the normative rules required to punish the hate offender. Their argument ranges from moral conflicts in punishing one's belief to that political limitations.

One of the major problems with respect to hate crime is about distinguishing it with other form of crimes and grading it within various forms of hate crimes. For example, could it be said that hate crime based on religious hatred

is different from hate crimes committed out of caste, colour, gender, or place of birth? If the answer to this question is negative, how the criminal law, specially the penal policy, should rationalises it in terms of sentencing? What if a victim of hate crimes possesses overlapping identities such as religious identity or caste identity along with gender or place of birth? It would be difficult for penal law to attribute distinctive hate motivation in overlapping identities. It may be noted here that hate crimes and related prejudice is not a single act. It is rather an ongoing process in which the victim is victimised every day on regular basis. The continued targeted hostility against the victim make the hate crime altogether different than ordinary crime.

Since hate crimes takes into consideration the belief of the offender about the victim's perceived identity, the debate on definition of hate crimes revolves questing the legitimacy and limits of criminal law in punishing once's belief. In other words, can criminal law punish the offender differently for having distinct belief about victim' identity?

The criminal law requires twin criteria for penalising any act vis., *actus reus* and *mens rea*. Whenever the offender commits a wrongdoing, his *blameworthy state of mind* along with the ensuing of *forbidden consequence* from his act determines his criminal liability. Further, the quantum of sentence, prescribed by the legislation, which is further subject to judicial discretion to bring the proportionality in sentencing, prepares the ground for deciding the punishment. Theorist (Hurd, Heidi M., and Moore, Michael S., 2004) supporting distinct legislation for hate crimes offender argue that the present penal policy, having no place for considering the extra factor of 'hate or prejudice', is inadequate to address the hate crimes. In this regard they count factors based on *greater wrongdoing thesis*, *expressive theory of punishment*, *culpability thesis*, and the *equality thesis*. According to the '*greater wrongdoing thesis*', an offender motivated by hate crime harms not only its immediate victim, but also causes greater injury to the victim's community. Through his act, he would be sending a message to the entire community of the victim about its being vulnerable, prone to violence and subjected to secondary status. The '*expressive theory of punishment'*, taking clue from '*greater wrongdoing thesis*' argue for enhanced punishment as a tool for expressing society's commitment against prejudice. The '*culpability thesis*' examines the very 'blameworthy state of mind' and argues that offender motivated by hate is more blameworthy than offenders who commit ordinary crimes. The necessary element of *mens rea*, though equally required under traditional crimes, the element of 'hate' or 'prejudice' brings hate crimes to a quite different level. *Lastly*, the *equality thesis* prepares ground for arguing that special legislation along with enhanced punishment for hate crime would be necessary to provide equal protection of laws, and thus would bring equality amongst classes, caste or sects. Hate crime laws would be means of evenly distributing the "state-produced good".

However, as stated earlier, the debate around the definition is more about punishing the offender for his 'mere belief'. Individual should be punished only when he causes a forbidden consequence while having specific blameworthy state of mind. Opponent of hate crime legislation argue that 'how can criminal law punish a person for having moral judgement about one's identity. The author submits that the heart of debate is not about one's moral judgement as to victim's identity. It is, rather about the very existence of victim or his community. Any threat to existence of victim or the victim's community is not merely a threat to victim or her community but rather threat to rule of law and the constitutional order. The observation of Supreme Court in *Tehseen S. Poonawalla* (*supra*) case that "*hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated; lest it results in a reign of terror"*

is reflection of the same. It is this sense; an argument is advanced hereby for enhanced punishment.

Enhanced Punishment theory and Indian Penal Code

A close reading of Indian Penal Code 1860 would suggest that the idea of *greater wrongdoing, culpability thesis* or *expressive theory* is very much part of the Indian Penal Code, 1860, hereinafter referred as IPC. The relationship between punishment and culpability under Section 299 read with 300 of IPC for same *actus resus* is true reflection of culpability thesis. The *greater wrongdoing thesis* could be explained in terms of Section 153A, 153B etc. of IPC. The '*expressive theory of punishment*' is may be placed to explain minimum punishment for offences like dowry death under Section 304-B IPC, or Offence of Rape under 367, 376A, 376C, 367D, 376E, 367AB, 367DA, and 376DB of IPC. As against general practice providing discretion to the court in terms of punishment, these provisions contain minimum as well as maximum punishment, and these provisions are 'the expression disapproval towards certain kind of offence', and thus sentenced differently.

III: CRIMINOLOGY OF MOB LYNCHING

Mob-violence has been subject matter of study in the field of Criminology and Criminal Psychology. Professor Gustave Le Bon, in his book, '*The Crowd – A Study of the Popular Mind*' (1896), said underline the basic cannons of mob violence. He narrated that once an individual becomes part of crowd, he becomes devoid of his own individuality. After becoming the part of the crowd offender loses touch with personal life, occupation, character, or intelligence. He is '*transformed into a crowd'* with a '*collective mind'* compelling him to feel, think, and act in a manner quite different from what he could have felt in isolation. Thus, as argued by Michael Welner (2017), the Crowd participation extinguishes one's normal psychological capacities. It is because of this reason that crowd reflects different behaviour than the people who have joined the crowd. Further, in reference to the objective of crowd, it is not at all necessary that same may be the objective of everyone joining the crowds. In reference to hate crime, especially during mob violence, it may absolutely be the case that an individual, suddenly propelled by his hate motivation, may join the crowd, cause horrendous act of violence against the victim. Some of the violent mob crimes may see the involvement of ordinary individual, perpetrated by group of people to commit hate crimes.

Hatred and Prejudice: The Glue that Makes Crowd Work in Consortium

With respect to mob violence, is it necessary to have specific demography or the structure of the crowd? In this regard when a religious violence is committed by a mob, it is often seen that the crowd is drawn from one single religion. However, with respect to caste violence, the demography of mob reflects altogether different feature. Here, the past incidents suggest that different caste groups come together in a spur-of-moment and become hostile victim. What is the reason that these individuals come together and form crowd, even though they have diverse socio-economic status, sometimes even contradictory? Dr Wendy James, in his work '*the Psychology of Mob Mentality and Violence'* narrates three psychological theories i.e. the *Convergence Theory, Contagion Theory*, and the *Emergent-Norm Theory* through which he attempts to address crowd behaviour.

As per the Convergence theory the violent behaviour of a crowd is separate to its constituent i.e. the people who are forming the part of the crowd. The crowd reflect the behaviour which is dominant in the people joining it. Thus, it is not crowd which encourages violence, but the people who join it who instigate and engage in violence. The

Contagion theory connects the link between initiation of violence and the continuation thereof. The *Contagion Theory* suggests once the violence is irrupted, the crowd influences each of its constituents in a hypnotic manner. With this hypnotic influence, each member of the crowd behaves in much irrational and emotionally charged manner. In other words, it is the inherent characteristics of a crowd that it makes the individual joining it as [crowd] frenzy. *The Emergent-Norm Theory* combines the two above theories and suggests that mob violence occur because mob would have liked-minded individuals with full prejudice and hatred against the victim and having sense of anonymity leads to violent crowd behaviour.

Dr. Wendy James, though suggest psychology of mob mentality, however, these theories fall short of explaining the glue that makes people work in consort. With experience day today incidents, the author believes that it is the persistent feeling of hatred and prejudice which works as *glue* whereby the individuals having distinct age, economic status, education or profession, after joining crowd behaves in one single direction. The indoctrination done through social interaction contribute a lot in this process.

Professor G.S. Bajpai, (2019) while discussing the '*criminology of mob lynching*' says that mob lynching '*is a typical form of a behavioural manifestation triggered at the instance of a combination of factors*." Prof. Bajpai proposes certain propositions whereby the criminal behaviour of lyncher could be understood. Professor Bajpai negates the contention that lyncher are always sociopaths or a psychopath. A lyncher is the same youth who grew up, seeing violence as the response and solution of a problem in many situations. He internalises violence as a reality which manifests whenever the occasion arises. Whenever individual joins the crowd, his individual identities melt in, and he represent the collective identity of the crowd. Thus, while committing mob violence, *the conscious, rational mind of the individual is controlled by the unconscious, irrational mind of the crowd*. Prof. Bajpai attribute mob lynching to de-individualisation i.e. in case of mob violence, individuals are no longer guided by a sense of personal moral restraint. Thus, the mob so formed, shall be devoid of individual moral restraints, and would reflect the "*extraordinary violent character of each member of the crowd, their ridiculous pride, their sickly susceptibility, the surprising sense of irresponsibility which originates from the illusion of being all-powerful*." Prof. Bajpai argues that *any "law, to be effective, would require as to how it takes care of dealing with those factors which are the product of human instinct and behaviour*." It is humbly submitted that criminal law alone would fail to address the mob violence unless the indoctrination done at various level is taken care by state.

IV. HATE CRIME: THE LEGAL REGIME

There are provisions under IPC to deal with the mob violence. Apart from general provisions dealing with *unlawful assembly*, *riots* and *affray*, IPC prescribes special provisions to punish violence based on hate crimes. Section 153A of IPC penalises acts inter group enmity on ground of religion, race, place of birth, residence, language, etc., Similarly, section 153-B punishes act of making or publishing any imputation or assertion which is prejudicial to national integration. Section 295 of IPC prohibits injuring or defiling any place of worship so as not to insult the religion of any class. Section 295A IPC restricts all the deliberate and malicious acts, which intend to outrage the religious feelings of any class. Section 296 IPC provides punishment to those who voluntarily causes disturbance to any lawfully assembled religious assembly. Section 297 of IIPC prohibits trespassing on burial grounds so that any religious sentiments may not be hurt. Section 298 prohibits uttering words with deliberate intention to wound religious feelings. To protect people who belong to

a class, which suffers with civil disability, 'Untouchability', law has been laid under the Protection of Civil Rights Act, 1955.

Why Lynching is more than Murder?

Opponents of special legislation for hate crimes often argue that demand for special legislation tackling hate crime is essentially political in nature. They would substantiate their argument that even the highest form of hate crimes i.e. lynching is nothing but murder under Indian Penal Code, 1860, and thus can suitably be prosecuted accordingly. The argument, it is submitted, is oversimplification of the facts. Since the hate crimes originate all together differently, than any other crimes, the whole penal policy, effective for traditional crimes, would fail even to initiate the very prosecution of hate perpetrator. The argument is substantiated by the very fact of low conviction rate in communal/caste violence. According to data released by Ministry of Home Affairs, the conviction rate under SC/ST (Prevention of Atrocities) Act is only 16.3% as against the national average of 29.4%. It was this reason that Ministry of Home issued advisory to all states to specially investigate the cases relating to SC/ST.

These provisions were devoid of effective impact on the growing hate crimes and mob violence. In view this, the Communal Violence Bill 2005, was proposed. The provisions of this bill were very stringent in nature and it had proposed enhanced punishment of religious violence/ riots. However, the law proposed failed to get adequate support on the floor of house. It was again revised in the year 2012, but lapse.

Alternative Legal Regime

After a series of lynching at various places, the Supreme Court of India took cognizance of hate crimes, and while denouncing such acts as '*a product of intolerance, ideological dominance and prejudice*' directed the state to prepare comprehensive policy in this regard. Supreme Court condemned the unabated incidents of lynching as "*an affront to the rule of law and to the exalted values of the Constitution*". *(Tahseen Poonawalla, supra*. para 18). These words of apex court are not of mere cosmetic values. There is a greater need to understand that constitutional virtues are different from majoritarian belief, and to uphold the values enshrined in constitution, a multipronged strategy is required to be observed. This will include *firstly*, special legislation recognising the mob violence and providing effective penal policy with enhanced punishment; *secondly* an alternative centralised mechanism to monitor and guide anti-hate crime strategy.

Demand for Special Legislation

Supreme Court in *Krishnamoorthy* v. *Sivakumar*, [(2015) 3 SCC 467] stated that "*the law is the mightiest sovereign in a civilized society…No individual in his own capacity or as a part of a group, which within no time assumes the character of a mob, can take law into his/their hands and deal with a person treating him as guilty*." Terming the mob-lynching as '*the horrendous acts of mobocracy*', Supreme Court recommended the Parliament "*to create a separate offence for lynching and provide adequate punishment for the same."* Underlining the urgency to *ensure* effective law and order, maintaining peace and to preserve quintessential secular ethos, pluralistic social fabric, Supreme Court directed the states *"to act positively and responsibly".* These words of apex court are not of mere cosmetic values. The Court, sensing the gravity of scenario, gave measures to be executed within 4 weeks of the judgment. These measures include preventive, remedial and punitive.

The preventive measures suggested by the court are to designate a senior police officer of the state, not below the rank of Superintendent of Police as Nodal Officer in each district. The Nodal Officer shall be responsible for taking measures to prevent

incidents of mob violence and lynching. The Nodal Officer shall also hold regular meetings with the local intelligence and in charge of each police station to identify the existence of the tendencies of mob violence. The Nodal Officer shall make efforts to eradicate hostile environment against any community or caste etc. and shall have regular check on social media to see instances of dissemination of offensive material. The Nodal Officers shall be coordinating the District to with that of the DGP for any inter-district co-ordination. At state level, a special task force would be constituted to procure intelligence reports about hate crimes. Similar coordination is directed to be there between central and state government. Even though the *law and order* are state subject under the Constitutional scheme, the Central Government is directed to issue necessary directions to all the state with a view to regulate serious incidence of hate crime.

Providing remedial measures, the Apex Court directed that all incidents of lynching or mob violence must result into registration of First Information Report. The investigation of hate crimes shall be monitored by the Nodal Officer. While conducting the investigation rights of victims should be taken care. Further, the State Governments shall prepare a lynching/mob violence victim compensation scheme in the light of the provisions of Section 357A of CrPC. The compensation scheme so designed must make necessary provisions for interim relief to be paid within a period of thirty days of the incident. State are being directed to establish special courts for the trial of lynching cases. Some other directions were also given as to witness protection, free legal aid, awarding the maximum punishment prescribed under the law, unless some special situation exist.

Departing from general practice, Supreme Court issued some punitive measures, and directed that non-compliance with the aforesaid directions, shall be considered as an act of deliberate negligence on the part of the officer concern. Reiterating the law laid down in *Arumugam Servai* v. *State of Tamil Nadu*, [(2011) 6 SCC 405] court said that the states are directed to take necessary disciplinary action against erring officials.

V. ARGUMENT FOR ENHANCE PUNISHMENT AND FEDERAL MONITORING AGENCY

It is worth repeated here that to solve a problem, the first stage is to recognise its existence. The observation of Supreme Court about hate crime, hate speech and mob lynching is the first step towards penalising the hate crime. The measures suggested by the Court categorically outlines the vision for a comprehensive penal policy in this regard. It recognises the core issues involved, and at same time provides some course correction. *Firstly*, the Court calls for recognising the existence of hate crimes, mob-violence, and mob-lynching. *Secondly*, it talks about speedy trial, protection to witnesses, compensation to the victims of hate crimes and sterns punishment for the offenders. *Thirdly*, court also felt the need for alternative, effective and coordinated policing, right from district level to that of ministry of Home affairs, Government of India for greater crime control.

Argument for Enhance Punishment

As directed by Supreme Court, and argued earlier, criminal justice system needs to evolve the policy of enhanced punishment for hate crimes. The *expressive theory of punishment* would demand that by enhanced punishment, twin message will be send simultaneously. The message will to all future offender that a crime committed out of prejudice or hate will be dealt sternly, and at the same time message will also be send to the victim or the victim's community that state will afford protection to all, and no one should ever feel dejected in the constitution order.

Federal Monitoring Agency

This may be extremely ambitious argument, but hate crime, which is threatening the core

of pluralistic ethos, diminishing the rule of law, and eroding constitutional values need to be tackled differently. The hate crime is required to be dealt with iron hand. In this regard, having a Federal Hate Crime Monitoring Agency could serve the purpose. The idea of having this body for a greater coordination is very much enshrined in the directives of Supreme Court itself. Apart from having inter-state coordination, this agency can preserve the data and sensitive information as to hate crimes. This can work in the line of principle of cooperative federalism and will essentially sub-serve the constitutional objectives. Having centralised bureaucracy for civil administration as well as policing, functioning of such a mechanism will not be much problematic.

SUMMING UP

Going by the direction issued by Supreme Court, many states came up with draft legislation to deal with mob lynching. The draft legislation prepared by UP Law Commission seems to have dealt with the problem stringently. The UP-draft legislation proposes for enhance punishment to lynchers along with punishment of three years on erring police officials. (Bajpai, 2019). The Manipur government also came up with its Bill against lynching in 2018, incorporating some of these measures. The proposed law provides protection to the victim of mob violence and witness protection including schemes for rehabilitation of victims. The Rajasthan and West Bengal government came up with bill against mob lynching in the year 2019. However, all these provisions are nothing less than half-hearted attempt to deal with hate crime. Parliament of India is also contemplating to have a comprehensive law on this issue. In the meanwhile, the lynching instances continue to rise.

M. K. Gandhi, the father of the nation, has once said that "[he] *object to violence because when it appears to do good, the good is only temporary; the evil it does is permanent…*" to save the nation from a permanent scar, a stringent, well-crafted, futuristic penal policy is required urgently. A policy of zero-tolerance towards hate crime and mob lynching needs to be placed before the law enforcement agency. Unless, an action is taken, in the true sense and spirit of judicial guideline, author afraid that the judicial law making may lose its sanctity.

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DIFFERENT TYPES OF CHILDREN IN CONFLICT WITH LAW: A STUDY OF THEIR LEVEL OF AGGRESSION

Nitu Kumari* & Lakshmi Pandey**

ABSTRACT

This paper attempted to analysis the levels of aggression among different types of Child in Conflict with Laws (CICL) and compare them with a group of non-CICL. Sample of the present study was consisting of 100 CICLs divided into legal categories such as petty criminals (40), serious criminals (44) and heinous criminals (16) and an equal number of non- CICL (100) participated as reference group in this study. The Hindi version of Aggression scale developed by Dr. R.L. Bhardwaj (2005) was used to capture responses from sampled group. Results indicated that all the three groups of CICL (Petty, Serious and Heinous) did not differ significantly between themselves in terms of mean aggression score. Though, they independently and jointly differed with non-CICL with significant margins. It was also found that different groups of CICL were scored higher on aggression as compared to non-CICL indicating the fact that CICL were more aggressive than non-CICL.

KEY WORDS

Child in Conflict with Law, Types, Non-CICL and Aggression

Introduction

As per the JJ Act, 2015, the children coming within the Juvenile Justice System have separated in Children in Conflict with Law (CICL) and Children in Need of Care and Protection (CNCP). The present study has concentrated only on male CICL. The Crime in India, 2018 recorded total of 38,256 CICL were apprehended in 31,591 cases, out of which 35,380 CICL were apprehended under cases of IPC and 2,876 CICL were apprehended under cases of SLL during the same year (NCRB, 2018). Majority of the apprehended CICL under IPC & SLL crimes belonged to the age group of 16 to 18 years (75.5%) (28,867 out of 38,256) during 2018 (NCRB, 2018). The NCRB data (2018) shows that majority of the children who were in CICL belonged to the disadvantaged section (42.5 per cent) of the society. The NCRB data also highlights that about 18 per cent CICL were involved in the property-related offence, whereas, the involvement of children in the serious and heinous offence was marginal. About 6.34 per cent of total CICL were committed violent or aggressive crimes during the same year. In the light of the above concerns, this paper, thus, attempts to analyse the levels of aggression among different types of CICL namely Petty, Serious and Heinous criminals than non-CICL counterparts.

Studies carried out to see the causes behind childhood criminality have reported that crime is the manifestation of various factors like biological, psychological, social, financial, familial, demographic and institutional (Ambastha, 1992, Sahmey, 2013; Pandey and Kumari, 2018). Since, the study is designed to analyse the levels of aggression among different types of children who were in CICL, as compared to non-CICL. Therefore,

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studies available concerning the aim is being reviewed below.

Freud suggested aggression is one of the consequences of frustration which was widely accepted by Dollard et al. (1939), who formulated a theory, and postulated that frustration results in aggression. While the social learning approach has focused on the specific problem behaviour and recognizes that it is learned, it can be unlearned as well (Bandura's, 1973). With this focus, aggressive and violent behaviours are presumed to acquire responses to frustration which can be used as instruments for achieving intentions and such type of learning occurs by observing others. Before-mentioned learning patterns are widely noticed like in the family, among peers, neighbourhood, media, or in violent pornography (Reiss, 1993). On the other hand, conflict theorists have stated that offensive behaviour arises in society due to an inequitable pattern of resources, power and politics. Conflict theorists have concerned about the role executed by the government in building an environment that is contributory to crime. Also, they are concerned with the role that power has in maintaining and developing the constitution. Ultimately, conflict theorists (Marx) deal with prejudice inside the juvenile justice system (Mills, 1956). Thus, theoretical information throw lights on the fact that social and psychological factors are predominant as compared to the biological factor in creating the deviant behaviour among child who tries to imitate and inculcate whatever environment shows them.

As per DSM-IV manual, aggression, described as a component of behaviour disorder, is consists of physical or verbal behaviour with a motive to harms or threatens to harm others; and it can be self-protective or self-destructive (Abdullah et al., 2015; Ferris and Grisso, 1996). The different types of aggressive and violent behaviours have broadly classified as person-centred (verbal and physical) and property-centred (theft, robbery etc.). But, more commonly aggressive behaviour has categorized in terms of its function viz. hostile aggression and instrumental aggression (Feshbach, 1970).

Moreover, the nature of hostile aggression is uncontrolled, emotionally charged physical or verbal violence that provokes physical injury or pain on the victim while, instrumental aggression is controlled, and purposeful non-physical violence (Abdullah et al., 2015; Dodge, 1997; Feshbach, 1970). Furthermore, investigations on adolescents' aggressive behaviour have advised that boys inclined to engage in hostile aggression, while the girls, usually, more inclined to show aggression in relational sense (instrumental aggression). Because, girls manage to use their relationships to impose hurt, and manipulate supporters to harm others feeling by socially recognized method (e.g. social exclusion, rumours and slander) (Abdullah et al. 2015). Furthermore, there are many forms of physical aggression, but more common among offender boys are first fighting and assault with weapons, which carries a tremendous challenge of the judicial system (Kupersmidt, Coie, & Dodge, 1990).

Also, physical aggression manifested by CICL and other aggressive individuals has two subtypes viz. reactive and proactive aggression (Dodge & Coie, 1987). Reactive aggression has characterised by unpredictable, defensive, and angry responses to perceived provocations or threats (Dodge & Coie, 1987). The goal of this type of aggression is to protect oneself against perceived threat or frustration and to inflict harm on its source. Proactive aggression, on the other hand, has not been associated with provocation but, described as aggression in pursuit of an adequate goal (Dodge, et al. 1997). Youths, who engaged in proactive aggressions, are favoured valuing

aggression as an effective means of acquiring their desired goals and anticipated positive outcomes for their aggressive behaviour (Dodge et al., 1997). Besides, childhood proactive aggression resulted in later violent behaviour, expecting significantly more specific consequences and results for their aggressive behaviour. While reactive aggression seems to be more associated with early developmental experiences, proactive aggression may have its beginning in social learning during the elementary school years (Dodge et al., 1997). Proactive aggression and reactive aggression have different predictive value about antisocial behaviours. For boys, proactive aggression during pre-adolescence predicts offence and violence during mid-adolescence, and criminal behaviour at adulthood (Dodge et al., 1997). Also, a large percentage of aggressive acts was significantly associated with higher levels of anger, and stronger assumptions that physical aggression is a relevant course of action in conflicts. Physical aggression has often associated with the offence, with many studies citing it as the best predictor of later criminal behaviour (Moffitt, 2006). Further, Hunter et al. (2004) had examined childhood exposure to violence against females, and male-modelled anti-social behaviour, as risk factors for sexual aggression, non-sexual aggression, and offence among adolescents. Both risk factors had produced direct and indirect effects on non-sexual aggression, and offence (Hunter et al. 2004). Similarly, adolescents repeated, and persistent deviant acts can turn into violent offences, and the offenders would start exhibiting antisocial behaviour (Moffitt, 2006).

Studies have shown that childhood and adolescents' aggression is a strong predictor of unlawful and antisocial conduct (Farrington, 2001; Farrington et al. 2008; Moffitt, 1993; Patterson, Crosby and Vuchinich, 1992). An overall trend disclosed by many studies that CICL were more aggressive than non-CICL (Shiva Kumara et al. 2014, Kumari, N, 2019). Research also indicates that childhood aggression has often associated with various negative issues like subsequent psychopathology, low achievement motivation, poor adjustment, and adolescence offence (Kupersmidt, Coie and Dodge, 1990; Loeber, 1990, and Stattin and Magnusson, 1989). Dodge et al., (1997) focussed more hostile outburst of serious criminals. Also, longitudinal investigators have observed that aggression is one of the best predictors of future social, psychological, and behavioural offence, including peer victimization (Dodge & Coie, 1987). Besides, Huesmann et al., (1984) has tracked a sample of 600 subjects for 22 years and found that highly aggressive 8-year-olds often became relatively hostile, 30-year-olds who were likely to batter their spouses or children and to be convicted of criminal offences. Twin studies suggested that some individuals are genetically predisposed to have aggressive behaviour and other antisocial acts (Plomin, 1990 and Rushton, et al., 1986). Abdullah et al. (2015) has conducted a study on Malaysian youths and found high-risk youth respondents scored low on criminality, and moderate on aggression. This finding has also reported a meaningful association between levels of criminal behaviour with both age and ethnicity, although, no meaningful connections have found with gender and religion. The result has indicated that public perceptions about at-risk youth may move contrary to reality; despite being at-risk, the respondents have displayed lower-than-expected levels of misconduct and moderate aggressive behaviour.

Thus, findings of the previous research have indicated that a higher level of aggression places youth at risk for serious crimes. Also, substance abuses and mental disorders, as well as frequent aggressive behaviour, were found to be more among CICL (NCRB, 2018). This is in line with the theoretical assumptions of Glueck and Glueck (1950),

Friedlander (1945), and Johnson (1996). About domicile, aggression was found to be of similar level among CICL, but among the non-CICL, only the rural adolescents were found to acquire a higher level of aggression than the urban adolescents. These contradictory results need further investigation with a larger sample size.

OBJECTIVES OF THE STUDY

The present study has concentrated exclusively on male CICL. Studies on aggression among different types of CICL in the Indian context are scanty. Therefore, the present study was designed to measure the levels of aggression among different types of CICL. Besides, an effort was also made to compare them with a group of non-CICL.

THE HYPOTHESIS OF THE STUDY

1. Different groups of CICL will not differ significantly between themselves in terms of the aggression score.
2. There will be a significant difference between the CICL and non-CICL in terms of their scores on aggression.

METHOD

1. Sample

Sample of the present study was consisting of 100 CICL divided into legal categories namely petty criminals (40), serious criminals (44) and heinous criminals (16) and an equal number of non- CICL counterparts (100) participated as a reference group in this study. The different groups of CICL were chosen for the study by the method of purposive method of sampling wherein a simple random sampling method applied for the selection of non-CICL counterparts. Sample of the different groups of CICL was selected from various observation homes (OH) and non-CICL belonged from various public schools in the district of Bihar. There are 12 OHs (4.11 per cent of all India) operated in the state of Bihar as on 31.03.16 (GoI, 2016). The study had covered 4 OHs, these were- Patna, Bhagalpur, Munger and Purnea. The non-CICL counterparts were also selected from the sampled district. All the respondents were between 13 to 16 years of age, belonged to lower class families and inhabitants of rural areas. All of them were boys and had an elementary knowledge of reading and writing in the Hindi language.

2. Instrument used

To measure the aggression among adolescents, the investigator has used a Hindi version of the aggression scale developed by Dr. R.L. Bhardwaj (2005). The scale consisted of 28 statements. Each statement has five alternatives. The respondents were required to rate themselves on five choices. The total score which one individual could obtain ranged between 28 to140. Higher scores on this scale are indicative of higher levels of aggression among respondents.

RESULTS

Table 1 presents the mean aggression scores of the different CICL groups. The result shows that heinous criminals were the highest achievers while serious criminals were the lowest achievers on the aggression scale. Also, little variations in aggression score among different group of CICL indicated unanimity in aggression score. Statistical analysis also confirms that different groups of CICL did not differ significantly between themselves concerning aggression score. Thus, the hypothesis framed for verification that different groups of CICL will not differ significantly between themselves in terms of the aggression score was accepted.

Table1: Comparison of different groups of CICL and their relative standing in terms of their level of aggression

Groups	N	Mean	SD	SE of Mean	t-ratio			F value
					Petty	Serious	Heinous	
Petty	40	79.52	8.98	1.42	x	0.58*	0.44*	0.44*
Serious	44	78.39	8.86	1.34	x	x	0.89*	
Heinous	16	80.69	8.69	2.17	x	x	x	

*Note: * = Not significant, ** = Significant at .05 level, *** = Significant at .01 level.*

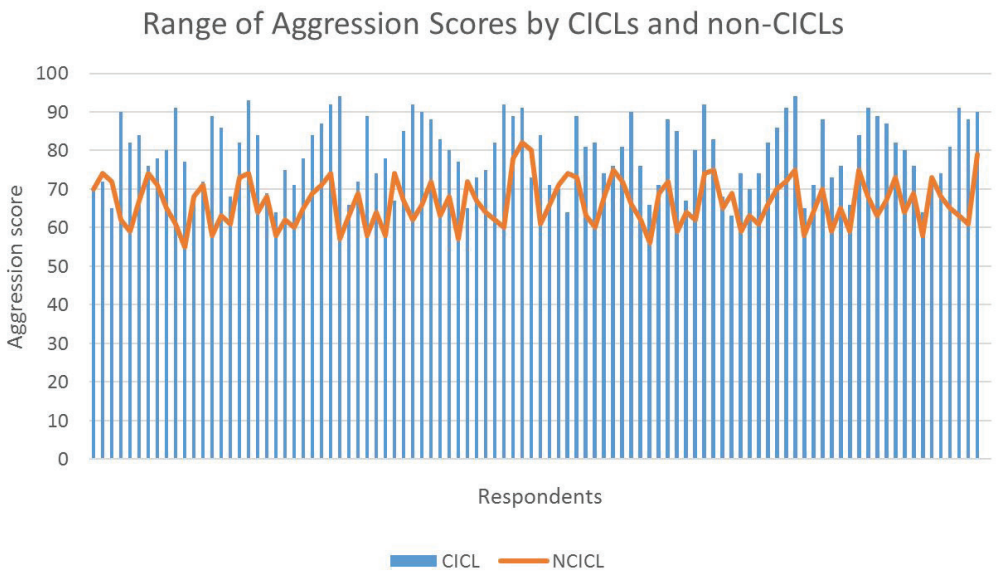
Table 2: Comparison of the CICL and non-CICL groups in terms of their level of aggression

Category	N	Mean	SD	SE Mean	t-ratio				F value
					Petty	Serious	Heinous	overall	
CICL	100	79.21	8.83	.88	10.02***	9.43***	8.21***	11.96***	47.92***
Non-CICL	100	66.40	6.05	.60					

*Note: * = Not Significant, ** = Significant at .05 level, *** = Significant at .01 level.*

From inspection of table 2, it is apparent that the CICL respondents (mean score of 79.21) were more aggressive than their non-CICL counterparts (mean score of 66.40) with significant margin (t=11.96/p<.01). The result further revealed that different groups of CICL viz. Petty criminals, serious criminals and heinous criminals have differed to the non-CICL counterparts with significant margins from = 10.02/p<.01, t=9.43/p<.01 and t=11.96/p<.01 respectively. Besides, figure 1 fairly explains that the individual aggression scores obtained by CICL respondents are higher than the non-CICL counterparts, which supported the earlier studies. It revealed that aggression of adolescents did make significant differences as far as his criminality has concerned. Thus, the hypothesis was accepted.

Figure 1: Distribution of aggression scores obtained by CICL and Non-CICL



DISCUSSION

Findings of the present study delineated that the levels of aggression were found to be higher among the different groups of CICL than the non-CICL. Though, the different groups of CICL (namely Petty, Serious and Heinous) did not differ significantly between themselves but, they independently and jointly differed with non-CICL counterparts with significant margins. Also, the study reveals some common features about CICL like lack of social interaction ability, excess anxiety and poverty. One possible explanation about the lack of these abilities is observation home, where they remained separated from the general population. It has been pointed out earlier that CICL criminals were characterised by impulsive, maladjusted, less intelligent, and psychopathic personality (Pandey and Kumari, 2018; Pandey, 2019; Kumari, 2019). These features are likely to predict and motivate criminality. The present findings fairly agree with the earlier researches of Glueck and Glueck, (1950), Friedlander, (1945), Johnson, (1996), Shiva Kumara et al., (2014) and Kumari, N, (2019) which have recorded that aggressive behaviour found to be higher among the CICL youths than the non-CICL youths. The NCRB data reported that the majority of the minor criminal cases are petty crimes which can be hindered by proper supervision, counselling, and economic strengthening of their parents. Therefore, it appears that if one would be involved in aggressive acts, they would certainly commit a crime. Further, it is suggested that to have a more vivid understanding about the aggression of anti-social children, we need not only to compare them with the non- CICL, but also with other children coming within the juvenile justice system in cross-cultural perspective. The findings of this study will be undoubtedly helpful to enrich our knowledge regarding psychological assistance, and education that should be the major part of the rehabilitation process.

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NARCO-CORRUPTION: A DESTRUCTIVE PRAXIS IN DRUG CONTROL AGENCIES

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ABSTRACT

It is stated that "there is corruption without organized crime, but there is no organized crime without corruption". Nowadays drug-related corruption has become a notable threat to anti-narcotic strategies of the country. It damages the image of drug law enforcement agencies and exacerbates the drug-related offences. The different agencies in the country including the national level like Narcotic Control Bureau, Central Excise and Customs, Revenue department, Paramilitary forces like Border Security Forces and state-level special units and police department involves drug controlling activities. Ostensibly, there is the risk of corruption in all these agencies. According to the sources, a significant number of corruption charges were framed against the officials of all these agencies and some of them were convicted. Recently NDPS special court in Mumbai sentenced one Saji Mohan, an IPS officer who was the Zonal Director of NCB, Chandigarh to 15 years imprisonment for drug-related corruption charges. The present paper attempts to address the different forms of drug-related corruption with appropriate cases. The extensive literature review method was adopted for the present study. The relevant data was also collected from open sources. The study found that there is the risk of corruption in all the stages of drug trafficking, the cultivators may bribe the law enforcement agencies for protecting their cultivation land from eradication and avoiding arrest. The manufacturers, transporters, and even distributors may bribe the agencies to avoid seizure of drugs, dismantling drug manufacturing units, and arrest. It was also found that the narco-corruption ranges from stealing seized drugs to direct involvement in drug-related offences by the officials.

KEYWORDS

narco-corruption, anti-narcotics, bribe, drug trafficking, cultivation.

Introduction

Drug trafficking has been considered one of the most lucrative activities conducted by organized criminal groups, and one provides a high risk of corruption in producing and transit countries. Overall estimation of corruption and tax evasion in cross-border flow of global proceeds from criminal activities at over one trillion US dollar in which the account of illegal drugs was eight percent of world trade. Globally, the drug trade is facilitated by corruption. Drug-related corruption has emerged as a significant problem in various drug control agencies. It does not only exacerbate the flow of drugs in the country but also reparations the image of the agencies. The studies show that drug dealers make illegal payments to government officials and law enforcement agencies for the smooth functioning of their activities in all the stages of drug trafficking from cultivation to distribution without any legal interruption. The studies also found that the drug dealers who managed to infiltrate members into government influence over decision making and law enforcement priorities (Martini, 2014). Corruption facilitates drug trafficking through influence the efforts of anti-drug controlling strategies (McGuire, 2010).

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Corruption simplifies the transportation of illicit drugs across the borders and their sale on local markets (UNODC, 2014). The world drug report 2017 broadly described the risk factors of corruption in all the stages of drug trafficking. Ostensibly, the patrol officers and drug investigation officers and officers working at drug transiting area like port border are the greatest exposure to corruption-related situations. Practices of corruption in various drug law enforcement agencies are one of the most dangerous hurdles in controlling drug smuggling. It has been alleged that law enforcement officers not only take bribe from the drug dealers but also, they actively involved in drug trafficking (Das, 2012).

Drug trafficking cannot operate without the existence of some form of corruption. Drug trafficking and corruption are intricately and inherently connected (Andreas, 1998; Beittel, 2011; Hanson, 2008; Naylor, 2003, 2009; O'Day and Lopez, 2001; O'Day 2001; Pimental, 2003; Shelley, 2005). Drug-related corruption highly reported in Mexico. It was reported that 357 Mexican law enforcement officials detained in 2009 for assisting drug traffickers.

Bribery among the customs officials and border police network for facilitating transnational drug smuggling is a widespread practice. Bribery of law enforcement officials further minimizes the risks of being caught, arrested, and prosecuted. With permeating political and state administration institutions by corrupt activities, the drug dealers efficiently compromise anti-narcotic, anti-corruption, and institution-building efforts to facilitate or reduce the risks and costs of their operations (Chene, 2008). Drug-related corruption plays a central role in drug trafficking and it not only facilitates drug criminal drug business enterprises and also it diminishes the state's efforts to confront them (Morris, 2012). Initially, the police officer joined the forces as good and honest men. But the amount of money involved in black market drug dealing offers cops an incredible temptation. It's indeed only a small percentage of the total number of police officers that involve drug-related corruption. But it damages the entire police community and honest officials (McNamara, 2011).

Statement of the Problem

India agonizes the menace of drugs for decades. Due to the millions of money turn over in drug trafficking, the drug dealers may offer a lucrative deal with law enforcement officials for facilitating smuggling or avoiding criminal proceedings against them. Sometimes, they threaten the officials to do the same. Drug control agencies involve drug-related corruption depending upon the situations while they deal with drug smuggling cases. Drug-related corruption is in different forms including facilitating the drug smuggling, stealing the drug from the property room, not registering the case, etc. Narco-corruption is also one of the reasons for the proliferation of drug smuggling cases. Hence, it is essential to address the dimensions of drug-related corruption among law enforcement officials. The present study focuses to identify the general facets of drug-related corruption among law enforcement officials and also examines the magnitude of drug-related corruption among various law enforcement officials in India.

Research Methodology

The prime objectives of this research paper are; to identify the different forms of drug-related corruption among the drug law enforcement officials; to examine the extent and nature of drug-related corruption among the Indian drug control agencies. Due to the lack of authentic data on drug-related corruption and a limited number of cases reported in India, a mixed-method including extant literature survey, case study and content analysis method was adopted to meet the objectives of the study. Secondary

data were collected from different sources. The extant literature review was conducted to identify the dimension of narco-corruption. For identifying drug-related corruption among Indian law enforcement officials, secondary data were collected from the government's documents. For case analysis, drug-related corruption cases were collected from SCC online sources. For content analysis, data were collected from online investigative journalism. There were 38 drug-related corruption cases collected from investigative journalism and one case from SCC online source. The state of Punjab was specifically focused due to the highest availability of drugs and relatively a greater number of drug-related corruption cases were registered in the state. The limitations of the study are, only 39 cases were collected due to the lack of authentic data and statistics to support the study; the 39 cases cover only 12 states and the data for other states were not available. Due to the limited number and nature of the data, any techniques of data analyses could not be applied.

Narco-corruption: Meaning and Forms

Narco-corruption is a term that describes deliberate and dishonest functions of law enforcement officials and other government officials while dealing with drug-related offences for personal gain. Drug-related corruption differs from other forms of police corruption. Drug-related corruption is a dishonest function of government officials which includes extorting drugs or money from the drug dealers, selling drugs or lying under oath about illegal searches, selling the information to the criminal group, facilitating the transportation of drugs, obstructing the investigation and so on. Selling the information includes providing information to criminal groups about the departmental plan of investigations or operational information that helps them avoid detection (Chene, 2018). Other forms of drug-related corruption are:

1) Accepting bribes from drug dealers/ traffickers in exchange for 'tip" information regarding drug investigations, undercover officers, drug strategies, names of informants, planned raids, and related tactical information.

2) Accepting bribes from drug dealers/ traffickers in exchange for interference in the justice process such as failure to arrest, evidence tampering, perjury, failure to interview or include witnesses, or contamination of other physical or testimonial evidence.

3) Theft of drugs by an officer from the property room or laboratory for personal consumption or sale.

4) Street "seizure" of drugs from users/ traffickers without an accompanying arrest with the intent of using the drug personally.

5) Robbery of drug dealers of profits from drug sales and/or the drugs for resale.

6) Extorting drug traffickers for money (and sometimes property, such as stereos, televisions, or other desired commodities) in exchange for failure to arrest or to seize drugs (Dombrink, 1988; Langer, 1986)

The police who involved in stealing or extorting drugs and money from the drug dealer believes that the drug dealer does not report to the police station, he shall be punished for their drug offence and it reinforces the police involvement in a robbery with drug dealers and it protects them from the prosecution. The incidence of stealing drugs from the evidence room and drug dealers by police officials is often reported in the United States (McNamara, 2011). Reportedly, criminal organizations were spending more than $500 million a year in bribes (Kenny and Serrano, 2011).

In some instances, the criminal groups go to great lengths to identify vulnerable officials who are likely to respond to a corrupt transaction or to infiltrate law enforcement or border protection agencies using bribery or intimidation. The infiltration in which the members of criminal groups enter into government agencies especially police and high-rank officials and the political arena where the capture of the decision-making process exacerbates the corrupt practices and proliferates drug trafficking (UNCIP). Every trafficker has a great many appointed officials and elected politicians on his payroll (Guillermoprieto, 2010). In Mexico for example, an investigation of drug trafficker's infiltration of police agencies revealed in October 2008 that one of the members from drug cartel infiltrated the Mexican Attorney General's office and paid a spy inside the US Embassy for details on DEA operations. A federal prosecutor who headed the organized crime unit was arrested for corruption on suspicion of leaking intelligence to a drug cartel. In 2007, 284 federal police officers were suspected and examined by the government in an attempt to eliminate corruption in the fight against drug trafficking (Chene, 2008).

The payoffs target those directly responsible for drug controlling efforts including preventive police investigation, judges, prison officials, and banking officials in charge of tracking money laundering (Morris, 2012). The criminal groups collect the intelligence about the officials including drinking habits, gambling, financial and other problems which are considered to make them easily compromised. In some cases, the criminal groups collude with government officials in conspiracies to smuggle the drugs (OECD, 2013). A study conducted in Kenya found that criminal groups that operate drug trafficking had close relationships with law enforcement officers and the judiciary. It also found that the members of parliament and members of the government were under investigation for their alleged role in drug trafficking (Gastrow, 2011).

Drug cartels sometimes use "silver or lead" approach, it is also called bribe or bullet for their drug smuggling operations, in which when the drug cartels approach a citizen with a job, that person is given a choice, work with the drug trafficker or risk the bodily harm or death of himself and potentially his family. There is no middle ground and often no chance to negotiate. They use force and threats to remove or replace those individuals that refuse to "play ball" (Courtney, 2013).

Risk of narco-corruption at border

Border controlling authorities play an unwanted crucial role in facilitating trade across the countries. In many countries, widespread corruption makes undermine sources and weaken the border controlling activities and fueling the various form of illegal activities including human trafficking, drug trafficking, weapon smuggling (Chene, 2018). Due to the lack of supervision and operates in remote and geographically disposed areas, the officials of border control authorities have more opportunities to engage in corruption practices. Direct contact between border guards and bribe payers or intermediates often occurred by some informal social network places that develop in casual places like local bars, coffee shops, gym when producing the opportunities the criminal and official of border security to meet in a conductive atmosphere (Centre for the study of Democracy, 2012).

Border security and customs officials are more vulnerable to corruption due to the varied nature of work (Chene, 2019). Transborder drug transportation is occurred through three possible means such as by land through the international border, by sea through seaport and by air through

an airport. The international border is controlled by border security guards whereas the seaport and airport are mostly controlled by Customs officials.

The prime responsibility of the border security officials is the prevention of illegal transportation of products including drugs across the land border. As a high amount of money involves in this transnational organized crime, the syndicate never hesitates to resort to bribery, intimidation and violence to facilitate their illegal transactions (Ferreira, Engelchalk and Mayville, 2007). Border control authorities and customs are often perceived among the most corrupt government institutions in many countries (McLinden and Durrani, 2013). In the United States, it was reported that during 2007-2017, 200 employees of the Department of Homeland and security took nearly US$15,000 in bribes from the crime syndicates in exchange of allowing drugs and people to be smuggled into the country, providing information to the cartels that included the name of an informant (Flores, 2017).

There are certain factors associated with drug-related corruption includes the police culture, characterized by a code of silence; the maturity and education levels of the police officers; ineffective management that does little to promote integrity or supervise officers; opportunity to commit corruption; inadequate training; police brutality and personal tie to an officer's neighborhood. The primary motive is money even after other factors are identified (Chene, 2008).

There are two distinct behavioral cycles identified among corrupted police officials, in these cycles, it was found that in the initial stage of a corrupt act, the official afraid of being detected. After the fear decreased, the officer involves another corrupt act when the opportunity for corruption occurred. It continues in every act of corruption. Failure of detection reinforces the act of corruption. In the user-driven cycle, the police officer typically the recreational user of drugs, confiscate the drugs from users or dealers or take them from the police property process for personal consumption. Two factors were identified in the user-driven cycle, one is the high cost of drugs or the impact of long-term expenditures for drugs on the officer's finances. A second factor is an opportunity in which the police officer has various chances to seize the drugs and divert them into their personal use. It cannot be concluded that all drug-using officers involve in some aspects of corruption. During the interview, the police officer admitted that he and his friends used seized drugs which were kept in the police property room for their consumption. The police officers those who involved in stealing drugs from the police property room do not view this behavior as corrupt since they did not deal with drug smuggler and there is no exchange of money.

In the profit-driven cycle, two types of behavior were identified in which monetary benefit is the only motivation. One is, stolen drugs from the police property room are routed to resale which gave them huge ill-gotten profit. For executing such activities, the police officers keep contact with such drug dealers. Second is, extorting money or making robbery of drug smugglers. Furthermore, when an opportunity to seize the drugs along with money from the drug smuggler, they report only less money after taking some amount as the drug money is unaccountable and untraceable.

Narco-corruption in India

There is no official data to support drug-related corruption in India. But the reliable official documents and the report of investigative journalism provide some adequate data to understand the concept of drug-related corruption in India. Despite,

India has specific drug controlling agencies like Narcotic Control Bureau which operates nationally and Central Bureau of Narcotic which operates in three states such as Madhya Pradesh, Uttar Pradesh and Rajasthan where opium cultivation is legally permitted for medical purposes, the other law enforcement agencies including central excise and customs, directorate of revenue department, paramilitary forces like Border security forces and state police also actively engage in drug control activities.

India is sandwiched between two of the world's largest opium and heroin producing regions popularly known as Golden Crescent (South West Asia) and Golden Triangle (South East Asia). India shares its border with Bangladesh (4,096.7km), China (3,488km), Pakistan (3,323 km), Nepal (1,751km), Mynamar (1,643km), Bhutan (699km) and Afghanistan (106km). The border security forces take more responsibility in the prevention of transborder drug smuggling. The transborder drug transaction is highly active across the India-Pakistan border as well as the India-Bangladesh border. The drug produced in Afghanistan which is the world's largest opium and heroin producing country is smuggled via Karachi in Pakistan to India through Punjab. The porous border and unfenced riverside are some major factors that make the Punjab border more vulnerable to smuggle the drugs. The drug smugglers often use these vulnerable border areas especially the border with the state of Punjab and West Bengal for smuggling the drugs from South West Asia and South East Asia respectively.

Besides, the department of central excise and customs also takes responsibility for the prevention of drug smuggling when it is routed through sea or airways from the respective ports. The directorate of revenue and other law enforcement agencies also engage in drug control activities. All these agencies work on secret information as well as routines checkups to seize the drugs and engage other drug-related operations. Every year, all the agencies seized huge quantities of drugs including heroin, opium, amphetamines, LSD, Methamphetamine, Ecstacy, Ganja and other Psychotropic substances across the country.

A colossal amount of money involves in drug trafficking brings on the likelihood of bribery among the officials for avoiding seizure, arrest, eradication and other legal proceedings. Based on the observations through the case studies, two kinds of corrupt practices such as corruption of pre-commission and corruption of post-commission have been identified among the law enforcement officials.

In *the corruption of pre-commission*, the corrupt practices commence before the occurrence of drug smuggling activities. The drug dealer ropes the drug controlling agents to facilitate the drug smuggling activities before it occurs, in exchange for money or property. They identify the officials who are in a financial problem, unsatisfactory with salaries, etc through informal social network places. Once they have assented, the drug dealer from the other countries transports the drugs into India through the border area where the agreed official was deployed duty.

In *the corruption of post-commission,* the corrupt practices commence after the drug dealer has been caught by the drug control agencies. They may bribe the officials for avoiding the initiation of the criminal proceeding including seizure and arrest or officials may demand bribe from drug offenders, their relatives or their friends for not registering the case or releasing the arrested persons or submitting the report in favor of him.

Narco-corruption in India: Case analysis

For this analysis, 39 cases were collected from different investigative journalism. A Content analysis method was adopted for the analysis of the cases.

Cases and Arrested Persons

Table 1: Drug-related corruption cases in different law enforcement agencies

Drug controlling agency	No. of cases	No. of arrested persons
Narcotic Control Bureau	9	13
Central Bureau of Narcotics	3	7
Border Security Force	7	7
Assam Rifles	2	2
Customs	1	1
State Police	10	12
Prison Department	7	7
Total	**39**	**49**

Table 1 shows that drug-related corruption cases and arrested persons from various law enforcement agencies. There were 49 law enforcement officials involved in 39 cases. 12 officials from the state police department involved the highest number of cases (n=10) followed by 13 officials from the Narcotic Control Bureau involved in nine drug-related corruption cases. The cases and arrested persons from other law enforcement agencies are, seven each in the prison department, seven each in BSF, three and seven in CBN, two each in Assam Rifles, one each in Customs department respectively.

Level of arrested officials

Table 2: Level of arrested persons

S.no	Rank /Organization	NCB	CBN	BSF	AR	Customs	Prison	State Police	Total
1	Zonal Director	2	-	-	-	-	-	-	**2**
2	Ad./Dpt.Commissioner	-	1	-	-	1	-	-	**2**
3	Superintendent	1	4	-	-	-	-	-	**5**
4	Dpt. Superintendent	-	-	-	-	-	-	1	**1**
5	Inspector	7	-	-	-	-	-	2	**9**
6	Sub-Inspector/ASI	-	1	-	-	-	-	6	**7**
7	Jawan	-	-	-	2	-	-	-	**2**
8	Jail warden	-	-	-	-	-	7	-	**7**
9	Head Constable/ Constable	2	1	7	-	-	-	3	**13**
10	Others	1	-	-	-	-	-	-	**1**
	Total	**13**	**7**	**7**	**2**	**1**	**7**	**12**	**49**

Table 2 elucidates the level of arrested persons in different law enforcement agencies. The study found that from subordinate officers at the bottom level to superior officers at the top level involved in drug-related corruption cases. it also

reveals that 13 constable rank personnel from different agencies (BSF-7; state police -3; NCB-2; CBN-1) involved in drug-related corruption cases. Except for BSF officials, all others were an accomplice to the misconduct. The inspector level officers involved in nine cases in which seven from NCB and two from state police. Seven Sub-Inspector/Assistant Sub-Inspector level officers and five superintendent rank officers involved in the cases. It was also found that two officers each in the rank of zonal director and additional commissioner also involved. Besides, seven jail wardens, one deputy superintendent rank officer also involved in drug-related corruption cases.

Type of Narco-corruption

Table 3: Type of narco-corruption

Type of narco-corruption	NCB	CBN	BSF	AR	Customs	State Police	Prison dept.	Total
Facilitating the drug smuggling	-	1	6	-	1	-	1	**9**
Stealing/extorting drugs, money from a drug dealer and resale	-	1	1	-	-	3	-	**5**
Stealing drugs from the property room and resale	1	-	-	-	-	-	-	**1**
Avoiding arrest/not implicating/ not registering in the case	3	1	-	-	-	2	-	**6**
Settle/disposal of the case	3	-	-	-	-	4	-	**7**
Releasing from the case/custody	1	-	-	-	-	1	-	**2**
Tampering evidence/submit the report in favor of accused	1	-	-	-	-	-	-	**1**
Directly involved in drug offences	-	-	-	2	-	-	6	**8**
Total	**9**	**3**	**7**	**2**	**1**	**10**	**7**	**39**

Table 3 explicates different types of drug-related corruption cases reported in India. Amongst 39 cases, in nine cases, the officials facilitated the drug smuggling in returns of a large amount of money. In eight cases, the officials directly involved in drug smuggling and seven cases, the officials tried to settle or dispose of the case for the money. The study also found that other forms of drug-related corruption such as bribes for avoiding arrest or not implicating or not registering cases (6), stealing or extorting drugs or money from a drug dealer and resale the drug (5), releasing from the case or custody (2), stealing drugs from property room and tampering evidence or submitting the report in favor of the accused (1 each). From table 3, it can be seen that the association of officials with the type of narco-corruption depends on the nature of their work. The officials of BSF mostly involved in facilitating drug smuggling. Most of the officials of NCB and state police departments involved in corruption for not registering the case and disposal of the cases after making arrest or seizure of the drugs. The officials of Assam Rifles directly involved in the drug smuggling case.

Other findings

The present study exposed that amongst 39 cases, 26 cases were registered between 2016 to 2020 (till February). The rest of the 13 cases

were between 2005 to 2015. The highest number of cases were registered in 2019 (n=10) followed by 2018 (n=8), 2016 (n=5) and 2014 (n=4).

In respect of states, the study found that Chandigarh (10 cases) and Punjab (8 cases) registered the highest number of cases, followed by Rajasthan (4 cases), Maharashtra (3 cases), Himachal Pradesh, Uttar Pradesh, Andhra Pradesh, West Bengal (2 cases each), Odisha, New Delhi, Manipur and Assam (one case each).

The study also exposed that in 11 cases, the officials were caught red-handed through trap by agencies like Anti-corruption Bureau, CBI, Vigilance Bureau, etc. The study also found that the amount involved in the cases range from Rs.10,000 to Rs. 45 lakhs. In one case, the police officers demanded sexual favors from the wife of the accused as a part of demanded money.

The study also found that a certain quantity of drugs including heroin, opium, Ganja, Yuba tablets were seized from the custody of some law enforcement officials who directly involved in drug smuggling or stealing/ extorting drugs from the drug offenders.

Out of 39 cases, the study found that three cases were convicted in which in one case, an officer has sentenced 5 years and Rs.90,000 fines, in the second case, the CBN official was sentenced 10 years and in a third case, NCB zonal director along with his subordinate was sentenced 13 years and RS. 1,50,000 fines each in 2009. The same officer along with his driver was sentenced to 15 years and 10 years punishment respectively in a case registered by Anti-Terrorism Squad, Mumbai in 2019. The rest of the cases were under police investigation or under trail during the study period.

Punjab: A Narco-corruption state?

In comparison to other states, Punjab witnesses the high availability of drugs and drug users. It is due to its proxy to the major drug-producing region, popularly known as 'Golden Crescent', and also it makes the state more vulnerable to the risk of corruption. The above case analysis shows that Punjab relatively has the highest number of drug-related corruption cases in India. The fact is supported by a report on drug-related corruption in Punjab, submitted by an Indian Minister in the Parliament. In June 2016, one Indian Minister presented in the parliament that 69 employees of the Punjab police and security forces were arrested on drug-related corruption charges. Two deputy superintendents of police had also been arrested on similar charges. Table 4 represents the number of drug-related corruption cases reported in Punjab from 2013 to 2015.

Table 4: Number of drug-related corruption cases in Punjab

Year	Number of drug-related corruption cases	Number of Arrested Persons				
		Total	Punjab Police	Jail Dept	BSF	Others
2013	27	35	20	7	2	6a
2014	25	29	20	3	3	3b
2015	26	36	23	5	1	7c

a-Home guard-5, Customs-1; b-RPF-1, Railway TT-1, J&K Police-1; c-RPF-1, Chandigarh Police-1, Home Guard-4; Airforce-1;

Source: Ministry of Home Affairs, GOI

From table 4, it can be seen that from 2013 to 2015, 78 drug-related corruption cases (avg 26 cases in every year) reported in Punjab and 100 persons from various law enforcement agencies were arrested. Amongst 100 arrested persons, 63 officials are from Punjab police, 15 officials are from jail departments, 6 officials are from BSF 16 officials are from other law enforcement agencies such as home guard, custom, Railway Protection Force, Chandigarh police, etc. The state of Punjab is at high risk of drug-related corruption amongst other states. The highest availability of drugs in the state, which is due to its close proxy to one of the largest opium-producing region, 'Golden Crescent' and the porous border with Pakistan makes the state more vulnerable to drug-related corruption.

Some Case Studies

In *Saji Mohan v. Narcotic Control Bureau*[1] case, Saji Mohan was serving as a Zonal Director, NCB Chandigarh with an additional charge of Jammu Unit. According to the prosecution, during his tenure, he used to pilferage heroin which was seized in his two jurisdictions from the *malhana* and sold it to various drug cartels in New Delhi, Mumbai and other cities. He used an informer to sell the stolen contrabands to the drug cartels. He managed to pilferage 60 kg of heroin from 13 seizures. When the matter came to light, NCB registered a case against them including Saji Mohan, then zonal director, Balwinder Kumar, then Superintendent Chandigarh Unit and other two. Meanwhile, in one instance, Anti-terrorism Squad, Mumbai arrested Saji Mohan's Driver, Rajesh Kumar Khataria while he attempted to smuggle heroin in Mumbai. Subsequently, ATS seized 12kg of pure heroin from Saji Mohan's custody, which was smuggled across the border via Jammu and Kashmir. In the first case, Saji Mohan and Balwinder Kumar were sentenced to undergo rigorous imprisonment for13 years each and Rs.1, 50,000/- each in 2013 by Additional Session Judge, Chandigarh and it was upheld by High court and subsequently by Supreme court in 2015. In a second case registered by ATS Mumbai, Saji Mohan was sentenced to 15 years imprisonment and his driver was awarded 10 years imprisonment by Special NDPS court in 2019 (The Hindu, 2019).

In another drug-related corruption case, Rajasthan Anti-corruption Bureau arrested three officials of CBN for their malfeasances. The CBN is an agency to control opium cultivation in three states including Rajasthan and they are responsible for issuing licenses to the eligible farmers, measuring the land, controlling opium cultivation and collecting. The farmers are allowed to produce only 9 to 10 kg of opium in 1000 square meters under cultivation rules. In this case, the CBN officials in Chittorgarh, Rajasthan allowed the cultivators to produce 20-22 kg of opium. The excess of opium was diverted into an illicit channel at the rate of RS.60,000 to Rs.70,000 per kg which is much more than the government rates Rs.2,000 to Rs.3,500 depending on the quantity of morphine. The money which was collected from this illegal channel was shared allegedly with CBN officials. The investigation also revealed that the CBN officials used to collect opium from the cultivators for free and sell it to the buyers at the highest prices. In connection with this case, ACB Rajasthan arrested a superintendent, a sub-inspector and a head constable along with two opium brokers, from whom 125 kg opium, 66 sacks of opium husk and 16 sacks of poppy seeds and four illegal firearms were also seized (The Hindustan times, 2019).

In another case, Punjab police arrested a BSF Jawan for facilitating a drug cartel and arms smugglers to infiltrate heroin and weapons into India. He was with 52 Battalion, deployed in Indo-Pak border, Rajasthan. The involvement of BSF constable in drug smuggling came to light after Punjab police

[1]*Saji Mohan V. Narcotic Control Bureau, 2015 SCC online P&H 5155.*

arrested three notorious drug smugglers. He admitted that he had been receiving money from his handler Imtiaz, a well-known Lahore based drug smuggler. It was also found that a group of people approached BSF constable when he was attending a wedding and throw a lucrative word of being rich if he would facilitate the transportation of drugs. After he was convinced, he was given two SIMs for uninterrupted communication from Pakistan drug dealer Imtiaz. Imtiaz started to contact BSF constable through Pakistan SIM card and the amount Rs.50,000 was sent to him as the first installment later Rs.39,000 were allegedly deposited in the bank account of said constable's wife. He kept in contact with two Indian drug dealers. This is a common modus operant for infiltrating drugs into India. The investigation revealed that the compromised BSF officials send the location where he was deployed through WhatsApp to his counterpart. After identifying the location of BSF constable, the handler would send his consignment at night to the fence and infiltrated into India either by flung over the fence or through big plastic pipes to India side where Indian couriers were waiting to receive it. It was also found that BSF Jawans had been paid up to Rs.50,000 for facilitating the transportation of each consignment into India (Daily Mail, 2016).

In a similar case, a CBI team arrested a BSF commandant who was in charge of the 83rd battalion of BSF at Indo-Bangladesh border, with Rs.45 lakh bribe money while he was traveling in a train to home in Kerala. During the search, the CBI team seized 18 bundles of Rs.2000 currency notes totaling 34.44 lakh and 22 bundles of Rs.500 notes totaling around Rs.10.86 lakh concealed underclothes in a blue trolley bag, in the presence of railway officials and the witness. During the investigation, it was found that he regularly receives illegal gratification from the drug smugglers operating along the Indo-Bangladesh border. It was also suspected that his junior level officers might also involve in facilitating the smugglers (The Times of India, 2018).

In another case, Fazilka police arrested a BSF constable along with four others for smuggling drugs across the international border with Pakistan. They seized 5kg of heroin and Rs.68 lakh in cash, two cars and two Pakistani mobile SIM cards from them. The investigation revealed that the BSF constable who was with 117th battalion at SS Wala Border outpost in the Abohar sector came to contact with one notorious drug dealer when he visited his home on leave. He accepted to facilitate drug smuggling through the border area where he was deployed. Drug dealer struck to pay Rs.70,000 per kg of heroin smuggled with his help. He was also given a Pak SIM card. It was found that after resumed his duty, he facilitated three cross border transactions of drugs and two pistols in 20 days. He continued to facilitate cross border transactions of drugs. It was found that he had been paid 1.14 crore for facilitating the trans-border crossing of 163 kg contraband (Hindustan Times, 2015).

Discussion

A general fact derived from this study is that a country that is afflicted with the problem of drugs is at the risk of drug-related corruption. A turnover of substantial money in drug smuggling is a motivating force for such corrupt practices. Drug-related corruption commences in either demand from law enforcement or supply from the accused. The present study shows that officials from the drug control agencies invariably involved in drug-related corruption. The officials in special units including Narcotic Control Bureau and Central Bureau of Narcotic and the state police highly involved in these cases as their likelihoods to deal the drug cases are substantially more than other agencies. The officials of law enforcement agencies deliberately and dishonestly involved in different forms of drug-related corruption including facilitating the drug smuggling,

stealing the drugs from property room and resale, extorting money from the drug dealer, avoiding the criminal proceeding against the accused persons, releasing the accused from custody, tampering the evidence, submitting the report in favor of accused persons for earning ill-gotten money. It was also found that some officers whenever they seize drugs, extract some quantities from the seized drug and accounted for the rest of the portions or mixed with adulterants to adjust the actual quantity. These officers maintain their network to resale of these seized or stolen drugs across the country. Some officials indulged in an extreme subversive act like asking sexual favor from the wife of an accused person as a part of demanded money. The bribe amount ranges from Rs.10,000 to Rs.45 lakhs was supplied or agreed to supply or demanded or seized from the officials. In some instances, the anti-corruption agencies like vigilance bureau, state anti-corruption bureau, CBI caught the accused persons red-handed in the trap. They also seized a bundle of ill-gotten money during the subsequent searches.

The officials of these drug control agencies had different circumstances while involving drug-related corruption. For instance, the officials of border security forces mostly facilitated transborder drug smuggling in returns of huge money as they guard the international border and control trans-border smuggling. The officials of the Narcotic Control Bureau involved stealing drugs from the property room, avoiding the criminal proceeding, disposal of the cases, tampering the evidence, etc for personal gain. The drug-related corruption among the officials of the Central Bureau of Narcotics is a far cry from other agencies because of their role. They engaged in corrupt practices while issuing licenses for legal opium cultivation, allow opium cultivation in the excess area, receiving shares from the earning of illicit diversion, collect the opium from the farmers and selling it in the illicit channel, etc. The jail wardens involved in drug-related corruption through facilitating drugs into prison or supplying drugs to the prisoners etc. Hence, the duties and responsibilities of different drug control agencies determine the type of drug-related corrupt practices.

Conclusion

Drug-related corruption not only exacerbates the drug smuggling in one country but also it destroys the image of law enforcement agencies. Due to the involvement of prime level officers, political influences, lack of supervision on subordinates, fluctuation of millions of money, intimidation from criminals are major contributing factors to drug-related corruption. An effective law enforcement agency only can control the flow of drugs in the country. Some black sheep in the agencies diminishes the strenuous and deliberate efforts of honest officials in controlling the drug-related offences. Stringent action is timely required to control drug-related corruption among law enforcement officials.

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MOBILITY: A HUMAN RIGHT FOR THE SPECIALLY-ABLED IN PERIL DUE TO HATE CRIMES

Rudranshu Singh*

ABSTRACT

This research article has a theme of on-board hate crimes which reduce travelling and mobility rights of the persons with special needs. Transportation with disabilities can be a traumatising experience because we the commonly-abled (non-disabled) are not equipped to accommodate the difference in appearance or/and physique. Since difference generates automatic friction between the commonly-abled and the differently-abled, the human rights jurisprudence needs to intervene and discourage the hate crimes perpetrated against the travellers with disabilities. The subtle social prejudices develop an unholy nexus with 'powerlessness' of the special persons, making the special folks the soft targets of on-board and off-board hooliganism. We will discuss different tenets of such violence, its connection to the overall social prejudices and amendments will be proposed to the U.N. Convention on the Rights of Persons with Disabilities, to find a solution to the raised problem.

KEY WORDS

Mobility, Disability, Human Rights, Transportation, UNCRPD, Hate Crimes.

Mobility is perceived as a tool for unhuman agencies to the discharge of socio-professional commitments. But movements also have an uneven and irking impact, as the marginalised social groups commonly attest when they are immobilised in the procrastinated lanes in the lifecycle or are being forced into the undesirable nimble lanes of urban life.[1] 'Mobility is supposed to be a comprehensive human right, still in mundanity, the same works in accordance with the (social grades) class, racism, gender as well as the disability-based segregation in civic realm, in bestowing nationality, and the tools of mobility across the whole spectrum'. In several ways, mobility justice is an inherently mobile doctrine, to the extent, that it considers justice as an unpredictable arrangement that travels across scales and domains.[2] Sheller argues that the 'clout patterns of mobility systems derive stimulus from the hierarchies of class, racism, erotic charge, non-disabled physique, and gendered subjugation are stitched into the travelling modalities which defines the hierarchies of 'movement' (and resting places) which decide upon the usage of transportation or its denial.'[3]

Be that as it may, justice is not a static phenomenon or a sequence of utopian conditions that should be vindicated, but is a process of new relationships in which the chemistry of diverse im-mobilities forms the nucleus. Even more importantly, we cannot look at it unilaterally as 'transportation justice' in quarantine. Nor is the doctrine of 'spatial justice' adequate to comprise all the issues of mobility that are enlivening

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[1]*Nancy Cook and David Butz, MOBILITIES, MOBILITY JUSTICE AND SOCIAL JUSTICE (Routledge Publishers— New York, 2019) p. 3.*

[2]*Mimi Sheller, Mobility Justice: THE POLITICS OF MOVEMENT IN AN AGE OF EXTREMES (Verso Books— London, 2018) p. 20.*

[3]*Gerard Goggin, Disability and Mobilities: Evening Up Social Futures, 11(4) Journal of Mobilities, 533, 535 (2016).*

contemporary political skirmishes. Instead, we must contemplate how to amalgamate the efforts for accessibility and physical freedom of movement. Freedom of movement is synonymous with equitable infrastructures accompanying spatial designs that facilitate rights to movement, for fair, equal, and sustainable transport that is compatible with environmental hygiene, and for the reasonable global distribution of resources and rights to move or reside.[4]

Movement is necessary for accessibility and vice-a-versa whether a job, education, commuting, tourism or even an outbreak of pandemic demands people to move from place to another. Disability jurisprudence needs disability friendly transport as a human right. A fiercely immobilising characteristic of consumerist natty localities is their inaccessible design. It exemplifies that the instinctual arrangement of towns – mutually involving the overall land use models along with the intrinsic configuration of edifices – deigns against differently-abled people by not taking stock of their mobility constraints. Essentially, this discrimination is nurtured through:

- Public and private transport modus which presumes that the drivers and travellers are commonly-abled (non-impaired), and
- Signage at the bus and railway stations are designed in formats that presume a standard level of visual and aural ability.[5]

Lack of transportation for the specially-abled people stymies academic and professional pursuits and adds to the discrimination that is already existing in our society.[6] Professional growth needs a flawless movement of the differently-abled people because exclusion from the labour market is a collective experience of these special folks. Most of the impairments stymie mobility.[7] Constraint mobility restricts the career growth of our specially-abled friends to the extent that they have to settle with temporary grey-or-blue-collar jobs in their respective villages.[8] Even though the *Directive Principles of State Policies* urge the Government to promote 'cottage industries' under Article 43 of the Constitution,[9] but the rural economy is too fragile to accommodate the people with disabilities. Hence, moving out of the villages to explore the avenues of employment is the only viable option for special persons.[10]

Transportation is an interlocking of a physical drive along with the exchange of thoughts and subtleties amongst strangers (co-passengers) which is an exciting notion. Still there are several potential paths to pursue

[4]*See Supra Note 2 (Sheller) p. 23.*

[5]*Brendan Gleeson, GEOGRAPHIES OF DISABILITY (Routledge Publication— London, 2000) pp. 137-138.*

[6]*"Individuals with disabilities reach seclusion by travelling on the socially created wave of their disaffection from the mainstream of society: emanating from exploitation, marginalization, powerlessness, cultural imperialism, and violence." See Rob Imrie, DISABILITY AND THE CITY: INTERNATIONAL PERSPECTIVES (Sage Publications: Paul Chapman— London, 1996) p. 6.*

[7]*See Initial Report of the European Union to the UNCRPD Committee. Accessed at https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/232/64/PDF/G1423264.pdf?OpenElement on 16th June 2020. UN Doc. No. CRPD/C/EU/1 dated 03rd December 2014. See also David Wilkin, DISABILITY HATE CRIME: EXPERIENCES OF EVERYDAY HOSTILITY ON PUBLIC TRANSPORT (Springer Nature Publications—New York, 2019) p. 10.*

[8]*"Significant transportation and environmental barriers had been preventing many individuals in a country as resourceful as the United States (Houston, Texas) from taking part in the socio-economic activities of the city. In a study of 1640 residents in Houston who had special housing and transportation needs, the authors noted that three out of every five disabled persons and elderly did not have pavements or kerb cuts between their homes and the local bus stops, while a greater proportion of people with disabilities in Houston (71 per cent) did not have a kerb cut by their nearest bus stop." Id p. 26.*

[9]*Article 43 of the Constitution. See also Punjab State Electricity Board vs Smt. Jaswant Kaur, STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB, First Appeal No. 970 of 2007. See Order dated 30th July 2012.*

[10]*"Decline in agricultural land ownership, rising cost of inputs, and the sale of agricultural produce at the mercy of hawkish intermediaries have put the peasantry at the lowest pedestal of society." Interview conducted on Mr. Devendra Singh Verma, formerly an Additional Commissioner, Meerut Division (I.A.S, Retd). At his residence on Wednesday, the 04th of September 2019.*

this excitement because there are multiple channels of reaching from X to Y. But humans cannot be treated solely as perplexed entities-in-movement. They grasp and procreate distinct voyage-repertoires chasing them through creepy gesticulations and habits that travel through multiple phases of maturity, workout, ailment, disaster, or injury. We stretch these movement-gestures to the extent of robotising our human faculties to toe the inhuman line of our cities, neighbourhoods, or villages. "We look, we listen, we even vamoose our way through landscapes that continually shape and re-shape our movement-abilities. These environments favour some bodies over others. We are differentially mobile."[11] But while travelling the categorisation of bodily difference, exposes the people with disabilities to discomforting surveillance as it finds a precedent in literary history. Narratives have long cited disability as 'the inventory management feature of characterisation' and 'an unscrupulous metaphorical device', using 'bizarre' physiques to index moral or social deviation in a character or a society, one that the anecdotal arc pretends to solve.[12]

These deviant physiques face humiliation and stereotypical behaviour while travelling. Shame falls upon differently-abled individuals during and after the security scanning, (if and when required) which is an ingredient of aviation and metro-rail security frisking process. Individuals with "unique body types bear the risk of having their scanned images mocked, laughed at, and circulated on the internet."[13] Those actions go unnoticed because an unexpected lurching motion or a body running messily towards ourselves fosters an unusual adumbration that invokes a different response than a hand reaching slowly towards us.[14] A stereotype which commonly prevails even while travelling is that one disability accompanies the features of other 'impairment groups'.[15] Such attitudes can induce travelling phobia in the passengers with special needs, as "scary impact of tangibly adverse exposure to discriminatory attitudes and, stereotypes behavior or unusual staring."[16] Some co-passengers can indulge in tomboyish behavior passing unwarranted comments exemplified as 'when you are blind why did you travel at all.'[17]

"When I am on the *bus* just [like] ordinary people. When I stand there or sit there entirely usually, the 'normal' people say: 'Disabled! Disabled!' and it vexes me. I virtually wanted to get up and ask them what they have got against specially-abled people, but then I did not have the guts, but I will do next time." (A German National reported by the FRA: European Union Agency for Fundamental Rights).[18]

Such inherent loathing can lead to hate crimes against differently-abled travelers reducing their right to mobility.[19] The beleaguered

[11]*Kim Sawchuk, Differential Mobilities. Chapter 39 in The Routledge Handbook of Mobilities (Taylor & Francis— New York, 2014) p. 409.*

[12]*Richard Bingham, The Disabled Body Under Surveillance Capitalism. C21 Literature: 8(1) Journal of 21st-Century Writings, 1, 4 (2020).*

[13]*Etienne Lombard, Bombing Out: Using Full Body Imaging to Conduct Airport Searches in the United States and Europe Amidst Privacy Concerns 19 Tulane Journal of International and Comparative Law 337, 360 (2010).*

[14]*See Supra Note 11 (Swachuk) p. 410.*

[15]*Pheroza Daruwalla and Simon Dracy, Personal and Societal Attitudes to Disability, 32(3) Annals of Tourism Research, 549, 552 (2005).*

[16]*Tanya L. Packer, Bob McKercher and Matthew K. Yau, Understanding the Complex Interplay Between Tourism, Disability and Environmental Context, 29(4) Disability and Rehabilitation 281, 288 (2007).*

[17]*Id p. 289.*

[18]*Report of FRA (2012): Choice and control: the right to independent living— Experiences of persons with intellectual disabilities and persons with mental health problems in nine EU Member States. Accessed at https://fra.europa.eu/sites/default/files/choice_and_control_en_13.pdf on 18th June 2020.*

[19]*"A transportation facility, station or stop can play a criminogenic role in such combinations." See Ward Adams Et. Al, Crime, Transportation and Malignant Mixes. Chapter 10 in Vania Ceccato and Andrew Newton eds., Safety and security in transit environments: An interdisciplinary approach. (Springer Publication— New York, 2015) p. 183.*

position of such individuals gets further compromised because they are reliant on public transport for the dearth of financial resources to own a personal car.[20] Those who hardly have any means of getting from one place to another except the public conveyance are known as the 'transit captive'. The differently-abled, women, elderly, and low-income groups exemplify transit captives, as they cannot choose a mode of transport. They have to adopt all the ill-traits of the community conveyance system and fall inevitably into the trap of unsophisticated travelling.[21] As a result, disability-based travelling phobia is directly proportional to the congeniality and adjustability of public transport *vis-à-vis* disability-oriented goodies. Reliable transportation makes the passenger with disabilities confident in using it. A congenial journey is fundamental to a special person's effectiveness in work, academics employment, and their subsequent well-being.[22]

Public transport journey provides perfect breeding grounds for crimes against people with disabilities because offence needs a 'victim', offender and a 'reduction in skillful guardianship.' It is relatively easy for the offensive co-passengers to detect the 'nervousness' of the unique travelers (differently-abled passengers). Conversely, the 'unique travelers' are often gullible to grasp the subtle hostility in the uncharitable body language of the co-passengers, passersby, station hawkers etc. Even if the concerned victim understands the surrounding discomfort, her/his helplessness remains intact because the concerned sufferer is possibly perplexed in a spot as hectic as a subway or bus station, might corrode a victim's aplomb to secure themselves.[23] Powerlessness and a toothless retaliation are synonyms for the specially-abled people, and their vulnerable physique and fragile psychological condition is perfect for precipitation of bullying upon them because the perpetrators are sure of getting away with impunity.[24]

Active and Passive Abuse Hurled at the Specially-Abled Travellers

The active crimes happening against travellers with disabilities can be sexual abuse, pickpocketing, public nuisance, seat grabbing, luggage grabbing and deboarding or deliberately misleading the differently-abled people to board the wrong vehicle.[25] Taking jibes, name-calling, imitating faulty gaits, banter clutching the consequential portion of a seat so that a differently-abled individual is forced to helplessly hang on the wafer-thin corner of her own seat occupy. The especial passengers are often NOT permitted access to priority areas as a pursual of anti-disability hooliganism exemplifying passive abuses. The most lousy 'passive or collateral insolence' occurs while ridiculing a differently-abled individual's obvious quandary and snubbing her subsequent orison for assistance; this

[20]See Supra Note 7 (Wilkin) p. 10.

[21]Sung-suk Violet Yu and Martha J. Smith, Areas Where Vulnerable Public Transit Commuters Reside: A Method for Targeting Crime Prevention and Other Resources to Address Local Area Problems. Chapter 12 in supra note 19 p. 216.

[22]Alexa Delbosc and Currie Graham, Transport Problems That Matter–Social and Psychological Links to Transport Disadvantage, 19(1) Journal of Transport Geography, 170, 178 (2011).

[23]Danielle Reynald, Guardians on Guardianship: Factors Affecting the Willingness to Supervise, the Ability to Detect Potential Offenders, and the Willingness to Intervene, 47(3) Journal of Research in Crime and Delinquency, 358, 390 (2010).

[24]A person with disabilities is treated like a secluded property with no support base to retaliate against the intruders. A person who can frown on insolent behaviour can guard his esteem; his physique much better than a differently-abled person. It is a scenario like when adults stop scolding rowdy children, they become rowdier as they start believing that insolence is bravery. In the same manner teasing the specially-abled travellers are considered acts of bravery. See James Q. Wilson and George L. Kelling, Broken Windows: The police and neighbourhood safety. Chapter 35 in Eugene McLaughlin, John Muncie, Gordon Hughes 2nd eds., Criminological Perspectives: Essential Readings (Sage Publications— London, 1996) pp. 402-404.

[25]Jeeja Ghosh and Another vs. Union of India and Others (2016) 7 SCC 761.

stonewalling produces an aftermath that is synonymous with the impact of 'active abuse' wherein, the victim feels defenceless and beset by a tight spot.[26]

Human Rights and Disability Oriented Abuses on Board: Hate Crimes

On-board ignominy and anti-disability browbeating continue unabated because the prey is often too naive to move away from the evildoer. Financial constraints prevent specially-abled passengers from using reserved spaces; consequently, they have to adjust with overcrowded or isolated places of seating. Crowded places are prone to insensitivities, and abusive behaviour in such circumstances procreates the feelings of fragility and hopelessness before, during and after spells of abuse. It escalates the sense of psychological and physical anxiety after keeping their assistive devices onto the distant loading shields away from the seating places.[27]

Even their presence is NOT acknowledged on board. Special passengers have to beg for all the pro-disability facilities literally. Insolent actions of photographing their disabilities go relentlessly without a trace of punishment or an admonition even. Contrarily, in many cases, the seats of the differently-abled passengers are changed, or they alight from the vehicle altogether.[28]

On-board violence is not an isolated incident, but the subtle anti-disability violence is tightly-knitted into our society. The disability-oriented hostility which prevails on railway platforms and bus station is NOT an isolated concept. It impersonates the disability curative therapies manifesting through practices of institutionalised treatments, eugenic sterilisation, psychosurgery and electro-convulsive therapies. Since, disability is considered a defect and a taboo in our society, the medical experimentation gets mixed with social mores, leading to an ill-advised and prolonged medication, culminating into an adverse behavioural modification in those who were treated for curing 'disability'.

Social truculence for the specially-abled folks is nurtured so subtly that it attains cryptic forms, feeding on erotic abuse which is quarantined in the fictitious honor of the nuclear family. This pugnaciousness penetrates the mental care asylums with multiple patterns of routine carnal abuse. The commonly-abled (non-disabled) are so accustomed to anti-disability sadistic contentment that even killing the differently-abled has become institutionalized and cruelty systematized. Abhorrence is the underlying cause of anti-disability aggression, and vulnerability of the targets only emboldens the crooks to vent their anti-disability malice. Indeed, folks who are commonly-abled (non-disabled) are respected as they are by and large deemed equal by the majoritarian society and they (the commonly-abled) remain insulated from disability-based abuse while voyaging.[29]

The direct onslaught on their fundamental right to travel comes with the chain of events mentioned above. In the litigation of *Kent vs Dulles*,[30] the right to voyage is a part of a broader jurisprudence of 'liberty'. Every citizen has a naturally has a jurisprudential stake in 'right to travel' which cannot be tempered without due process of law. If a citizen's liberty to travel is to be

[26]*See Supra Note 7 (Wilkin) p. 38.*
[27]*Id p. 42.*
[28]*Id pp. 43-46.*
[29]*B.F. Waxman, Hatred: The unacknowledged dimension in violence against disabled people, 9(3) Sexuality and Disability, 185, 189 (1991). "It is not coincidental that disability hate crimes occur against a backdrop of social exclusion and marginalization. Hate crimes are sometimes described as crimes about power – they are one link in a long chain used to sustain inequality and power imbalances, directed mostly towards marginalized and stigmatized groups." See Mark Sherry, DISABILITY HATE CRIMES: DOES ANYONE REALLY HATE DISABLED PEOPLE? (Routledge Publication— New York, 2016) p. 117.*
[30]*357 U.S. 116 (1958).*

institutionalised (altered), the same ought to be steered according to the law-making tasks of the legislature, and any such delegation of authority and must be rooted upon stringent criteria, and such assigned authorization must be carefully construed.[31] In *American Public Transit Association vs Lewis*, the Court gave an ambiguous verdict and failed to decode the doctrine of 'reasonable accommodation' in the mobility's context.[32]

Reasonable accommodation in the first place means ample security and seating arrangement and a complete prohibition upon on-board bullying. The year 1973, saw the birth of American Architectural and Transportation Barriers Compliance Board to monitor the implementation of pro-disability facilitation *vis-à-vis* architectural and transportation barriers.[33]

Reasonable accommodation for a unique traveller is a cumbersome doctrine with multiple facets. Respectable assimilation of transportation rights and disability jurisprudence is expected to envelop the protection of a differently-abled traveller's own self-esteem and of those assisting or accompanying them. Amidst occurrences of disability-based intimidation, the kinsfolks are also dragged into the sour incident of bullying and have to endure the disgrace of viewing their sweethearts being imperilled in abuse. That fear of indignity gets transmitted to all those who object to the disability-based harassment. It makes them refrain from any intervention to stop the impugned bullying. Consequently, co-passenger related to the victim of the hostility, generally remain silent and do not retaliate on behalf of the specially-abled victim, even if she or he is a relative. It is also noteworthy that although the co-passenger might not be the prime whipping boy of abuse, but the escort for differently-abled person have to unfortunately the vitriolic emotional turmoil.[34]

The case of *Dordevic vs Croatia*: The European Court of Human Rights (ECtHR) subpoenaed the fact that Croatian authorities proved to be spineless in stopping the escalating violence against the differently-abled persons.[35] In 2012, the ECtHR admitted a mother's complaint related to her differently-abled son, who had been browbeaten for approximately four years by a cluster of cheeky lads residing in the neighbourhood. Incidents had a spectrum of name-calling, spitting, yelling, insulting drawings on the pavement and damage to private property sporadically intensified into more severe acts of physical violence against the young man with physical and intellectual disabilities. The victim's hands were burnt with cigarettes, or his head knocked against a wall. After the applicants' appeal for protection from various authorities met with no answer, they finally knocked the doors of the ECtHR to adjudicate upon the state's obligations as per the European Convention on Human Rights (ECHR). The ECtHR ruled that the *Croatian* authorities failure to act had infringed the applicants' rights under Article 3 (*three*)—"prohibition of inhuman or degrading treatment", Article 8 (*eight*)—"right to private life", Article 13 (*thirteen*)—"right to an effective remedy" and Article 14 (*fourteen*)—"prohibition of discrimination".[36]

"But the sour episodes of insolence continue unabated where perpetrators get away with lenient punishments. One such case was when Valerie Gillespie, the mother of a Canadian male adolescent with a developmental impairment, accused a Paratransit chauffeur

[31]*Id p. 129.*
[32]*655 F.2d 1272 (D.C. Cir. 1981).*
[33]*Stephen L. Percy, DISABILITY, CIVIL RIGHTS, AND PUBLIC POLICY: THE POLITICS OF IMPLEMENTATION (University of Alabama Press— Tuscaloosa U.S.A, 1989) p. 108.*
[34]*See Supra Note 7 (Wilkin) p. 59*
[35]*Application No. 41526/10 of 2010. Decided on 24th July 2012*
[36]*Ibid.*

of perpetrating a hate crime against her boy in May of 2009. The boy in the nucleus of the instant litigation was helpless with rinsing uncontrollable quantity of mucous from his mouth and consequently, spits as he expectorated his throat. He commuted in a Paratransit wagon run by 'Pat and the elephant'. Paratransit wagons are meant for door-to-door transportation for the differently-abled people. The lad endeavoured to clean his throat as he exited the vehicle. Consequently, sputum got on the wagon's gate. The chauffeur erased the sputum off the wagon door and then wiped it over the boy's face, saying he would 'teach the boy a lesson of his life'. The teenager's mother, Valerie Gillespie, told the Court that her son was mortified by the incident. The accused, Palo Victor Szerman, pleaded guilty in Prince Edward Island Provincial Court to assaulting Gillespie's son. Szerman was not charged with a disability hate crime but pled guilty to assault. Judge John Douglas gave Szerman a conditional discharge, six months suspension, instructed him to write a letter of apology to the mother, and ordered that he donate $400 to a children's disability charity. Szerman was not fired from his job; his employer, Pat and the Elephant transferred him temporarily to a position where he drove for disabled adults and promised to return him to his position driving for disabled children in the following fall, after a 'cooling-off period'."[37]

Theological Imprudence: A platform for Disability Oriented Hate Crimes in India

Religious doctrines utterly deny legal status or personhood to persons with disabilities. Differently-abled people cannot be legal agents, Manu (VIII.149) carries out his onslaught, by labelling them as "Idiots, the dumb, the blind", and the deaf. He (Manu) imprudently compares those deficient in limbs with animals when he propagates the same yardstick for the "specially-abled, beasts, too older adults, women, barbarians and the sick" by prohibiting their entry into the courtroom altogether during the trial.[38] Grant of food, clothing and shelter were the only legal rights then bestowed upon the especial individuals.[39]

Theology and its arbitrary interpretation is the stepping stone to the disability-oriented repulsion on disabilities; because it (faith) flows in the bloodstream of the eastern societies, including India.[40] Effect of theology is so deep-rooted in the Indian culture that religion is a 'way of life' for us, and religion is a fundamental driving force behind all social agendas.[41] Therefore, *Manu's* statements become relevant for taking stock of disability oriented hate crimes in the stream of law.[42] In essence, *Manu's* law denies people with disabilities of the right to own property and enter business contracts or any profit-making adventure, thereby belittling the sick and specially-abled persons to economic and legal dependents.[43]

Ashtavakra, who has been portrayed as a symbol of physical distortion and disease, went on to symbolise spiritual wisdom.[44] Nevertheless, the word *Ashtavakra* itself is derogatory because *Naam Rupa* is an integral part of Hindu philosophy— *Ashta* means eight and *Vakra* means 'crooked, bent,

[37] *See Supra Note 29 (Sherry) p. 10.*
[38] *Ariel Glucklich, Laws for the Sick and Handicapped in the Dharmaśāstra. 4(2) South Asia Research p. 142 (1984).*
[39] *Ibid.*
[40] *Michael Miles, Disability in an Eastern religious context: Historical perspectives. 10 (1) Disability & Society p. 51 (1995).*
[41] *Ibid.*
[42] *"The law with all its rulings, and the legal institutions which are founded to produce justice based on the law in any given society, are bound to be products of its social structure and cultural features. The legal product is thus influenced by the beliefs, rituals and customs that are cherished and practiced by members of that society." See Vardit Rispler-Chaim, DISABILITY IN ISLAMIC LAW Vol. 32. (Springer Science & Business Media— Dordrecht, The Netherlands, 2006) p. 15.*
[43] *See Supra Note 38 (Ariel Glucklich) p. 143.*
[44] *Ruth Vanita, Full of God: Ashtavakra and Ideas of Justice in Hindu Texts. 3(2) Religions of South Asia p. 172 (2010).*

curved', which means that he was a 'sage with eight curves.' His name hints at the Indian attitude for the differently able. Even if he is a mythological figure, we could only find a name for *Ashtavakra*, which signifies his physical deformity and veils his spiritual enlightenment.[45] It is crucial to penetrate the psychology of disability-based hate crimes, because has had religion repeatedly jeopardised the 'congeniality of judgement' which is the prerequisite of a seasoned morality. Traditional theologies have thwarted 'fresh moral insights' emanating from the social application of modern discourse.[46] In the same tone, religious conservatives; across faiths, tend to cuddle zealously; their religious doctrines, despite consistent failures. Such apparent rigidity has always delayed modernisation of social laws.[47] The priesthood has been sacrosanct in our society, consequently, the *Brahmins* have been able to direct the judicial discourse on the way to 'theological and exegetical' arrangement.[48] Priesthood stymies human rights approach because All religions are based on custom and diktat, and they stick to antiquity.[49] *Manu* has justified the social death of persons with disability. To replace this theological vitriol with the modern tenets of equality, we need the international human rights approach. Such theological imprudence as mentioned above provides impunity to the hate-crime perpetrated against the specially-abled people because theology says that whatever comes to the differently-abled is a destiny earned from their own sins which is precipitating as "divine fury".

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the Right to Transportation: Has No Provision Against Hate Crimes

Three Article of the UNCRPD[50] offer protection to the rights to transportation for the differently-abled people. Article 9 broadly peruses ease of access and mentions transport under Article 9(1)(a), mobility under Article 20 and mobility skills under Article 24(3)(a) respectively. But none of these clauses of the UNCRPD mentions disability-based intimidation thrust upon the differently-abled people while in transit or waiting to board a public transport vehicle. In my view, the accessibility and mobility clauses of the UNCRPD should be amended to tackle the menace of disability-based hate crimes explicitly. That anti-bullying law as proposed above, if added to the UNCRPD will attain the status *jus cogens*.[51]

On-board harassment needs international law because 'right to travel' also means 'right to travel abroad.'[52] Moreover, such protective legislation desires the uniformity at the

[45]Id p. 170. Vakra or Vikriti is a Sanskrit word meaning "deviation from the natural state', 'sickness, disease, malady', 'a change, an alteration, a modification' (Apte 2000: 506). The past participle vikṛta means 'changed', 'sick, diseased', 'mutilated, deformed, disfigured' and 'averse from, disgusted with' as well as 'loathsome', and 'aversion, disgust. Interestingly, here, the same word connotes both the object of disgust and the disgust itself, suggesting how the one is shaped by the other." Id p. 171.

[46]Robert Morrison MacIver and Charles H. Page, SOCIETY: AN INTRODUCTORY ANALYSIS (MacMillan India Ltd 2004) p. 172.

[47]Ariel Glucklich, Conservative Hindu response to social legislation in Nineteenth Century India. 20(1) Journal of Asian History p. 34 (1986).

[48]Id p. 36.

[49]Id p. 37.

[50]UN Convention on the Rights of Persons with Disabilities, (A/RES/61/106) as adopted on 13th December 2006. Accessed at https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf on 09th Oct. 2019.

[51]With changing times, wheels of international law have reached the milestones of authority and recognition in the shape of Jus Cogens. The literal meaning of Jus Cogens is 'cogent law'. It provides meaningful guidance: a primary attribute of Jus Cogens is that it is "compelling." We have no other option but to elevate the human rights of especially abled to the status of 'customary international law.' See Karen Parker, Jus Cogens: Compelling the Law of Human Rights, Hastings 12 International and Comparative Law Review, 411, 415 (1989).

[52]Maneka Gandhi vs Union of India, AIR 1978 SC 597.

national and global level. Consistency is also required at the domestic and universal stage because the modes of public transport do not operate on custom made contracts between *two* specific parties.[53] Transportation arrangements for the specially-abled were responses to distinct challenges, rather than facets of the all-encompassing policy. That is why those have discussed facilitating a happy journey for unique travellers with reasonable assistance and accommodation. But the policymakers did not pay attention to 'on-board hate crimes' because they had a parochial view of the legitimate needs of the differently-abled. They were uncertain about what should be done or how it should be achieved.[54] All modes and routes of traffic can be prone to anti-disability hostility and hate crimes. Therefore, all the legislation of roadways, railways, waterways, and air travel must have specific provisions related to the appointment of marshals who have powers of policing. These Marshals must be trained in disability rights jurisprudence and must be full-time government employees.

Disability based bullying needs specific legal and administrative handling because it is a "*prototypical bias crime*." It is an attestation of ruthlessness wherein, a lawbreaker scapegoats a victim because of an unending acrimony for the sufferer's impugned fraternity, typically characterised through age, impairment, cultural background, sexual characteristics, gender identity, citizenship, race, spiritual quotient, or carnal disposition.[55] An explicit intervention of international law is required to stymie disability-based hate crimes. As culprits may stab into a sitting-duck with physical and mental impairments. The bullies execute anti-disability crime with perfect aplomb as they (the bullies) are aware of the police and prosecutors are clutched by lackadaisical mindset that the differently-abled victims are too gullible to be credible complainants. Such attitude of the investigators resonates in a botched-up investigation. It prevents disability-bias based crimes from being investigated which leads to a closure report or a painful acquittal obtained from the scarceness of evidence.[56]

Therefore, it is incumbent upon the UNCRPD being a human rights treaty that it ought to use the arrow of 'quasi international tribunal' available in its quiver for invigilating the observance of the *Convention on the Rights of Persons with Disabilities*.[57] Disability Convention and few other treaties are a distinct species of agreements. The Convention on disability is at par with the Convention against torture on the issue of enforceability.[58] This Convention subpoenas a responsibility on the State-parties to invigilate the domestic

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[53]*"In a private taxi, a contract is a milestone of negotiations on an individual basis. Whereas, in public transportation, providers are typically given the exclusive right to run the business under government license. They have the authority to collect a fare from the passengers in return from the services, and it means that they are obliged to offer services to anyone who expressed their wish to ride." See Satoshi Kose, Toward Inclusive Public Transportation: Rights, not Privileges. In International Conference on Applied Human Factors and Ergonomics (Springer Cham Publication— New York, July 2017) pp. 344-350.*

[54]*Robert A. Katzmann, INSTITUTIONAL DISABILITY: THE SAGA OF TRANSPORTATION POLICY FOR THE DISABLED (The Brookings Institution— Washington D.C., 1986) pp. 19-20.*

[55]*J.B. Woods, Taking the Hate Out of Hate Crimes: Applying Unfair Advantage Theory to Justify the Enhanced Punishment of Opportunistic Bias Crime. 56 UCLA Law Review, 489, 491 (2008).*

[56]*Mark Sherry, Don't ask, tell or respond: Silent acceptance of disability hate crimes, Ontario, Disabled Women's Network Ontario (2003). "Cultural stereotypes that members of certain groups are weaker or less likely to defend themselves also cause opportunistic bias crime perpetrators to believe that targeting members of these groups will increase the probability that their crimes will be successful. For example, perpetrators may assault only the Amish because they believe that the victims will not resist attack by virtue of their pacifist commitments." See Bryan Byers, Benjamin W. Crider, and Gregory K. Biggers, Bias Crime Motivation: A Study of Hate Crime and Offender Neutralization Techniques Used Against the Amish, 15(1) Journal of Contemporary Criminal Justice, 78, 96 (1999).*

[57]*See Infra Note 58.*

[58]*See Article 33 of the Convention on the Rights of Persons with Disabilities (UNCRPD, A/RES/61/106) supra note 50.*

adherence to the disability rights treaty. The Disability accord of 2006 (UNCRPD—2006); under its 'Optional Protocol' makes a provision for the monitoring of execution by a committee of U.N. on disability (UNCRPD Committee); comprising of experts, who audit the implementation bi-annually and this Committee also has jurisdiction to entertain complaints of violations of the provision of the Disability Convention.[59]

The deliberations of the Committee include the following:

- Concluding Observations and Recommendations.
- General Comments.
- The Committee investigates individual, and group complaints (case law); and Inquiry reports on States Parties, where it is proved that there are acute or premeditated violations of the provisions of the Disability Convention.[60]

It is a breakthrough in international law for the differently-abled, as in many nations, the fundamental rights and freedoms of the specially-abled people are disrespected, dissuaded and are unprotected. The second prominent ingredient of the Convention is that it may be qualified as a *traité cadre*, or framework treaty,[61] as distinct from a *traité de Droit*, or international law treaty. Whereas the provisions of a *traité de Droit* are rigid, those of a *traité cadre* may be supplemented by secondary sources, including the four categories of the Committee's decisions stated above. These secondary sources address the gaps of the Disability Convention and, as such, they function as the building block of its jurisprudence and are the key sources of international law pertaining to specially-abled persons. Such decision-making is dynamic and enables the Committee to respond effectively to societal changes.[62]

Conclusion

Hence, if the 'on-board hate crimes' find an explicit prohibition under the UNCRPD, they will gradually earn the rank of *jus cogens* (customary international law). The required consensus building will start at the global level, which will sensitise the commonly-abled people (non-disabled) against anti-disability bullying unleashed upon the specially-abled travellers and those who intervene on their behalf. Law should give teeth to powerless travellers.

Internationalisation of on-board disability-oriented hate crimes is needed because internationalisation of disability and mobility jurisprudence will build an international consensus. The intermingling of domestic and international governance procreates international legal duties to stipulate

[59] *See Article 1 and 6 of Optional Protocol to the Convention on the Rights of Persons with Disabilities. Accessed at https://www.ohchr.org/en/hrbodies/crpd/pages/crpdindex.aspx on 09th September 2019.*

[60] *Ibid. See also Coomara Pyaneandee, INTERNATIONAL DISABILITY LAW: INTERNATIONAL DISABILITY LAW A PRACTICAL APPROACH TO THE UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (Taylor and Francis, 2018) p. 6.*

[61] *"While assessing the framework treaty we need to extract its core legacy: The principles contained in Article 3 (dignity, autonomy, equality of opportunity, etc.) are both inspiring and elegant. They are the 'legacy values' of human rights theory and law. As such they are not revolutionary. But of course, their application in the context of disability is revolutionary. If one could pour 'cynical acid' over the text to see if anything essential remains – as Oliver Wendell Holmes would have counselled– then there is indeed a profound message in the Convention. It is that persons with disabilities are not 'objects' to be managed or cared for, but human 'subjects' enjoying human rights on an equal basis with others. The nature of this revolution should not be underestimated. It brings into play a different way of seeing the reality of the lives of persons with disabilities, a different set of values with which to judge existing social arrangements and wholly new policy prescriptions to bring about improvements." See Oddný Mjöll Arnardóttir, A Future of Multidimensional Disadvantage Equality? in Oddný Mjöll Arnardóttir and Gerard Quinn's THE UN CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: EUROPEAN AND SCANDINAVIAN PERSPECTIVES (International Studies in Human Rights, Brill \| Nijhoff Publishers—NY, 2009) p. 216. See also Oliver Wendell Holmes, Jr., The Path of the Law, 10 Harvard Law Review pp. 457, 463 (1897).*

[62] *Ibid.*

answerability for anti-humanity (international) crimes. This can be a tangible tactic for swaying national that internationalisation of disability jurisprudence will not threaten their local judicial and enforcement institutions. Even after internationalisation of disability-oriented hate crimes will modernise the national judicial systems as well and will inspire the governments to embark on their own prosecutions of disability-hate crimes against the differently-abled travellers as international crimes of hate. proactive complementarity would permit the international quasi tribunal for disability (CRPD Committee) to catalyse national judiciaries to deliver their own obligations to prosecute disability crimes, while taking judicial inputs from the precedents created by the "CRPD Committee."[63]

The disability jurisprudence requires complementarity of domestic and international law as well as the social and human rights model of disability rights. The doctrine of complementarity will help connect the broken dots of a life with disabilities. The notion that the human rights model broadens and adjusts upon the social model is securing popularity.[64] Internationalisation of travelling rights of the specially-abled individual because domestic disability laws are at times a zombie of local political convenience. Legal structure fluctuates in this mosaic of laws, and the characterisation of disability diverges from nation to nation as well. Considering that disability, as discussed above, may be a social construct contingent upon the ecosystem in which it develops, it is not unexpected that there is no universal unanimity regarding who is considered differently-abled and eligible for legal shields and who falls short. Different nations will and do possess diverse ideas as to which human conditions yield the protection from their respective disability laws. Most countries do not even spell out the types of people protected under national disability laws.[65]

Hence, I recommend that Articles 20 and 24 of the Disability Convention 2006 be amended to specifically carry a prohibition on hate crimes against the differently-abled travellers. This change will initiate an international consensus which is required against disability-based hate crimes while travelling. The quasi-judicial tribunal which is part and parcel of the UNCRPD will provide the desired guidance to the national courts or tribunals.

[63] *William White, Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice, 53, 57 (2008).*
[64] *Anna Lawson and Angharad E. Beckett. "The social and human rights models of disability: towards a complementarity thesis. The International Journal of Human Rights 1, 2 (2020).*
[65] *A.S. Kanter, The globalization of disability rights law, 30(2) Syracuse Journal of International Law and Commerce, 241, 250.*

NEED FOR A STATUTE FOR RECOGNIZING AND COMBATING PRISON RAPE IN INDIA

Vibha Hetu*

ABSTRACT

The article envisages the need for acknowledging that prison rapes are common occurrence inside the prisons in India. Now and then, there are reporting by newspapers enlightening on the concealed cases of sexual violence in Indian prisons. Prison rape is inimical to the reformation of the prisoners. To understand the prison rape and its deleterious effects on the prison inmates and to prevent such crimes in the future, the State Governments need a proper framework to define, detect, punish and prevent such rapes. The article introduces an act cited as 'The Protection of Prisoners from Rape Act, 2019' to curb the prison rapes in India. The framework of an act describes the different roles to be played by the (projected) National Prison Rape Prevention, Detection and Reduction Commission to garner information about prison rape, detect and punish, and may likely reduce the cost of victimization. It is necessary that such an act be approved and promulgated by the State Governments for ameliorating the effects of prison rapes.

KEYWORDS

Prison rape; Act; Elimination; Prevention, Detection

Introduction

Prison Rape and its Modus Operandi

As the rapes of women is defined by feminists, in the same way, male rapes came to be redefined in the 1970 as an act of aggression and power rather than chiefly lone of sexual need (Scacco, 1975, 1982). The prisoners have exerted their power and masculinity over other prisoners deliberately to control one another through forced sexual contact whereby committing sexual violence against one another; except in some cases where sexual relations meant to be consensual between them (Levan, 2011, p.110).

The sexual violence was committed by male counterparts purposefully to feminize their victims; also considered an act of domineering power roles because they didn't have access to females in prisons (Levan, 2011, p.110). The aggressors didn't ruminate themselves homosexual, nor did they consider to have partaken in homosexual acts (Brownmiller, 1975, p.266). Susan Brownmiller (1975, p.266) elucidated that this belief is based on the "startlingly primitive view of sexual relationships, where the aggressor defined as male in the relationship and the other partner as homosexual who remained passive".

The male inmates used both explicit and hidden sexual violence to exercise dominance over one another (Levan, 2011, p.110). The sexual coercion is more commonly used by the female inmates against one another; rather than, overtly indulging in sexual violence (Levan, 2011, p.111). The sexual relations are the initial reasons for sexual desires but it ultimately

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evolved into the need for emotional support (Marcum, 2014). Since, the female inmates craved for familial relationships, they often engaged in same-sex relationships to reconstruct the family support system in the prison also known as pseudo-families (Hensley and Tewksbury, 2002; Marcum, 2014; Merotte, 2012; Owen 1998).

Sexual victimization has been unreported due to victimhood being highly tabooed because of social desirability bias in hegemonic masculinity. Goffman's (1968) have termed this "spoiled identity," where men tenaciously remained quite fearing for the matter, if at all get leaked; are likely to cause shame and ostracizes them from other inmates; and could also attract more predators; aggravating their conditions further (as observed by Banbury, 2004). Those who thought of reporting earlier changed their mind in an apprehension that their reports of violence will be dismissed as a trivial matter by the correctional staff (Levan, 2011, p.112). The victims could have felt embarrassed at their own supposed lack of masculinity based on the normative nature of violence, inmates will not think that a crime has occurred (Levan, 2011, p.112). The inmates, who have been caught in the web of indebtedness as a result of participating in risky behaviors such as gambling and/or buying contrabands, may treat sexual violence a respite to their problems thus, believing they deserve this type of victimization (Levan, 2011, p.112).

Factors risky for Prison Rape Victimization in Prison

Large numbers of prison populations usually suffer from severe substance abuse as well as other problems of cognitive, emotional, or psychological (Harland, 2011, p.210). Overcrowding is partially correlated with levels of violence (Levan, 2011, p.111). The overburdened basic resources make it impracticable to provide critical mental health, medical care, and/or adequate protection from physical and sexual violence to the prisoners have all been attributed to overcrowding in prison (Harland, 2011, p.210). Overall, such adverse prison conditions gave rise to dire consequences such as assaults, suicides, killings, rapes, deaths, communicable diseases escalate due to failure to cater with timely medical treatment, and serious conditions of riots and hostage taking may also occur (Harland, 2011, p.210-211).

Consequences of Prison Rape

The sexual assaults in prison can have severe physical injuries (Beck & Harrison, 2007), sexually transmitted diseases (STDs) are likely to increase (National Prison Rape Elimination Commission, 2009; Wolff & Shi, 2009; Maruschak, 2007), and posttraumatic stress disorder (PTSD) and other psychological problems (Banbury, 2004; Dumond & Dumond, 2002; Fagan, Wennerstrom, & Miller, 1996; Struckman-Johnson & Struckman-Johnson, 2006; Struckman-Johnson, Struckman-Johnson, Rucker, Bumby & Donaldson, 1996; Toch, 1992). The men who have been victims of sexual assault in prison experienced high rates of fear, anxiety, and social disruption; and underwent devalued sense of manhood and lowered competence and security (Dumond & Dumond, 2002, p. 73).

Imprisoned men have been affected by higher rates of HIV infection than men in the general U.S. population (DeBraux, 2006; Graham, Treadwell & Braithwaite, 2008; Pinkerton, Galletly & Seal, 2007). Male rape victims of sexual violence often complained of somatic problems, interrupted eating and sleeping patterns, minor mood swings and fears (Knowles, 1999; Wolff & Shi, 2009). It is highly likely that such victims may have developed severe conditions of despondency and dejection (Cooper & Berwick, 2001; Hochstetler, Murphy & Simons, 2004; Wolff & Shi, 2009) and suicidal bouts

(Blaauw, 2005); especially those who faced repeated victimization and developed learned patterns of helplessness and fear; felt suicide as their only viable option (Dumond, 2000). The inmates carried similar negative psychological outcomes as a result of prison victimization into the community after their release (Boxer, Middlemass, & Delorenzo, 2009; Hochstetler, Murphy & Simons, 2004; Listwan, Colvin, et al., 2010; Wooldredge, 1999).

Case Laws on Prisoners' Rights in India

In *Sunil Batra v. Delhi Administration*,[1] the Court rejected the 'hands-off' doctrine and ruled that fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration. Our Constitutional culture has now crystallized in favor of prison justice and judicial jurisdiction. The court should ensure that the deprivation of certain freedom of prisoners to fulfill constitutional purposes is not defeated by the prison administration. In *Maneka Gandhi v. Union of India*[2] and *N.H. Hoskot v. Maharashtra*,[3] the Court observed that implicit in the power to deprive the sentence of his personal liberty, the Court has to ensure that no more and no less than is warranted by the sentence happens. If the prisoner breaks down because of mental torture, psychic pressure or physical infliction beyond the licit limits of lawful imprisonment the Prison Administration shall be liable for the excess.

In *Charles Sobraj v. Superintendent Central Jail, Tihar*,[4] it was stated that this Court would intervene even in prison administration when constitutional rights or statutory prescriptions are transgressed to the injury of a prisoner. In that case the complaint was against incarceratory torture. The judgments of *RD Upadhyay v. State of Andhra Pradesh*[5] dealt with the under-trial prisoners (UTP) lodged in Tihar jail. The bench directed for their release on bail depending upon the type of offences alleged against them on the completion of period mentioned in the judgment.

It can be seen that the Courts and their judgments are deeply concerned about protecting various rights of the prisoners by interpreting the prisoners' constitutional rights in a way that they are soft and considerate towards them without undermining the larger public interest and guiding a way to pragmatically rehabilitate them.

Prison Rapes in India

All forms of sexual activities, including consensual sex, are prohibited by correctional policies in India. The term "fresh fish" is used for good-looking young men in early 20s in the prison, often treated as the preferred target of sexual victimization; the act described as 'colgate' (Shekhar, 2015). There is a strong belief among the people and the correctional authorities that prisoner rape is an inherent part of prison life and its victims are "bad" persons; unworthy of empathy or humane treatment, while others feel that this abuse somehow acts as a deterrent to crime (Mendiratta, and Tewari, 2018). It is treated as a norm for the under-trials who are alleged with rape crime; as they are brutally sodomized as a welcome to the prison party (Rahman, 2013).

[1]*Sunil Batra v. Delhi Administration (1978) 4 SCC 409.*
[2]*Maneka Gandhi v. Union of India (1979) 1 SCC 248.*
[3]*N.H. Hoskot v. Maharashtra, (1979) 1 SCR 192.*
[4]*Charles Sobraj v. Superintendent Central Jail , Tihar, AIR (1978) SC 1514.*
[5]*RD Upadhyay v. State of Andhra Pradesh 1996 (3) SCC 422.*

Magnitude of the problem

Table1. CAPACITY OF PRISONS IN INDIA

YEARS	NO. OF PRISONS	ACTUAL CAPACITY OF PRISONS	NO. OF PRISONERS AT THE END OF THE YEAR	OCCUPANCY RATE AT THE END OF THE YEAR
2013	1,391	3,47,859	4,11,992	118.4%
2014	1,387	3,56,561	4,18,536	117.4%
2015	1,401	3,66,781	4,19,623	114.4%
2016	1,412	3,80,876	4,33,003	113.7%
2017	1,361	3,91,574	4,50,696	115.1%

Data Source: Report on Prison Statistics of India (2014-2017) National Crime Records Bureau Publications, New Delhi.

*Note: Figures as on 31st December of the respective year (Report on Prison Statistics of India, 2013, p.8).

*Occupancy rate: The number of inmates accommodated in jail against the authorized capacity of 100 inmates (Report on Prison Statistics of India, 2013, p.8).

*Overcrowding: The occupancy rate of more than 100 percent results in overcrowding in the jail (Report on Prison Statistics of India, 2013, p.8).

*Prison population: Number of prisoners kept in prison at any given point of time. The prison population keeps changing because of addition of new prisoners and release of the old ones (Report on Prison Statistics of India, 2013, p.8).

The **Table 1** describes that the occupancy of prisoners has always been high in comparison to the actual capacity of the prisons across India. The number of prisons has decreased by 30 in 2017 since 2013, yet the prison population is all time high in 2017 by 38,704; consistently increasing commencing 2013. The occupancy rate was all time high in 2013 in comparison to 2014 till 2017. The occupancy rate is all time lowest at 113.7% in 2016 in the last five years beginning 2013 to 2017.

Table 2. DEATHS IN PRISONS IN INDIA

YEARS	TOTAL NO. OF DEATHS IN PRISONS	NO. OF NATURAL DEATHS	NO. OF UN-NATURAL DEATHS (INCL. SUICIDE)
2013	1,597	1,482	115
2014	1,702	1,507	195
2015	1,584	1,469	115
2016	1,655	1,424	231
2017	1,671	1,494	133

Data Source: Report on Prison Statistics of India (2014-2017) National Crime Records Bureau Publications, New Delhi.

*Deaths in jails have been broadly classified into two categories i.e. natural deaths and unnatural deaths. Unnatural deaths include suicide, murder by inmates, deaths due to assault by outside elements during transit or inside prison, death due to firing, death due to negligence or excesses by jail personnel, death by execution etc. (Report on Prison Statistics of India, 2017, p.164).

The **Table 2** shows that the no. of deaths has increased by 4.6% in 2017 since 2013 and no. of unnatural deaths has increased by 15.6% in 2017 commencing 2013. The overpopulation may also be the cause of unnatural deaths among the inmates.

Methodology

This article is a secondary source-based article. The article deliberated that prison rape crime is a frequent occurrence yet, obscured and consciously ignored by State Governments. The state of prisoners is not a matter of concern for governance. It's vital that the State Governments introduce an act known as The Protection of Prisoners from Rape Act, 2019 to curb the prison rapes in India.

Conceptual Clarification

Section 375 specifically mentions the definitions of rape where a man commits a rape against a woman; mentioning different methods by which rape can be committed.[6] Section 376(*2*)[7] talks about punishment for rape. Sub-clause (*d*) of Section 376[8] mentions that any staff of a jail, remand home, women's or children's institution or other place of custody and/or on the management of such place established by law, commits rape on any inmate of such place or institution, shall be punished with rigorous imprisonment of not less than ten years, but, which may extend to imprisonment for life and shall also be liable to fine.

Explanation.—For the purposes of this sub-section, —

(*d*) "women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

The law mentions punishment for a male staff if he commits rape on a female inmate of women's or children's institution (although male inmates below 18 years of age are also housed in Children's institution) or remand home or other place of custody. It does not mention inmate to inmate rape.

Need for an Act for recognizing and combating Prison Rape in India

Since, the prison rapes are not legally recognized in India, the Government is not aware of such crimes and its intensity, no. of victims and the types of sexual victimization that occur in the prisons. Since, these crimes are undocumented, it prevents the prisoners from seeking help and identifying themselves as victims of rape. The registration of rape crimes happening in the prisons will prevent its occurrence. The exploration of pre-dispositional factors giving rise to the rapes between prisoners will identify those vulnerable and the situational factors to ultimately prevent, protect and also defend the innocent ones. The prisoners who stand as alleged criminals may be safe from such inhuman and atrocious treatment by other prisoners, and the convicted ones may think twice before indulging as reporting would bring serious repercussions.

[6]*Section 375 Rape, The Indian Penal Code (45 of 1860) and Sub-section (a) of Section 375 Rape, The Criminal Law (Amendment) Act, 2013.*
[7]*Section 376 Punishment for rape, The Indian Penal Code (45 of 1860) and Section 375 Punishment for rape, The Criminal Law (Amendment) Act, 2013.*
[8]*Clause (d) of Sub-section (2) of Section 376 Punishment for rape, Indian Penal Code (45 of 1860).*

The violence begets violence, so the prison rapes are highly likely to make the prisoners violent; giving rise to more victimization in prisons, also increasing the likelihood of recidivism. Such victimization may incur more cost to the prisons and also detract from the very objective of reformation of the prisoners. The framework of an act pinpoints the formation of and the different roles to be played by the National Prison Rape Prevention, Detection and Reduction Commission to garner information about prison rape, detect and punish prison rape, and may likely reduce the cost of victimization.

A framework of An Act for Defining, Detecting, Punishing and Preventing Prison Rape Crime committed by Prisoners and Staff against the prisoners inside the Prison.

It should be published by Authority in The Gazette of India.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)
New Delhi, the Date, Month, 2019

THE PROTECTION OF PRISONERS FROM RAPE ACT, 2019

An Act to protect prisoners and juveniles from rape in prison and juvenile homes and establish Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

WHEREAS clause (1 & 2) of article 254 of the Constitution, *inter alia,* empowers the State to make any law at any time with respect to the prison;

AND WHEREAS, it is imperative that the law operates in a manner necessary for the proper protection of the inmate of a prison, established by or under any law, that his or her right to privacy be protected and respected by staff of a prison, by all means and through his or her stay at such places;

The purposes of this Act are to—

(a) Prevent the inducement or coercion of an inmate and/or the exploitative use of inmate to engage in any sexual activity,

(b) Prison rape is a heinous crime and need to be effectively addressed.

(c) Establish a zero-tolerance standard for the incidence of prison rape in prison and other places in India;

(d) Make the prevention of prison rape a top priority in each prison system and other places;

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

1. Short title, extent and Commencement.—(*1*) This Act may be called The Protection of Prisoners from Rape Act, 2019.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—(*1*) In this Act, —

(a) The term "prison rape" includes the rape of an inmate in the actual or constructive control of prison officials.

(b) The term "rape" means: if an inmate/staff of a prison

- penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of an inmate or makes the inmate to do so with him or any other inmate; forcibly or against that inmate's will; or
- inserts, to any extent, any object or other instrument or a part of the body, not being the penis, into the vagina, the urethra or anus of an inmate or makes the inmate to do so with him/her or any other inmate; forcibly or against that inmate's will; or

- manipulates any part of the body of an inmate so as to cause penetration into the vagina, urethra, anus or any part of body of the inmate or makes the inmate to do so with him/her or any other inmate; forcibly or against that inmate's will; or
- applies his mouth to the penis, vagina, anus, urethra of an inmate or makes the inmate to do so to him/her or any other inmate; forcibly or against that inmate's will;
- touches the private body parts of an inmate including the genitalia, anus, groin, breast, inner thigh, or buttocks or makes the inmate to do so to him/her or any other inmate; for the purpose of sexual gratification; forcibly or against that inmate's will;
- *Explanation 1*.—When an inmate is raped not forcibly or against the inmate's will, where the victim is incapable of giving consent because of his or her youth or his or her temporary or permanent mental or physical incapacity; shall not by the reason only of that fact, be regarded as consenting to the rape act.
- *Explanation 2*.—When the rape of an inmate is achieved through the exploitation of the fear or threat of physical violence or bodily injury, shall not by the reason only of that fact, be regarded as consenting to the rape act.
- *Exception* —A medical procedure or intervention shall not constitute rape.

3. Punishment for prison rape.—Whoever, being an inmate or staff of a prison, commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

4. Aggravated Prison rape.—If an inmate/staff of a prison

- commits rape causing grievous hurt or bodily harm or injury to the sexual organs of the inmate; or
- commits rape on an inmate, which physically incapacitates the inmate or causes the inmate to become mentally ill as defined under clause *(b)* of section 2 of the Mental Health Act, 1987[9] or causes impairment of any kind so as to render the inmate unable to perform regular tasks, temporarily or permanently; or
- in the case of female inmate, makes the female pregnant as a consequence of rape;
- inflicts the inmate with Human Immunodeficiency Virus (HIV) or any other life threatening disease or infection which may either temporarily or permanently impair the inmate by rendering him/her physically incapacitated, or mentally ill to perform regular tasks; or
- taking advantage of an inmate's physical disability, commits rape on the inmate; or
- commits rape on the inmate more than once or repeatedly; or
- commits rape on an inmate and attempts to murder the inmate; or
- commits gang rape on the inmate;

5. Punishment for Aggravated prison rape.—Whoever, being an inmate or staff of a prison, commits rape shall be punished with rigorous imprisonment for a term which

[9]*Clause (b) of Section 2. Definitions "mentally ill person" means a person who is in need of treatment by reason of any medical disorder other than mental retardation, The Mental Health Act, 1987.*

shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation — When an inmate is subjected to rape by one or more inmates and/or staff of a group in furtherance of their common intention, each of such inmates and/or staff shall be deemed to have committed gang rape within the meaning of this clause and each of such inmates and/or staff shall be liable for that act in the same manner as if it were done by him/her alone;

6. The term "prison" means any confinement facility of a State government, whether administered by such government and includes—

(a) any prison; to hold a person pending adjudication of criminal charges; or person committed to confinement after adjudication of criminal charges for sentences; or

(b) any juvenile facility or a prison, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, used for the custody or care of juvenile inmates.

7. The term "inmate" means any person incarcerated or detained in any facility under the writ, warrant, or who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, furlough, pretrial release, or diversionary program, or by order of a Court-martial;

8. Prison staff would include all prison officials such as superintendent (Grade I & II), assistant superintendent, medical officer, medical subordinate, head warder, head matron, warder and matron.

9. The prisons would include Central Jails, District Jails, Sub Jails, Women Jails, Borstal Schools, Open Jails, Special Jails, and Other Jails.

10. National Prison Rape Prevention, Detection and Reduction Commission.

(a) ESTABLISHMENT.—A commission should be established which would be known as the National Prison Rape Prevention, Detection and Reduction Commission (in this section referred to as the "Commission").

(b) MEMBERS.—The Commission shall comprise of at least nine members. Each member of the Commission should have knowledge or expertise in prison matters to be studied by the Commission.

(c) OPERATION.—A majority of the members of the Commission shall constitute a quorum to conduct business, but the Commission may establish a lesser quorum for conducting hearings scheduled by the Commission.

(d) COMPREHENSIVE STUDY OF THE IMPACTS OF PRISON RAPE.—The Commission shall carry out a comprehensive legal and factual study of the penological, physical, mental, medical, social, and economic impacts of prison rape in India.

11. REPORT.—Two years after the date of the initial meeting of the Commission, the Commission shall submit a report on the study carried out to—

(i) Prime Minister;

(ii) Parliament;

(v) Director of the Bureau of Police Research & Development;

(vi) State Home Minister; and

(vii) Head of the department of corrections of each State.

(Inputs taken from The Prison Rape Elimination Act of 2003)

Recommendations

1. The Police Training Colleges and BPR&D should carry out periodic training and education programs for the prison staff and other authorities accountable for the prevention, investigation, and punishment of instances of prison rape.

2. The views and opinions regarding how to prevent prison rapes should be solicited from representatives of the following: Ministry of Home Affairs, Ministry of Law and Justice, State departments of Prisons; jails; juvenile facilities; former inmates; victim advocates; victimologists, criminologists, victim service departments, researchers; and other experts in the area of sexual assault.

Further Recommendations

Conjugal Visits

The family of the convicts also suffers indirectly from the separation of their member undergoing sentence in jail. Because of the long period of separation, the family may become detached with its member and may not support after his/her release. Recently, the Punjab and Haryana High Court in the case of Jasvir Singh and Another Vs State of Punjab and Others has recognized the conjugal rights of the prisoners within the jail premises considering it as part and parcel of right to life under Article 21 in its judgment. Therefore, it is recommended that the conjugal visits should be permitted by the Government in jails so that the inmates will be able to maintain a healthy, nonviolent sexual relationship and it may prevent prison sexual violence.

Connections with loved ones

All forms of visitation from the family is recommended so that it will be helpful in preventing any rule violations, and this will be treated as a reward for reinforcing good behavior of the inmate towards other inmates and staff in the jail.

Treatment, Rehabilitation and Education

The prisons should implement treatment and rehabilitation strategies for those who are identified as victims of rape and those who are known offenders and should be placed in a peer-led program. The members who have personal experiences as that of the perpetrators or the victims of prison violence may be in a position to give instructions to the freshly entering inmates to deal with and keep away from violence within the facility without indulging in nefarious activities. The major aspects of these programs would include uplift the self-respect and dignity of inmates, develop their solution oriented handiness, exploit role-playing strategies, and make available substance abuse treatment to the inmates.

Educational programs on physical and sexual violence issues should be conducted to teach inmates, to sensitize them and make them known of its repercussions. Such programs will have a long term effects on the mindset of prisoners as to how to avoid high-risk behaviors and seek help in a situation leading to the risk of victimization.

Technology and prison structure

Many prisons in India use some form of Closed Circuit Television (CCTV), it is highly recommended that such video cameras which capture images and CCTVs should be installed in every prison to monitor and record violent activities and prevent such incidents from escalating.

The crime-mapping software should be used to determine whether any particular institution is at risk for particular violent incidents, such as attempted escapes, riots, sexual assaults, assaults on staff members etc.

It is also necessary to check the feasibility and cost of conducting surveillance, undercover activities, or both, to reduce the incidence of prison rape.

An assessment of the safety and security of prison facilities and the relationship of prison facility construction and design to the incidence of prison rape should also be conducted.

Victim/Offender Education Group (VOEG)

Insight Prison Project founded in 1997 in San Rafael, CA, offers unique and effective 18-month long *Victim/Offender Education Group* (VOEG) program. The prisons in India should design a project similar to the above mentioned program and as a part of this program, involve highly trained facilitators and well design a space that may allow the victims and inmates an opportunity to work together, which would dramatically aid in the healing process for everyone involved, and will play an instrumental role hand-in-hand in bringing down recidivism and promoting public safety.

Conclusion

The occurrence of prison rapes in India is a serious problem but for some reason, it has been ignored by the Government. A review of the protection of human rights of prisoners is necessary to understand the hidden forms of criminality and victimization particularly 'rape' committed by staff/prisoners against the prisoners inside the prisons. The Government should forge new act for the purpose of vindicating the most precious rights such as Right to Life and Personal Liberty of prisoners. The Government, Criminologists and Victimologists should turn their attention toward researching prison rape and how it can be eliminated. Prison rapes are apart from other sexual assaults in terms of the gender of victims, the social context within which it occurs; the motivation of the perpetrator, and the effects of victimization. Therefore, the treatments should be trauma informed, individually-tailored (e.g., understanding the specific experiences of the victim based on their gender and sexual orientation), culturally sensitive, of sufficient duration to adequately treat the victim, practice- and evidence-based, and holistic, with members of the health care team working together for the victim (Dumond and Dumond, 2007).

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ANALYZING THE IMPACT OF THERAPEUTIC MODELS BASED ON COGNITIVE BEHAVIORAL THERAPY (CBT) AND TREATMENT READINESS AMONG VIOLENT OFFENDERS

Reena Sharma*

ABSTRACT

This paper presents an analysis of the impact of various therapeutic models based on Cognitive Behavioural Therapy (CBT). This paper contributes towards finding and evaluating the treatment readiness as well as rehabilitation among the violent offenders. There exist a few methods of assessing treatment readiness, although working with violent offenders is a challenge. Cognitive skills such as reasoning and rehabilitation programs have shown to be effective in reducing recidivism. The assessment like treatment readiness assists with the impact and selection of appropriate candidates for the violent offender rehabilitation programs. This paper focuses on (CBT) cognitive-behavioural therapy approach to treat violent offenders with anger-related issues. This paper attempts to conclude by formulating a solution on the most appropriate CBT models used for the rehabilitation of violent offenders from the Indian perspective.

KEY WORDS

Cognitive behavior therapy, rehabilitation, offenders, violent offenders, treatment readiness, recidivism, anger.

1. Introduction

Loza (2003), in his paper, examined the factors that led to the criminal behavior of violent offenders. A large percentage of the prison population is of Individuals guilty of violent offenses (Ware, Cieplucha & Matsuo, 2011). Practices that are viewed as criminal violence are frequently characterized by legal terms code related to violence – i.e., Aggravated Assault (Blackburn, 1993). From a psychological perspective (treatment) violence has been depicted as the purposeful and malicious physical damage of another from a psychological perspective (treatment) (Blackburn, 1993).

Within a forensic setting, effective correctional treatment is expected to refer to the treatment relying on altered introverted attitudes, behavior, and personality to reduce recidivism (Greenwood, 1995). The susceptibility factors contributing to such behavior, as identified by Loza (2003) are self-efficacy, motivation, locus of control, and problem recognition. Edmondson and Conger (1996) discovered that people with tolerance aggression constantly suffer by getting in significant problems themselves and for others around them. It is widely believed that anger acts as a vital predecessor to aggressive and violent attitudes (Novaco, 1997; Berkowitz, 1986). For instance, Howells (2008) suggested recently that anger induces almost two-thirds of all homicides. Howells et al. (2005) also suggested that anger is also considered as a significant antecedent for many offenders of violence. The CBT interventions focus on changing and reframing the troubled beliefs which result in problematic behavior, it also focuses on skill training to identify the problem area and work on changing it.

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2. Aim and Objectives of the study:

Aim: The present study aims to analyze the impact of therapeutic models based on Cognitive Behavioural Therapy (CBT) to assess treatment readiness and rehabilitation among violent offenders.

Objectives:

1. To identify the factors leading to violent and offensive behavior
2. To emphasize on the various domains of CBT treatment with offenders
3. To understand anger issues among offenders and discuss the interventions related to anger control.
4. To explore how interventions prepare offenders to return to society and reduce recidivism with focus on making them prosocial, enhancing problem solving and social skills, and inculcating cognitive restructuring.

3. Literature Review:

3.1 The genesis of Violence:

According to WHO, Violence is "the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either result in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation" (Mendes, Mari, Singer, Barros & Mello, 2009, pp. S78). There are numerous forms of violence and also a lot of variety between offenders based on causes and occurrences of their violent behaviors. Violent offenders could be people assaulting their partner or children, or who have been involved in a serious fight or fights, or got into gang violence or committed violence in the course of a robbery, to those who have killed someone. But the reasons for committing such crimes can vary (Ware et al., n.d).

Sullivan & Tifft (2001) elaborates that violence emerges from irritation, anger, and the urge for vengeance and retaliation. It creates feelings of humiliation and shame. Programs concentrating on anger management and violence reduction were identified by Polaschek and Collie (2004). These programs were concentrating specifically on the jail inmates.

Day et al. (2008) state that domestic violence incidents to improvise the criminal's awareness of the victim's perceptions, experiencing intense anger following minor interpersonal transgressions, or failing to offer assistance to another in danger or distress is an impulsive origin of violence.

Howells (1998) has pointed out that violence might not always arise out of anger for some offenders. It is for this reason that Howells (1998) considered psychopathy as a contraindication for anger management and violence while Novaco et al. (2001) believed that anger management of some psychopathic individuals seems likely to be effective for their socialization.

3.2 Factors involved in offenders' violent behavior:

Aggressive and violent behavior is the outcome of a combination of the biological, genetic, and environmental factors of people that begins from birth and continues through life (Valois, MacDonald, Fischer, Bretous & Drane, 2002). The predictors of aggressive behavior and violence are impulsivity, attention deficit, and hyperactivity (Valois et al., 2002).

The MORM (Multifactor Offender Readiness model) recommends that an offender will be prepared to change culpable to the degree that the individual in question comprises of cognitive, emotional and behavior properties, and exists in a domain where such modifications are conceivable and supported (Ward, Cieplucha & Matsuo, 2004). MORM or the multifactor readiness model for treatment readiness includes intrinsic and extrinsic factors (Ward, Cieplucha & Matsuo,

2004). Altogether, the factors proposed by Ward and colleagues hypothesized whether an offender as an individual takes part in the treatment and resultantly benefits from it. The internal factors proposed by them includes past experiences of programs, beliefs about treatment, and offender goals whereas extrinsic factors include the setting in which treatment is delivered, the extent to which treatment is coerced, and the availability of resources to support program delivery. Even though these factors are beyond the control of legal pressure, attempts to measure the internal aspects of readiness, including motivation to change, have been assessed. Moffatt & Poynton (2006) provided evidence suggesting that although the frequency of violent crime in some of the countries may be decreasing slowly, the offenders that have been imprisoned for their offenses have seen a steady rise over the last few years. A significant obstacle, according to Davey, Day & Howells (2005), in violent offender treatment is the assessment and selection of the pertinent candidates for treatment. Programs must target greater risk offenders or violent offenders and not homogenous groups concerning their treatment needs (Andrews & Bonta, 2003).

3.3 Anger management:

Anger is a "negative phenomenological feeling state that motivates desires for action, used against others, which aims to warn, intimidate, control, attack or gain retribution" (Kassinove & Tafrate, 2006, pp. 4). Cornell, Peterson, and Richards (1999) have associated anger problems to adjustment in prison, disciplinary problems, assaults, and violence. It is an important predictor of aggression in incarcerated adolescents. The process of initial assessment can be done by personal unstructured interviews, questionnaires which are in the self-report format, or while completing psychometric tests, (Spielberger, 1999; DiGiuseppe &Tafrate, 2004). When it comes to the characteristics of anger, the feelings and expressions vary demographically. More inmates significantly were found to have a learning disability or emotional condition (Haigler et al., 1994). Therefore it will be wise to take this into account and develop interventions accordingly. Psychologists working with individuals with anger aggression work on helping with their attitudes and expectations. (Kassinove and Toohey, 2014). Interventions based on sensory and change in beliefs, thinking results in a reduction or physiological arousal, and behavioral skill-building have shown relatively more success. Treatment gains were maintained at follow-up according to DiGiuseppe and Tafrate (2003). According to Saini (2009) a minimum of eight sessions is required for anger reduction.

There are different types of outbursts of anger, such as regulated anger and dysregulated anger. Anger occurs once a week and lasts for an hour. In community settings, if anger outburst happens it is less intense than rage but more intense than an annoyance. Averill (1983) suggests that anger emerges as moral judgments about actions that are thought to be wrong.

Environment and learned interactions is an important ingredient of anger. Modeling behavior and conditions have been studied as another impactful source of anger. The modeling effect is known since the experiment of Bandura et al. (1961) has emerged. In this experiment, children who watched videos of an adult being aggressive toward a Bobo doll were found to be more aggressive with the doll themselves. Children came up with their ideas of being more aggressive with the doll which was not even shown or shared with them.

Anger can be seen in different forms; few people stay angry all the time, for some it's episodic. which come and go, in response to certain provocations. The episodes, therefore, vary in terms of intensity, frequency, duration, and expression. the cognitive, verbal, and

motor behaviors are identified and change techniques are applied in the applied behavioral analysis approach.

To assess the anger by self-report method might sometimes be misleading, Forensic CBT practitioners understand this. This is because evidence suggests that people do not know much about their inner lives (Wilson and Nisbett, 1978; Schwarz, 1999). The responses vary according to the perceived consequences of their verbalizations. Clinicians, therefore, feel that self-reports are not very reliable or predictive and that they represent the primary method of social discourse and psychotherapeutic interchange.

3.4 Positive criminology in a nutshell:

Positive criminology or the tendency to overemphasize the positive instead of negative suggests a very innovative way of responding to crime. Instead of running away or avoiding the bad, the attempt is to enable, promote, and increase the good. The 'positive makings' (Ronel and Segev, 2015, p. 4) covers a variety of theories and practices such as 'sociology of acceptance' as introduced by Bogdan and Taylor which expose individuals who are offended to altruism and a sense of social and personal unification. It is important to prevent criminals from further committing such crimes posing harm to society in general. So the development of self-efficacy and also hope for prospects will help them desist from crime. This was further explained through the Good Life Model, developed by Tony Ward. This advocate for enhancing an individual's strength by helping the offenders develop a way of life that goes along with their values and set goals which will pose to be meaningful to the offender individually. Some more examples adding to the existing innovations and theories are positive criminology and its teaching which can help individuals recover from trauma and cope with distress and risk; exposure to goodness and altruism by way of, for example, volunteers who can encourage the processes of rehabilitation and within individual changes; also, therapeutic jurisprudence reflects positive criminology themes by exposing offenders to a constructive and just court process, as well as enhancing the courts' ability to promote therapeutic consequences.

3.5 Cognitive Behavior Therapy:

In recent years, various new psychological treatments have developed. A large number of these psychological interventions consider themselves to be a piece of the worldwide group of cognitive-behavioral therapies (CBT), notwithstanding numerous unique features, for example, Buddhist ideas and mindfulness-based strategies. Notwithstanding differences in theoretical models and methods of reasoning, these new advancements are starting to come together on a practical level (Hofman, 2017). Cognitive-behavior therapy depends on the supposition that characteristics of offenders such as cognitive deficits and distortions are not inherent but are learned (Lipsey, Landenberger, & Wilson, 2007). various programs for offenders are developed to instruct offenders to comprehend the reasoning processes and decisions that appeared before their criminal behavior. Learning to monitor one's thinking is the first step, followed by therapeutic techniques to help the offenders recognize and correct biased, risky, or insufficient reasoning examples. All CBT interventions, consequently, utilize a lot of organized procedures planned for building cognitive skills in areas where offenders show shortfalls and rebuilding cognition in areas where offenders' reasoning is one-sided or distorted. These procedures regularly include cognitive skills training, anger management, and different supplementary segments identified with social skills, moral improvement, and prevention of the same thing happening again (Lipsey, Landenberger, & Wilson, 2007).

The point of CBT is to address the cognitive distortions that are the reason for negative behavior, including criminal conduct. Its

major components of activity incorporate going back to criminal activities by decreasing dysfunctional social attitudes, improving behavioral self-efficacy through an assortment of decisional risk-weighting strategies to boost prosocial results (Mpofu et al., 2016). The viability of CBT to decrease recidivism is based on the assumption that acceptance of responsibility regarding offense will lead to better effects of treatment. Cognitive distortion, denial, and absence of empathy for the victims are very common among medium-to high-risk sexual offenders (Tierney & McCabe, 2001).

In the case of anger management, an exceedingly important outcome from the perspective of rehabilitation of offenders is change in behavior with regards to minimizing the episodes of anger (Tafrate et al., 2002). In these kinds of situations, the cognitive-behavioral treatment of anger stands apart from the ones in mental health, which focuses on the reduction of distress and improving the well-being (Mohr, Schall and Gerace, 2008). Gilbert (1998) also asserted that interpersonal relationships can be boosted by anger management therapies since satisfaction and job performance are also included.

3.6 Effectiveness of CBT treatment:

Quite a few studies have distinguished cognitive-behavioral therapy (CBT) as an especially viable intervention for diminishing the recidivism of adolescent and adult offenders (Lipsey et al., 2007).. For example, Pearson et al. (2002), led a study covering behavioral and cognitive-behavioral projects. Cognitive-behavioral programs were found to be more effective in decreasing rates of recidivism than the behavioral ones. Also, a meta-examination by Wilson et al. (2005) studied the group-oriented cognitive-behavioral programs for offenders and found that CBT was powerful for reducing their criminal behavior. In their analysis, representative CBT programs demonstrated more recidivism reduction when compared to control groups.

Another study that showed the effectiveness of CBT interventions in reducing recidivism among medium- to high-risk sexual offenders for sexual, violent, and general reoffending is the one carried out by Mpofu et al. (2018). Their study affirms the effectiveness of CBT with moderate-and high-risk offenders in which comparison groups were utilized and with expanded follow-up periods. The significance of similar treatment and comparison groups inside sexual offense investigations has for quite some time been recognized (Craissati et al. 2009; Hanson et al., 2002; Witt et al.,2008; Hall, 1995b; Marques, Day, Nelson, and West, 1994) as inadequately coordinated comparison groups have regularly been a significant weakness of recidivism studies. Also, the absence of proof of the long term effects of CBT intercessions with moderate-and high-risk sexual offenders has impeded related studies. Therefore, the recommendation for future studies is to focus on treatment responsiveness among moderate and high-risk sexual offenders (Mpofu et al., 2018).

CBT covers a broad spectrum of interventions and techniques, many of which can be adapted for treating forensic patients (Seeler, Freeman, DiGiuseppe & Mitchell, 2014). (CBT) cognitive behavioral therapy-based interventions are used to reduce the risk of future violence. Additionally, more attention must be given to problem-solving skills according to Eckhardt et al (2014), in addition to relaxation skills. There is a substantial increase in the interventions in the development of domestic violence and partner violence progress. CBT as interventions used on antisocial individuals has had a positive impact. Whether the antisocial individual is an inmate or a patient, the will to change comes from an outside source. Therapists who are working with antisocial patients must have that skill, compassion, and motivation throughout the process. Throughout

this process, the constant reassurance of collaborative therapy will also help patients in issues of trust (Seeler et al., 2014). Programs focusing on cognitive-behavioral therapy emphasize individual accountability and layout a set of structured techniques targeted at building cognitive skills and restructuring cognition in areas where offenders' thinking is biased or distorted. However, Beck and Fernandez (1998) & Del Vecchio and O'Leary (2004) suggested that the outcomes of meta-analytic reviews of the treatment for anger management are generally effective but in moderate effects in small sample sizes. To analyze CBT outcomes in case of anger, the studies included prison inmates, abusive parents and partners, juvenile offenders and these studies then focused on the interventions on cognitive restructuring. An important focus of the research conducted by Day et al. (2008) not only relates much to the effectiveness of anger management therapy but also to the efficacy when compared to other interventions.

3.7 Acceptance and commitment therapy (ACT)

Acceptance and commitment therapy (ACT) is a "behaviorally based approach to intervention that utilizes acceptance and mindfulness processes, and commitment and behavior change processes, to produce psychological flexibility" (Amrod and Hayes, 2013, pp. 43). "Psychological flexibility is a combination of openness, awareness, and active engagement where the person is aware of the present, thoughts and feelings it contains and also more willing to participate in values-based actions that the situation can afford (Amrod and Hayes, 2011, p. 43). ACT helps reduce inner noise by helping the clients to connect with themselves, be more open and accepting to engage in the value-focused actions that a particular situation brings. It doesn't focus on what has happened in the past but is more focused on the present moment. It helps inmates to be compassionate by developing a more humble relationship. It also teaches how to be accepting and willing (Amrod and Hayes, 2013).

The ACT model is very flexible. This model is more about psychological flexibility and less about fixed emotions like dominance by verbal rules and difficult emotions. Also, this approach is applied equally to therapists and inmates.

The ACT focuses on problem identification, acceptance of the same, describing and discussing the value of work, and slowly moving towards the non-judgmental part of our kind instead of judging our actions in the mind. Focusses on the conceptualization of "self "and the story we use for ourselves and others. and finally, learn to be mindful by being in the present moment. These are steps where the inmate commits to themselves and works towards their goals.

(Amrod and Hayes, 2013).

3.7 Psychosocial approaches:

Cognitive-behavioral approaches center around understanding and building up the person's ability for self-regulation, his reasoning and feelings, and the associations between the two. Cognitive-behavioral theories can incorporate the idea of implicit theories (ITs) which comprise sets of beliefs associated with a predominant topic that guide behavior and assist people with comprehending circumstances (Kemshall et al., n.d.).

Psychosocial approaches give a comprehension of the manners by which specific examples of emotional response, thinking, and behavior have emerged after some time and are sustained in particular environments. The multifaceted nature of the components that may cause trouble in controlling angry feelings incorporates family influences, developmental disabilities, early conduct problems, substance use, and systematization (Kemshall et al., n.d.).

Jolliffe and Farrington (2007) found that interventions with violent offenders were successful. The authors depict the outcomes as very encouraging yet additionally recognize that not many reasonable concentrates were accessible for consideration. The investigation likewise showed that the focal point of interventions was critical with general instruction and compassion reducing the usefulness, yet with cognitive skills, anger control, use of role-playing and relapse prevention and homework proving to be more useful.

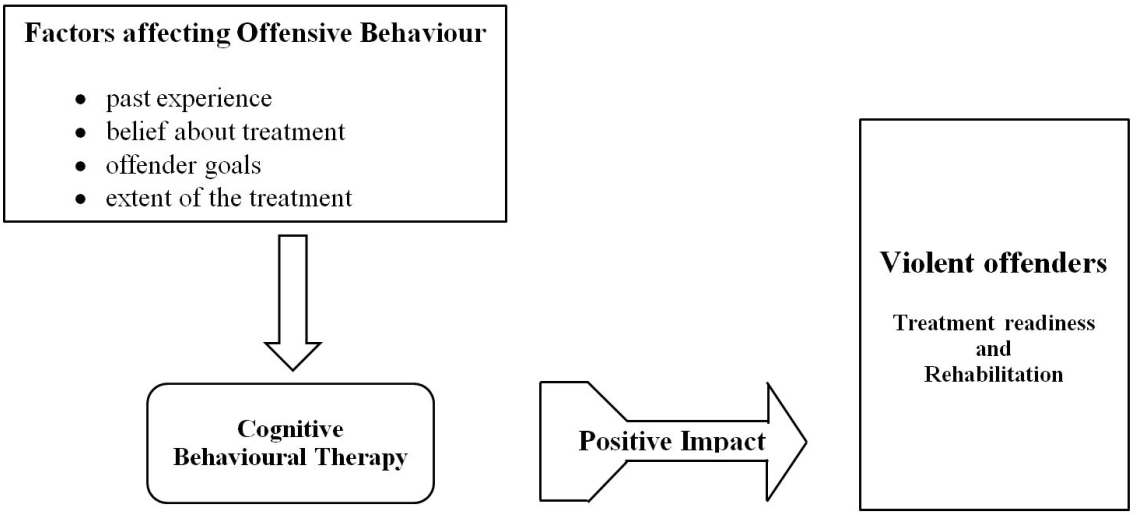
Aggressiveness, violence in behavior, violation of rules, substance abuse, infringement of property are a few examples of antisocial behaviors. Self-control is offered as a significant solution in managing antisocial, delinquent, and criminal behavior. This also includes the development of a few systems and projects planned to develop self-control among youngsters and youths (Piquero, Wesley, Jennings, & Farrington, 2010). The program named (ART) Animosity Replacement Training is a relevant example of such a program.

The (ART) Animosity Replacement Training -program is a multimodal program initially created for aggressive delinquents in private care in New York, USA, with the point of supplanting antisocial behaviors by effectively showing desirable behaviors. It is an organized program that consolidates the utilization of strategies from cognitive therapy (in light of cognitive theories) and behavioral therapy (from learning theory). ART is effective on recidivism, secondary outcomes, anger control, social skills, and moral reasoning. Goldstein and his colleagues have contended that aggression and different forms of antisocial behavior can be followed back to a general absence of prosocial behavior, a low degree of anger control, and an immature, egocentric style of good reasoning (Goldstein et al., 1994 & 2004). One of the theoretical bases for ART is that aggression and criminal mindset in young people can be decreased through the capability to manage both anger and self-control (Brannstrom et al., 2016).

4. Discussion

Conceptual framework:

Considering the literature explored, a conceptual framework is formulated as follows.



Conceptual framework

"Human aggression or offensive behavior is any behavior directed toward another individual that is carried out with the proximate (immediate) intent to cause harm. Also, the perpetrator must believe that the behavior will harm the target and that the target is motivated to avoid the behavior" (Kemshall et al., n.d., pp. 5). The factors behind offensive behavior include experience, belief about treatment, offender goals, and extent of the treatment. Cognitive-behavioral therapy helps in treating such offensive behavior and has proved to be effective for reducing recidivism among sexual offenders as well (Mpofu et al., 2018; Craissati, South, and Bierer, 2009; Hanson et al., 2002; Witt et al.,2008; Hall, 1995) This, in turn, brings a positive impact on violent offenders by focusing on their treatment readiness and rehabilitation (Birgden, 2008; Day et al., 2008).

The issue of anger episodes among offenders is closely related to violent offenses. While it has been discussed in the literature, this section will look into anger management therapies.

Kassinove proposed a model in 1995 in which the five stages such as trigger, appraisal, experience, expression, and outcome contribute to anger. Trigger as a stimulus begins the anger episode. A trigger can be anything, even something which is objectively pleasing. Certain anger triggers are even positive. Physical or mental discomfort triggers anger as people are more sensitive to anger triggers when they are physically or mentally uncomfortable or threatened (Anderson, 1989; Engine, Keskin, Dulgerler, & Bilge, 2010; Rotton, Frey, Barry, Milligan, & Fittzpatrick, 1979). An environment which supports calm surrounding such as clean air, appropriate temperature, no negative smells alongside appropriate sleep, food and recreational opportunities can prevent the emergence of anger (Kassinove and Toohey, 2014).

Different people interpret the same situation in different ways and manners. Their interpretation of the trigger situation might make the person angrier or less angry in the same situation. Experiences a person goes through are directly influenced by the self - interpretations (appraisal) and it refers to the subjective awareness of anger. Public display of expression of anger is a common characteristic in the offenders.

Outcomes can either be short-term or long-term, positive, or negative. Outcomes of anger that are short term are positive. Short term outcomes are used to intimidate or control others. Long-term outcomes are negative and include criminal justice system involvement, relationships, and occupational difficulties and medical problems (Williams et al., 2000).

The stages in a standard intervention for anger episodes include preparation and psychoeducation. To have success in interventions the offenders need to be aware of their dysfunctional anger and also have that motivation to reduce it. Anger and aggression are held to be very normal among the offender population because the type of background they come from sees yelling, screaming, verbal put-downs, threats, and aggression as daily things among family members and peers. When offenders see the model behavior on television or such medium, they get more validation in persisting this behavior and they become more sure of the same. Therefore, they need to assess their anger in terms of others instead of modeling or replicating the same. Direct discussion and a log describing daily anger, will help in this. Standardized psychological anger measures can also be used. Once the awareness of anger is recognized, then working on the problem becomes easier (Kassinove and Toohey, 2014). The second factor that is motivation can be enhanced through a motivational interviewing approach (Miller and Rollnick, 2002).

(CBT) Cognitive Behavior Therapy based models focus on the motivation and the key challenges faced by the offenders, especially those who have trouble controlling their

emotions or regulate their anger aggressive behavior. There are effective evidence-based interventions that exist. Within the supervision of CBT, therapist offenders identify their concern areas like their triggers an inappropriate way of interpreting those and learn to express themselves in a more effective manner instead of dysfunctional manner which leads them in conflict with the justice system. It is recommended that programs that help offenders explore relationships with themselves and help them understand their behavior will make a remarkable difference however in India we don't have such a scientific approach towards interventions.

An attempt has already been made in Gujarat Prisons and the model is called Samarth: Breaking Barriers, a forensic CBT based & Positive criminology based developed by the Founder Reena Sharma, The Mind Practice a Forensic psychological and Mental Health care service provider. The Samarth: Breaking barriers therapeutic program and its center are established inside all the central prisons of Gujarat. It has been running successfully in all the central prisons of Gujarat. Also, it engages the good behavior prisoners to work in Samarth as Mentors within the Prison. All the mentors are trained by The Mind Practice for the role of Mentors. Mentors are even paid as per the Prison manual wages for Skilled Job. (Sharma, 2019) Samarth: Breaking Barriers Samarth is India's pioneering Therapeutic rehabilitation intervention program for offenders it focuses on treatment readiness, providing skills and therapeutic tools, and empowers offenders to solve their problems using pro-social methods and reintegrate with society without any bagages. (p.175,176). Samarth: Breaking Barriers is an evidence-based program that has shown its visible impact in improving treatment readiness, violent treatment readiness, psychological symptoms, social criminal identity, and self-esteem. The Prisoners who participated showed acceptance towards treatment and reported high levels of treatment satisfaction (Sharma, 2019). The implementation of such models in India has to be region-centric and as per the criminogenic needs of the Indian Prisoners and Prisons.

5. Conclusion:

The review paper assessed and identified cognitive behavior therapy intervention and its effectiveness in preventing further criminal behavior. Furthermore, various committees and acts were passed from time to time for improving the conditions of prisons in India but still, the majority of the problems are left unsolved. Based on the current findings, it is envisioned that such treatment could both elevate the process of rehabilitation at a psychological level and also reduce violent offending by encouraging fundamental changes to inmates' thinking styles. Also, the conclusion drawn from this work suggests that there are many cognitive treatments for violent behavior in offenders which can be delivered as adjuncts of the anger management approaches as well as other behavior domains which leads to crime.

In conclusion, the literature assists with the study's aim that cognitive behavior therapy has a positive impact on offenders, and additionally assessing them to interpret their treatment readiness and rehabilitation around program eligibility and suitability assists the program outcome.

Therefore, it is recommended that the focus should be on ideas to rehabilitation that will also sustain the change in the behavior of offenders. It is highly recommended that Therapeutic programs (for example, Samarth-Breaking Barriers Therapeutic program based on forensic (CBT) cognitive behavioral therapy and positive criminology within the state of Gujarat, India) be considered to be regarded as a standard protocol in prisons which should also be recommended by the courts and relevant authorities (Sharma, 2019). Programs such as Samarth will

make 'a paradigm shift change in offender rehabilitation' (p. 177). Sharma (2019) states that the implication for future research lies in introducing risk and needs assessments, RNR models, therapeutic programs, and criminogenic needs instruments to add to the rehabilitation process of the offenders. Such programs if implemented systematically with government support will bring change and will continue to bring change in the mindsets of offenders and they will take more interest in transforming towards living better.

Using therapeutic skills such as Samarth: breaking Barriers will help work through the roadblocks and assist in building therapeutic relationships, engagement, and readiness to change. Additionally, once the therapeutic alliance is in place necessary changes will be made in behavior from antisocial behavior towards more prosocial behavior rather than just one event which got the offenders into conflict with the law. It will also help in complete behavior pattern change in an individual, the result of which will reduce recidivism and reduce the chances of conflict with the criminal justice system. In the end, it is also recommended that research in prison should have more of a qualitative perspective than quantitative as there are several such expressions which cannot be measured through paper and pencil tests alone. Forensic practitioners must be more creative yet pragmatic in terms of delivering solutions in forensic settings.

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A REVIEW OF ANTI-DRUG REGULATIONS IN REFERENCE OF JUVENILE: INDIAN PERSPECTIVE

Neha Tanwar*

ABSTRACT

Background: This study considers anti-drug regulations as an essential category to engage with, and to define the present state of such regulations dealing with Juvenile drug dependency and use, abuse of drugs by them. It deals with identifying and examine the rationale behind the usages of terms such as drug abuse and the intervention of legal framework, primarily referred as regulations.

Methods: This study is doctrinal and descriptive method in accessing the realities behind. Paper adopts a regulation-based approach. Assessment of anti-drug regulations and international scenarios of drug trafficking has enabled us to arrive at some critique of present regulatory system dealing with the problem of drug abuse. Paper here actually transcendent through the questions as, how UN regulations are much more important to prevent drug abuse and trafficking in India.

Results: We have found that many anti-drug regulations proposed by the United Nations and other international bodies have not been given due and proper attention to evolving the effective intervention into preventing drug abuse. There are only very few of those laws which are looking forward to anticipation tending of drug addiction among the Juvenile and juveniles.

Conclusion: The study concludes that this situation requires strong regulations to control free and easy availability of drug and to check drug abuse among Juvenile and young people as well. The paper focuses that, in the world, there is an inadequate regulatory enforcement system that urges to raise the question of the absence of pro workforce.

KEY WORDS:

Juvenile, Anti-drug regulations, Indian perspective, Golden Triangle, Golden Crescent.

"Drug abuse is a social evil. It destroys vitals not only of the society but also adversely affects the economic growth of the country…."

Y. K. Sabarwal, Ex- Chief Justice of India

1. Introduction

Drug addiction among juvenile is growing concern. But very regularly the risk to juvenile exhibited by drugs is expressed without adequate investigation of the propriety and viability of the measures received to ensure them. The dependence delivering drugs in India likewise has long conventional and social roots. Reliance on drugs is continuously transforming into a general example in lifestyle that is inescapable in rich and helpless countries the same. Dependence on drug, is presently viewed as a serious major health problem. It directly affects brain, body and behaviour. Many juveniles indulge into vicious circle of drug for the reason of absence of strong regulations and easy availability of drug. Drug is not

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limited problem. Its spread over the world. "India is the second most populated nation, with almost a fifth of the total population of the world. As per the 2017 correction of the Total population Prospects (World population prospect, 2017) the population remained at 1,324,171,354. India has more than 50% of its population below the age of 25". "It has the world's highest number of 10 to 24-year-olds, with 242 million" (World population prospect, 2015). The decennial identification through Population Census hurls predictable evaluations of juvenile in India. Juvenile (15-24 years) in India constitutes 1/5th (19.1%) of India's aggregate citizens (India's Census, 2011). It is watched that India has the relative favourable position at introduce over other countries regarding conveyance of juvenile population. India's leverage in juvenile full population is additionally obvious when it is contrasted and other Asian Countries. A review to measure the range and example of the issue in India. "The survey sampled 40,697 males between 12 and 60 years of age spread out in 25 states of India" (Ministry of social justice and empowerment and UNODC, 2004). "An estimated quarter of a billion people, or around 5 percent of the global adult population, used drugs at least once" (World Drug Report, 2017) Drug addiction is the foremost social problem which is engulfing the Juvenile all over the India. They are detrimental now not solely for the individual yet additionally for his family and the general public on the loose. Drug abuse is accepted no longer solely in urban areas but additionally in the rural areas of India. India is located middle of Golden triangle (Thailand, Laos and Myanmar) and Golden crescent (Afghanistan, Iran and Pakistan). India's north-west border is heavily influenced by the golden crescent. And South-east influenced by Golden Triangle. Here, location of India, is highly prone area of drug trafficking and abuse.

2. Drug scenario of World

For an extensive time, allotment, the Golden Triangle, comprised of a steep area crossing Myanmar, Laos, and Thailand, and the Golden Crescent, a sloping region of Iran, Afghanistan, and Pakistan, have directed the overall narcotic market. Narcotic creation in the Golden Crescent has extended gigantically since the 1980s, and Afghanistan has created as one of the critical players in the overall markets of opium and heroin. Afghan narcotics have caused general well-being crises and had a destabilizing sway on neighbouring countries. In spite, of the endeavours of both household and remote counter opiates offices, the illegal opioid advertise keeps on prospering in the nation. Be that as it may, territorial counter opiates market has expanded as of late, exhibiting a hint of something better over the horizon in the battle against the drug trafficking. "Overall, in excess of 15 million individuals devour illegal sedatives (opium, morphine, and heroin) (World Drug Report, 2010). The supply hotspot for this enormous underground economy is currently moved in three zones. Afghanistan, south-east Asia essentially Myanmar and Latin America (Mexico, Colombia). Together they supply about all the world's illegal opium and heroin, however Afghanistan emerges among this gathering, representing ground 90% of worldwide illicit opium creation is ongoing years.

"The area of India near the Golden Crescent (i.e. Pakistan, Afghanistan and Iran) and Golden triangle (i.e. Burma, Laos, Vietnam and Thailand) improved not only the unlawful import of hauls over the outskirt yet additionally increment in illegal fabricate of illegal opium making India the biggest illegal opium delivering country in the world" (Choudhury, 2004).

3. Objective

1. To study the role of National and International regulations in overcoming drug abuse among youth.
2. To assess the severity of Drug abuse among youth.

4. Methodology

Hypothesis

- There will be international relation to delivering drugs in India.
- Drug abuse and trafficking in India needs strong regulations and implementations to control on easy accessibility.

Procedure

Qualitative methods of research were used for the present study. While examining the legal perspective towards juveniles, doctrinal method was used. Researcher utilizing the resources such as –the 1912 Hague International Opium convention, UN drugs conventions of 1961, 1971 and 1988, Juvenile Justice Act 2000, NDPS act 1985, world drug reports, New papers, Theories, Books, Research Articles, journal and government data etc. as part of Doctrinal Research.

5. International Relation to Delivering Drugs in India

5.1 Golden Crescent

The delivering drugs in India likewise has long conventional and social roots. A rough zone of Iran, Afghanistan, and Pakistan, have managed the overall narcotic market. Narcotic age in the Golden Crescent has extended massively since the 1980s, and Afghanistan has created as one of the genuine players in the overall markets of opium and heroin. Afghan narcotics have caused general well-being crises and had a destabilizing sway on neighbouring countries. "Even more worrisome is the fact that about 29.5 million of these drugs user's 0.6 percent of the global adult population, suffer from drug use disorders" (World Drug Report, 2017). The development in Afghan narcotic developing has essentially influenced sedate utilize the world over, and has arrived at various districts through major dealing ways. Through the 'Golden crescent' course, heroin and opium is routinely dealt to Pakistan, by then the path through Pakistan-Punjab outskirt, until it arrives at the Indian market. "Through the 'Balkan Route', heroin is often trafficked to Pakistan, then makes its way through Iran, Turkey, Greece, Bulgaria, and across Southeast Europe, until it reaches the Western European market. And Through the 'Southern Route', heroin travels from Afghanistan through Pakistan or Iran by sea to the Gulf region, Africa, South Asia, and the Oceania region. "(NATO association of Canada). Heroin, cannabis import to India discovered its way through the nations of the Golden Crescent. "By some estimates, up to 85 percent of opium poppy cultivation in Afghanistan is in territory under influence of the Taliban" (World Drug Report, 2017). Punjab imparts a 550 km long border to Pakistan. Heroin is someone who is addicted most loved drug in Punjab and almost 53% of the addicts in the state devour it. While Punjab does not grow opium or weed. Global drug markets utilize the brilliant bow to smuggle the drug into India and in addition different nations in south Asia from the point in Iran. Rajasthan imparts 1,037km border to Pakistan, is additionally utilized for smuggling drugs. Borders here in much longer than Punjab, and poppy husk and opium are entering into the nation.

5.2 Golden Triangle

A rugged zone of golden triangle (Myanmar, Laos and Thailand) have ruled worldwide drug market. The area, where golden triangle joint at the Ruak and Mekong river. Generally, the Golden triangle is a region between the edges of Myanmar, Laos and Thailand an acclaimed district for its opium age and furthermore provided a large portion of the

world's heroin. Brilliant Triangle of South-east Asia are the universes boss opium poppy creating regions. Encircling Myanmar toward the east are the four Indian conditions of Arunachal Pradesh, Manipur, Mizoram and Nagaland. They represented the greater part of universes unlawful production of opium and heroin. Golden Triangle nations and the developing indigenous unlawful production of drugs postures genuine difficulties to the social strength and to the advancement of the nation. The permeable fringes and the nearness of an expansive number of furnished psychological oppressor and radical gatherings add to the unabated smuggling of drugs into the nation which will be averse to the wellbeing and security of the country.

As per the United Nations Office on Drugs and Crime (UNODC) most recent (Southeast Asia Opium Survey, 2013) "opium cultivation in the Golden Triangle went up by 22 per cent in 2013 propelled by a 13 per cent growth in Myanmar". "A decade ago, the Golden Triangle supplied half the world's heroin, but drug barons backed by ethnic militias in Myanmar have turned to trafficking massive quantities of amphetamines and methamphetamines – which can be produced cheaply in small, hidden laboratories, without the need for acres of exposed land" (Ben Doherty, 2010).

6. Anti- Drug regulations

"While some drugs are illegal to possess, many governments regulate the manufacture, distribution, marketing, sale and use of certain drugs, for instance through a prescription system." (Wikipedia, 10/01/2019). "The illegal us of drug will impressively devastate the personal satisfaction and hamper social, monetary and social improvement of the nations.".

6.1. 1912 Hague International Opium convention

1912, International Opium Conference, was the main universal medication control bargain. The 1912 Convention was far from come full circle, anyway it contained various segments of a careful medication control deal. Moreover, as an official introduction on the hazardous acts of opium smoking and the non-helpful trade opium and various medications, it had an impetus as an advancement instrument. It is like manner awakened national medication control authorization, for instance, the 1913 Harrison Act in the United States, the foundation of U.S. sedate law in the twentieth century.

The main objective of the convention was to present confinements on exports instead of forcing preclusion or criminalizing the utilization and development of opium, coca, and cannabis. That explains the withdrawal of the United States and China, which were coasting towards prohibitionist draws near, and furthermore the beginning of exchanges provoking the 1925 International Opium Convention in Geneva. At the Shanghai meeting, the Americans had moved a future gathering to draft an international control drug treaty that would incorporate the Shanghai goals in an extended and more rigid shape. This proposition was challenged by other nations and went no place.

In the next years, be that as it may, the U.S. campaigned persistently and powerfully around the globe for another meeting. Tending to the opium issue specifically, freely and universally was a route for the U.S. to accomplish its residential control goals, to put a conclusion to the productive drug trade ruled by the frontier (colonial) powers. This was an undertaking to debilitate the opium plan and divert thought from Indian opium creation, Britain in like manner believed that a sensible course of action would make a level playing field for British pharmaceutical associations to match the overwhelming German engineered medicate industry.

6.2. UN drugs conventions of 1961, 1971 and 1988

The single convention on narcotic drugs, 1961 is a worldwide convention to prevent creation

and gracefully from claiming specific drugs and of drugs with near effects acknowledges under license for specific explanation, for instance, clinical treatment and exploration. Paris convention, 1931 had quite recently consolidate opium, coca and auxiliaries, for instance, morphine, heroin and cocaine. The single convention received in 1961, cemented those settlements and extended their expansion to consolidate cannabis and medications whose effects resemble those of the opiates decided.

India is a signatory individual from single convention on narcotic drugs, 1961 from March 30, 1961. Article 49 alluded, subject to one side of the Government of India to allow briefly any of its regions:

(a) The quasi-medical use of opium,

(b) Opium smoking,

(c) Coca leaf chewing,

(d) The use of cannabis, cannabis resin, extracts and tinctures of cannabis for non- medical purposes, and

(e) The production and manufacture of and trade in the drugs referred to under (a), (b), and (d) above for the purposes mentioned therein.

Psychotropic substances, 1971 is United Nations treaty intended to control psychotropic medications, for example, – Amphetamines type's energizers, barbiturates, benzodiazepines, and hallucinogenics marked in Vienna, Austria on 21 February 1971. The single show on opiate medications of 1961 didn't boycott the numerous newfound psychotropic. The tradition builds up a worldwide control framework for psychotropic substances.it reacted to the broadening and development of the range of drugs of manhandle presented control and over various synthetic drugs as per their helpful incentive on the others. The Convention builds up a global control framework for psychotropic substances. It responded to the improvement and advancement of the scope of medications of misuse and introduced powers over different engineered sedates as demonstrated by their mistreat potential from one point of view and their accommodating motivating force on the other.

United Nations Single Convention on Narcotic Drugs 1961 and the United Nations Convention on Psychotropic Substances 1971. These regulations try to manage the overall movement in drugs of mishandle.

The 1988 Convention was introduced following the political and sociological enhancements during the 1980s. The creating enthusiasm for cannabis, cocaine, and heroin for recreational purposes, by and large in the made world, set off an extension of illicit age in geological areas where cannabis, coca, and opium had been usually evolved. With the rising size of the unlawful drug trade, overall prescription dealing transformed into a multi-billion-dollar business directed by criminal social events, offering grounds to the creation of the 1988 Convention and the important quickening of the war on drugs.

The Convention sets up a universal control framework for psychotropic substances. It reacted to the broadening and extension of the range of drug of manhandle and presented controls over various engineered drugs as indicated by their mishandle potential from one perspective and their remedial incentive on the other.

Profoundly concerned additionally by the consistently expanding advances into different social gatherings made by unlawful activity in opiate drugs and psychotropic substances, and especially by the way that juvenile are utilized as a part of numerous parts of the world as an illegal drugs purchasers advertise and for motivations behind illegal generation, appropriation and exchange opiate drugs and psychotropic substances, which involves a peril of inestimable attraction.

6.3. UN political declaration and Plan of action on drugs, 2009

The Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem,14 embraced during the fifty-second meeting of the Commission and by the General Assembly in its assurance 64/182 of 18 December 2009, in which it was communicated that Member States should ensure that neutralizing activity programs concentrated on and included Juvenile and youngsters, with the end goal of extending their degree and practicality, and that the medication issue continued speaking to a real hazard to the prosperity, security and thriving of all mankind, explicitly Juvenile.

1998 and 2009, the couple declaration go for improving global collaboration in countering the world drug issue, which is a typical and shared duty. Particular targets and objectives to lessen and the interest for illegal drug were likewise concurred by part state. It is obligation on governments to accomplish the two goals: to secure health, and contain one of the world's chief terrible crime. The Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug issue, grasped at the unusual state part in 2009, fuses measures to improve widespread coordinated effort, perceives issues and districts requiring further movement, and furthermore goals and centres in countering the world drug issue.

6.4. UN convention on the right of child {art-33}

Article 33 (Drug abuse): Governments should utilize all methods conceivable to shield juvenile from the utilization of destructive drugs and from being utilized as a part of the drug trade. States Parties will take each legitimate measure, including definitive, regulatory, social and instructive measures, to shield adolescent from the unlawful usage of sedative substances and psychotropic substances as portrayed in the huge all-inclusive settlements, and to keep the use of youth in the illicit age and dealing of such drugs.

6.5. UN office of drug and crime, International standards on drug use prevention, UNODC, commission on Narcotic drugs, resolutions.

Resolution 53/10

"The need to take all appropriate measures, including legislative, administrative, social and educational measures, to protect children and young people against the use or abuse of narcotic drugs and psychotropic substances, as defined in the relevant treaties, and to prevent the use of children and young people in the illicit production of and trafficking in such substances, and urging Governments to implement" (Commission on Narcotic Drugs resolution 53/10 of 12 March 2010)

Resolution 57/3

"Promoting prevention of drug abuse based on scientific evidence as an investment in the well-being of children, adolescents, youth, families and communities" (UNODC resolution 57/3 of 13-14 March, 2014).

Resolution 58/3

"Promoting the protection of children and young people, with particular reference to the illicit sale and purchase of internationally or nationally controlled substances and of new psychoactive substances via the Internet" (UNODC resolution 58/3 of 9-17 March, 2015).

Resolution 56/6

"The United Nations Office on Drugs and Crime to provide the leadership and guidance necessary to support Member States, upon request, in their efforts to scale up access to evidence-based HIV prevention, care, treatment and support services for people who inject drugs, including family-friendly services, especially for women who are pregnant and/or have young children"

(Commission on Narcotic Drugs resolution 56/6 of 15 March 2013).

The proceeding with expanded endeavours by States, important associations, civil society and NGO's, the world drug issue keeps on constituting a genuine risk to general health and the prosperity of humankind, specifically child and juvenile and their families, and to the national security and influence of States, and that it subverts money related and political adequacy and viable boost.

6.6. Beijing Rules – UN standard minimum rules on the administration of juvenile

Government associations should give high need to plans and tasks for youth and should give sufficient resources and various resources for the effective transport of organizations, workplaces and staff for agreeable clinical and mental wellbeing mind, sustenance, including drug and alcohol misuse revulsion and treatment, ensuring that such resources reach and truly advantage Juvenile. Enactment ought to be established and entirely upheld to shield children and youth from drug abuse and drug traffickers.

7. Indian Anti-drug regulations

7.1. Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)

The Narcotics Control Bureau (NCB) is the focal law approval and information association of India responsible for forestall medicate managing and the maltreatment of unlawful substances. It was made on March of seventeenth, 1986 to enable the full execution of the Narcotic Drugs and Psychotropic Substances Act (1985) and fight its encroachment through the Prevention of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances Act (1988). The Narcotics Control Bureau was set up with sway from March 1986. The Act is expected to fulfil India's course of action responsibilities under the Single Convention on Narcotic Drugs, Convention on Psychotropic Substances, and United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The Act has been adjusted on various occasions - in 1988, 2001, and most starting late in 2014. Broadly known as ganja, cocaine and heroin are restricted in India under NDPS act, 1985. Development/creation/fabricate, ownership, deal, buy, transport, stockpiling, utilization or dissemination of any of the accompanying substances, aside from clinical and logical purposes and according to the principles or requests and states of licenses that might be given, is unlawful.

Accordingly, NDPS act rules which would be material to all states and Union territories has been declared by the government of India in 2015 may. It likewise has included 6 tranquilizes to be specific Morphine, Fentanyl, Methadone, Oxycodone. The Act reaches out to the entire of India. NDPS Act was presented by Parliament with an excellent target of handling the illegal drug hazard. "The discipline part in tranquilize dealing is a significant one however its preventive part is progressively significant," governed the seat. From the Statement of targets and causes and the Preamble of the NDPS, the Court was convinced that the administering body never wanted to disallow the measure of fair substance.

7.2. Juvenile Justice (Care & Protection) Act, 2015

The Juvenile Justice Act 1986 (from this point forward alluded to as JJA), and the Juvenile Justice (Care and Protection) Act 2000 (in the future alluded to as JJ (C&P) Act). The last has become the unique store of juvenile justice in the entire of India, aside from the province of Jammu and Kashmir, since its authorization on April, 1st 2001. The JJ (C&P) Act, brings a kid found in states of monetary and social hardship inside its defensive ward. The Act also makes provision for great participation the community in the operations of the community in the operations of the JJS. Most recent revision in JJ (C&P) act, 2015, permit

minors in the age 16-18 to be attempted as grown-ups on the off chance that they carry out shocking wrongdoing. The demonstration of reprobate analysed by Juvenile Justice Board (JJB) to make out if the wrongdoing was submitted as a "child" and a "mature".

Under sec-77 "Whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees."

Under sec-78 "Whoever uses a child, for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine up to one lakh rupees."

The rigorous punishment should be explicit in words, and the 1,00000 fine is also very less. The penalty should be increased by about five lakhs or more. There are severe punishments in the act. Hence the need of the hour now is proper administrative implementation. The Juvenile Justice Act, 2015 specifically requires the establishment of a standard working technique to execute the arrangements of sections 77 and 78.

7.3. National Policy for Drug Demand Reduction (NPDDR), 2018-2023

The Ministry of Social Justice and Empowerment has orchestrated a National Action Plan for Drug Demand Reduction (NAPDDR) for 2018-2023 so as to focus on preventive instruction, mindfulness age, ID, guiding, treatment and restoration of medication subordinate individuals and getting ready and cut off working of the authority associations through communitarian attempts of the Central - State Governments & Non-Governmental Organizations.

Apprehension age through social, print, advanced and online media, and commitment of famous people, other than reinforcing the national complementary helpline for sedate counteraction. The Action Plan calls for persuading directors, officials, negative behavior pattern chancellors of enlightening foundations to ensure that no drugs are sold inside/near to the grounds. Augmentation social order backing and open support in the reduction of enthusiasm by including Panchayati Raj associations, Urban Local Bodies, Nehru Yuva Kendra Sangathan and other nearby packs like Mahila Mandals, self-improvement gatherings, etc to deal with the danger of drug.

8. Result and Discussion

India is both a producer and transit country for these substances. Incalculable states in the India are seen as exceedingly weak for the managing of these drugs and in such way, the State of Jammu and Kashmir, Punjab and north-east locales have ended up being extraordinarily notable for its consideration in the age of charas, ganja & opium besides conveying of drugs like heroin over the line of real control for forward transmission to different world objectives. Unlawful hawking in drugs in the country has also acknowledged upsetting situation in the North and North-Eastern areas. The most noticeably unpleasant part of the chronic drug use is that it establishes its most profound connection on the individuals who are most endangered youth. In light of their interest and push for new incident, the youthful are especially powerless to drug use. The Act has not exclusively been over the top and harsh, however has additionally thrown an enormous weight on the criminal justice framework in view of its auxiliary deformities. On the off chance that the legislature is not kidding about changing the criminal justice framework, change of the NDPS Act is an important initial step.

9. Conclusion

The constitution of India orders the State, to secure health and to try to preclude the utilization of drugs which are harmful to health. It is a direct result of this sacred promise that NDPS Act, 1985 has been passed. India is involved with International regulations determined to crash drug abuse and trafficking. The legitimacy of international anti-drug regulations is exceptionally controversial issue of practical concerns to which concern theory can contribute elucidation of open discussion by dealing with the various types of contention, analysing them. Different of disputes or recognized and broke down, arguments against the free accessibility of drugs and powerless and deficient regulatory implementation framework which desires to bring up the issue of the absence of pro workforce. India is a signatory to the large number of global treaties and conventions, yet at the same time juvenile population are indulged the endless loop of drug and that uncovered the dark side of prevention programs.

Illegal drug utilize is a proceeded with concern for world, especially given the association of juvenile and other populations. The right number of drug abusers in the country remains dark. The inquisitive land position of India makes her powerless against sedate dealing: In the northern edge, countries of the Golden Crescent, to be explicit Pakistan, Afghanistan and Iran make gigantic measures of heroin and supplies it overland through the Middle East to European markets. Unlawful drugs from the Golden Triangle, to be explicit Myanmar, Thailand and Laos moreover are unfamiliar to and given through India since mid-80's. Many anti-drug regulations proposed by United Nations and other international bodies. But very few are looking forward to juvenile and juveniles.

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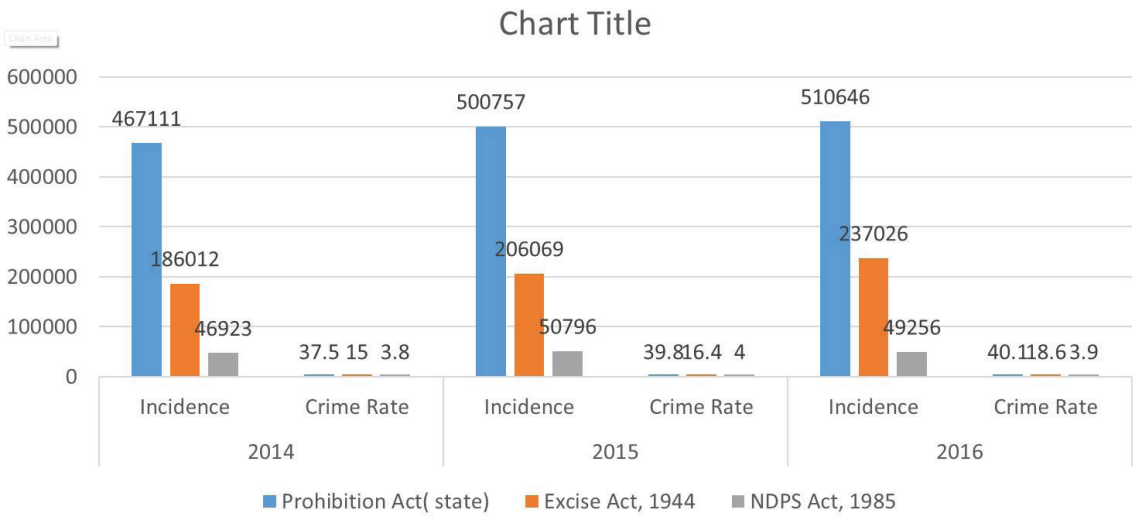
Tables & Figures

Table 1



Juveniles under Liquor and Narcotic Act (2014-2016)						
	2014		2015		2016	
Acts	Incidence	Crime Rate	Incidence	Crime Rate	Incidence	Crime Rate
Prohibition Act (state)	467111	37.5	500757	39.8	510646	40.1
Excise Act, 1944	186012	15	2006069	16.4	237026	18.6
NDPS Act, 1985	46923	3.8	50796	4	49256	3.9

About Authors

My Research topic is "**Socio-Legal study of Drug abuse among Juvenile Delinquents in Delhi Metropolitan**". In this research I am conducting study on juvenile delinquents who indulged in Drug abuse. I analyses the role of counseling in the reformation of drug abusers and the causes of Drug abuse among juveniles. Through this study I focus to understand the socio-legal dilemma related to juvenile delinquency and crimes. This study identifies the impact of counseling upon juveniles' delinquents. To review the anti-drug counseling programs and policies for juvenile in Delhi Metropolitan. How affect counseling to juvenile drug abuse. How policies work in the best interest of juvenile drug abusers.

I have to work on criminal justice system in MA (criminology). I was working with **"Bureau of Police Research & Development"** as intern. My working area is Public policies and social policies organization, Counselling organization, NGO's specialized in Juvenile and security management.

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